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FEDERAL REGISTER

Vol. 88 Wednesday,
No. 233 December 6, 2023

Pages 84683–85090

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Title 3—

The President

Proclamation 10681 of December 1, 2023

International Day of Persons With Disabilities, 2023

By the President of the United States of America

A Proclamation

On International Day of Persons with Disabilities, we recommit to building a world where disabled people everywhere are treated with the dignity and respect they deserve and are afforded an equal shot at achieving their dreams.

Many Americans can still recall when—just over three decades ago—a person could legally be denied service in a restaurant and employers could refuse to hire them on the basis of their disability. Since the beginning of my career, I have worked hard to change that. One of my earliest acts as a United States Senator was co-sponsoring the Rehabilitation Act, which banned discrimination on the basis of disability by any entity funded by the Federal Government. Years later, I was proud to co-sponsor the Americans with Disabilities Act—a landmark piece of legislation that banned discrimination against disabled people in workplaces, schools, public transit, and more.

In the years since, over 180 nations around the world have passed similar laws, delivering justice to millions of people with disabilities worldwide. But there is still more to do at home and abroad to ensure they have equal opportunities. Too often, disabled Americans are unable to vote, get to and from school, and enjoy public spaces, and are paid less for doing the same work. Around the world, disabled people continue to face discrimination, harassment, exploitation, abuse, and violence, which inhibits their full participation in society.

That is why my Administration has worked to ensure that the dignity and rights of disabled Americans are lifted in every policy we pursue. Through my American Rescue Plan, we have taken action to improve access to health care for disabled Americans, including providing billions of dollars to all 50 States to expand home- and community-based services under Medicaid so that more people with disabilities can live independently at home. Through the Bipartisan Infrastructure Law, we have invested billions of dollars more in building a country that works for everyone—from repairing and improving accessibility in airports and transit stations to expanding access to high-speed internet so more disabled Americans can work, study, and stay connected from home. Additionally, the Department of Justice proposed standards for State and local governments to make their internet content and mobile apps more accessible to disabled Americans so that they can easily do things like travel to and from work and school, care for themselves and their loved ones, and vote.

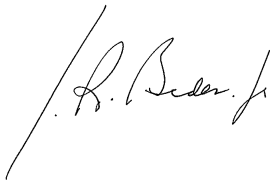
My Administration is also working to uphold the dignity and freedom of disabled people worldwide. For example, I released the first-ever memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally, which directed departments and agencies to account for the particular needs of persons with disabilities in promoting labor rights. At the United Nations General Assembly in September, I met with leaders from Central Asia at the first-ever C5+1 Presidential Summit and launched a joint disability rights initiative aimed at integrating disability rights, promoting inclusive education, and increasing infrastructure accessibility. At

the Department of State, I reestablished the role of Special Advisor on International Disability Rights so that the needs of disabled people are consistently represented in foreign policy. Through our participation as a co-chair of the Global Action on Disability Network and a participant in the Global Disability Summit, the United States continues to stand for the equal rights of people with disabilities around the world.

Today, as we celebrate the dignity, resilience, and immense contributions of disabled people everywhere, we recognize that our progress is not just about protecting disability rights—it is about promoting disability pride. For many of the over one billion disabled people around the world, disability is a source of identity and power—and it is our responsibility to ensure everyone has equal opportunities to reach their full potential.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2023, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2023–26898
Filed 12–5–23; 8:45 am]
Billing code 3395–F4–P

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 335

RIN 3206–AN28

Appointment of Current and Former Land Management Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to allow certain current and former employees of a land management agency to compete for a permanent position at such agency, when the agency is accepting applications from individuals within the agency's workforce under promotion and internal placement (*i.e.,* merit promotion) procedures; or at any hiring agency when the agency is accepting applications from individuals outside its own workforce under merit promotion procedures. The intended effect of this hiring authority is to provide a pathway for current and former land management employees currently serving (or served) under time-limited appointments, who have not received a permanent appointment in the competitive service, to compete for vacant permanent Federal positions in the competitive service under merit promotion procedures.

DATES: This rule is effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Michelle T. Glynn, (202) 606–1571, by TDD: 1–800–877–8339, or email: *michelle.glynn@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under most circumstances, individuals who are serving (or served) under time-limited appointments are not eligible to compete under merit promotion procedures for permanent positions in the competitive service. Generally, positions filled under merit promotion procedures are only open to current career or career conditional employees to include certain veterans who are eligible under the Veterans Employment Opportunities Act (VEOA) of 1998, as amended. Because time-limited employees are not career or career conditional employees, they may never be considered for permanent positions under merit promotion procedures. To remedy this situation, Congress enacted the Land Management Workforce Flexibility Act (''the Act'') under 5 U.S.C. 9601 and 9602 to better assist certain time-limited employees in Federal land management agencies to compete for vacant permanent positions in the competitive service under merit promotion procedures.

To implement the Act, OPM published proposed regulations in the **Federal Register** at 85 FR 29348 on May 15, 2020. Specifically, OPM proposed to allow certain current and former land management employees who are serving (or served) under time-limited appointments and have not received a permanent position in the Federal government to compete for permanent positions under merit promotion procedures in 5 CFR parts 316 and 335. After considering the comments received, OPM is finalizing the proposed amendments with modifications as discussed in the next section. OPM is also adopting several non-substantive modifications from the proposed to the regulatory text to improve clarity.

Comments on the Proposed Rule

OPM received five comments on the proposed rule: four from individuals and one from a Federal employee union. One individual commented that the rule does not address whether a land management eligible with competitive status is subject to time-in-grade (TIG) restrictions when using this authority. The commenter also asked whether a land management eligible who already held a permanent job could use his or her eligibility multiple times when applying for positions under promotion and internal placement (*i.e.,* merit promotion) procedures. The commenter suggested that OPM state clearly in the regulation whether these situations are allowed.

Agencies cannot use this authority to circumvent TIG requirements. TIG exists to prevent excessively rapid promotions in competitive service General Schedule positions and to protect competitive principles. In accordance with 5 CFR 300.603, TIG applies to an individual who served on a non-temporary appointment within the 52-week period prior to advancement. Based on the scenario described above, the permanent employee, who was formerly a time-limited employee, would be subject to time-in-grade if seeking a higher-graded position. In accordance with 5 U.S.C. 9602, eligibility under these regulations applies to certain individuals serving, or who served, under a time-limited appointment and have not received a permanent position in the Federal government. OPM will address this and other scenarios pertaining to TIG requirements in supplemental guidance.

One individual expressed concern over the hiring practices at the Bureau of Land Management (BLM) and dissatisfaction with the current BLM leadership. This individual did not have any objections to or suggestions on the proposed regulation. OPM will not address this comment because it is beyond the scope of the proposed regulations.

Two individuals provided positive comments and expressed strong support for the proposed regulation. A retired National Park Ranger stated that he strongly supports the proposed regulation because it greatly benefits the National Park Service in the recruitment and retention of new and diverse employees. Another individual stated that this regulation will help temporary employees find full-time permanent employment and hiring managers to attract experienced workers. OPM appreciates this support.

One individual suggested that OPM amends the proposed rule to allow employees who previously served on a temporary appointment have that time credited toward the probationary or trial period. OPM is not adopting this suggestion because it is not necessary. The governing statute at 5 U.S.C. 9602(c)(2) states that individuals appointed under this authority acquire competitive status upon appointment. Competitive status is acquired after completion of a probationary period in accordance with 5 CFR 212.301. The

statute deems a land management eligible who is selected to have completed a probationary period upon appointment under this authority. The proposed regulation at 5 CFR 315.613(d) states this.

The same individual suggested that OPM modifies proposed § 335.107 to make clear that a land management eligible may compete for a permanent position at any agency when the position is being filled under merit promotion procedures. OPM is not adopting this suggestion. The Act at 5 U.S.C. 9602 established the conditions and criteria under which certain current or former land management employees may compete for a permanent position under merit promotion procedures. The suggested language is not in accordance with this statute. The language in the proposed rule is consistent with the governing statute and reflects the conditions under which a land management employee may compete when a job is advertised under merit promotion procedures and open to candidates from outside an agency's workforce or under merit promotion procedures and open to candidates from within an agency's workforce.

A Federal employee union commented that its primary concern is to ensure the regulation and supplementary information reflect the statutory requirement that agencies must allow all land management eligibles to compete for vacancies filled under their merit promotion procedures. This Federal employee union submitted several specific comments that are discussed throughout the remainder of the Supplementary Information section of this preamble.

Federal Employee Union Comments on the Supplementary Information of the Proposed Rule

The employee union stated:

> The primary thrust of the statute, as expressed in its first sentence, is to establish that a land management eligible ''is *eligible* to compete (emphasis added).'' [sic] It is therefore mandatory that agencies consider land management eligible applicants.
>
> This is not reflected in the first sentence in the supplementary information under ''Description of the Flexibility (p. 29349)'' which states, in relevant part, ''. . . an agency *may* use this authority to *allow* a current or former land management eligible . . . to compete for a permanent position. . .'' (emphasis added). The term ''may'' gives agencies discretion to ''allow'' or to not allow land management eligibles to compete. In fact, the statute is prescriptive in this regard, in that it states that land management eligibles are ''eligible to compete.'' It is not within the authority of an agency to remove that which Congress has bestowed. We recommend this be revised to state ''. . .*under this authority,* an agency *must* to allow [sic] a current or former land management eligible. . . to compete for a permanent position . . .'' (emphasis in original.)

The employee union also asserted the sentence quoted above (''. . . an agency *may* use this authority to *allow* a current or former land management eligible . . . to compete for a permanent position . . .'' (emphasis in original)) had to be ''a simple drafting error'' because in the same section the supplementary information stated: ''an agency must consider a land management eligible (also under ''Description of the Flexibility, '' p. 29349).'' Nevertheless, the presence of the first sentence remained ''problematic as it introduces ambiguity that could lead to flawed implementation.''

OPM thanks the Federal employee union for the comment. No modification to the regulatory text is needed as it already reflects that agencies have the discretion whether to fill their positions under promotion and internal placement (*i.e.,* merit promotion) procedures (5 CFR part 335) or through another hiring authority. OPM further notes that the difference in the sentences was not a drafting error, but rather reflect different points in the hiring process. OPM's use of ''must'' in the second reference under ''Description of the flexibility'' modifies the phrase ''consider a land management eligible . . .'' It relates to when a land management eligible applies for a permanent position. That is, once an agency makes the determination to use its discretion to advertise for a permanent position under Promotion and Internal Placement procedures at 5 CFR 335, certain land management eligibles must be considered.

The employee union further objected to the phrase—''. . . *will be expected* to consider land management eligibles . . . (under ''Land Management Workforce Flexibility Act, as Amended,'' [sic] p. 29349)'' in two places because that phrase did not create requirements and was not a term of art. In the alternative, the employee union again recommended revising the language ''to clearly articulate the statutory requirement that agencies *must* to consider [sic] land management eligibles.''

OPM agrees and clarifies that agencies who use their discretion to hire for positions under proposed parts 315 and 335 must consider eligible land management applicants who apply for permanent positions.

Federal Employee Union Comments on the Regulatory Text at § 335.107

The employee union recommended revising the language at § 335.107 to make it clear that land management eligibles are entitled to compete for permanent positions. It asserted ''[t]he statement that they 'may compete' is not, in our view, sufficiently prescriptive in this regard.''

OPM does not believe this change is necessary because 'may' and 'are entitled' have the same meaning in this context. The law does not *require* individuals to compete, it allows them to, hence our use of ''may.'' Further, this formulation parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained ''may compete'' for consistency in part 335.

The employee union further commented that the proposed § 335.107, ''Special selection procedures for *certain* land management eligibles under merit promotion'' (emphasis added) is problematic because it implies some but not all land management eligibles are eligible to compete for permanent positions. The employee union added ''In fact, the section applies to *all* land management eligibles, as defined in the statute and in the proposed regulation, not only to certain ones . . . [and] could lead practitioners to wrongfully exclude subsets of land management eligibles.'' The employee union recommended deleting the word ''certain'' from the heading.

OPM notes this section applies only to those land management employees who meet the eligibility requirements of the statute (*i.e.,* current and former time-limited land management employees). OPM agrees, however, the original title may cause confusion by suggesting greater limitations beyond meeting the eligibility requirements. Consequently, OPM has revised the section heading for proposed § 335.107 to read, ''§ 335.107. Special selection procedures for land management eligibles under merit promotion.''

The employee union further stated that § 335.107 should be revised to reflect that the section was not about selection procedures and the Act established an ''entitlement to compete.'' Consequently, it recommended changing the heading to ''Entitlement of land management eligibles to compete for permanent positions under merit promotion.''

OPM disagrees with this comment. This section is about selection procedures, as it encompasses eligibility

for selection as well as how selected individuals will be appointed (*i.e.,* given a career or career-conditional appointment in accordance with 5 CFR 315.613). This formulation parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained ''selection procedures'' for consistency in part 335.

The employee union disagrees with the phrase ''if otherwise qualified'' in the regulatory language at § 335.107 and states the phrase suggests some but not all land management employees are eligible. The employee union further states that the statute and the proposed definition at § 315.613(b)(3) makes all land management employees eligible to compete for a permanent position and fears it could lead human resources specialists to wrongfully exclude subsets of eligible land management employees. The employee union recommends replacing ''if otherwise qualified'' with ''if they properly apply and otherwise meet qualifications for the position.''

OPM is not adopting this suggestion. The phrase ''if otherwise qualified'' describes who may compete under merit promotion procedures in part 335 and entails more general considerations, such as whether an applicant meets the qualifications for the position being filled, satisfies any applicable time-in-grade requirements, etc.

The employee union also provided a list of additional recommended edits to the proposed language at § 335.107 as follows:

1. ''There is a spurious close parenthesis in the parent phrase.''

OPM agrees and removed the extraneous parenthesis in § 335.107.

2. ''As written, 'compete' is under (a) and therefore does not apply to (b), leaving that which a land management eligible may do under the circumstances described under (b) unspecified. 'Compete' should be the last word of the parent phrase, not the first word under (a).''

OPM agrees and has revised the text in § 335.107 to the following: ''. . . may compete, if otherwise qualified:''

3. ''As written, the phrase ''in accordance with § 315.613'' applies only to (b). It should apply to both (a) and (b) and therefore should be moved to the parent phrase.''

4. ''As written, it is specified that a land management eligible selected to such a position is given a career or career-conditional appointment only in (b), but not in (a). This requirement exists for both.''

OPM agrees with both comments immediately above and has modified § 335.107(a) to include similar language to what appears in paragraph (b).

5. ''As written, it is specified that a permanent position subject to the requirements of the statute are in the competitive service in (a), but not in (b). This requirement exists for both.''

OPM agrees and has revised the text by removing the reference to ''in the competitive service'' at § 335.107(a). The reference to the ''competitive service'' at § 335.107(a) is superfluous because, by definition, merit promotion procedures can only be used to fill positions in the competitive service. We also revised the text at § 335.107(b) to coincide. Further, the sentence added to § 315.613(a) based on earlier comments notes the types of appointments available, which also are only available in the competitive service.

6. ''As written, the use of the conjunction 'or' at the end of (a) would mean a land management eligible could compete under (a) or under (b), but not both. In fact, a land management eligible is not precluded from, for example, applying for a position under (a) by virtue of having applied for one under (b). The appropriate conjunction for this circumstance is 'and.'

OPM is not adopting the suggestion to replace ''or'' with ''and'' between § 335.107(a) and (b). OPM's use of ''or'' conveys that a land management eligible may compete in either of two instances: if a job is advertised under merit promotion procedures outside the agency's workforce, or if a job is advertised under merit promotion procedures within the agency's workforce. The use of ''and'' may confuse readers to think a land management eligible may only apply when a job is advertised both ways.

7. ''The statement 'A land management eligible so selected will be given a career or career-conditional appointment' does not go to the point of the section, the entitlement of land management eligibles to compete for permanent positions. It is one of several aspects that relate to selection. As such, it is handled under the section dealing with these matters, at § 315.613(e). It is not needed here.

OPM notes that the employee union also commented above at #4 that this sentence only appeared in § 335.107(b) but also applied to § 335.107(a). OPM accepted the change requested at comment #4 and added the language to paragraph (a). However, OPM disagrees with comment #7. We believe describing the type of appointment a land management eligible may receive is appropriate under this section heading, as it is an aspect of selection. We note this reference to the type of appointment parallels language currently in § 335.106 pertaining to individuals eligible under the Veterans Employment Opportunities Act of 1998, as amended. We retained this formulation in proposed § 335.107 for consistency with part 335.

To effectuate these requested changes, the employee union recommended that OPM redraft § 335.107 as follows:

§ 335.107. Entitlement of Land Management Eligibles To Compete for Permanent Positions Under Merit Promotion

A current or former time-limited employee of a land management agency who is a land management eligible, as defined in § 315.613(b)(3), is entitled to compete in accordance with the provisions of § 315.613:

(a) for a permanent position in the competitive service at any agency (including, but not limited to, a land management agency) when that agency is accepting applications from individuals outside its own workforce under its merit promotion procedures; and

(b) for a permanent position in the competitive service at the land management agency at which they were most recently an employee when that agency is accepting applications from individuals within the agency's workforce under its merit promotion procedures.

OPM responded to each bulleted issue individually above and is not adopting the recommended language in its entirety. As previously noted, we are making many of the recommended revisions to § 335.107 based on the concerns expressed by the employee union. OPM also notes that a former time-limited employee of a land management agency who is a land management eligible is considered ''within the [land management] agency's workforce'' as long as the employee was most recently an employee of that agency (date of separation was not more than 2 years prior to application), even if the time-limited appointment has ended. *See* 5 U.S.C. 9602(d).

Expected Impact of This Final Rule

A. Statement of Need

OPM is issuing this final rule to implement statutory changes that allow certain current and former time-limited employees of a land management agency to compete for permanent positions at a land management agency, when the agency is accepting applications from individuals within the agency's workforce under merit promotion procedures; or at any agency when the agency is accepting applications from individuals from outside its own workforce under merit

promotion procedures. These changes are in response to the enactment of the Act, Public Law 114–47, 5 U.S.C. 9601 and 9602.

B. Impact

This final rule provides a pathway for certain current and former land management employees currently serving (or who have served) under time-limited appointments at 5 CFR part 316 to compete for vacant permanent Federal positions in the competitive service under merit promotion procedures. Prior to enactment of the Act, these individuals competed for Federal jobs open to U.S. citizens through an open competitive process (unless the Land Management eligible had previously acquired competitive status). These employees now have statutory eligibility to compete under merit promotion procedures under certain circumstances. Thus, the law treats these individuals as if they had competitive status for purposes of applying for permanent Federal jobs advertised under an agency's merit promotion procedures. A potential impact may be that the demand for jobs advertised under these procedures could increase, as measured by an increase in the number of applicants vying for positions advertised under these procedures. This may result in longer processing times or ''time to hire'' periods than was previously the case.

Another potential impact could be on job-seeking veterans whose eligibility derives from the Veterans Employment Opportunities Act (VEOA) of 1998, as amended. The VEOA provides eligible veterans with the right to apply for positions advertised under merit promotion procedures when the hiring agency seeks applicants outside the hiring agency's workforce. Prior to enactment of the Act, VEOA eligible veterans were the only group with a statutory entitlement to compete for positions being filled by an agency from outside its own workforce under merit promotion procedures. In general, this may increase competition for these positions in general, and thus may reduce the chances of a VEOA eligible being selected for one of these positions.

Lastly, this rule could impact current employees of land management agencies serving in career-ladder positions. An employee in a career ladder position may be non-competitively promoted to the next highest grade-level, provided the next highest grade-level is within the career-ladder, the employee meets time-in-grade requirements, and is otherwise qualified for the duties at the next highest grade level. Because the Act extends eligibility to individuals outside the agency's or the Federal government's workforce, employees in career-ladder positions may now find themselves pitted against these external candidates.

OPM cannot quantify the size of these potential impacts (including the impact on VEOA eligible) because we have no way of knowing the volume or frequency with which land management eligibles may apply for a position under these rules.

C. Regulatory Alternatives

There is no regulatory alternative to the final rule because OPM is required by the Act to implement the statute through regulations (see 5 U.S.C. 9602(e)).

D. Costs

The costs associated with the final rule are minimal and include: the costs associated with the resources needed to process a potentially higher volume of job applicants for certain Federal jobs and the usual learning curve of implementing a regulatory change. To help minimize the latter cost, OPM intends to issue supplemental, explanatory guidance as well as provide technical assistance upon request to any agency that may require such assistance. Because agency resources and the potential volume of increased job applicants vary, OPM cannot monetize the costs of these rules.

E. Benefits

The final rule will benefit certain employees and former employees of land management agencies and may benefit hiring agencies as well. These rules allow current and former time-limited employees of land management agencies who are otherwise ineligible (*i.e.,* they have not acquired competitive status nor do they have reinstatement eligibility) to compete for permanent jobs under merit promotion procedures to do so. Time-limited employees are ineligible to compete for vacant permanent positions advertised under merit promotion procedures because, by definition, they do not acquire competitive status on the basis of the time-limited appointment. Generally, positions filled under merit promotion procedures are open to current or former career or career-conditional employees, certain veterans eligible under the VEOA and other individuals with special appointment eligibilities who are treated as if they have competitive status (*i.e.,* former peace corps volunteers or certain military spouses). Because many agencies fill non-entry level positions using merit promotion procedures, qualified time-limited employees may never be considered for these positions under merit promotion procedures. To remedy this circumstance, Congress enacted the Act to provide a pathway for certain time-limited employees in Federal land management agencies to permanent positions. These provisions allow eligible current and former time-limited land management employees to compete for permanent positions in the competitive service under merit promotion procedures that previously were closed to them.

Hiring agencies may benefit from having an additional source of experienced land management employees to consider under their merit promotion procedures who otherwise may not have been within reach for selection when applying through the competitive examining process. This potential benefit must be balanced with the costs associated with processing a potentially higher volume of job applicants (including longer time-to-hire processing times) under merit promotion procedures.

Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which 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). This rule is considered a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

The Office of Personnel Management has examined this rulemaking in accordance with Executive Order 13132, Federalism, and have determined that this rulemaking will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rulemaking will not 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OMB's Office of Information and Regulatory Affairs has determined this is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

This rulemaking does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Parts 315 and 335

Government employees.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR parts 315 and 335 as follows:

PART 315—CAREER AND CAREER CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also under E.O. 13473. Sec 315.613 also issued under Pub. L. 114–47, sec. 2(a) (Aug. 7, 2015), amended by Pub. L. 114–328, sec. 1135 (Dec. 23, 2016), as codified at 5 U.S.C. 9602. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1978 Comp. p. 264.

Subpart F—Career or Career Conditional Appointment Under Special Authorities

■ 2. Add § 315.613 to subpart F to read as follows:

§ 315.613 Appointment of current and former land management eligibles serving under time-limited appointments.

(a) *Appointment of land management eligibles.* (1) Any agency—

(i) May appoint a land management eligible who is a current time-limited employee of a land management agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency's workforce; and

(ii) May appoint a land management eligible who is a former time-limited employee of a land management agency to a permanent position provided:

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency; and

(B) Was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside of the hiring agency's workforce.

(2) In addition, a land management agency—

(i) May appoint a land management eligible who is a current time-limited employee of that agency to a permanent position provided the land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency's workforce; and

(ii) May appoint a land management eligible who is a former time-limited employee of that land management agency to a permanent position provided:

(A) The land management eligible applied for that position within the 2-year period following the most recent date of separation from a land management agency;

(B) The land management agency from which the land management eligible most recently separated is the same land management agency as the one making the appointment; and

(C) The land management eligible was selected from among the best qualified following competition under a merit promotion announcement open to candidates within that agency's workforce.

(b) *Definitions*—(1) *Agency* has the meaning given in 5 U.S.C. 105, and may also mean a major subdivision or component of an entity defined in 5 U.S.C. 105.

(2) *Land management agency* means any of the following:

(i) The Forest Service of the U.S. Department of Agriculture;

(ii) The Bureau of Land Management of the U.S. Department of the Interior;

(iii) The National Park Service of the U.S. Department of the Interior;

(iv) The Fish and Wildlife Service of the U.S. Department of the Interior;

(v) The Bureau of Indian Affairs of the U.S. Department of the Interior; and

(vi) The Bureau of Reclamation of the U.S. Department of the Interior.

(3) *Land management eligible* means either:

(i) An individual currently serving in a land management agency who:

(A) Initially was hired under competitive procedures, for a time-limited appointment in the competitive service in accordance with part 316, and has not received a permanent appointment;

(B) Has served under one or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break in service of 2 or more years; and

(C) Has performed at an acceptable level during each period of service; or

(ii) An individual who previously served in a land management agency who:

(A) Initially was hired under a time-limited appointment under competitive procedures in the competitive service in accordance with part 316, and did not receive a permanent appointment before leaving Federal service;

(B) Served under one or more time-limited appointments by a land management agency for a total period of more than 24 months without a break in service of 2 or more years;

(C) Performed at an acceptable level throughout the service period(s);

(D) Applied for a position covered by these provisions within 2 years after the individual's most recent date of separation from a land management agency; and

(E) With respect to the individual's most recent separation, for reasons other than misconduct or performance. For these purposes, an individual under this paragraph is deemed a time-limited employee of the land management agency from which the individual was most recently separated.

(4) *Time-limited appointment* means a temporary or term appointment, in accordance with 5 CFR part 316.

(c) *Conditions.* An agency is expected to consider the application of a land

management eligible; and must waive any age requirement unless it can prove that the requirement is essential to the performance of the duties of the position.

(d) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon appointment.

(e) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempted from the service requirement pursuant to § 315.201.

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 3. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f); Pub. L. 106–117; Pub. L. 114–47, sec. 2(a) (Aug. 7, 2015), as amended by Pub. L. 114–328, sec. 1135 (Dec. 23, 2016), codified at 5 U.S.C. 9602.

Subpart A—General Provisions

■ 4. Add § 335.107 to subpart A to read as follows:

§ 335.107 Special selection procedures for land management eligibles under merit promotion.

A current or former land management employee of a land management agency, who is a land management eligible, as defined in § 315.613(b)(3) of this chapter, may compete, if otherwise qualified for:

(a) A permanent position at any agency (including, but not limited to, a land management agency), in accordance with the provisions of § 315.613 of this chapter, when that agency is accepting applications from individuals outside its own workforce under merit promotion procedures. A land management eligible so selected will be given a career or career-conditional appointment under § 315.613; or

(b) A permanent position at the land management agency with which the individual was most recently an employee, in accordance with the provisions of § 315.613 of this chapter, when the agency is accepting applications from individuals within the agency's workforce under its merit promotion procedures. A land management eligible so selected will be given a career or career-conditional appointment under § 315.613.

[FR Doc. 2023–26723 Filed 12–5–23; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1050; Project Identifier AD–2022–00602–E; Amendment 39–22620; AD 2023–24–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Honeywell International Inc. (Honeywell) Model AS907–1–1A and AS907–2–1G engines. This AD was prompted by reports of compressor surge, including a dual engine compressor surge, during takeoff climb out through a steep temperature inversion, causing a loss of engine thrust control. This AD requires either the replacement of a certain electronic control unit (ECU) software version installed on AS907–1–1A engines with updated software or the replacement of certain ECUs installed on AS907–1–1A engines with ECUs eligible for installation. This AD also requires the replacement of certain ECUs installed on AS907–2–1G engines. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 10, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1050; 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, 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: Joseph Costa, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5246; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Honeywell Model AS907–1–1A and AS907–2–1G engines. The NPRM published in the **Federal Register** on May 23, 2023 (88 FR 32980). The NPRM was prompted by several reports that Honeywell Model AS907–1–1A and AS907–2–1G engines experienced compressor surge, including an AS907–1–1A dual engine compressor surge, during takeoff climb out through a steep temperature inversion, which resulted in loss of engine thrust control. The FAA determined that the installed ECU software version logic locked the engine inlet total temperature (Tt2) at 60 knots on a takeoff roll and that reference Tt2 remained locked until the aircraft reached 400 feet above ground level (AGL) or the pilot moved the throttle before reaching 400 AGL. The locked Tt2 is mathematically adjusted by the ECU software for altitude and Mach number changes as the takeoff progresses. During a climb to 400 feet AGL with a thermal inversion, the actual engine Tt2 can increase above the Tt2 that is being calculated by the ECU, which causes the compressor guide vanes' (CGVs) and surge bleed valves' (SBVs) positions to be off-schedule for the actual ambient conditions. Significant off-scheduling of the CGVs and the SBVs can lead to a compressor surge event. The compressor surge margin is decreased when scheduling is based on a colder Tt2 temperature than what the engine is actually running. Engine deterioration impacts compressor surge margin and can increase the likelihood of a dual engine compressor surge as the AS907–1–1A and AS907–2–1G engine fleets age. Dual engine power loss due to a temperature inversion may result in significant loss of airplane thrust, which could reduce the climb gradient and result in the airplane's inability to clear obstacles. As a result, the manufacturer updated the software.

In the NPRM, the FAA proposed to require either the replacement of a certain ECU software version installed on AS907–1–1A engines with an updated software version eligible for installation or the replacement of certain ECUs installed on AS907–1–1A engines with ECUs eligible for installation. The NPRM also proposed to require the replacement of certain ECUs installed on AS907–2–1G engines with ECUs eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. The commenters were Bombardier Inc. (Bombardier), Duncan Aviation, and Honeywell. All three commenters requested changes to the proposed AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update Software Update Language

Bombardier requested that the FAA update the NPRM so that references to software are consistent. Bombardier noted that in the NPRM **SUMMARY** section, the phrase ''updated software'' was used, while other portions of the AD refer to the ''software version eligible for installation.''

The FAA acknowledges the inconsistency and has provided detail about the updated software in the Background of this final rule.

Request To Clarify Background

Bombardier requested that the FAA include language in the Background paragraph of this AD to explain the effect of Tt2 locking on the SBVs.

The FAA agrees. As a result, the FAA has added language to the Background paragraph of this AD to explain the effect of Tt2 locking and clarify the surge bleed valves that affect surge margin.

Request To Update Unsafe Condition Description

Bombardier requested that the FAA update the language in the unsafe condition of the NPRM Background and paragraph (e) of the proposed AD to the following: ''may result in significant loss of overall airplane thrust which can lead to inability of the airplane to clear the AFM OEI net flight path (risk of obstacle collision).''

The FAA partially agrees. The unsafe condition description in Background of this final rule was clarified to include ''which could reduce the climb gradient and result in the airplane's inability to clear obstacles.'' However, paragraph (e) of this AD was not changed as a result of this comment because the consequence remains consistent with the end-level effect if the unsafe condition is not addressed.

Request To Correct the Costs of Compliance

Honeywell suggested a change to the second sentence of the Cost of Compliance to remove an erratum.

The FAA agrees and has changed the second sentence of the Costs of Compliance of this final rule to refer to AS907–2–1G engines installed on airplanes of U.S. registry.

Request To Update Labor Cost

Bombardier questioned why the work-hours for removing the ECU for the AS907–1–1A engine are less than the work-hours for removing the ECU for the AS907–2–1G engine.

The FAA acknowledges that the estimated work-hours should be the same for removing an ECU from both engine models. However, the FAA estimated one ECU will need to be replaced in the AS907–1–1A fleet. Therefore, the FAA estimated 1 work-hour to replace the ECU and 1 work-hour to complete the power assurance run for one engine. The FAA did not change this AD as a result of this comment.

Request To Clarify Estimated Costs Table

Honeywell noted that the structure of the Estimated Costs table is such that the total or individual engine model fleet cost to the U.S. registered operators is not clearly presented.

The FAA agrees and has clarified the Costs of Compliance of this final rule. The cost per product columns reflect the estimated costs per engine. The AS907–1–1A cost to replace ECU software was moved to the Estimated Costs table to show a total fleet cost assuming all ECUs receive the software upgrade. The cost to replace the AS907–1–1A ECU remains unchanged. The FAA has no way of knowing how many AS907–1–1A engine operators will replace the ECU instead of the software.

Request To Change the Expression of Compliance Times

Duncan Aviation and Honeywell requested that the FAA change the expression of compliance times throughout Tables 1 and 2 of the NPRM to be more concise. Each of the two commenters suggested slightly different phrasing of compliance times. Each suggested removal of the terms ''before exceeding'' and ''hours time-in-service (TIS).'' Duncan Aviation and Honeywell requested the order of ''whichever occurs first'' and ''after the effective date of this AD'' be reversed. Duncan Aviation stated that ''hours TIS'' could be misinterpreted as time since new.

The FAA agrees that the expression of compliance times should be clear. The FAA clarifies that ''hours TIS'' is equivalent to flight hours. The FAA changed the compliance times in Table 1 to paragraph (g)(1) and Table 2 to paragraph (g)(2) of this AD to read as follows: Within X months/years or Y flight hours after the effective date of this AD, whichever occurs first.

Request To Correct ECU Software Version Number

Honeywell requested that the FAA change the ECU software version number in paragraph (g)(1) of the proposed AD from ''AS907_1011'' to ''AS907_1001.'' Bombardier requested that the FAA change the ECU software part version number in paragraph (g)(1) of the proposed AD from ''AS907_1011'' to ''AS907–1001.''

The FAA agrees with changing the ECU software version number in paragraph (g)(1) to ''AS907_1001'' because ''AS907_1001'' is the correct nomenclature.

Request To Update Definitions

Bombardier requested that the FAA change the part/version numbers defined as eligible for installation. Bombardier requested that the definitions change from excluding certain part/version numbers to requiring certain part/version numbers because older versions of software will not address the unsafe condition.

The FAA partially agrees. While these items may be the only items currently eligible for installation, the definitions also allow future approved items. This mitigates the need for an alternative method of compliance (AMOC) for future software versions or ECU P/Ns. There is no version of software older than AS907_1001 for the AS907–1–1A engine. The FAA did not change this AD as a result of this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Costs of Compliance

The FAA estimates that this AD affects a total of 853 engines installed on airplanes of U.S. registry. The FAA estimates that 175 AS907–2–1G engines installed on airplanes of U.S. registry will require replacing two ECUs per engine.

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
Replace AS907–2–1G ECUs (2 per engine)	5 work-hours × $85 per hour = $425	$109,044	$109,469	$19,157,075
Replace AS907–1–1A ECU software (2 per engine).	5 work-hours × $85 per hour = $425	0	425	*288,150

*The FAA assumes that all 678 AS907–1–1A engines installed on airplanes of U.S. registry will replace the software in two ECUs per engine. Honeywell Model AS907–1–1A operators may replace the ECU instead of replacing the software to comply with this AD. For replacing the ECU, the FAA estimates the following costs:

Action	Labor cost	Parts cost	Cost per product
Replace AS907–1–1A ECU (per ECU, per engine)	2 work-hours × $85 per hour = $170	$61,162	$61,332

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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.

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.

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:

2023–24–04 Honeywell International Inc.: Amendment 39–22620; Docket No. FAA–2023–1050; Project Identifier AD–2022–00602–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 10, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honeywell International Inc. (Honeywell) Model AS907–1–1A and AS907–2–1G engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by reports of compressor surge, including a dual engine compressor surge, during takeoff climb out through a steep temperature inversion, which caused a loss of engine thrust control. The FAA is issuing this AD to prevent loss of engine thrust control. The unsafe condition, if not addressed, could result in reduced controllability of the airplane, loss of control of the airplane, reduced ability of the flight crew to maintain the safe flight and landing of the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For AS907–1–1A engines with an electronic control unit (ECU) having part number (P/N) 2119576–1011 and software version AS907_1001 installed, before exceeding the applicable compliance time in Table 1 to paragraph (g)(1) of this AD, either replace software version AS907_1001 with a software version eligible for installation; or replace the ECU with an ECU eligible for installation. Either the software or ECU must be replaced for all four ECUs installed in both airplane engines at the same time.

Note 1 to paragraph (g)(1): Guidance for removing and replacing the ECU software or removing and replacing the ECU may be found in Honeywell Service Bulletin (SB) AS907–76–9031, Revision 2, dated May 15, 2022.

TABLE 1 TO PARAGRAPH (g)(1)—MODEL AS907–1–1A ENGINES

Engine time since new (TSN)	Compliance time
Greater than 5,000 hours TSN	Within 12 months or 400 flight hours (FH) after the effective date of this AD, whichever occurs first.
3,000 to 5,000 hours TSN	Within 18 months or 600 FH after the effective date of this AD, whichever occurs first.

TABLE 1 TO PARAGRAPH (g)(1)—MODEL AS907–1–1A ENGINES—Continued

Engine time since new (TSN)	Compliance time
Fewer than 3,000 hours TSN	Within 24 months or 800 FH after the effective date of this AD, whichever occurs first.

(2) For AS907–2–1G engines with serial numbers (S/N) P130101 through P130240 that have not incorporated Honeywell SB AS907–72–9063, and for AS907–2–1G engines with S/Ns P130241 through P130336, and S/Ns P130101 through P130240 that have incorporated Honeywell SB AS907–72–9063, before exceeding the applicable compliance time in Table 2 to paragraph (g)(2) of this AD, replace any installed ECU having P/N 2119576–3001 or P/N 2119576–3002 with an ECU eligible for installation. All four ECUs installed in both airplane engines must be replaced at the same time.

Note 2 to paragraph (g)(2): Guidance for removing and replacing the ECU may be found in Honeywell SB AS907–76–9014, Revision 6, dated October 10, 2022.

Note 3 to paragraph (g)(2): Guidance for converting a standard flow compressor to a high flow compressor for improving surge margin may be found in Honeywell SB AS907–72–9063, Revision 1, dated July 31, 2019.

TABLE 2 TO PARAGRAPH (g)(2)—MODEL AS907–2–1G ENGINES

Engine type	Compliance time
Standard Flow Compressor AS907–2–1G engines (engine S/Ns P130101 through P130240 that have not incorporated Honeywell SB AS907–72–9063).	Within 2 years or 800 FH after the effective date of this AD, whichever occurs first.
High Flow Compressor AS907–2–1G engines (engine S/Ns P130241 through P130336 and engines that have incorporated Honeywell SB AS907–72–9063).	Within 7 years or 2,800 FH after the effective date of this AD, whichever occurs first.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install an ECU having P/N 2119576–1011 and software version AS907_1001 in any AS907–1–1A engine.

(2) Do not install an ECU having P/N 2119576–3001 or P/N 2119576–3002 in any AS907–2–1G engine if the ECU has exceeded the compliance time specified in Table 2 to paragraph (g)(2) of this AD.

(i) Definitions

(1) For the purpose of this AD, for the AS907–1–1A engine, a ''software version eligible for installation'' is a software version that is not software version AS907_1001.

(2) For the purpose of this AD, for the AS907–1–1A engine, an ''ECU eligible for installation'' is an ECU that does not have P/N 2119576–1011.

(3) For the purpose of this AD, for the AS907–2–1G engine, an ''ECU eligible for installation'' is an ECU that does not have P/N 2119576–3001 or P/N 2119576–3002.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification 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 West Certification Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *9-ANM-LAACO-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.

(k) Additional Information

For more information about this AD, contact Joseph Costa, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5246; email: *joseph.costa@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26636 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1719; Project Identifier 2008–NM–202–AD; Amendment 39–22621; AD 2010–26–05R1]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: The FAA is removing Airworthiness Directive (AD) 2010–26–05, which applied to certain Dassault Aviation Model Falcon 10 airplanes; Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; and all Model MYSTERE–FALCON 200 airplanes; Model FALCON 2000 and FALCON 2000EX airplanes; Model MYSTERE–FALCON 50 and MYSTERE–FALCON 900 airplanes; and Model FALCON 900EX airplanes. AD 2010–26–05 required repetitive inspections for overpressure tightness on the pressurization control regulating valves and, if necessary, replacing the affected valve with a serviceable unit. The FAA issued AD 2010–26–05 to address failure of the pressurization control regulating valve (overpressure capsule), which will affect the aircraft's overpressure protection. Since the FAA issued AD 2010–26–05, the FAA issued ADs 2021–04–20, 2020–02–13, 2020–03–24, 2020–03–19, 2020–01–13, 2023–05–15, 2023–04–10, 2023–02–13, 2023–04–18, and 2023–04–13 to address the unsafe condition. Therefore, the FAA has determined that AD 2010–26–05 is no longer necessary. Accordingly, AD 2010–26–05 is removed.

DATES: This AD becomes effective December 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1719; 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), 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: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05). The NPRM was published in the **Federal Register** on August 29, 2023 (88 FR 59471). AD 2010–26–05 applied to certain Dassault Aviation Model Falcon 10 airplanes; Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; and all Model FALCON 2000 and FALCON 2000EX airplanes; Model MYSTERE–FALCON 200 airplanes; Model MYSTERE–FALCON 50 and MYSTERE–FALCON 900 airplanes, and Model FALCON 900EX airplanes. AD 2010–26–05 was prompted by AD 2008–0072, dated April 18, 2008, issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union (EASA AD 2008–0072) (also referred to as the MCAI). The NPRM was prompted by a determination that AD 2010–26–05 is no longer necessary, because the actions specified in the MCAI have been included in the airworthiness limitations section of the existing maintenance manual. EASA issued AD 2008–0072–CN, dated October 5, 2020, which cancels EASA AD 2008–0072. Additionally, the FAA has issued the following ADs to address the unsafe condition by revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations, including the actions specified in AD 2010–26–05.

- AD 2021–04–20, Amendment 39–21442 (86 FR 12802, March 5, 2021), which addresses the unsafe condition for Model Falcon 10 airplanes.
- AD 2020–02–13, Amendment 39–19827 (85 FR 6744, February 6, 2020), which addresses the unsafe condition for Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes on which the supplemental structural inspection program (SSIP) has been incorporated into the airplane's maintenance program.
- AD 2020–03–24, Amendment 39–19848 (85 FR 11289, February 27, 2020), which addresses the unsafe condition for Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes on which the SSIP (Dassault Service Bulletin 730) has been embodied into the airplane's existing maintenance or inspection program.
- AD 2020–03–19, Amendment 39–19843 (85 FR 11280, February 27, 2020), which address the unsafe condition for Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, except those on which the SSIP (Dassault Service Bulletin 730) has been embodied into the airplane's existing maintenance or inspection program.
- AD 2020–01–13, Amendment 39–19819 (85 FR 5313, January 30, 2020), which addresses the unsafe condition for Model MYSTERE–FALCON 200 airplanes.
- AD 2023–05–15, Amendment 39–22384 (88 FR 22374, April 13, 2023), which addresses the unsafe condition for Model MYSTERE–FALCON 50 airplanes.
- AD 2023–04–10, Amendment 39–22357 (88 FR 20743, April 7, 2023), which addresses the unsafe condition for Model MYSTERE–FALCON 900 airplanes.
- AD 2023–02–13, Amendment 39–22320 (88 FR 8740, February 10, 2023), which addresses the unsafe condition for Model FALCON 900EX airplanes.
- AD 2023–04–18, Amendment 39–22365 (88 FR 15607, March 14, 2023), which addresses the unsafe condition for Model FALCON 2000 airplanes.
- AD 2023–04–13, Amendment 39–22360 (88 FR 20741, April 7, 2023), which addresses the unsafe condition for Model FALCON 2000EX airplanes.

The NPRM proposed to remove AD 2010–26–05. The FAA is issuing this AD to remove AD 2010–26–05.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

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. 551 *et seq.*) 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 providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause. Since the FAA issued AD 2010–26–05, the actions specified in the MCAI have been included in the airworthiness limitations section of the existing maintenance manual, and the FAA has issued ADs to require the incorporation of those airworthiness limitations. Therefore, the FAA is issuing this AD to remove AD 2010–26–05, and the FAA did not receive any adverse comments or useful information about this AD from U.S. operators that necessitates waiting 30 days for relief from this requirement. Accordingly, 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.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

This AD removes all actions of AD 2010–26–05. Therefore, the requirements of AD 2010–26–05 are terminated.

Related Costs of Compliance

This AD adds no costs. This AD removes AD 2010–26–05 from 14 CFR part 39; therefore, operators are no longer required to show compliance with that 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.

Regulatory Findings

The FAA 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,

(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.

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:

■ a. Removing Airworthiness Directive (AD) 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), and

■ b. Adding the following new AD:

2010–26–05R1 Dassault Aviation: Amendment 39–22621; Docket No. FAA–2023–1719; Project Identifier AD–2008–NM–202–AD.

(a) Effective Date

This AD is effective December 6, 2023.

(b) Affected AD

This AD replaces AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This action applies to the airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Dassault Aviation Model Falcon 10 airplanes; Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; all serial numbers, equipped with Liebherr or ABG-Semca pressurization outflow valves.

(2) Dassault Aviation Model MYSTERE–FALCON 200 airplanes, Model MYSTERE–FALCON 50 and MYSTERE–FALCON 900 airplanes, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Terminating Action

This AD terminates all requirements of AD 2010–26–05.

(f) Related Information

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

(g) Material Incorporated by Reference

None.

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26662 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2023–2220; Airspace Docket No. 23–AWP–59]

RIN 2120–AA66

Amendment of Restricted Area R–2512 Holtville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on November 16, 2023, that amends restricted area R–2512 in the vicinity of Holtville, CA.

DATES: Effective date 0901 UTC, January 25, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.10 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the final rule, this final rule correction, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2023–2220 (88 FR 78636; November 16, 2023), that amended restricted area R–2512 in the vicinity of Holtville, CA. The section of 14 CFR part 73 to be amended by the final rule was incorrectly stated as 73.22. The correct section of 14 CFR part 73 to be amended is 73.25. This rule corrects this typographical error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace amendment reflected in Docket No. FAA–2023–2220, as published in the **Federal Register** of November 16, 2023 (88 FR 78636), FR Doc. 2023–25347, is corrected as follows:

§ 73.25 [Amended]

■ 2. Section 73.25 is amended as follows:

* * * * *

R–2512 Holtville, CA [Amended]

Boundaries. Beginning at lat. 33°05′00″ N, long. 115°17′33″ W; to lat. 33°00′00″ N, long. 115°13′33″ W; to lat. 32°51′00″ N, long. 115°05′33″ W; to lat. 32°51′00″ N, long. 115°17′03″ W; to lat. 32°58′00″ N, long. 115°17′33″ W; to lat. 33°05′00″ N, long. 115°20′03″ W; to the point of beginning.

Designated altitudes. Surface to 23,000 feet MSL.

Time of designation. 0600–2300 local time daily; other times by NOTAM 24 hours in advance.

Controlling agency. FAA, Los Angeles ARTCC.

Using Agency. U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ.

* * * * *

Issued in Washington, DC, on November 30, 2023.

Karen Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–26706 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 516, 520, 522, 524, and 558

[Docket No. FDA–2023–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Change of Sponsor; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), and conditionally approved new animal drug applications (CNADAs) during July, August, and September 2023. The animal drug regulations are also being amended to improve their accuracy and readability.

DATES: This rule is effective December 6, 2023.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *George.Haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Approvals

FDA is amending the animal drug regulations to reflect approval actions for NADAs, ANADAs, and CNADAs during July, August, and September 2023, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOIA Summaries) under the Freedom of Information Act (FOIA). These documents, along with marketing exclusivity and patent information, may be obtained at *AnimalDrugs@FDA: https://animaldrugsatfda.fda.gov/adafda/views/#/search.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS, ANADAS, AND CNADAS APPROVED DURING JULY, AUGUST, AND SEPTEMBER 2023 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS

Approval date	File No.	Sponsor	Product name	Effect of the action	21 CFR section
July 6, 2023	200–752	Cronus Pharma Specialties India Private Ltd., Sy No-99/1, M/s GMR Hyderabad Aviation SEZ Ltd., Mamidipalli Village, Shamshabad Mandal, Ranga Reddy, Hyderabad, Telangana, 501218, India.	DEXMEDVET (dexmedetomidine hydrochloride) Injectable Solution.	Original approval as a sedative, analgesic, and preanesthetic in dogs and cats as a generic copy of NADA 141–267.	522.558
July 11, 2023	200–753	Do	CROPAMEZOLE (atipamezole hydrochloride) Injectable Solution.	Original approval for reversal of sedation and analgesia in dogs as a generic copy of NADA 141–033.	522.147
July 19, 2023	141–554	Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA30096.	NEXGARD PLUS (afoxolaner, moxidectin, and pyrantel chewable tablets).	Original approval for the prevention, treatment, and control of internal and external parasites in dogs.	520.35
August 3, 2023	200–755	Felix Pharmaceuticals Pvt. Ltd., 25–28 North Wall Quay, Dublin 1, Ireland.	Firocoxib Chewable Tablets.	Original approval for the control of pain and inflammation associated with osteoarthritis and for the control of postoperative pain and inflammation associated with soft-tissue and orthopedic surgery as a generic copy of NADA 141–230.	520.928

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS, ANADAS, AND CNADAS APPROVED DURING JULY, AUGUST, AND SEPTEMBER 2023 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS—Continued

Approval date	File No.	Sponsor	Product name	Effect of the action	21 CFR section
August 3, 2023	200–756	Ceva Sante Animale, 10 Avenue de la Ballastière, 33500 Libourne, France.	FIRODYL (firocoxib) Chewable Tablets.	Original approval for the control of pain and inflammation associated with osteoarthritis and for the control of postoperative pain and inflammation associated with soft-tissue and orthopedic surgery as a generic copy of NADA 141–230.	520.928
August 10, 2023	141–568	Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA30096.	SENVELGO (velagliflozin oral solution).	Original approval to improve glycemic control in otherwise healthy cats with diabetes mellitus not previously treated with insulin.	520.2654
August 31, 2023	200–757	ZyVet Animal Health, Inc., 73 Route 31N, Pennington, NJ 08534.	Acepromazine Maleate Tablets (acepromazine maleate tablets).	Original approval as an aid in tranquilization and as a preanesthetic agent in dogs as a generic copy of NADA 117–532.	520.23
September 6, 2023	141–578	Genus Lifesciences Inc., 700 N Fenwick St., Allentown, PA 18109.	FIDOQUEL–CA1 (phenobarbital tablets).	Conditional approval for the control of seizures associated with idiopathic epilepsy in dogs.	516.1760
September 20, 2023	200–310	Parnell Technologies Pty. Ltd., Unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia.	ESTROPLAN (cloprostenol injection) Injectable Solution.	Supplemental approval for use with gonadorelin to synchronize estrous cycles to allow for fixed time artificial insemination (FTAI) in lactating dairy cows as a generic copy of NADA 113–645.	522.460

II. Withdrawals of Approval

Oasmia Pharmaceutical AB, Vallongatan 1, Uppsala, 75228 Sweden requested that FDA withdraw conditional approval of CNADA 141–422 for PACCAL VET–CA1 (paclitaxel for injection) because the product is no longer manufactured or marketed. Also, Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861 requested that FDA withdraw approval of the eight abbreviated applications listed in table 2 because the products are no longer manufactured or marketed. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these actions.

TABLE 2—APPLICATIONS FOR WHICH APPROVAL WAS VOLUNTARILY WITHDRAWN DURING JULY, AUGUST, AND SEPTEMBER 2023

File No.	New animal drug	21 CFR section
200–190	GENTORAL (gentamicin sulfate) Concentrate Solution	520.1044a
200–241	LINCOSOL (lincomycin hydrochloride) Soluble Powder	520.1263b
200–245	DERMA–VET (neomycin sulfate, nystatin, thiostrepton, triamcinolone acetonide) Cream	524.1600a
200–275	MEDALONE (triamcinolone acetonide) Cream	524.2483
200–289	NEOSOL–ORAL (neomycin sulfate) Concentrate Solution	520.1484
200–292	IVERSOL (ivermectin) Liquid for Horses	520.1195
200–299	IVER–ON (ivermectin) Topical Solution	524.1193
200–456	Dexamethasone Solution	522.540

III. Change of Sponsor

The sponsors of the approved applications listed in table 3 have informed FDA that they have transferred ownership of, and all rights and interest in, these applications to another sponsor. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these actions.

TABLE 3—APPLICATIONS FOR WHICH OWNERSHIP WAS TRANSFERRED TO ANOTHER SPONSOR DURING JULY, AUGUST, AND SEPTEMBER 2023

File No.	Product name	Transferring sponsor	New sponsor	21 CFR section
141–342	ALFAXAN Multidose (alfaxalone) injectable solution.	Jurox Pty. Ltd., 85 Gardiner St., Rutherford, NSW 2320, Australia.	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	522.52

TABLE 3—APPLICATIONS FOR WHICH OWNERSHIP WAS TRANSFERRED TO ANOTHER SPONSOR DURING JULY, AUGUST, AND SEPTEMBER 2023—Continued

File No.	Product name	Transferring sponsor	New sponsor	21 CFR section
200–699	Dexmedetomidine hydrochloride injection.	Akorn Operating Co. LLC, 5605 Centerpoint Ct., Suite A, Gurnee, IL 60031.	Parnell Technologies Pty. Ltd., Unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia.	522.558
200–614	Pentobarbital sodium and phenytoin sodium injectable solution.	Do	Noble Pharma, LLC, 4602 Domain Dr., Menomonie, WI 54751.	522.1700
141–559	Pentosan polysulfate sodium injectable solution.	Anzac Animal Health, LLC, 218 Millwell Dr., Suite B, Maryland Heights, MO 63043.	Dechra, Ltd., Snaygill Industrial Estate, Keighley Rd., Skipton, North Yorkshire, BD23 2RW, United Kingdom.	522.1704
200–553	Bacitracin, neomycin, polymyxin B ophthalmic ointment.	Akorn Operating Co. LLC, 5605 Centerpoint Ct., Suite A, Gurnee, IL 60031.	Domes Pharma S.A., ZAC de Champ Lamet, 3 rue Andre Citroen, Pont-du-Chateau, Auvergne-Rhône-Alpes, 63430, FRANCE.	524.154

As provided in the regulatory text of this document, the animal drug regulations cited in table 3 are amended to reflect these actions.

IV. Change of Sponsor Address

Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525 has informed FDA that it has changed its address to 3760 Rocky Mountain Ave., Loveland, CO 80538–7084. The entries in § 510.600(c) are amended to reflect this action.

V. Technical Amendments

FDA is making the following amendments to improve the accuracy of the animal drug regulations.

- 21 CFR 510.600 is amended to reflect sponsors of approved applications by adding entries for Domes Pharma S.A., Genus Lifesciences, Inc., and Noble Pharma, LLC, by revising the entry for Heska Corp., and by removing the entries for Jurox Pty. Ltd. and Oasmia Pharmaceutical AB.
- 21 CFR 520.23 is amended to reflect approved strengths of acepromazine maleate tablets for dogs and cats.
- 21 CFR 522.460 is amended to reflect current labeling for cloprostenol injectable solution for use in cattle.
- 21 CFR 522.2640 is amended to reflect the approved strengths of generic tylosin injectable solutions.
- 21 CFR 558.330 is amended to reflect the sponsors of drugs approved for use in combination medicated feeds containing lubebegron and monensin.
- 21 CFR 558.355 is amended to reflect the classes of pasture cattle approved for use of a monensin free-choice block.
- 21 CFR 558.625 is amended to reflect the sponsors of drugs approved for use in combination medicated feeds containing lubebegron, monensin, and tylosin.

VI. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(i)). Although deemed a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability'' and is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 516, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), add entries for ''Domes Pharma S.A.'', ''Genus Lifesciences, Inc.'', and ''Noble Pharma, LLC''; revise the entry for ''Heska Corp.''; and remove the entries for ''Jurox Pty. Ltd.'' and ''Oasmia Pharmaceutical AB''.

■ 3. In the table in paragraph (c)(2), remove the entries for ''049480'' and ''052818'', revise the entry for ''063604'', and add entries for ''064950'', ''086119'', and ''086189''.

The revisions read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Domes Pharma S.A., ZAC de Champ Lamet, 3 rue Andre Citroen, Pont-du-Chateau, Auvergne-Rhône-Alpes, 63430, FRANCE	086189

Firm name and address	Drug labeler code
* * * * * * *	
Genus Lifesciences Inc., 700 N Fenwick St., Allentown, PA 18109	064950
* * * * * * *	
Heska Corp., 3760 Rocky Mountain Ave., Loveland, CO 80538–7084	063604
* * * * * * *	
Noble Pharma, LLC, 4602 Domain Dr., Menomonie, WI 54751	086119
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
063604	Heska Corp., 3760 Rocky Mountain Ave., Loveland, CO 80538–7084.
* * * * * * *	
064950	Genus Lifesciences Inc., 700 N Fenwick St., Allentown, PA 18109.
* * * * * * *	
086119	Noble Pharma, LLC, 4602 Domain Dr., Menomonie, WI 54751.
* * * * * * *	
086189	Domes Pharma S.A., ZAC de Champ Lamet, 3 rue Andre Citroen, Pont-du-Chateau, Auvergne-Rhône-Alpes, 63430, FRANCE.
* * * * * * *	

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

§ 516.1684 [Removed]

■ 4. Remove § 516.1684.

■ 5. Add § 516.1760 to subchapter E to read as follows:

§ 516.1760 Phenobarbital.

(a) *Specifications.* Each tablet contains 16.2, 32.4, 64.8, or 97.2 milligrams (mg) phenobarbital.

(b) *Sponsor.* See No. 064950 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer phenobarbital as tablets given orally twice a day at the minimum dosage of 2.5 mg per kilogram of body weight (mg/kg) and may be titrated to effect to a maximum dosage of 5 mg/kg. The dosage of phenobarbital tablets should be adjusted based on monitoring the clinical response of the individual patient.

(2) *Indications for use.* For the control of seizures associated with idiopathic epilepsy in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 6. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 7. In § 520.23, revise paragraphs (a) and (b) to read as follows:

§ 520.23 Acepromazine.

(a) *Specifications.* Each tablet contains 10 or 25 milligrams (mg) acepromazine maleate.

(b) *Sponsors.* See Nos. 000010 and 086117 in § 510.600(c) of this chapter.

* * * * *

■ 8. Add § 520.35 to read as follows:

§ 520.35 Afoxolaner, moxidectin, and pyrantel.

(a) *Specifications.* Each chewable tablet contains 9.375 milligrams (mg) afoxolaner, 45 micrograms (mcg) moxidectin, and 18.75 mg pyrantel; 18.75 mg afoxolaner, 90 mcg moxidectin, and 37.5 mg pyrantel; 37.5 mg afoxolaner, 180 mcg moxidectin, and 75 mg pyrantel; 75 mg afoxolaner, 360 mcg moxidectin, and 150 mg pyrantel; or 150 mg afoxolaner, 720 mcg moxidectin, and 300 mg pyrantel.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer orally once a month at the minimum dose of 1.14 mg/lb (2.5 mg/kg) afoxolaner, 5.45 mcg/lb (12 mcg/kg) moxidectin, and 2.27 mg/lb (5.0 mg/kg) pyrantel. For heartworm disease prevention, give once monthly for at least 6 months after last exposure to mosquitoes.

(2) *Indications for use in dogs.* For the prevention of heartworm disease caused by *Dirofilaria immitis* and for the treatment and control of adult hookworm (*Ancylostoma caninum, Ancylostoma braziliense,* and *Uncinaria stenocephala*) and roundworm (*Toxocara canis* and *Toxascaris leonina*) infections. Kills adult fleas and is indicated for the treatment and prevention of flea infestations (*Ctenocephalides felis*) and the treatment and control of *Ixodes scapularis* (black-legged tick), *Rhipicephalus sanguineus* (brown dog tick), *Dermacentor variabilis* (American dog tick), and *Amblyomma americanum* (lone star tick) infestations for 1 month in dogs and puppies 8 weeks of age and older, weighing 4 pounds of body weight or greater.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.928 [Amended]

■ 9. In § 520.928, in paragraph (b)(1), remove ''Nos. 000010, 055246, and 055529'' and in its place add ''Nos. 000010, 013744, 055246, 055529, and 086101''.

§ 520.1044a [Amended]

■ 10. In § 520.1044a, in paragraph (b), remove ''Nos. 000061 and 054925'' and in its place add ''No. 000061''.

■ 11. In § 520.1195, revise paragraph (b)(1) to read as follows:

§ 520.1195 Ivermectin liquid.

* * * * *

(b) * * *

(1) Nos. 058005 and 058198 for use of product described in paragraph (a)(1) of this section as in paragraphs (e)(1)(i), (e)(1)(ii)(A), and (e)(1)(iii) of this section.

* * * * *

■ 12. In § 520.1263b, revise paragraphs (b)(2) and (d)(1)(iii) to read as follows:

§ 520.1263b Lincomycin powder.

* * * * *

(b) * * *

(2) Nos. 016592 and 076475 for use as in paragraphs (d)(1) and (2) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Discard medicated drinking water if not used within 2 days. Prepare fresh stock solution daily. Do not use for more than 10 days. If clinical signs of disease have not improved within 6 days, discontinue treatment and reevaluate diagnosis. The safety of lincomycin has not been demonstrated in pregnant swine or swine intended for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

§ 520.1484 [Amended]

■ 13. In § 520.1484, in paragraph (b)(1), remove ''Nos. 054771 and 054925'' and in its place add ''No. 054771''; and remove paragraph (b)(4).

■ 14. Add § 520.2654 to read as follows:

§ 520.2654 Velagliflozin.

(a) *Specifications.* Each milliliter of solution contains 15 milligrams (mg) velagliflozin.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer orally 0.45 mg per pound of body weight (1 mg per kilogram) velagliflozin once daily.

(2) *Indications for use.* To improve glycemic control in otherwise healthy cats with diabetes mellitus not previously treated with insulin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 15. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.52 [Amended]

■ 16. In § 522.52, in paragraph (b), remove ''049480'' and in its place add ''054771''.

■ 17. In § 522.147, revise paragraphs (b), (c)(1), and (2) to read as follows:

§ 522.147 Atipamezole.

* * * * *

(b) *Sponsors.* See Nos. 015914, 052483, and 069043 in § 510.600(c) of this chapter.

(c) * * *

(1) *Amount.* Administer 3,750 mcg/m^2 intramuscularly for the reversal of intravenous dexmedetomidine hydrochloride or medetomidine hydrochloride and 5,000 mcg/m^2 intramuscularly for the reversal of intramuscular dexmedetomidine hydrochloride or medetomidine hydrochloride.

(2) *Indications for use.* For the reversal of the sedative and analgesic effects of dexmedetomidine hydrochloride and medetomidine hydrochloride.

* * * * *

■ 18. In § 522.460, revise paragraphs (b) and (c) to read as follows:

§ 522.460 Cloprostenol.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter.

(1) No. 000061 for use of product described in paragraph (a)(1) of this section as in paragraphs (c)(1)(i) and (c)(2) of this section.

(2) No. 000061 for use of product described in paragraph (a)(2) as in paragraphs (c)(1)(ii) through (viii) and (c)(2) of this section.

(3) No. 068504 for use of product described in paragraph (a)(2) as in paragraphs (c)(1)(ii) through (vii), (c)(1)(ix), and (c)(2) of this section.

(c) *Conditions of use in cattle*—(1) *Amount and indications for use.*

(i) Administer 375 µg by intramuscular injection to induce abortion in pregnant feedlot heifers from 1 week after mating until 4½ months of gestation.

(ii) Administer 500 µg by intramuscular injection for unobserved or non-detected estrus in beef cows, lactating dairy cows, and replacement beef and dairy heifers.

(iii) Administer 500 µg by intramuscular injection for treatment of pyometra or chronic endometritis in beef cows, lactating dairy cows, and replacement beef and dairy heifers.

(iv) Administer 500 µg by intramuscular injection for treatment of mummified fetus in beef cows, lactating dairy cows, and replacement beef and dairy heifers.

(v) Administer 500 µg by intramuscular injection for treatment of luteal cysts in beef cows, lactating dairy cows, and replacement beef and dairy heifers.

(vi) Administer 500 µg by intramuscular injection for abortion of beef cows, lactating dairy cows, and replacement beef and dairy heifers from 1 week after mating until 5 months of gestation. Not for use in heifers placed in feedlots.

(vii) Administer 500 µg by intramuscular injection as a single injection regimen or double injection regimen with a second injection 11 days after the first injection, for estrus synchronization in beef cows, lactating dairy cows, and replacement beef and dairy heifers.

(viii) For use with gonadorelin acetate to synchronize estrous cycles to allow for fixed time artificial insemination (FTAI) in lactating dairy cows: administer to each cow 86 µg gonadorelin by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by 86 µg gonadorelin by intramuscular injection. Gonadorelin acetate as provided in § 522.1077(a)(1) of this chapter.

(ix) For use with gonadorelin to synchronize estrous cycles to allow for FTAI in lactating dairy cows: administer to each cow by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by gonadorelin by intramuscular injection. Gonadorelin as provided in § 522.1077(a)(1) through (3) of this chapter.

(2) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.540 [Amended]

■ 19. In § 522.540, in paragraph (a)(2)(ii), remove ''*Sponsors.* See Nos.

054925 and 058005'' and in its place add ''No. 058005''.

§ 522.558 [Amended]

■ 20. In § 522.558, in paragraph (b)(1), remove ''Nos. 017033, 059399, and 086117'' and in its place add ''Nos. 017033, 068504, 069043, and 086117''.

§ 522.1700 [Amended]

■ 21. In § 522.1700, in paragraph (b), remove ''059399'' and in its place add ''086119''.

§ 522.1704 [Amended]

■ 22. In § 522.1704, in paragraph (b), remove ''086073'' and in its place add ''043264''.

■ 23. In § 522.2640, revise paragraphs (b)(1) and (2) to read as follows:

§ 522.2640 Tylosin.

* * * * *

(b) * * *

(1) Nos. 016592 and 058198 for use of 50- or 200-mg/mL solutions as in paragraph (e) of this section.

(2) No. 061133 for use of a 200-mg/mL solution as in paragraphs (e)(1) and (2) of this section.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 24. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.154 [Amended]

■ 25. In § 524.154, in paragraph (b)(2), remove ''059399'' and in its place add ''086189''.

§ 524.1193 [Amended]

■ 26. In § 524.1193, in paragraph (b)(2), remove ''Nos. 016592 and 054925'' and in its place add ''No. 016592''.

■ 27. In § 524.1600a, revise paragraph (b) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone ointment.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter:

(1) For petrolatum base ointments: Nos. 025463 and 054771; or

(2) For vanishing cream base ointments: Nos. 025463 and 054771.

* * * * *

§ 524.2483 [Removed]

■ 28. Remove § 524.2483.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 29. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 30. In § 558.330, revise paragraphs (d)(1)(ii) and (iii) and (d)(2)(i) and (ii) to read as follows:

§ 558.330 Lubabegron.

* * * * *

(d) * * *

(1) * * *

Lubabegron fumarate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) 1.25 to 4.54	Monensin, 5 to 40	Beef steers and heifers fed in confinement for slaughter: for reduction of ammonia gas emissions per pound of live weight and hot carcass weight and for improved feed efficiency during the last 14 to 91 days on feed.	Feed continuously as the sole ration to provide 13 to 90 mg lubabegron/head/day and 50 to 480 mg monensin/head/day during the last 14 to 91 days on feed. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 g/ton (360 mg monensin/head/day). A decrease in dry matter intake may be noticed in some animals receiving lubabegron. Lubabegron has not been approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Do not allow horses or other equines access to feed containing lubabegron and monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle and could be fatal to goats. Must be thoroughly mixed in feeds before use. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product for preruminating calves. Do not use in calves to be processed for veal. See special labeling considerations in § 558.355(d) of this chapter. Lubabegron fumarate as provided by No. 058198, monensin as provided by No. 016592 or 058198 in § 510.600(c) of this chapter.	016592, 058198

Lubabegron fumarate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(iii) 1.25 to 4.54	Monensin, 10 to 40	Beef steers and heifers fed in confinement for slaughter: for reduction of ammonia gas emissions per pound of live weight and hot carcass weight; and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* during the last 14 to 91 days on feed.	Feed continuously as the sole ration to provide 13 to 90 mg lubabegron/head/day and 0.14 to 0.42 mg monensin/lb body weight per day, depending upon severity of coccidiosis challenge, during the last 14 to 91 days on feed. A decrease in dry matter intake may be noticed in some animals receiving lubabegron. Lubabegron has not been approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Do not allow horses or other equines access to feed containing lubabegron and monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle and could be fatal to goats. Must be thoroughly mixed in feeds before use. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product for preruminating calves. Do not use in calves to be processed for veal. See special labeling considerations in § 558.355(d) of this chapter. Lubabegron fumarate as provided by No. 058198, monensin as provided by No. 016592 or 058198 in § 510.600(c) of this chapter.	016592, 058198

(2) * * *

(i) Monensin as in § 558.355.

(ii) Tylosin in § 558.625.

■ 31. In § 558.355, revise paragraph (f)(4)(iv) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(4) * * *

Monensin amount	Indications for use	Limitations	Sponsor
* *	*	* * *	*
(iv) 400 mg per pound of block	Growing beef steers and heifers on pasture (stocker, feeder, and slaughter) and beef replacement heifers): for increased rate of weight gain.	Provide 50 to 200 mg of monensin (2 to 8 ounces of block) per head per day, in at least one block per five head of cattle. Feed blocks continuously. Do not feed salt of mineral supplements in addition to this block. Discontinue feeding if block consumption falls below 2 ounces or rises above 8 ounces daily. See paragraph (d)(10)(i) of this section..	086113
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■ 32. In § 558.625, revise paragraphs (e)(2)(vii) and (viii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(e) * * *

(2) * * *

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	* * *	*
(vii) 8 to 10	Monensin, 5 to 40 plus lubabegron fumarate, 1.25 to 4.54.	Beef steers and heifers fed in confinement for slaughter: for reduction of ammonia gas emissions per pound of live weight and hot carcass weight; for reduction of incidence of liver abscesses associated with *Fusobacterium necrophorum* and *Arcanobacterium pyogenes* and for improved feed efficiency during the last 14 to 91 days on feed.	Feed continuously as sole ration to provide 13 to 90 mg lubabegron/head/day, 50 to 480 mg monensin/head/day, and 60 to 90 mg tylosin/head/day during the last 14 to 91 days on feed. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 g/ton (360 mg monensin/head/day). A decrease in dry matter intake may be noticed in some animals receiving lubabegron. Lubabegron has not been approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Do not allow horses or other equines access to feed containing lubabegron and monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle and could be fatal to goats. Must be thoroughly mixed in feeds before use. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product for preruminating calves. Do not use in calves to be processed for veal. See special labeling considerations in § 558.355(d) of this chapter. Tylosin as provided by No. 016592 or 058198, monensin as provided by No. 016592 or 058198, lubabegron fumarate as provided by No. 058198 in § 510.600(c) of this chapter.	016592, 058198
(viii) 8 to 10	Monensin, 10 to 40 plus lubabegron fumarate, 1.25 to 4.54.	Beef steers and heifers fed in confinement for slaughter: for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, for reduction of incidence of liver abscesses associated with *Fusobacterium necrophorum* and *Arcanobacterium pyogenes* and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* during the last 14 to 91 days on feed.	Feed continuously as sole ration to provide 13 to 90 mg lubabegron/head/day, 0.14 to 0.42 mg monensin/lb body weight per day, depending upon severity of coccidiosis challenge, up to 480 mg/head/day, and 60 to 90 mg tylosin/head/day during the last 14 to 91 days on feed. A decrease in dry matter intake may be noticed in some animals receiving lubabegron. Lubabegron has not been approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Do not allow horses or other equines access to feed containing lubabegron and monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle and could be fatal to goats. Must be thoroughly mixed in feeds before use. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product for preruminating calves. Do not use in calves to be processed for veal. See special labeling considerations in § 558.355(d) of this chapter. Tylosin as provided by No. 016592 or 058198, monensin as provided by No. 016592 or 058198, lubabegron fumarate as provided by No. 058198 in § 510.600(c) of this chapter.	016592, 058198
*	*	*	* * *	*

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Dated: November 29, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26545 Filed 12–5–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 214, and 251

RIN 0596–AD54

Travel Management; Administration of the Forest Transportation System; Postdecisional Administrative Review Process for Occupancy or Use of National Forest System Lands and Resources; Land Uses; Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture, Forest Service (Forest Service or Agency) is making purely technical, clarifying revisions to its existing regulations governing administration of the forest transportation system, administrative appeal of certain written decisions pertaining to written authorizations for occupancy or use of National Forest System (NFS) lands and resources, and issuance and administration of special use authorizations for use and occupancy of NFS lands. The purely technical, clarifying revisions update citations and enhance consistency of the existing regulations with governing statutes.

DATES: This rule is effective December 6, 2023.

ADDRESSES: Information on this final rule may be obtained via written request addressed to the Director, Lands, Minerals, and Geology Management, USDA Forest Service, 201 14th Street NW, Washington, DC 20250–1124 or by email to *SM.FS.WO_LandStaff@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Chandler, Realty Specialist, (202) 205–1117 or *mark.chandler@usda.gov.* Individuals who use telecommunication devices for the hearing impaired may call the Federal Relay Service at (800) 877–8339 between 8:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This final rule makes purely technical, clarifying revisions to the Agency's existing regulations at 36 CFR 212.8, 214.4, 251.50, 251.51, 251.53, 251.54, 251.55, 251.57, 251.58, 251.59, 251.60, 251.64, and 251.124 governing administration of the forest transportation system, administrative appeal of certain written decisions pertaining to written authorizations for occupancy or use of NFS lands and resources, and issuance and administration of special use authorizations for use and occupancy of NFS lands. The purely technical, clarifying revisions update citations and enhance consistency of the existing regulations with governing statutes. These purely technical, clarifying revisions do not formulate standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and opportunity to comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1612(a)).

36 CFR Part 212, Subpart A

The Department is revising text in § 212.8(d)(5)(i) to track revisions being made to § 251.60(a)(2)(i) and to provide that a formal adjudicatory hearing is required for revocation for nonuse of an easement issued under the National Forest Roads and Trails Act (FRTA).

36 CFR Part 214

The Department is revising § 214.4(c)(1)(i) to provide that suspension or revocation of permits as well as easements issued under the Mineral Leasing Act (MLA) and revocation for nonuse of an easement issued under FRTA are not subject to administrative appeal under 36 CFR part 214. In contrast to the Federal Land Policy and Management Act (FLPMA) addressed in 36 CFR 251.53(l), the MLA addressed in 36 CFR 251.53(e) requires a formal adjudicatory proceeding for suspension or revocation of permits as well as easements (30 U.S.C. 185(o)(1)(C)). Therefore, suspension or revocation of permits as well as easements issued under the MLA must be exempt from the informal administrative appeal process under 36 CFR part 214. FRTA provides for a formal hearing for revocation of an easement for nonuse (16 U.S.C. 534).

36 CFR Part 251, Subpart B

§ 251.50

The Department is removing paragraph (c)(3) of § 251.50, which requires a special use authorization for a noncommercial recreational activity if required by an order issued under 36 CFR part 261, subpart B, or by a regulation issued under 36 CFR part 261, subpart C. There is no basis for issuance of such an order under 36 CFR part 261, subpart B. Moreover, there is no need for issuance of such an order or regulation because the Forest Service has the authority to require a noncommercial special recreation permit under the Federal Lands Recreation Enhancement Act and its implementing directives in Forest Service Handbook (FSH) 2309.13, Chapter 30.

§ 251.51

The Department is revising the definitions for ''outfitting'' and ''guiding'' by replacing the phrase ''pecuniary remuneration'' with the word ''monetary.'' The revised language is more contemporary and easier to understand.

§ 251.53

The Department is revising § 251.53(a) by changing the phrase ''group events'' to ''noncommercial group use'' and deleting the phrase ''and distribution of noncommercial printed materials'' for authorizations issued under the Organic Administration Act (16 U.S.C. 551). The term of art per the definitions for special uses in 36 CFR 251.51 is ''noncommercial group use.'' The distribution of noncommercial printed materials does not require a special use authorization under 36 CFR 251.50(c).

The Department is adding paragraph (o) to § 251.53 to include the Forest Service's authority under section 111 of the National Historic Preservation Act of 1966 (54 U.S.C. 306121) to issue leases for Federally owned historic properties on NFS lands.

§ 251.54

The Department is revising § 251.54(d) through (g) to use appropriate terminology when referring to a proponent or a proposal and to enhance clarity.

The Department is revising § 251.54(e)(1)(iv), which precludes consideration of proposals for a permanent use and occupancy of NFS lands, to add an exception for permanent easements issued under FRTA (16 U.S.C. 533).

The Department is revising § 251.54(f)(1)(i) regarding who may apply for an oil or gas pipeline right-of-way authorization for greater consistency with the MLA (30 U.S.C. 181).

The Department is revising § 251.54(g)(3)(iii) to replace the citation to 36 CFR part 215 with a citation to 36 CFR part 218. The postdecisional administrative appeal process in 36 CFR part 215 has been replaced with the predecisional objection process in 36 CFR part 218.

§ 251.55

The Department is revising the second sentence of § 251.55(a) to replace the word ''sublet'' with the word ''lease.'' The word ''sublet'' is appropriate only when the issued authorization is a lease. Many special use authorizations are not leases. The Department is making other minor clarifications to the wording of § 251.55(a).

§ 251.57

The Department is changing the heading of § 251.57 from ''Rental fees'' to ''Land use fees.'' The term ''rent'' is associated with leases, and many special use authorizations are not leases.

The Department is revising § 251.57(a)(2), consistent with section 504(g) of FLPMA (43 U.S.C. 1764(g)), to authorize the Forest Service to require either annual land use fee payments or annual land use fee payments covering more than one year, regardless of the amount of the land use fee.

The Department is revising § 251.57(a)(3) by replacing the language from and citation to the Cabin User Fee Fairness Act with language from and citation to the Cabin Fee Act. The Cabin Fee Act (16 U.S.C. 6214) has supplanted the Cabin User Fee Fairness Act (16 U.S.C. 6201–6213) as the authority for land use fees for recreation residence permits.

The Department is revising § 251.57(b) governing land use fee waivers by adding text and removing the word ''or'' at the end of paragraphs (1) through (5) to clarify, consistent with Forest Service directives, that if a holder is ineligible for a land use fee waiver under one criterion, the holder is ineligible for a land use fee waiver under any of the other criteria.

The Department is removing § 251.57(i). Paragraph (i) of § 251.57 addresses implementation of the Cabin User Fee Fairness Act, which has been superseded by the Cabin Fee Act of 2014.

§ 251.58

The Department is revising § 251.58(d)(1) by replacing the phrase ''scheduled inspections'' with the phrase ''routine on-site reviews'' to distinguish between inspections, which are the holder's responsibility, and monitoring, which is the Forest Service's responsibility.

The Department is revising § 251.58(i)(1) by changing the first sentence from, ''The Forest Service shall maintain schedules for processing and monitoring fees in its directive system (36 CFR 200.4),'' to ''The Forest Service shall maintain schedules for processing and monitoring fees on its website.'' It is more efficient to update a website than a directive, and other Forest Service land use fee schedules such as the communications use rental fee schedule are maintained on the Forest Service's website.

§ 251.59

The Department is clarifying § 251.59 by revising the first sentence, ''If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership,'' to read, ''If the holder through death, voluntary sale, transfer, or enforcement of a valid legal proceeding or operation of law ceases to be the owner of the authorized improvements, the special use authorization terminates upon change of ownership and issuance of a new special use authorization to another party for the authorized use and occupancy.'' This revision clarifies that the existing holder is responsible for the authorized use and occupancy until a new authorization is issued. In addition, the Department is revising § 251.59 to clarify that an application and new authorization are not necessary for leases and easements issued under the MLA, FRTA, or FLPMA and that assignments of leases and easements are subject to the terms of the applicable authorization.

§ 251.60

In § 251.60, the Department is revising paragraphs (a)(2)(i), (a)(2)(ii), and (c); removing paragraph (d); designating existing paragraphs (e) and (f) as paragraphs (d) and (e); revising existing paragraph (g) and redesignating it as paragraph (f); removing paragraph (h); and redesignating existing paragraph (i) as paragraph (g), as discussed below.

The Department is revising paragraph (a)(2)(i) by removing the exception for permits and easements issued under the MLA and easements issued under FLPMA, adding an exception for authorizations issued under FRTA, and including separate bases for revocation and suspension for authorizations issued under FRTA. FLPMA and the MLA provide for revocation and suspension of land use authorizations issued under those statutes, but the current language in the regulations does not include any bases for revocation or suspension of authorizations issued under FLPMA or the MLA. FRTA provides for revocation only with the grantee's consent, by condemnation, or after a 5-year period of nonuse (16 U.S.C. 534).

The Department is revising paragraph (a)(2)(ii) to provide that suspension or revocation of permits as well as easements issued under the MLA and revocation for nonuse of easements issued under FRTA are not subject to appeal under 36 CFR part 214. In contrast to FLPMA, the MLA requires a formal adjudicatory proceeding for suspension or revocation of permits as well as easements. Therefore, suspension or revocation of permits as well as easements issued under the MLA must be exempt from the informal administrative appeal process under 36 CFR part 214. FRTA provides for a formal hearing for revocation of an easement for nonuse (16 U.S.C. 534).

The Department is revising § 251.60(c) by removing references to limiting and terminating a right-of-way authorization issued to a Federal entity. The reference to limiting a right-of-way is redundant, and the reference to terminating a right-of-way is incorrect. Termination of an authorization occurs by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in an authorization, without any action of the authorized officer (36 CFR 251.51). The correct term is revocation, which occurs by action of the authorized officer (36 CFR 251.51). The Department is also revising § 251.60(c) to state that a special use authorization issued to a Federal agency under 36 CFR 251.53(l) may be suspended or revoked only with the concurrence of the head of that Federal agency. Only authorizations issued to a Federal agency under FLPMA are subject to this restriction (43 U.S.C. 1767(b)). By statute, the consent must be from the agency head. The Department is also removing the word ''termination'' because it is defined in the special use regulations to mean an action that occurs by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified an authorization, without any action of the authorized officer.

The Department is removing § 251.60(d), which provides for notice to and consultation with a Federal agency before suspending or revoking a special use authorization issued to that agency, as this provision is unnecessary. Preceding § 251.60(c) provides that an authorization issued to a Federal entity under FLPMA may be suspended or revoked only with the Federal holder's consent. A Federal holder would not consent to suspension or revocation of an authorization issued under FLPMA without notice and consultation.

The Department is revising and redesignating existing § 251.60(g) as § 251.60(f) to clarify the requirements for a formal adjudicatory proceeding for revocation or suspension of an authorization consistent with FLPMA (43 U.S.C. 1766) and the MLA (30 U.S.C. 185(o)(1)) and to require a formal adjudicatory proceeding for revocation for nonuse of an easement issued under FRTA (16 U.S.C. 534). The language in existing § 251.60(g) is not entirely consistent with FLPMA and the MLA. FRTA provides for a formal hearing for revocation for nonuse of an easement upon request within 60 days of receipt of notice (16 U.S.C. 534).

The Department is removing existing § 251.60(h) in its entirety and including its contents in § 251.60(a)(2)(i). The Department is redesignating existing § 251.60(i) as § 251.60(g).

§ 251.64

The Department is revising the title and text of § 251.64 to track statutes governing issuance of special use authorizations and special use authorization forms approved by the Office of Management and Budget, which provide for reauthorization of the use and occupancy, not renewal of the authorization, and which require reauthorization of the use and occupancy, subject to conditions, only for authorizations issued under the MLA (43 U.S.C. 185(n)) and priority use outfitting and guiding permits (FSH 2709.14, Ch. 50, sec. 53.1m, para. 4). Only permits and easements issued under these authorities require reauthorization of the use and occupancy, subject to specified conditions. Reauthorization of any other type of use and occupancy is at the sole discretion of the authorized officer.

36 CFR Part 251, Subpart E

§ 251.124

The Department is updating the citation in the second sentence of § 251.124(b) by replacing ''Forest Service Handbook 2709.11, chapter 40,'' with ''Forest Service Handbook 2709.14, Chapter 50.''

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Consistent with Executive Order (E.O.) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final rules that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final rules that OIRA has designated as significant. This final rule does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not require a significance determination by OIRA. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed this final rule consistent with E.O. 13563.

Congressional Review Act

Since this final rule does not impose, eliminate, or modify requirements on non-Forest Service parties, it is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act, 5 U.S.C. 804(2)).

National Environmental Policy Act

This final rule will make only technical, clarifying revisions to existing Forest Service regulations at 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E. Forest Service regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.'' The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

The Department has considered this final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism.* The Department has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that the final rule does not have federalism implications.

Consultation With Tribal Governments

The Department has reviewed this final rule in accordance with the requirements of E.O. 13175, *Consultation and Coordination with Indian Tribal Governments.* The Department has determined that national Tribal consultation is not necessary for the final rule. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not have any direct effects on Tribes.

Environmental Justice

The Department has considered the final rule under the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore will not result in disproportionately high and adverse impacts on minority or low-income populations or the exclusion of minority and low-income populations from meaningful involvement in decision making.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211, and OIRA has not otherwise designated the final rule as a significant energy action.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* Upon issuance of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted, (2) no retroactive effect will be given to this final rule, and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on state, local, and Tribal governments, and the private sector. The final rule will not compel the expenditure of $100 million or more by any state, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The final rule does not contain information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands-rights-of-way, Transportation.

36 CFR Part 214

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Alaska, Electric power, Mineral resources, National forests, Public lands-rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, the Department is amending chapter II of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

■ 1. The authority citation for part 212, subpart A, continues to read as follows:

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

■ 2. Amend § 212.8 by revising paragraph (d)(5) to read as follows:

§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

* * * * *

(d) * * *

(5)(i) The Chief may revoke an easement granted under 36 CFR 251.53(j):

(A) With the grantee's consent;

(B) By condemnation; or

(C) After a 5-year period of nonuse by the grantee.

(ii) Before revocation of an easement granted under 36 CFR 251.53(j) for nonuse, a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, provided the grantee requests the hearing within 60 days of receipt of the notice of revocation.

PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

■ 4. Amend § 214.4 by revising paragraph (c)(1)(i) to read as follows:

§ 214.4 Decisions that are appealable.

* * * * *

(c) * * *

(1) * * *

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension, or revocation of a noncommercial group use permit; suspension or revocation of a permit or easement issued under 36 CFR 251.53(e); suspension or revocation of an easement issued under 36 CFR 251.53(l); revocation for nonuse of an easement issued under 36 CFR 251.53(j); or revocation of a special use authorization with the consent of the holder.

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PART 251—LAND USES

Subpart B—Special Uses

■ 5. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

§ 251.50 [Amended]

■ 6. Amend § 251.50 by removing paragraph (c)(3).

■ 7. Amend § 251.51 by revising the definitions for ''Guiding'' and ''Outfitting'' to read as follows:

§ 251.51 Definitions.

* * * * *

Guiding—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for monetary or other gain to individuals or groups on National Forest System lands.

* * * * *

Outfitting—renting on or delivering to National Forest System lands for monetary or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment.

* * * * *

■ 8. Amend § 251.53 by revising paragraph (a) and adding paragraph (o) to read as follows:

§ 251.53 Authorities.

* * * * *

(a) Permits governing occupancy and use, including noncommercial group use, under the act of June 4, 1897 (16 U.S.C. 551);

* * * * *

(o) Leases governing occupancy and use of Federally owned historic properties under section 111 of the National Historic Preservation Act of 1966 (54 U.S.C. 306121).

■ 9. Amend § 251.54 by revising paragraphs (d)(2)(i) introductory text, (e)(1)(iv), (f)(1) introductory text, (f)(1)(i), (g)(1), and (g)(3)(iii) to read as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(d) * * *

(2) *Required information*—(i) *Noncommercial group uses.* Paragraphs (d)(3) through (5) of this section do not apply to proposed noncommercial group uses. A proponent for a

noncommercial group use shall provide the following:

* * * * *

(e) * * *

(1) * * *

(iv) Except for permanent easements issued under § 251.53(j), the proposed use will not create an exclusive or perpetual right of use or occupancy.

* * * * *

(f) * * *

(1) *Oil and gas pipeline rights-of-way.* An individual proposing an oil or gas pipeline right-of-way must be a United States citizen and must provide proof of United States citizenship. An entity proposing an oil or gas pipeline right-of-way must be established, and must provide documentation that the entity was established, under the laws of the United States, a state or territory of the United States, or in the case of coal, oil, shale, or gas, a municipality of the United States.

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not by stock ownership, stock holding, or stock control own an appreciable interest in any oil or gas pipeline right-of-way or associated special use authorization; and

* * * * *

(g) * * *

(1) *Acceptance of applications.* Except for proposed noncommercial group uses, if a proposed use does not meet both the initial and second-level screening criteria in paragraph (e) of this section, the authorized officer shall reject the proposal. The authorized officer shall notify the proponent in writing of the rejection and the reasons for the rejection. If a proposed use meets both the initial and second-level screening criteria in paragraph (e) of this section, the authorized officer shall notify the proponent that the proponent may submit a written application for evaluation under this paragraph. The authorized officer shall, as appropriate or necessary, provide the proponent guidance and information of the type described in paragraphs (e)(3)(i) through (viii) of this section.

* * * * *

(3) * * *

(iii) If an authorized officer denies an application because it does not meet the criteria in paragraphs (g)(3)(ii)(A) through (H) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (g)(3)(ii)(C) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analyses for the requested site. An environmental assessment or an environmental impact statement prepared for the requested site is subject to the predecisional objection procedures at 36 CFR part 218. Notwithstanding the timing provisions set forth in 36 CFR 218.12, a decision to grant or deny an application for which an environmental assessment or an environmental impact statement is prepared for the requested site shall be made within 48 hours after the time for filing an objection expires or, if an objection is filed, the objection process is completed. A denial of an application in paragraphs (g)(3)(ii)(A) through (H) of this section constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

* * * * *

■ 10. Amend § 251.55 by revising paragraph (a) to read as follows:

§ 251.55 Nature of interest.

(a) A holder is authorized to use and occupy only the land and structures and conduct only the activities specified in the holder's special use authorization. The holder may lease the authorized facilities and improvements to other parties only with the prior written approval of the authorized officer. The holder shall remain responsible for compliance of facilities and improvements leased to other parties with all the terms of the holder's special use authorization.

* * * * *

■ 11. Amend § 251.57 by revising the section heading and paragraphs (a)(2) and (3), (b), and (h) and removing paragraph (i).

The revisions read as follows:

§ 251.57 Land use fees.

(a) * * *

(2) The authorized officer may require either an annual land use fee payment or a land use fee payment covering more than one year, provided a holder that is a private individual (rather than a commercial or other entity) and that has an annual land use fee of more than $100 may elect to make either an annual land use fee payment or a land use fee payment covering more than one year.

(3) The annual land use fee for a recreation residence permit shall be assessed in accordance with the tiered land use fee structure and inflation adjustment specified in the Cabin Fee Act (16 U.S.C. 6214).

(b) All or part of the land use fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System lands when one of the following criteria is met. If an applicant or a holder is ineligible for a land use fee waiver under one criterion in this paragraph, the applicant or holder is ineligible for a land use fee waiver under any other criteria in this paragraph:

(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges;

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare, except that free use will not be authorized when funds derived by the holder through the authorization are used to increase the value of the authorized improvements owned by the holder or are used to support other activities of the holder;

(3) The holder provides without charge, or at reduced charge, a valuable benefit to the public or to the programs of the Secretary;

(4) When the land use fee is included in the land use fee for an authorized use or occupancy for which the United States is already receiving compensation;

(5) When a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

* * * * *

(h) Each ski area permit issued under the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future land use fees to reflect Forest Service revisions to the existing system for determining land use fees based on fair market value or to comply with any new system for determining land use fees based on fair market value that may be adopted after issuance of the permit.

■ 12. Amend § 251.58 by revising paragraphs (d)(1) and (i)(1) to read as follows:

§ 251.58 Cost recovery.

* * * * *

(d) * * *

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fees in minor categories 1 through 4, authorization holders are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Major category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, annual performance evaluations, or routine on-site reviews to determine compliance generally with the terms of an authorization.

* * * * *

(i) * * *

(1) The Forest Service shall maintain schedules for processing and monitoring fees on its website. The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator–Gross Domestic Product (IPD–GDP) index. The Forest Service shall round the changes in the rates either up or down to the nearest dollar.

* * * * *

■ 13. Revise § 251.59 to read as follows:

§ 251.59 Transfer of authorized improvements.

If the holder through death, voluntary sale, transfer, or enforcement of a valid legal proceeding or operation of law ceases to be the owner of the authorized improvements, the special use authorization terminates upon change of ownership and issuance of a new special use authorization to another party for the authorized use and occupancy. Except for leases and easements issued under § 251.53(e), (j), and (l) that are assignable in accordance with their terms, the new owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms of the authorization and any new terms warranted by existing or prospective circumstances. Assignment of leases and easements must comply with all terms governing their assignment.

* * * * *

■ 14. Amend § 251.60 by:

■ a. Revising paragraphs (a)(2)(i) and (ii) and (c);

■ b. Removing paragraph (d);

■ c. Redesignating paragraphs (e) and (f) as paragraphs (d) and (e);

■ d. Redesignating paragraph (g) as paragraph (f) and revising it;

■ e. Removing paragraph (h); and

■ f. Redesignating paragraph (i) as paragraph (g).

The revisions read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(2) * * *

(i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except aneasement issued under§ 251.53(j):

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest. The Chief may revoke an easement issued under § 251.53(j) with the consent of the holder; by condemnation; or upon abandonment after a 5-year period of nonuse by the holder.

(ii) *Administrative review.* Except for revocation or suspension of a permit or easement issued under § 251.53(e), revocation or suspension of an easement issued under § 251.53(l), and revocation for nonuse of an easement issued under § 251.53(j), revocation or suspension of a special use authorization under this paragraph is subject to appeal pursuant to 36 CFR part 214.

* * * * *

(c) A special use authorization issued to a Federal agency under § 251.53(l) may be suspended or revoked only with the consent of the head of that Federal agency.

* * * * *

(f) Before suspension or revocation of permits and easements issued under § 251.53(e) and suspension or revocation of easements issued under § 251.53(l), a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, as amended, and the authorized officer must determine, based on the proceeding, that grounds for revocation or suspension exist and that revocation or suspension is justified. Before revocation of easements issued under § 251.53(j) for nonuse, a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, provided the holder requests the hearing within 60 days of receipt of the notice of revocation.

* * * * *

■ 15. Revise § 251.64 to read as follows:

§ 251.64 Reauthorization of existing uses.

(a) Upon expiration of a permit or easement issued under § 251.53(e), a powerline facility permit issued to a federal entity or a powerline facility easement issued under § 251.53(l)(4), or a private road easement or a forest road easement issued under § 251.53(l)(6), the authorized officer shall issue a new special use authorization for the authorized use and occupancy, provided the use and occupancy authorized by the existing authorization are consistent with the applicable land management plan and applicable laws and regulations; the authorized activities and improvements are still being conducted or used for the purposes previously authorized; and the holder is in compliance with all the terms of the existing authorization.

(b) A priority use outfitting and guiding permit is subject to renewal without competition as provided in accordance with applicable Forest Service directives.

(c) Issuance of a new special use authorization upon expiration of any other type of special use authorization is at the sole discretion of the authorized officer, subject to the same conditions in paragraph (a) of this section.

(d) In reauthorizing existing uses under paragraph (a), (b), or (c) of this section, the authorized officer may modify the terms of the authorization to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. Appropriate environmental analysis must accompany the decision to reauthorize the special use.

Subpart E—Revenue-Producing Visitor Services in Alaska

■ 16. The authority citation for part 251, subpart E, continues to read as follows:

Authority: 16 U.S.C. 3197.

■ 17. Amend § 251.124 by revising paragraph (b) to read as follows:

§ 251.124 Preferred operator competitive special use authorization procedures.

* * * * *

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.14, Chapter 50, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

* * * * *

Homer Wilkes,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2023–26666 Filed 12–5–23; 8:45 am]

BILLING CODE 3411–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 386

[Docket No. 23–CRB–0010–SA–COLA (2024)]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates; Correction

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** of November 29, 2023, regarding the cost of living adjustment (COLA) to the royalty rates that satellite carriers pay for a compulsory license under the Copyright Act.

DATES: *Effective* January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–26122, appearing on page 83354 in the **Federal Register** of Wednesday, November 29, 2023, the following corrections are made:

§ 386.2 [Corrected]

■ 1. On page 83354, in the second column, in part 386, in amendment 2, the instruction ''Section 386.2 is amended by adding paragraphs (b)(1)(xiv) and (b)(2)(xiv) to read as follows:'' is corrected to read ''Section 386.2 is amended by adding paragraphs (b)(1)(xv) and (b)(2)(xv) to read as follows:''.

Dated: November 30, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–26741 Filed 12–5–23; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, and 266

[EPA–HQ–OLEM–2023–0081; FRL 8687–03–OLEM]

RIN 2050–AH23

Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Because the EPA received adverse comment on eight amendments in the direct final rule published on August 9, 2023, we are withdrawing amendments to specific provisions through correction to the direct final rule.

DATES: This correction is effective December 7, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Knieser, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0516, (*knieser.brian@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0517, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION: Because the EPA received adverse comment on specific amendments, through this correction, we are withdrawing only those specific amendments from the direct final rule, Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, published on August 9, 2023 (88 FR 54086). We stated in that direct final rule that if we received adverse comment by the close of the comment period on October 10, 2023, the specific amendments in the direct final rule that are the subject of adverse comment would not take effect, and we would publish a timely withdrawal in the **Federal Register**. Because the EPA subsequently received adverse comment on eight amendments in that direct final rule, we are withdrawing only the eight affected amendments. All other amendments in that direct final rule will go into effect on the effective date (December 7, 2023). The eight specific amendments that are being withdrawn are:

1. Section 261.4(e)(1) introductory text related to sample waste generated or collected for the purpose of conducting treatability studies.
2. Section 262.11(d) introductory text related to identifying hazardous characteristics for listed hazardous wastes when the characteristic is already addressed by the listing.
3. Section 262.11(g) related to identifying hazardous characteristics for listed hazardous wastes when the characteristic is already addressed by the listing.
4. Section 262.16(b)(1) related to the accumulation limit for small quantity generators generating acute hazardous waste.
5. Section 262.17(a)(8)(i) introductory text related to LQG closure notification when closing a waste accumulation unit but not the whole facility.
6. Section 262.17(a)(8)(i)(A) related to LQG closure notification when closing a waste accumulation unit but not the whole facility.
7. Section 262.232(b)(6)(iv) related to adding ''RCRA-'' to the term ''designated facility'' to match the language of parallel provisions in this section.
8. Section 266.508(a)(2)(ii) related to allowing applicable EPA hazardous waste numbers (also known as waste codes) in addition to the required PHARMS code in item 13 of the hazardous waste manifest for shipments of hazardous waste pharmaceuticals from a healthcare facility subject to 40 CFR part 266 subpart P. We are also withdrawing language from this provision that allows the use of PHRM in lieu of PHARMS in item 13 of the hazardous waste manifest.

Except for the amendment to § 262.11 at instruction 25, which is withdrawn in full, because the provisions we are withdrawing appear in amendatory instructions affecting other provisions, we are correcting the corresponding amendments in full minus those provisions withdrawn.

The EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on

August 9, 2023. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects

40 CFR Part 261

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

■ For the reasons stated above, EPA is withdrawing amendments in the direct final rule published August 9, 2023, at 88 FR 54086, by making the following corrections:

Correction

■ In FR Rule Doc. No. 2023–14731, published August 9, 2023, at 88 FR 54086, make the following corrections:

■ 1. On page 54109, in the first column, amendatory instruction 25 amending § 262.11 is removed.

■ 2. Beginning on page 54100 and ending on page 54114, correct amendatory instructions 5 (§ 261.4), 27 (§ 262.16), 28 (§ 262.17), 34 (§ 262.232), and 55 (§ 266.508) to read as follows:

■ 5. Section 261.4 is amended by revising paragraphs (a)(25)(i)(I), (a)(25)(vi) and (vii), and (a)(25)(xi)(D) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(25) * * *

(i) * * *

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms ''EPA Acknowledgment of Consent'', ''country of import'' and ''country of transit'' are used as defined in 40 CFR 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

* * * * *

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent documenting the consent of the country of import to the receipt of the hazardous secondary material. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) Prior to each shipment, the hazardous secondary material generator or a U.S. authorized agent must:

(A) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(B) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(*1*) EPA license code;

(*2*) Commodity classification code per 15 CFR 30.6(a)(12);

(*3*) EPA consent number;

(*4*) Country of ultimate destination per 15 CFR 30.6(a)(5);

(*5*) Date of export per 15 CFR 30.6(a)(2);

(*6*) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(*7*) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

* * * * *

(xi) * * *

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the consent number(s) under which the hazardous secondary material was shipped and for each consent number, the total amount of hazardous secondary material shipped and the number of shipments exported during the calendar year covered by the report;

* * * * *

■ 27. Section 262.16 is amended by revising the introductory text and paragraphs (b) introductory text, (b)(5) introductory text, and (b)(8)(iv)(A) and (B) to read as follows:

§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all the conditions for exemption listed in this section are met:

* * * * *

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (c), (d), and (e) of this section. The following accumulation conditions also apply:

* * * * *

(5) *Accumulation of hazardous waste in containment buildings.* If the waste is placed in containment buildings, the small quantity generator must comply with 40 CFR part 265 subpart DD. The generator must label its containment buildings with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172, subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

* * * * *

(8) * * *

(iv) * * *

(A) Whenever hazardous waste is being poured, mixed, spread, or

otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b)(8)(ii) of this section.

(B) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under paragraph (b)(8)(ii) of this section.

* * * * *

■ 28. Section 262.17 is amended by revising the introductory text and paragraphs (a)(2), (a)(7)(i)(A), (a)(8)(iii)(A)(*4*), (b), (c) introductory text, (d), (e), and (f) introductory text to read as follows:

§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all of the following conditions for exemption are met:

* * * * *

(a) * * *

(2) *Accumulation of hazardous waste in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 CFR part 265, subparts AA through CC.

* * * * *

(7) * * *

(i)(A) Facility personnel must successfully complete a program of classroom instruction, online training (*e.g.,* computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv)(C) of this section.

* * * * *

(8) * * *

(iii) * * *

(A) * * *

(*4*) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(iii)(A)(*2*) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform postclosure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this subchapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in 40 CFR part 265, subparts G and H.

* * * * *

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of 40 CFR parts 124, 264 through 268, and part 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless it has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that it complies with all of the following additional conditions for exemption:

* * * * *

(d) *F006 transported over 200 miles.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.* A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 124, 264, 265, 267, and 270, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in § 260.10 of this subchapter), without a storage permit or interim status and without complying with the requirements of parts 124, 264 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that they comply with the following conditions. ''Control,'' for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person

shall not be deemed to ''control'' such generators.

* * * * *

■ 34. Section 262.232 is amended by revising the paragraphs (a)(5), (b)(4) introductory text, and (b)(4)(ii)(C) to read as follows:

§ 262.232 Conditions for a generator managing hazardous waste from an episodic event.

(a) * * *

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of subpart B of this part and the recordkeeping provisions for small quantity generators in § 262.44 when it sends its episodic event hazardous waste off site to a designated facility, as defined in § 260.10 of this subchapter.

* * * * *

(b) * * *

(4) *Accumulation by small quantity generators.* A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

* * * * *

(ii) * * *

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

* * * * *

■ 55. Section 266.508 is amended by revising paragraphs (a)(1)(iii)(C) and (a)(2)(i) to read as follows:

§ 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility of evaluated hazardous waste pharmaceuticals from a reverse distributor.

(a) * * *

(1) * * *

(iii) * * *

(C) Lab packs that will be incinerated in compliance with § 268.42(c) of this subchapter are not required to be marked with EPA hazardous waste numbers (*i.e.,* hazardous waste codes), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification tag, may be used to identify the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes).

* * * * *

(2) * * *

(i) A healthcare facility shipping noncreditable hazardous waste pharmaceuticals is not required to list all applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700–22.

* * * * *

[FR Doc. 2023–26750 Filed 12–5–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430 and 435

Office of the Secretary

45 CFR Part 16

[CMS–2447–IFC]

RIN 0938–AV26

Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with request for comments (IFC) implements reporting requirements and enforcement authorities in the Social Security Act (the Act) that were added by the Consolidated Appropriations Act, 2023 (CAA, 2023). CMS will use these new enforcement authorities as described in this rule if States fail to comply with the new reporting requirements added by the CAA, 2023 or with Federal Medicaid eligibility redetermination requirements during a timeframe that is generally aligned with the period when States are restoring eligibility and enrollment operations following the end of the Medicaid continuous enrollment condition under the Families First Coronavirus Response Act (FFCRA). The new enforcement authorities include requiring States to submit a corrective action plan, suspending disenrollments from Medicaid for procedural reasons, and imposing civil money penalties (CMPs). They also include applying a reduction to the State-specific Federal Medical Assistance Percentage (FMAP) for failure to meet reporting requirements.

DATES: These regulations are effective on December 6, 2023.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, by February 2, 2024.

ADDRESSES: In commenting, please refer to file code CMS–2447–IFC.

Comments, including mass comment submissions, must be submitted in *one* of the following three ways (please choose only *one* of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2447–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2447–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Abby Kahn, (410) 786–4321, *Abigail.Kahn@cms.hhs.gov,* or Anna Bonelli, (443) 615–1268, *Anna.Bonelli@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Enforcement Authorities Under Section 1902(tt) of the Social Security Act

Section 1902(tt)(2) of the Social Security Act (the Act) (added by section 5131(b) of Subtitle D of Title V of Division FF of the Consolidated Appropriations Act, 2023 (CAA, 2023), Public Law 117–328, enacted December 29, 2022) includes new enforcement authority for CMS to use if it determines that a State is not in compliance with the reporting requirements under section 1902(tt)(1) of the Act, Federal eligibility redetermination requirements,[1] or both.

First, if CMS determines that a State is not in compliance with the reporting requirements under section 1902(tt)(1) of the Act for any fiscal quarter that occurs during the period that begins on July 1, 2023, and ends on June 30, 2024, section 1902(tt)(2)(A) of the Act requires CMS to reduce the Federal Medical Assistance Percentage (FMAP) as determined for the State for the quarter under section 1905(b) of the Act by the number of percentage points (not to exceed 1 percentage point) equal to the product of 0.25 percentage points and the number of fiscal quarters during such period for which the State has failed to satisfy such requirements. Per section 1902(tt)(2)(A) of the Act, the FMAP reduction is for fiscal quarters occurring in the period beginning on July 1, 2023, and ending on June 30, 2024. Therefore, CMS will not apply the FMAP reduction under section 1902(tt)(2)(A) of the Act to the quarter from April 1, 2023, to June 30, 2023, and CMS will not evaluate State-reported data reflecting activities during these months for purposes of the FMAP reduction.

Second, if CMS determines that a State is not in compliance with Federal eligibility redetermination requirements, the reporting requirements under section 1902(tt)(1) of the Act, or both, section 1902(tt)(2)(B) of the Act authorizes CMS to require a State to submit a corrective action plan (CAP) to address the noncompliance. If the State fails to submit or implement an approved CAP in accordance with section 1902(tt)(2)(B)(ii) of the Act, then, under section 1902(tt)(2)(B)(iii) of the Act, CMS may require the State to suspend some or all terminations of Medicaid eligibility that are for procedural reasons (hereinafter referred to as ''procedural disenrollments'') and may also impose civil money penalties (CMPs) of up to $100,000 for each day a State is not in compliance. In this rule, CMS defines procedural disenrollments in § 430.5 to mean, for the purposes of § 430.49 and 45 CFR part 16, a termination of a beneficiary's Medicaid eligibility after providing advance notice required under 42 CFR part 431, subpart E for reasons that are unrelated to a State's determination of whether the individual meets eligibility criteria to qualify for coverage, including for failure to return a renewal form or documentation needed by the State to make a determination of eligibility. This new authority under section 1902(tt)(2)(B) of the Act is in addition to any FMAP reduction that may also be applicable under section 1902(tt)(2)(A) of the Act or any other enforcement authority available to the Secretary. This new enforcement authority under section 1902(tt)(2)(B) of the Act relates to State conduct occurring during the period that began on April 1, 2023, and ends on June 30, 2024.

Both the new enforcement authorities in section 1902(tt)(2)(A) of the Act and in section 1902(tt)(2)(B) of the Act took effect on April 1, 2023. As noted above, the enforcement authority in section 1902(tt)(2)(A) of the Act does not apply to State conduct during the period from April 1, 2023, to June 30, 2023.

B. New Enforcement Needs and Considerations Given the Ending of the Medicaid Continuous Enrollment Condition

Section 1902(tt) of the Act applies during a period when States are conducting an unprecedented volume of Medicaid eligibility redeterminations. Under section 6008(b)(3) of the FFCRA (Pub. L. 116–127, originally enacted March 18, 2020), States were able to claim a temporary 6.2 percentage point increase in their FMAP provided that they met several conditions, including that they not disenroll most persons enrolled in Medicaid as of or after March 18, 2020, until the last day of the month in which the COVID–19 Public Health Emergency (PHE) ended. This provision is known as the Medicaid continuous enrollment condition. As of April 1, 2023, 50 States, the District of Columbia, and the five U.S. Territories (referred to as ''States'' throughout, consistent with section 1101(a) of the Act), were claiming the FFCRA FMAP increase, so this condition applied to all States.

Section 5131(a) of Subtitle D of Title V of Division FF of the CAA, 2023 made several changes to section 6008 of the FFCRA. As relevant here, section 5131(a)(2)(C) of Subtitle D of Title V of Division FF of the CAA, 2023 separated the end of the continuous enrollment condition from the end of the COVID–19 PHE by amending section 6008(b)(3) of the FFCRA to end continuous Medicaid enrollment as a condition for claiming the FFCRA temporary FMAP increase on March 31, 2023.[2] This means that, beginning April 1, 2023, all 56 States claiming the temporary FMAP increase were no longer required to comply with the continuous enrollment condition. Accordingly, States must conduct a full renewal of eligibility for each beneficiary (as part of a process referred to as ''unwinding''), in accordance with 42 CFR 435.916 and as described in State Health Official (SHO) letter #22–001, ''RE: Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID–19 Public Health Emergency'' (March 2022 SHO letter).[3]

CMS previously released guidance describing specific requirements and recommendations for States related to unwinding from the continuous enrollment condition. As a result of the policies described in these guidance documents, State unwinding periods vary and do not necessarily overlap with the compliance period for the new enforcement tools created under section 1902(tt) of the Act. As discussed in SHO letter # 23–002, ''RE: Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023'' (January 2023 SHO letter),[4] beginning as early as February 1, 2023, States have up to 12 months to initiate, and 14 months to complete, a renewal for all individuals enrolled in Medicaid, a period commonly referred to as a State's

[1] Medicaid regulations use both terms ''redetermination'' and ''renewal.'' For purposes of this rule, we interpret the reference to all Federal requirements applicable to eligibility redeterminations in section 1902(tt)(2)(B)(i) of the Act to include Federal renewal requirements outlined in 42 CFR 435.916, as newly defined at § 430.5 in this rule.

[2] Section 5131(a) of Subtitle D of Title V of Division FF of the CAA, 2023 also amended section 6008 of the FFCRA to revise the conditions States must meet to claim the temporary FMAP increase for each quarter beginning April 1, 2023, to extend the availability of the temporary FMAP increase until December 31, 2023, and to gradually phase down the amount of the increase for each quarter from April 1, 2023, to December 31, 2023.

[3] *https://www.medicaid.gov/Federal-policy-guidance/downloads/sho22001.pdf.*

[4] *https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf.*

''unwinding period.''[5] Starting on or after April 1, 2023, States claiming the temporary FFCRA FMAP increase may disenroll persons determined to be ineligible by a renewal initiated during the State's unwinding period. Likewise, the March 2022 SHO letter outlines CMS' expectations for renewals during unwinding. As also discussed in the January 2023 SHO letter, States had the option to initiate the first cohort of renewals to begin their unwinding period in February, March, or April 2023.[6]

Section 1902(tt) of the Act took effect on April 1, 2023, the day after the continuous enrollment condition expired. It imposes new reporting requirements on States during a period that generally overlaps with States' unwinding periods. It also provides CMS with new authority to take enforcement action if States fail to comply with Federal requirements related to eligibility redetermination or the new reporting requirements. Notably, these new reporting requirements and CMS' authority to enforce redetermination and data reporting requirements apply to all 56 States, regardless of whether a State is continuing to claim the FFCRA FMAP increase. This rule implements the new reporting requirements in section 1902(tt)(1) of the Act and the enforcement authorities in section 1902(tt)(2) of the Act (which are further discussed in the section II).

C. Monitoring Eligibility Redetermination Activities

Section 1902(tt) of the Act authorizes CMS to closely monitor and enforce Federal redetermination requirements during a period that generally aligns with States' unwinding periods, and thus, these authorities better position CMS to take actions to prevent unauthorized disenrollments during this critical period. Section 1902(tt)(1) of the Act requires that, for each month occurring during the period beginning on April 1, 2023, and ending on June 30, 2024, States must submit on a timely basis to CMS, and CMS must make public, certain monthly data about activities related to eligibility redeterminations conducted during that same period. The January 2023 SHO letter discussed these reporting requirements under section 1902(tt)(1) of the Act in further detail and explained that all the data States must report under these new reporting requirements are included in existing data sources, including the Unwinding Data Report and State-based Exchanges (SBE) priority metrics.[7]

Based on the timeframe when the reporting requirements under section 1902(tt)(1) of the Act apply, and the title of section 1902(tt)(1) of the Act, which refers to the ''transition from [the FFCRA] FMAP increase,'' CMS interprets the statutory data collection and reporting requirements to be a means to help CMS monitor States' work unwinding from the Medicaid continuous enrollment condition and returning to regular eligibility and enrollment operations. Under our interpretation, the reporting requirements under section 1902(tt)(1) of the Act will help us monitor whether States are compliant—during a timeframe that generally aligns with their return to regular eligibility and enrollment operations—with Federal eligibility redetermination requirements (including renewal requirements at 42 CFR 435.916, strategies authorized under section 1902(e)(14) of the Act, or alternative strategies authorized by CMS, including alternative or mitigation strategies CMS has authorized States to implement under section 6008(f)(2)(A) of the FFCRA, which was added by section 5131 of Subtitle D of Title V of Division FF of the CAA, 2023). Additionally, because section 1902(tt) of the Act also includes the new enforcement authorities in section 1902(tt)(2)(B) of the Act, CMS interprets the data collection and reporting requirements under section 1902(tt)(1) to be a tool CMS can use to monitor State compliance with Federal eligibility redetermination requirements during a period that generally aligns with States' unwinding periods.

CMS has also been monitoring States' implementation of other amendments made by section 5131 of Subtitle D of Title V of Division FF of the CAA, 2023, which create new conditions for States seeking to receive the FFCRA temporary FMAP increase through December 31, 2023. These new conditions for receiving the FFCRA temporary FMAP increase also give CMS ways to incentivize States to minimize the disruption in coverage resulting from procedural disenrollments during States' unwinding periods. Specifically, the CAA, 2023 added to the FFCRA new section 6008(f)(2)(A), which conditions receipt of the FFCRA FMAP increase after April 1, 2023, on State compliance with Federal redetermination requirements, including renewal strategies authorized under section 1902(e)(14)(A) or other alternative processes and procedures approved by the Secretary. New FFCRA section 6008(f)(2)(B) conditions receipt of the FFCRA FMAP increase after April 1, 2023, on States' maintaining up-to-date contact information for a beneficiary before redetermining eligibility for such beneficiary, and new section 6008(f)(2)(C) conditions receipt of the FFCRA FMAP increase after April 1, 2023, on States' undertaking a good faith effort to contact an individual using more than one modality prior to terminating their enrollment on the basis of returned mail. The January 2023 SHO letter outlines these new conditions for receiving the FFCRA FMAP increase in greater detail. Because the same section of the CAA, 2023 that added new section 1902(tt) to the Act also included both these conditions for receiving the FFCRA FMAP increase, CMS interprets the entirety of the changes made in section 5131 of subtitle D of division FF of the CAA, 2023 to give CMS a range of enforcement mechanisms and incentives that, taken together, can be used to help minimize the disenrollment of people who otherwise continue to meet the substantive eligibility criteria and whose enrollment would be retained but for their failure to meet a procedural requirement during States' unwinding periods. One key purpose of section 1902(tt) is thus to enhance CMS' ability to take enforcement action against noncompliant States during this critical timeframe.

CMS takes seriously its responsibility to hold States accountable for resuming routine eligibility and enrollment operations and plans to fully exercise the new authorities at section 1902(tt) of the Act when appropriate to do so. Since the FFCRA was enacted, CMS has been preparing for the eventual unwinding of the FFCRA continuous enrollment condition. CMS has explained to States the conditions of the FFCRA FMAP increase, gauged States'

[5] While the requirements of section 6008 of the FFCRA do not apply to separate CHIPs or the Basic Health Program (BHP), CMS recognizes some States elected to apply certain provisions of section 6008 to their separate CHIP program or BHP. In those circumstances, subject to exceptions noted and other Federal requirements, much of CMS' guidance related to unwinding from the FFCRA continuous enrollment condition also applies to CHIP and BHP. However, neither section 1902(tt) of the Act, nor this rule, applies to separate CHIPs or BHPs.

[6] For additional guidance about State renewals of eligibility following the end of the continuous enrollment condition see *www.medicaid.gov/unwinding.*

[7] See the January 2023 SHO Letter. See also CMS, ''Consolidated Appropriations Act, 2023: FMAP Reduction for Failure to Meet Reporting Requirements under Section 1902(tt)(1) of the Social Security Act, Frequently Asked Questions for State Medicaid and CHIP Agencies,'' (June 30, 2023) (''June 2023 FAQs'') (Available at: *https://www.medicaid.gov/federal-policy-guidance/downloads/fmap-rdctn-repot-medcid-chip-agncs-06302023.pdf).*

ability to resume redeterminations on an unprecedented scale, and provided States with technical assistance to address challenges that might lead to preventable loss of coverage for procedural reasons among beneficiaries. If CMS identifies a violation of Federal redetermination requirements, then, consistent with section 6008(f)(2)(A) of the FFCRA, CMS will communicate to the State that its FFCRA FMAP increase will be withheld if the State does not ensure the issue is fully resolved or does not implement appropriate mitigations until full compliance can be achieved.

The new enforcement tools outlined at section 1902(tt) of the Act, which allow CMS to enforce existing Federal redetermination requirements as well as the reporting requirements at section 1902(tt)(1) of the Act, are a key part of the suite of CMS enforcement mechanisms and incentives added through the CAA, 2023 to minimize the disenrollment of eligible individuals during States' unwinding periods. These new enforcement tools are critical to enabling CMS to effectively monitor for, and take action to protect against, States conducting renewals that do not adhere to Federal redetermination requirements and to support continued enrollment for those individuals who remain eligible. Nothing in this rule affects other authorities that exist outside of this new enforcement framework or precludes CMS from pursuing additional enforcement action under section 1904 of the Act, including withholding Federal financial participation (FFP), or limiting payments, for States that fail to comply with requirements of the Medicaid statute.

D. Pre-Compliance Engagement With States

When CMS becomes aware of a potential violation of Federal requirements, we first attempt to work collaboratively with the State to understand the nature and scope of the problem and to identify appropriate alternative processes and procedures that the State can adopt to avoid or minimize beneficiary harm until the State can fix the problem and come into full compliance with Federal requirements, consistent with our authority to enforce compliance with section 1902 under section 1904 of the Act and 42 CFR 430.35. Consistent with this practice, as discussed in section II.A of this rule, CMS will provide technical assistance to States facing unusual circumstances that interfere with their ability to comply fully with section 1902(tt)(1) of the Act reporting requirements and will consider approving alternative timelines and processes for meeting those requirements. The statute does not give CMS the discretion to avoid taking an FMAP reduction under section 1902(tt)(2)(A) of the Act for a quarter in the period beginning July 1, 2023, and ending June 30, 2024, if a State ultimately fails to report each of the metrics required under section 1902(tt)(1) of the Act for that quarter. However, CMS will consider mitigating circumstances before taking additional enforcement action under section 1902(tt)(2)(B) of the Act if a State fails to meet the reporting requirements under section 1902(tt)(1) of the Act during the period from April 1, 2023, to June 30, 2024.

If CMS' efforts to work collaboratively with States are successful, and the State takes necessary steps to address beneficiary harm and prevent future harm (such as reinstating eligibility for affected beneficiaries and suspending procedural disenrollments, where appropriate), CMS might not initiate compliance action under section 1902(tt)(2)(B) of the Act. However, if CMS determines that a State violated the section 1902(tt)(1) of the Act reporting requirements or Federal redetermination requirements, CMS will consider exercising the enforcement authorities in section 1902(tt)(2)(B) of the Act, as implemented in this rule.

II. Provisions of the Interim Final Rule With Comment

This rule adds new 42 CFR 430.49 and 435.927 and 435.928 to the CFR and amends §§ 430.3, 430.5, and 45 CFR part 16. New § 430.49 of this rule interprets and implements section 1902(tt)(2)(B) of the Act, which authorizes CMS to do the following: (1) require States to submit and implement a CAP for noncompliance with Federal requirements applicable to eligibility redeterminations and the reporting requirements described in section 1902(tt)(1) of the Act; and (2) if the State fails to submit or implement an approvable CAP in accordance with section 1902(tt)(2)(B)(ii), require the State to suspend some or all disenrollments from Medicaid for procedural reasons until the State takes appropriate corrective action, impose CMPs of not more than $100,000 for each day the State is not in compliance, or both. New § 435.927 interprets and implements section 1902(tt)(1) of the Act, which requires that, for each month occurring during the period beginning on April 1, 2023, and ending on June 30, 2024, States must submit on a timely basis to CMS, and CMS must make public, certain monthly data about activities related to eligibility redeterminations conducted during that same period.

New § 435.928 specifies how CMS will implement the FMAP reduction required under section 1902(tt)(2)(A) of the Act. If a State does not satisfy the reporting requirements described in section 1902(tt)(1) of the Act for any fiscal quarter in the period that begins on July 1, 2023 and ends on June 30, 2024, section 1902(tt)(2)(A) of the Act requires CMS to reduce the FMAP determined for the State for the quarter under section 1905(b) of the Act by the number of percentage points (not to exceed 1 percentage point) equal to the product of 0.25 percentage points and the number of fiscal quarters during such period for which the State has failed to satisfy such requirements.

The provisions of this rule apply to the States, District of Columbia, and all 5 territories—Guam, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and American Samoa. While the regulations in part 435 apply only to the States, the District of Columbia, the Northern Mariana Islands and American Samoa, § 436.901 provides that with one exception (not relevant here), the requirements of part 435, subchapter J, which includes §§ 435.927 and 435.928 through this rulemaking, apply to Guam, Puerto Rico, and the Virgin Islands.

The new enforcement authority granted to CMS under section 1902(tt)(2)(A) and (B) of the Act will improve State accountability for complying with Federal renewal requirements while also minimizing disruptions to coverage for eligible people during a period that generally aligns with States' unwinding activities. The additional enforcement activities authorized in section 1902(tt)(2) of the Act will reinforce and augment the routine monitoring and compliance action that CMS is already undertaking to promote State compliance with Federal enrollment and eligibility requirements, described in section I.C and D of this rule. These authorities will also help ensure that States remain accountable to CMS by requiring them to submit certain data to CMS and will increase public transparency about eligibility redeterminations between April 1, 2023, and June 30, 2024, by requiring CMS to publicly report the data.

Finally, the rule amends § 430.5 to add new definitions of the terms Federal redetermination requirements and procedural disenrollment for purposes of § 430.49, and (with respect to the definition of procedural disenrollment only) for purposes of 45 CFR part 16. And this rule creates reconsideration

and appeal rights for States under new § 430.49(f) and corresponding amendments to § 430.3 and 45 CFR part 16, to ensure States have clear avenues for appealing CMS decisions to require suspension of procedural disenrollments and/or impose CMPs under the new authorities in section 1902(tt)(2)(B)(iii) of the Act.

We have also included severability clauses at new §§ 430.49(g), 435.927(e), and 435.928(c) to emphasize our intent that, to the extent a reviewing court holds that any provision of these rules is unlawful, the remaining provisions should take effect and be given the maximum effect permitted by law. The severability clauses provide that any provision of these sections that is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, shall be severable from the relevant section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

A. Reporting Requirements (§ 435.927)

Section 1902(tt)(1) of the Act requires that, for each month occurring during the period that begins on April 1, 2023, and ends on June 30, 2024, each State submits to CMS, and that CMS make public, a report on the activities of the State relating to eligibility redeterminations conducted during such period.

New § 435.927 implements and interprets the reporting requirements in section 1902(tt)(1) of the Act. The required reporting will help CMS and others to monitor State actions during the unwinding period and beyond because it includes reporting on metrics such as the number of individuals disenrolled from Medicaid or CHIP and certain information about transitions from Medicaid or CHIP coverage to coverage through an Exchange. Reviewing and publishing these monthly data will give CMS and the public information to help hold States accountable for following redetermination requirements and will promote transparency.

CMS interprets section 1902(tt)(1) of the Act to require that States report data representing the activities conducted during each month of the designated time period.[8] However, CMS does not believe the provision requires that States must submit all the required monthly reports by June 30, 2024, because it will take States time to assemble, review, and submit data from the months for which they are reporting. For example, States must report on activities occurring in June 2024, but the submission of that monthly report could occur after June 30, 2024, to allow the State time to collect, review, and submit the data.[9] This is reflected in new § 435.927(c), which requires States to report certain data representing activities conducted by a State during the time period beginning April 1, 2023, and ending June 30, 2024.

To help ensure that CMS and the public can use and understand the data, avoid redundancy, and for purposes of practicality, CMS is interpreting the data elements required under section 1902(tt)(1) of the Act differently in § 435.927(d) depending on the element. Section 1902(tt)(1) of the Act directs the Secretary to make public reports with data ''relating to eligibility redeterminations,'' but CMS is not interpreting all the reporting elements listed in the subsequent subparagraphs to be limited to data related to such redeterminations. Specifically, CMS is interpreting the reporting elements listed in section 1902(tt)(1)(A), (B) and (D) of the Act to represent only those individuals who are subject to Medicaid or CHIP redeterminations but is not interpreting the elements listed in section 1902(tt)(1)(C) or (E) of the Act to be limited to reporting on such individuals.

Paragraphs (A) and (B) of section 1902(tt)(1) of the Act require States to report on certain data elements for persons with coverage for medical assistance, child health assistance, or pregnancy-related assistance, which CMS interprets to refer to people with Medicaid or CHIP coverage, including pregnancy-related coverage in both programs. The data elements required under paragraphs (A) and (B) are as follows: the number of eligibility renewals initiated, beneficiaries renewed on a total and *ex parte* basis (that is, based on available reliable information without contacting the individual consistent with § 435.916(a)(2)), individuals who were disenrolled for any reason, and the number of individuals disenrolled for procedural reasons. These data points are all the direct result of Medicaid or CHIP eligibility redetermination actions and thus new § 435.927(d)(1) through (5) require States to report this information only for people undergoing Medicaid or CHIP redeterminations.

Similarly, paragraph (D) of section 1902(tt)(1) of the Act requires States to report the number of individuals whom a Federal or State-based Exchange determined eligible for a qualified health plan or a Basic Health Program (BHP),[10] as well as the number of individuals who selected a qualified health plan or enrolled in a BHP (section 1902(tt)(1)(D)(i) and (ii) of the Act specifically require data related to BHPs). Paragraph (D) of section 1902(tt)(1) of the Act does not specify that these data be limited only to numbers of individuals whose eligibility had been redetermined by the Medicaid program. However, these data elements are only useful to CMS in understanding ''the activities of the State relating to eligibility redeterminations,'' as directed by section 1902(tt)(1) of the Act if the data are limited to Medicaid and CHIP beneficiaries who have undergone an eligibility redetermination. These data will help demonstrate if beneficiaries found ineligible for Medicaid and CHIP during the redetermination process are able to find other coverage on Exchanges or BHPs and will also help CMS and other interested parties identify States in which transitions to Exchange coverage are relatively successful and States in which such transitions may not be as successful. These data will be most useful for oversight of States' redetermination processes if they are limited to the numbers of individuals' accounts that were transferred to an Exchange or BHP because of a redetermination under Medicaid or CHIP. To include other transfers (those of consumers who were not enrolled in Medicaid or CHIP at the time and who newly apply directly with their State agency and are determined ineligible) would not help to illuminate ''eligibility redeterminations,'' because new applicants are not in a position to lose Medicaid or CHIP coverage. Therefore, in new § 435.927(d)(10) and (11), we require the reported data described in section 1902(tt)(1)(D) of the Act to reflect Medicaid/CHIP redeterminations.

In previous guidance,[11] we listed the reporting elements under section 1902(tt)(1) of the Act related to Exchanges and the anticipated data sources for obtaining the data for these elements. Specifically, in the January 2023 SHO letter, in the first column of ''Table 2: Reporting Elements Under Section 1902(tt)(1) for the Period from April 1, 2023, through June 30, 2024, and Corresponding Data Sources,'' we stated that for States with Exchanges

[8] See the January 2023 SHO, and the June 2023 FAQs.

[9] See the June 2023 FAQs.

[10] The Basic Health Program (BHP) is a program for specified individuals who do not qualify for Medicaid but whose household income does not exceed 200 percent of the Federal poverty level (FPL).

[11] See the January 2023 SHO Letter, and the June 2023 FAQs.

that use the Federal Exchange eligibility and enrollment platform (including Federally-facilitated Exchanges (FFEs) and SBEs on the Federal platform (SBE–FPs)) we anticipated that CMS would report these data on behalf of States and that we intended to limit the data to information that is the result of a Medicaid or CHIP redetermination (which would exclude data resulting from a new Medicaid or CHIP application). In contrast, for SBEs with their own platforms that use either a non-integrated or integrated eligibility system, we inadvertently did not make such a distinction.[12] Rather, column one in Table 2 of the January 2023 SHO letter suggests that the reporting elements would apply to Exchange activity resulting from all Medicaid or CHIP applications. However, in the ''SBE Priority Metrics: Medicaid/Children's Health Insurance Program (CHIP) Continuous Enrollment Condition Unwinding Overview and Template 1.0 User Guide (version 1.0, 5/19/2023),'' which is cited in guidance that we released on June 30, 2023,[13] we specified that SBEs will report only those required data elements that result from Medicaid or CHIP redeterminations. As a result, although the labeling in the first column of the table in the January 2023 SHO letter is inconsistent, the definitions of the required State data are consistent across types of Exchanges, and therefore the data collected and reported will be consistent across types of Exchanges, and in all cases, including for SBEs not using the Federal platform, will be limited to information related to Medicaid or CHIP redeterminations.

Section 435.927(d)(10) and (11) reflect this.

As noted, in the January 2023 SHO letter, CMS identified the reporting requirements under section 1902(tt)(1) of the Act that relate to Exchanges. Consistent with CMS' stated expectations in that SHO letter, CMS will report data on behalf of States with Exchanges that use the Federal eligibility and enrollment platform (including FFEs and SBE–FPs) since CMS operates the Federal eligibility and enrollment platform. Therefore, States do not have to report the data, and we are not including in this rule any provisions implementing the requirements under section 1902(tt)(1) of the Act that apply to States with Exchanges that use the Federal eligibility and enrollment platform. Section 435.927(d)(10) and (11) describe the reporting requirements that apply to States with SBEs that do not use the Federal platform.

Section 435.927(d)(10) and (11) also reflect certain practical and operational differences between SBEs based on whether the Exchange eligibility system is integrated with the State's Medicaid and/or CHIP eligibility systems. Specifically, some SBEs have integrated eligibility systems but others do not. As Congress recognized in section 1902(tt)(1)(D)(i) and (ii) of the Act, there is no need for an Exchange with an integrated eligibility system to report account transfers from the Medicaid and/or CHIP agency to the Exchange, whereas that data point is relevant for Exchanges without integrated eligibility systems.

In contrast to how we are interpreting section 1902(tt)(1)(A), (B), and (D) of the Act, we are not interpreting section 1902(tt)(1)(E) of the Act to be limited to describing only information about a Medicaid or CHIP redetermination. States are required under section 1902(tt)(1)(E) of the Act to report data on total call center volume, average wait times, and average abandonment rate. For these reporting elements, it is impractical to limit the measures only to data related to eligibility redeterminations. States do not always identify the purpose of individual calls to call centers, calls can address multiple purposes and beneficiaries, and reprogramming call trees and retraining staff could take months for States to operationalize, if required. As the period for which States are required to report these data under section 1902(tt)(1)(E) of the Act has already begun and is time-limited, it is impractical to limit the collection of the call center data required under 1902(tt)(1)(E) of the Act to only those calls related to individuals' eligibility redeterminations. Furthermore, these call center metrics are useful because they illustrate the extent to which all beneficiaries, including those whose eligibility is being redetermined, can access assistance. Accordingly, new § 435.927(d)(7) through (9) are not limited to just call center information related to redeterminations.

CMS is also not interpreting section 1902(tt)(1)(C) of the Act to be limited to describing only information about a Medicaid or CHIP redetermination. Section 1902(tt)(1)(C) of the Act requires States to report on the number of individuals enrolled in a separate CHIP program under section 2101(a)(1) of the Act. Broadening the data collected under paragraph (C) to include the total number of enrollees in a separate CHIP, not just those enrolling subject to a Medicaid or CHIP eligibility redetermination, provides useful information. In addition to being new data that is not publicly reported elsewhere, the data helps CMS and others identify whether separate CHIP programs' total enrollment levels are changing during the applicable period, which might indicate whether individuals are transitioning to CHIP from the Medicaid program. New § 435.927(d)(6) therefore refers to reporting on total enrollment in separate CHIPs.

Despite not being limited to information on redeterminations, data elements reported under section 1902(tt)(1)(C) and (E) of the Act are still useful for purposes of providing transparency on States' activities to conduct redeterminations. State Medicaid agency operational data on call center activity—call volume, average wait times, and average abandonment rates—help illuminate beneficiaries' access to information and ability to receive assistance from the State, as well as the eligibility process generally. Information on the enrollment levels for separate CHIP programs helps identify trends in enrollment that could signal whether a State is not performing redeterminations or transitioning eligible individuals from Medicaid to CHIP.

All the data States must report under the requirements of section 1902(tt)(1) of the Act are already being reported through existing data reports collected by CMS. For efficiency and to improve standardization (and hence, comparability) of the data, and because the applicable statutes, regulations, and other guidance governing CMS' use of the data collected through those existing data sources permit this, CMS is not requiring States to submit separate or

[12] States with SBEs that operate an integrated eligibility platform have a shared operating system between the SBE and the Medicaid/CHIP agency that conducts eligibility determinations related to new and renewal applications for certain Medicaid and CHIP programs and qualified health plans. In contrast, States with SBEs that operate a non-integrated eligibility platform have separate operating systems for the SBE and the Medicaid/CHIP agency. Accounts are transferred between the separate operating systems depending on the initial eligibility determination or assessment for the programs made by either the SBE or the Medicaid/CHIP agency.

[13] The June 2023 FAQs, in Table 1, cites to CMS, ''State-Based Exchanges (SBE) Priority Metrics: Medicaid/Children's Health Insurance Program (CHIP) Continuous Enrollment Condition Unwinding; Overview and Template 1.0 User Guide,'' released May 5, 2023, *https://www.medicaid.gov/resources-for-states/downloads/sbe-medicaid-chip-con-unwind-metrics-reprt-guide.pdf.* ''The priority metrics include indicators that are specific to Medicaid/CHIP continuous enrollment unwinding activities. For those metrics, SBEs should count activities that were initiated through the Medicaid/CHIP agency's renewal process, in which a consumer was determined ineligible for limited or full benefit Medicaid or CHIP.''

additional reports to CMS to comply with section 1902(tt)(1) of the Act.[14] Rather, CMS believes the requirements of section 1902(tt)(1) of the Act can be met through compliance with the following existing, CMS-approved data reporting processes: the Unwinding Eligibility and Enrollment Data Reporting (also referred to as the Unwinding Data Report), Medicaid and CHIP Eligibility and Enrollment Performance Indicator Data (PI data), the Transformed Medicaid Statistical Information System (T–MSIS), and SBE Priority Metrics.[15] Additionally, as described previously, the required data under section 1902(tt)(1) of the Act that apply to States with Exchanges that use the Federal eligibility and enrollment platform will be reported by CMS. Under section 1902(tt)(1) of the Act, CMS will publish all required data after a period of time to allow for data quality and validation reviews.

Section 1902(tt)(1) of the Act requires States to submit the required monthly data on a timely basis but does not include a definition of timely or standards for completeness and accuracy. CMS already collects the required data via existing processes, and the timeliness, completeness, and quality specifications for data submitted via those existing processes have generally been defined previously.[16] Under this regulation, States will generally submit data in accordance with these existing timelines and specifications unless CMS has approved an alternative process or timeline for reporting, in which case the State must submit the data according to any alternative specifications CMS approved as part of the alternative process or timeline.

As specified in § 435.927(b)(1), CMS will consider data to be timely when it is submitted by the deadline outlined in the applicable existing reporting process specifications, with some variations for T–MSIS data and to permit States to submit data according to alternative processes and timelines approved by CMS. CMS will approve these alternative processes and timelines when, as discussed below, a State is making a good faith effort to meet the requirements despite facing significant challenges that interfere with its ability to do so. As an example of how a deadline outlined under other existing reporting process specifications might apply here, the specifications for PI data generally require States to submit data by the 8th of each month;[17] thus under § 435.927(b)(1), States would report these PI data on a timely basis under section 1902(tt)(1) of the Act if they reported them by the 8th of each month. The rule also, however, includes a variation on how the existing T–MSIS reporting timeline would apply for purposes of section 1902(tt)(1) of the Act data because, in order for T–MSIS data to be useful for section 1902(tt)(1) of the Act purposes, these data must be reported under a different timeline. Specifically, to publicly report data under section 1902(tt)(1)(D)(i) of the Act, CMS will use T–MSIS data to match the records of Medicaid and CHIP beneficiaries to data from the FFEs and SBEs-FPs and identify the number of accounts that are received at these Exchanges due to a Medicaid/CHIP redetermination. Using these data, CMS can determine the other metrics listed under section 1902(tt)(1)(D)(i) of the Act, such as the total numbers of these individuals who apply for and are determined eligible for a qualified health plan. CMS will also use T–MSIS data to publicly report data on the number of separate CHIP enrollees for each State, as required under section 1902(tt)(1)(C) of the Act. CMS already requires that States maintain current data submissions by submitting T–MSIS data monthly before the last day of the subsequent month, although States are not considered to be out of compliance for T–MSIS reporting until data submissions are behind by 2 or more months. As reflected in § 435.927(b)(1)(ii), due to the time-sensitive nature of these calculations and the need for up-to-date data, States that do not submit T–MSIS data monthly by the last day of the subsequent month may be subject to the FMAP reduction under section 1902(tt)(2)(A) of the Act or other corrective action under section 1902(tt)(2)(B) of the Act. For example, T–MSIS data reflecting March 2024 activities will be due by the end of April 2024, under § 435.927(b)(1)(ii).

CMS recognizes that some States might encounter unusual circumstances that interfere with reporting using existing CMS-approved processes or that impede a State's ability to meet the deadlines in § 435.927(b)(1)(i) and (ii). For example, States may experience unforeseeable or unavoidable challenges such as a natural disaster or unplanned systems outages, or may be working to resolve significant foreseeable challenges, such as a known and reported major operational or systems issue that impacts the State's ability to submit timely and accurate data and that the State is working to remediate but needs additional time to fix. As reflected in § 435.927(b)(1)(iii), (b)(3)(ii), (b)(4), and (c)(2), CMS would consider approving alternative timelines and processes for reporting required data if a State is making a good faith effort to submit the required data. For example, CMS would consider allowing such a State to submit certain summary data via email. As specified in § 435.927(b)(4), a good-faith effort means that (1) the State is experiencing significant, unforeseeable, or unavoidable challenges in complying with the reporting requirements of § 435.927(c), or is experiencing significant foreseeable challenges in complying and is working to remediate these challenges but needs additional time to address them; (2) the State requested and obtained approval from CMS to submit the data via an alternative process or timeline, and (3) the approved alternative process for submitting the data or timeline is sufficient to ensure CMS can obtain and use the data to meet CMS' obligations to report the data publicly per section 1902(tt)(1) of the Act. CMS will work with such a State to ensure that CMS has all the data it needs in order to meet its requirement to publicly report data under section 1902(tt)(1) of the Act and will only approve alternative timelines or reporting processes that permit CMS to meet this requirement.

States that are ultimately unable to submit required data or that submit data via an unapproved process or according to an unapproved timeline will be subject to the enforcement actions in section 1902(tt)(2) of the Act. Because section 1902(tt)(2)(A) requires CMS to take an FMAP reduction if States fail to meet the section 1902(tt)(1) of the Act reporting requirements for a quarter in the period beginning July 1, 2023, and ending June 30, 2024, CMS does not have the authority to exempt States from FMAP reductions for failure to meet the section 1902(tt)(1) of the Act reporting requirements during that timeframe. However, as indicated in § 430.49, CMS will consider certain mitigating circumstances before taking the various

[14] See sections 1902(a)(4), 1902(a)(6), 1902(a)(75), 1903(r)(1)(F), and 2107(b)(1) of the Act; see also 42 CFR 431.16, 42 CFR 433.112(b)(15), 45 CFR 155.260(a)(1)(ii). See also *https://www.federalregister.gov/documents/2019/02/06/2019-01157/privacy-act-of-1974-system-of-records and https://www.federalregister.gov/documents/2013/10/23/2013-24861/privacy-act-of-1974-report-of-an-altered-cms-system-of-records-notice.*

[15] See the January 2023 SHO Letter, and the June 2023 FAQs.

[16] See the January 2023 SHO Letter, and the June 2023 FAQs.

[17] CMS, ''Medicaid and Children's Health Insurance Program Eligibility and Enrollment Data Specifications for Reporting During Unwinding,'' updated December 2022. Available at *https://www.medicaid.gov/sites/default/files/2022-12/unwinding-data-specifications-dec-2022.pdf.*

additional enforcement actions described in section 1902(tt)(2)(B) of the Act.

The regulation also provides in § 435.927(b)(2) that in order to be considered ''complete'' for purposes of public reporting under section 1902(tt)(1) of the Act, States must submit every data element (although in some cases, as noted above, certain elements may be submitted on a different or later timeframe than others, subject to CMS approval). A State that ultimately fails to report one or more required data elements would be subject to the FMAP reduction under section 1902(tt)(2)(A) of the Act if the State's noncompliance was for a quarter during the period from July 1, 2023, through June 30, 2024. Such a State might also be subject to other enforcement actions under section 1902(tt)(2)(B) of the Act; these are discussed in section II. of this rule.

Furthermore, in § 435.927(b)(3), the regulation provides that to be considered of ''sufficient quality,'' the State must report data that adheres to specifications outlined in previously existing regulation or guidance for each of the CMS-approved processes, or data that adheres to the specifications outlined in an alternative process approved by CMS. Existing reporting processes are governed by detailed instructions that outline how and what States should report and help ensure that States are reporting consistent data that CMS can publicly report, consistent with requirements under section 1902(tt)(1) of the Act.

New section § 435.927(c) implements the reporting requirements in section 1902(tt)(1) of the Act in light of the interpretations that are discussed above and reflected in the other paragraphs of § 435.927. Section 435.927(c) specifies that States must submit to CMS the data described in § 435.927(d), and those data must be timely, complete, and of sufficient quality (as those terms are defined in § 435.927(b)). It further provides that States must submit the required data via existing CMS-approved processes or through alternative processes approved by CMS when a State is making a good faith effort as defined in § 435.927(b)(4).

B. Application of the FMAP Reduction (§ 435.928)

If a State does not satisfy the reporting requirements in section 1902(tt)(1) of the Act for any fiscal quarter that occurs during the period that begins on July 1, 2023, and ends on June 30, 2024, section 1902(tt)(2)(A) of the Act requires CMS to reduce the FMAP determined for the State for the quarter under section 1905(b) of the Act by the number of percentage points (not to exceed 1 percentage point) equal to the product of 0.25 percentage points and the number of fiscal quarters during such period for which the State has failed to satisfy such requirements. We are implementing this FMAP reduction along with our interpretation of how it is to be applied in new § 435.928.[18] In § 435.928(b)(1), CMS interprets the statutory reference to the FMAP determined for the State under section 1905(b) of the Act to mean the State-specific FMAP defined in the first sentence of section 1905(b) of the Act.[19] In § 435.928(b)(4), CMS interprets the statutory language regarding the amount of the reduction to mean that when States are noncompliant in multiple quarters, the FMAP reduction will increase by 0.25 percentage points for each successive quarter of noncompliance, regardless of whether the noncompliant quarters are consecutive. For example, if a State were out of compliance for three quarters, the reduction would be: a 0.25 percentage point FMAP reduction in the first quarter of noncompliance; a 0.50 percentage point FMAP reduction in the second quarter of noncompliance; and a 0.75 percentage point FMAP reduction in the third quarter of noncompliance. In no case, however, would the FMAP reduction for any single quarter exceed 1 percentage point.

We acknowledge that the language of the statute would allow for an alternative interpretation that would require CMS to apply the same percentage point reduction to all of the quarters in which a State failed to comply with the reporting requirements. For example, if a State were out of compliance for three quarters, CMS could apply a 0.75 percentage point reduction to the State's FMAP in all three of the applicable quarters. To come to that conclusion, CMS would have to interpret the statute as requiring CMS either to apply the reduction to the relevant quarters multiple times, or to wait until the end of the period to apply the reduction. Neither of these alternative approaches supports transparency, as the total amount of the reduction would not be known until up to three quarters after the State is found to be noncompliant, making it difficult for States to budget for the amount of State share they would need for the four-quarter period.

As specified in § 435.928(b)(3), States that fail to report data according to the requirements in § 435.927 for a single month within a quarter will be subject to the FMAP reduction for the entire quarter. Section 1902(tt)(1) of the Act specifies that the FMAP reduction should be applied for each fiscal quarter. As such, the statute does not give CMS the authority to reduce a State's FMAP for a single month.[20]

C. Corrective Action Plans (§ 430.49(b))

As noted in section I.A. of this rule, section 1902(tt)(2) of the Act includes new enforcement authority for CMS to use if it determines that a State is not in compliance with the reporting requirements in section 1902(tt)(1) of the Act, Federal eligibility redetermination requirements, or both. New § 430.49(b) provides guidelines for how CMS will exercise the CAP authority created by section 1902(tt)(2)(B) of the Act. Specifically, § 430.49(b)(1) provides that if CMS determines that, during the period between April 1, 2023, and June 30, 2024, a State has been out of compliance with the reporting requirements in section 1902(tt)(1) of the Act (as implemented in § 435.927 of this rule) or Federal eligibility redetermination requirements (as defined at § 430.5, as amended by this rule), then, after considering whether mitigating circumstances (discussed in section II.E. and § 430.49(d) of this rule) apply, CMS will determine whether to require the State to submit and implement a CAP.

New § 430.49(b)(2) specifies that CMS will issue a written notice to the State informing the State of CMS' finding of noncompliance and the requirement to submit and implement a CAP, or to revise and resubmit an existing approved CAP to address newly identified violations of the Federal reporting and/or redetermination requirements, unless consideration of certain mitigating circumstances has led CMS to delay or forgo requiring a CAP. The notice will: (1) explain the violation of Federal redetermination or reporting requirements that CMS has identified and the basis for CMS' finding; (2) inform the State of the requirement to submit and implement a new CAP or to revise and resubmit an existing CAP, with instructions on the method and deadline by which the State must submit a CAP to CMS; and (3) explain the additional enforcement actions that CMS may pursue if the State fails to

[18] For additional discussion about the application of the FMAP reduction, see the January 2023 SHO Letter, and the June 2023 FAQs.

[19] In the June 2023 FAQs, CMS explained how such a decrease would be applied to expenditures that are matched at FMAPs articulated elsewhere in statute, because they use the 1905(b) State-specific FMAP as a base.

[20] See, the January 2023 SHO Letter, and the June 2023 FAQs.

submit or implement the CAP, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, in accordance with the requirements at section 1902(tt)(2)(B)(ii) of the Act, as interpreted in this rule and discussed in section II.D. and at § 430.49(b) of this rule.

As set forth in new § 430.49(b)(3), a CAP must include specific content to be approved by CMS. First, the CAP must identify actions the State will take immediately, which means as soon as feasible, if needed to prevent further harm or risk of harm to beneficiaries while it implements the CAP. Harm to beneficiaries in this context includes increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, and delays in access to coverage or care. Actions to prevent harm, or risk of harm, to beneficiaries could include, if needed and appropriate, reinstatement of coverage for impacted individuals, suspension of procedural disenrollments, and adoption of alternative processes or procedures under section 1902(e)(14)(A) of the Act or other alternative strategies approved by CMS.

Next, the CAP must detail steps the State will take to ensure compliance with Federal redetermination and/or reporting requirements, such as new policies, procedures, operational processes, or systems changes it will implement. The CAP must also include key milestones and a detailed timeline for achieving compliance, as well as a plan for communicating the steps in the CAP to: (1) State staff, including State Medicaid agency staff and staff of any agency or other entity that is determining eligibility under a delegation of authority under § 431.10(c)(1)(i), (2) CMS, and (3) beneficiaries, as applicable. CMS believes that an approvable CAP must include these elements because they will allow CMS to assess at the outset whether the State's CAP appears sufficient to resolve the noncompliance and to monitor whether the State is making sufficient progress in its implementation. Additionally, these elements are consistent with those that CMS has historically required when requesting CAPs under section 1904 of the Act and § 430.35 for failure to administer the State Plan in compliance with the provisions in section 1902 of the Act, violations of which may result in withholding of FFP.

New § 430.49(b)(4) of this rule implements section 1902(tt)(2)(B)(ii) of the Act by requiring the following timeline for submission, approval, and implementation of a CAP after the State receives notice that CMS is requiring it to implement a CAP:

(1) The State must submit a CAP that includes the minimum elements described in § 430.49(b)(3) to CMS not later than 14 calendar days after receiving CMS' written notice.

(2) CMS must approve or disapprove the proposed CAP within 21 calendar days of the date the CAP is submitted by the State. If CMS does not approve or disapprove the CAP within 21 calendar days of submission, the CAP will be deemed approved.

(3) The State must begin implementation of the CAP not later than 14 calendar days after receiving CMS approval or after the CAP is deemed approved.

We interpret the statute to refer to calendar days and to authorize CMS to provide that CAPs not expressly approved or disapproved within 21 calendar days will be deemed approved. (Henceforth in this rule, ''days'' refers to calendar days unless otherwise noted.) CMS is providing for deemed approval so that CMS and States can take quick action to implement any strategies or system changes needed to correct identified violations of the reporting or redetermination requirements to promote sustained compliant operations and beneficiary coverage.

Section 430.49(b)(5) provides that CMS will consider the following in determining whether to approve a CAP submitted by a State: (1) whether the CAP will promptly eliminate or minimize any harm or risk of harm to beneficiaries, including increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, and delays in access to coverage or care, due to the noncompliance to be addressed by the plan; and (2) whether the CAP will result in the State achieving compliance in a reasonable time, taking into account systems challenges and circumstances faced by the agencies involved. Systems challenges that could impact the timeframe in which a State can achieve compliance could include, for example, the timeframe needed to update coding for a State's eligibility system, the need to create policy manuals to guide workers on use of new system functionality, training workers on new system changes, and/or the creation and implementation of new forms or functions to receive or track information in the renewal process.

As discussed further in section II.E. and § 430.49(d)(1) and (2), CMS will consider certain mitigating circumstances before issuing a notice directing a State to submit a CAP in accordance with the requirements at § 430.49(b).

D. Suspension of Procedural Disenrollments and Civil Money Penalties (§ 430.49(c))

Under section 1902(tt)(2)(B)(iii) of the Act, as implemented at § 430.49(c) of this rule, if a State fails to submit or implement an approved CAP, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, in accordance with section 1902(tt)(2)(B)(ii) of the Act, the Secretary may, after consideration of any mitigating circumstances described in section II.E. of this rule and at new § 430.49(d)(3), and in addition to any reduction applied to the FMAP under section 1902(tt)(2)(A) of the Act, take either or both of the following actions: (1) require the State to suspend making some or all disenrollments from Medicaid that are for procedural reasons until the State takes appropriate corrective action; (2) impose CMPs of not more than $100,000 for each day a State is not in compliance.

Under new § 430.49(c)(2), prior to taking either or both of these enforcement actions, CMS will issue a notice to the State. Such notice will include: (1) a description of the enforcement actions CMS is taking and the basis for such action(s); (2) whether CMS is requiring suspension of some or all procedural disenrollments, and in the case of a partial suspension, the affected populations; (3) the date on which the State must begin suspending procedural disenrollments, if applicable; (4) the daily amount of any CMPs imposed, the date that assessment of the CMPs will begin, the timeline for payment (including information on how the timeline for payment would be affected by an appeal), and instructions on how to submit payment; (5) the steps the State must take to cure its noncompliance and for CMS to lift the enforcement action(s); (6) information on the State's appeal rights as described in section II.G and at new § 430.49(f) of this rule, including the deadline to submit an appeal request and the effect of requesting an appeal on the applicability of any enforcement actions pending the decision in such appeal.

The notice must also provide that the decision outlined in the notice is final unless it is timely appealed as described in § 430.49(f). Section 430.49(c)(2)(ii) also provides that CMS may issue additional notices to take additional actions (for example, increasing CMPs or adding or increasing the scope of a suspension of procedural disenrollments) if CMS identifies additional violations of a CAP's provisions. Such notices will meet the requirements outlined in § 430.49(c)(2)(i).

Suspension of Procedural Disenrollments. As noted in this rule, if CMS finds that a State has failed to submit or implement an approved CAP in accordance with the requirements in section 1902(tt)(2)(B) of the Act, section 1902(tt)(2)(B)(iii) of the Act provides that CMS may require the State to suspend either some or all procedural disenrollments of Medicaid eligibility. We believe it is appropriate to target any procedural disenrollment suspension to protect those beneficiaries impacted by the State's noncompliance. If CMS requires the State to suspend procedural disenrollments, the scope of that requirement will be based upon the impact of the noncompliance that led to the requirement for the CAP. Accordingly, under § 430.49(c)(3)(i), if the impact of the noncompliance requiring a CAP affects a substantial number of (meaning all or nearly all) individuals in the State who are or should have been found eligible for Medicaid, CMS may require the State to suspend all procedural disenrollments. If the impact of the noncompliance is limited, for example to a specific population or geographic area, CMS may limit the suspension only to the affected population(s). In cases where CMS initially limits the requirement to suspend procedural disenrollments to an affected population or area, CMS may later opt to require the State to suspend all procedural disenrollments if CMS subsequently determines that the impact of the noncompliance is greater than was initially determined or if the State fails to comply with the initial requirement to suspend procedural disenrollments for a targeted population or area in accordance with the notice issued under § 430.49(c)(2). In these circumstances, CMS will issue a subsequent notice under § 430.49(c)(2).

CMS believes that suspension of procedural disenrollments is an effective and necessary enforcement tool to protect beneficiaries from harm due to a State's noncompliance and, except in one limited circumstance discussed in section II.E of this rule, will always require States that have failed to submit an approvable CAP or to implement an approved CAP to suspend some or all procedural disenrollments.

After CMS requires a State to suspend procedural disenrollments, the State must continue suspending procedural disenrollments until CMS determines that the State has taken appropriate corrective action. Once CMS is satisfied that the State has taken appropriate corrective action, CMS will inform the State of the date on which it may resume procedural disenrollments. See section II.F of this rule for a discussion of the circumstances under which CMS will lift enforcement actions taken pursuant to an enforcement notice issued in accordance with § 430.49(c).

Civil Money Penalties. If CMS finds that a State has failed to submit or implement an approved CAP, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, in accordance with the requirements in 1902(tt)(2)(B)(ii) of the Act and as interpreted at § 430.49(b) of this rule, CMS may also issue notice to the State in accordance with § 430.49(c)(2) indicating that CMS will impose CMPs.

The CMPs authorized under section 1902(tt)(2)(B)(ii) are a tool to compel State compliance with corrective action as quickly as possible, given the urgency of preventing unauthorized loss of coverage for beneficiaries during a period that generally aligns with States' unwinding periods. For this reason, CMS is adopting a penalty formula that will impose a lower penalty for States with a shorter timeframe of noncompliance and increase the penalty over time for States that do not return to compliance. CMPs will start accruing 5 days after the date of the notice and become payable 60 days after the date of the notice, if not timely appealed, or 60 days after issuance of a final determination at the conclusion of any appeals pursuant to § 430.49(f). Under § 430.49(c)(3)(ii)(B) of this rule, CMS will impose CMPs for failure to submit or implement an approved CAP according to the following formula: Days 1–30 (after 5-day delay as specified in the enforcement notice): $25,000/day; Days 31–60: $50,000/day; and Days 61–until State comes into compliance with CAP requirements: $100,000/day. All CMP amounts provided in this rule will be adjusted annually in accordance with 45 CFR part 102.

New § 430.49(c)(2)(ii) provides that CMS may issue additional notices to take additional actions (including increasing CMPs or imposing or broadening the scope of a suspension of procedural disenrollments) if CMS identifies additional violations of CAP provisions. Such notices will meet the requirements in 430.49(c)(2)(i).

Noncompliant States will be charged CMPs daily until the State takes appropriate action to cure the noncompliance with the CAP requirements as outlined in § 430.49(e) and discussed in section II.F. of this rule. Under § 430.49(e)(2), once CMS is satisfied that the State has taken appropriate action to cure the noncompliance with the CAP requirements, CMS will inform the State of the total amount of CMPs that have accrued, the balance owed if the State has already begun payment, and the last day CMPs under the enforcement notice were imposed.

As provided in § 430.49(c)(4), if the State fails to suspend procedural disenrollments as required pursuant to a notice described in § 430.49(c)(2) or to pay CMPs as specified in that notice, or both, CMS may issue a subsequent notice under § 430.49(c)(2) to increase the CMPs to the maximum allowable daily amount, if not already reached, or may pursue additional enforcement action under section 1904 of the Act, including withholding some or all FFP for the period of noncompliance.

CMS intends to issue additional guidance following the issuance of this rule providing additional information regarding the process CMS will use to collect CMPs and any operational requirements for States to remit payment of CMPs.

E. Mitigating Circumstances (§ 430.49(d))

As described previously, section 1902(tt)(2)(B) of the Act, as implemented in new § 430.49, gives CMS the authority to require States to submit a CAP for failure to meet reporting or Federal redetermination requirements and, if the State fails to submit or implement such CAP, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, in accordance with section 1902(tt)(2)(B)(ii) of the Act, to suspend procedural disenrollments, impose CMPs of up to $100,000 per day, or take both actions. While section 1902(tt)(2)(B) of the Act empowers CMS to require CAPs, suspend procedural disenrollments, and impose CMPs, the statute also gives the Secretary discretion to use this authority or not and to determine the amount of CMPs up to the statutory maximum.[21]

[21] Section 1902(tt)(2)(B)(iii) of the Act provides (emphasis added): If a State fails to submit or implement an approved corrective action plan in

CMS interprets the enforcement authorities in section 1902(tt)(2) of the Act as tools to promote State accountability for compliance with the reporting requirements in section 1902(tt)(1) of the Act and Federal redetermination requirements, as defined in § 430.5 of this rule, and to maximize accurate eligibility redeterminations to promote retention of coverage for eligible people to the greatest extent feasible. CMS recognizes that the scope or impact of different violations of the reporting or redetermination requirements may vary, and there also may be an emergency or other extraordinary circumstances preventing a State from complying with a given requirement or submitting or implementing a CAP. Thus, consistent with the discretion allowed under section 1902(tt)(2)(B) of the Act, CMS will take into consideration certain mitigating circumstances related to the State's noncompliance when determining whether to require the State to submit a CAP or require suspension of procedural disenrollments or impose CMPs. These circumstances are set forth at § 430.49(d) of this rule.[22]

Mitigating Circumstances Impacting Decision to Require a CAP. In the case of State noncompliance with Federal redetermination requirements, § 430.49(d)(1) provides that CMS may elect to not require or to delay requiring submission of a CAP if either or both of the following circumstances exist:

1. *No Harm or Substantial Risk of Harm Occurred:* The noncompliance caused neither actual harm nor a substantial risk of harm to beneficiaries, including increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, or delays in access to coverage or care.

2. *Extraordinary Circumstances Exist:* There is an emergency or there are other extraordinary circumstances preventing the State's compliance—for example, a natural disaster or catastrophic systems outage.

In addition, in the case of noncompliance with the reporting requirements in § 435.927, § 430.49(d)(2) provides that CMS may delay requiring or elect not to require a State to submit a CAP if CMS has determined that the State implementing a CAP is not necessary to ensure that the noncompliance is remedied. For example, CMS might not require a CAP if a State's noncompliance is due to an error that the State commits to correcting and does immediately correct. As with violations relating to Federal redetermination requirements, CMS may also delay requiring or elect not to require a State to submit a CAP relating to a violation of reporting requirements if CMS determines that there is an emergency or other extraordinary circumstances preventing the State's compliance.

Mitigating Circumstances Impacting Decision to Suspend Procedural Disenrollments or Impose CMPs. If a State fails to submit an approvable CAP or to implement an approved CAP, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, new § 430.49(d)(3) provides that CMS will consider whether any of the following mitigating circumstances exist when deciding whether to require a suspension of procedural disenrollments, impose CMPs, or take both actions:

1. *Extraordinary Circumstances Exist:* Regardless of the type of violation that gave rise to the requirement of a CAP, CMS will consider whether there is an emergency or other extraordinary circumstance that occurred after the violation resulting in the requirement of a CAP that significantly impeded the State's ability to submit or implement the CAP. If such circumstances exist, CMS may delay or forgo imposition of CMPs but will not delay requiring a suspension of procedural disenrollments (beyond the one-month delay described below in the case of reporting violations that do not impede CMS' oversight of procedural disenrollments).

2. *Reporting Violation Does Not Impede CMS' Oversight of Procedural Disenrollments:* When a State fails to submit or implement an approved CAP that was required based on the State's violation of reporting requirements under section 1902(tt)(1) of the Act, CMS will consider whether the underlying reporting violation impedes CMS' oversight of procedural disenrollments. If so, CMS will suspend procedural disenrollments and impose CMPs. If not, CMS will delay requiring a suspension of procedural disenrollments for 1 month to allow the State an opportunity to comply with the data reporting requirements but will immediately impose CMPs (unless extraordinary circumstances exist, as discussed above).

Although all data reporting under section 1902(tt)(1) of the Act is important to support CMS oversight of State redetermination processes during a period that generally aligns with States' unwinding periods, we believe that in most cases it would be too punitive to suspend procedural disenrollments immediately if the State fails to submit or implement a CAP related to an underlying reporting requirement violation that does not impede CMS' understanding of the State's procedural disenrollment rate. In contrast, where a State fails to submit or implement a CAP related to an underlying reporting violation that impedes CMS' oversight of procedural disenrollments in that State, CMS will take immediate action to require suspension of procedural disenrollments, in addition to imposing CMPs (if not delayed or forgone by CMS due to the existence of extraordinary circumstances), to mitigate possible harm to beneficiaries at risk of disenrollment.

For example, if a State fails to submit or implement an approved CAP that CMS required based upon the State's failure to report data on the volume of calls it is receiving at a call center, CMS will examine the circumstances of the underlying reporting violation and may find that the lack of these data does not impede its oversight of procedural disenrollments and, if so, will delay requiring the State to suspend procedural disenrollments for 1 month, pending the submission or implementation of a CAP or the correction of the underlying reporting violation, but will impose CMPs according to § 430.49(c)(3)(ii) without delay (unless there has been an extraordinary circumstance after the violation occurred that prevented the State from submitting or implementing the CAP).

F. Lifting of CAP Enforcement Actions (§ 430.49(e))

Under § 430.49(e)(1) of this rule, CMS will lift any requirement to suspend procedural disenrollments and/or stop charging any CMPs imposed pursuant to § 430.49(c) when the State cures its noncompliance by submitting an approvable CAP (where the violation was a failure to submit a CAP) or initiating or resuming implementation

accordance with clause (ii), the Secretary *may* . . . require the State to suspend making all or some terminations of eligibility for medical assistance from the State plan under this title (including any waiver of such plan) that are for procedural reasons until the State takes appropriate corrective action, as determined by the Secretary, and *may* impose a civil money penalty of *not more than* $100,000 for each day a State is not in compliance.

[22] CMS has also used its discretion in setting the amount of the CMPs that will apply in certain circumstances, based on the duration of the CAP violation involved, as discussed above in section II.D.

of an approved CAP (where the violation was a failure to implement according to the terms of the CAP). In cases where the State had received a notice imposing CMPs due to failure to submit an approved CAP, CMS will continue the accrual of CMPs from the date that a State submits a CAP for CMS review in accordance with § 430.49(e)(1)(i)(A), until CMS determines whether the CAP is approvable. If CMS determines the CAP is approvable, CMS will retroactively end the accrual of CMPs on the day the CAP was submitted and cease charging CMPs prospectively. If CMS determines that the CAP is not approvable, CMS will continue charging CMPs imposed under the terms of the enforcement notice without interruption from the date specified in the original notice provided to the State under § 430.49(c)(2) and will continue charging such CMPs until an approvable CAP is submitted. Under § 430.49(e)(2), once CMS is satisfied that the State has taken appropriate action to cure the noncompliance with the CAP requirements, CMS will inform the State of the total amount of CMPs that have accrued, the balance owed, and the last day CMPs were imposed as well as the date on which the State may resume procedural disenrollments.

CMS may again require suspension of procedural disenrollments and impose CMPs that have been lifted in accordance with § 430.49(e)(1) if CMS subsequently determines that the State is not complying with the terms of the approved CAP. In such a situation, CMS will issue a new notice pursuant to § 430.49(c)(2).

G. State Reconsideration and Appeal Rights (42 CFR 430.3, 430.49(f), and 45 CFR Part 16)

Under new § 430.49(f) and amendments to § 430.3 and 45 CFR part 16, States will be able to appeal CMS' decision to require a State to suspend procedural disenrollments and/or pay CMPs under section 1902(tt)(2)(B)(iii) of the Act and new § 430.49(c). The rule amends § 430.3 and 45 CFR part 16, Appendix A, to provide that States can appeal these CMS decisions to the Departmental Appeals Board (Board) in accordance with procedures set forth in 45 CFR part 16.

The rule creates a new 42 CFR 430.49(f)(1), providing that a State dissatisfied with CMS' determination under § 430.49(c) that the State must suspend procedural disenrollments or pay CMPs will have 30 days (as counted consistent with the protocol for counting days outlined under 45 CFR 16.19) from receipt of the notice described in § 430.49(c)(2) to appeal CMS's decision to the Board. The appeal request must comply with 45 CFR 16.7, and the appeals process will be governed by 45 CFR part 16. That means that the expedited appeal procedures outlined in 45 CFR 16.12 might be available, if the conditions in 45 CFR 16.12 are met. If the State does not submit an appeal request within that 30-day timeframe, then the decision described in the notice received by the State under § 430.49(c)(2) is the final decision of the Secretary and is final agency action within the meaning of 5 U.S.C. 704.

At new 42 CFR 430.49(f)(2), we give any party to the appeal that is dissatisfied with the Board's decision under 430.49(f)(1) an opportunity to request that the CMS Administrator reconsider it, and we outline the process that will govern the Administrator's reconsideration. In particular, new § 430.49(f)(2)(i) specifies that any party to the appeal that is dissatisfied with the Board's decision on an appeal brought by a State under § 430.49(f)(1) may request reconsideration of that decision within 15 days of receiving notice of the decision under 45 CFR 16.21. The process for such reconsiderations is provided under new § 430.49(f)(2)(i)(A) through (D). Under new § 430.49(f)(2)(i)(A), we are providing that reconsideration requests must be filed with the Administrator, and must include a copy of the Board's decision, a brief statement of why the party believes it was wrong, and a statement of the amount of any CMPs in dispute. New § 430.49(f)(2)(i)(B) requires that the party requesting reconsideration send a copy of the request for reconsideration to all other parties to the appeal and other participants in the appeal (as described in 45 CFR 16.16) at the same time the request is filed. New § 430.49(f)(2)(i)(C) provides that any other party to the appeal, or other participant in the appeal, may respond to the request for reconsideration in writing and file such response with the Administrator within 15 days of the date the request for reconsideration is filed with the Administrator. Under new § 430.49(f)(2)(i)(D), the Administrator will review the Board's decision and any additional information submitted by the parties and other participants, and either affirm the Board's decision or issue a new decision within 60 days after the Board issues notice of its decision under 45 CFR 16.21. Under new § 430.49(f)(2)(ii), the Administrator may, within 60 days after the Board issues notice of its decision under 45 CFR 16.21, also modify or reverse the Board's decision without receiving a request for reconsideration under § 430.49(f)(2). In cases where the Administrator opts to review the Board's decision without a request for reconsideration, such decision must be provided within 60 days of the Board's issuance of its notice of decision under 45 CFR 16.21.

New § 430.49(f)(2)(iii) states that if there is no request for reconsideration filed under § 430.49(f)(2)(i) and the Administrator does not modify or reverse the decision within the 60-day period described in § 430.49(f)(2)(ii), then the Board's decision will be the final determination of the Secretary and final agency action, and the Administrator will provide notice to all parties and other participants of such decision as described in § 430.49(f)(2)(iv). New § 430.49(f)(2)(iv) provides that the Administrator will provide a notice to all parties and other participants of the final decision that communicates that it is the final determination of the Secretary and final agency action and § 430.49(f)(2)(v) provides that the determination of the Administrator pursuant to §§ 430.49(f)(2)(i)(D) or 430.49(f)(2)(ii) constitutes final agency action within the meaning of 5 U.S.C. 704.

Under amendments in the rule to 45 CFR 16.22, any suspensions of procedural disenrollments under 42 CFR 430.49(c) will continue in effect and CMPs imposed on a State under 430.49(c) will continue to accrue pending an appeal to the Board under § 430.49(f).

Appeals of CMS decisions to take the FMAP reduction under section 1902(tt)(2)(A) of the Act will follow a different process that is governed by already existing regulations. If CMS finds that a State is noncompliant with reporting requirements under § 435.927, CMS will calculate the amount of the FMAP reduction under § 435.928 and request that the State make a voluntary adjustment to the Form CMS–64 to return the funds to CMS. If the State does not do so, CMS will initiate disallowance proceedings, which will be governed by existing regulations at § 430.42. States may request reconsideration or appeal disallowance decisions per these existing CMS regulations at § 430.42. Under § 430.42, States wishing to request a reconsideration of the Administrator's decision to impose a disallowance must request such reconsideration within 60 days of receiving the notice of disallowance described in § 430.42(a).

We are adding new § 430.49(f) and amending § 430.3 and 45 CFR part 16 as outlined in this section to provide States

with a fair and reasonable administrative process for appealing CMS' decisions to suspend procedural disenrollments or impose CMPs and to ensure that accountability for those decisions is vested in a principal officer. These changes also will provide States with accurate information about the availability of administrative review if they are dissatisfied with a CMS decision under 42 CFR 430.49(c). These provisions also clarify when agency decisions are final agency action for purposes of 5 U.S.C. 704.

H. Definitions (§ 430.5)

This rule adds two new definitions to § 430.5 that apply to the provisions at § 430.49. One of the two new definitions will also apply to related amendments to 45 CFR part 16. First, the rule defines a ''procedural disenrollment'' for purposes of 42 CFR 430.49 and 45 CFR part 16 as a termination of eligibility and disenrollment from Medicaid for reasons that are unrelated to a State's determination of whether the individual meets eligibility criteria to qualify for coverage, including for failure to return a renewal form or documentation needed by the State to make a determination of eligibility. And second, the rule defines ''Federal redetermination requirements'' for purposes of 42 CFR 430.49 as Federal requirements applicable to eligibility redeterminations outlined in § 435.916, including renewal strategies authorized under section 1902(e)(14)(A) or other alternative processes and procedures approved by CMS under section 1902(e)(14)(A) of the Act or section 6008(f)(2)(A) of the FFCRA.

III. Good Cause

The Administrative Procedure Act (APA), at 5 U.S.C. 553(b), requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. Section 553(c) further requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the rule take effect. Section 553(b)(B) provides an exception to notice-and-comment requirements, however, if the agency for good cause finds that notice-and-comment is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Section 553(d) ordinarily requires a 30-day delay in the effective date of a final rule from the date of its publication in the **Federal Register**. However, similar to the good cause exception for notice-and-comment requirements, section 553(d)(3) excepts a rule from the 30-day delay requirement if the agency for good cause finds that the delay is impracticable, unnecessary, or contrary to the public interest. Similarly, the Congressional Review Act (CRA) also allows an agency to issue a rule that would otherwise be subject to a 60-day delayed effective date requirement with an immediate effective date in circumstances where a delay is impractical, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). CMS is forgoing the usual notice-and-comment procedures and delay in the effective date for this rule because, for the reasons discussed in this section, following such requirements would be impracticable and contrary to the public interest.

Recent data on unwinding-related renewals indicates that of the 7.1 million Medicaid and CHIP beneficiaries whose eligibility was due for renewal in July 2023, more than 1.6 million had been disenrolled.[23] The vast majority of these disenrolled individuals (71 percent) were disenrolled due to a procedural reason such as failure to return paperwork, not because of a determination that the person no longer satisfied Medicaid's substantive eligibility criteria. While we are unable to determine the proportion of individuals who were procedurally disenrolled but continued to meet substantive eligibility criteria, the high rate of procedural disenrollments suggests that the options and strategies that CMS has been working with States to implement through their mitigation plans may not be sufficient to protect the continued enrollment of individuals who continue to meet substantive eligibility criteria. For this reason, the enforcement authorities established under this rule are needed to protect access to Medicaid coverage. Any delay in implementing the enforcement tools in this rule would thwart CMS's ability to take an array of possible enforcement actions against noncompliant States under section 1902(tt) of the Act and could result in serious harm to beneficiaries.

In anticipating the likely impact of unwinding, the Assistant Secretary for Planning and Evaluation (ASPE) in HHS estimated that in the period between April 1, 2023, and June 1, 2024, 6.8 million people will lose Medicaid coverage despite still meeting substantive eligibility criteria.[24] ASPE estimated that 82.7 percent of enrollees would be determined eligible, and their eligibility would be renewed, while 17.5 percent would be disenrolled. Of those disenrolled, ASPE estimated 54 percent would be disenrolled because they were determined ineligible, and 45 percent (6.8 million) would be disenrolled for procedural reasons despite still meeting substantive eligibility criteria. Early unwinding data from May and June 2023 renewals show a higher percentage of renewals resulting in disenrollment (nearly 38 percent in May and just over 25 percent in June) and a significantly higher percentage of disenrollments occurring for procedural reasons (77 percent in May and 73 percent in June) compared to ASPE's estimates. While these early data are limited, if disenrollments continue at the June 2023 rates, the number of individuals who lose Medicaid coverage for procedural reasons will be much higher than ASPE's estimates, and many of those individuals may still meet substantive Medicaid eligibility criteria. If CMS is unable to take all actions within its authority to enforce Federal redetermination requirements, the number of individuals negatively impacted may increase.

Analyses indicate that Medicaid coverage loss could have significant detrimental consequences, resulting in forgone medical care, including preventive care, that could result in refilling prescriptions less often, more emergency department visits, and increased morbidity and mortality.[25] [26] Preventable coverage loss could result from States' failure to follow Federal requirements, which CMS cannot fully enforce without this rulemaking. Loss of coverage by individuals who still meet substantive eligibility criteria, which is likely followed by re-enrollment at a later point in time, is often referred to as ''churning.'' Because churning can lead to deferred or delayed care, it can result in greater health care costs; such disruptions in care and medication

[23] Medicaid and CHIP National Summary of Renewal Outcomes—March Through July 2023 Data; published October 2023; available at *https://www.medicaid.gov/sites/default/files/2023-10/july-2023-national-summary-renewal-outcomes.pdf*.

[24] ASPE (August 19, 2022). Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches. (Available at *https://aspe.hhs.gov/sites/default/files/documents/404a7572048090ec1259d216f3fd617e/aspe-end-mcaid-continuous-coverage_IB.pdf*).

[25] ASPE (April 11, 2021). Medicaid Churning and Continuity of Care. (Available at *https://aspe.hhs.gov/reports/medicaid-churning-continuity-care*).

[26] Abdus, S. (August 2014). Part-year Coverage and Access to Care for Nonelderly Adults. (Available at *https://journals.lww.com/lww-medicalcare/Fulltext/2014/08000/Part_year_Coverage_and_Access_to_Care_for.6.aspx*).

adherence create negative health outcomes that make care more costly down the road.[27]

By contrast, continuous enrollment permits individuals to maintain a regular source of care, including preventive care and ongoing treatment of chronic conditions. A review of the research available on continuous enrollment of children found it is related to reductions in unmet health care needs, increases in coordination of care, including monitoring and regular treatment adjustments as conditions change, and greater patient/provider engagement in treatment planning, which can lead to better health outcomes.[28] In fact, a study of health care outcomes in States that provided continuous eligibility to children prior to the FFCRA's continuous enrollment condition found reductions in insurance gaps, lower probability of children being in fair or poor health, and, for children with serious health care needs, increased access to preventive and specialty care.[29] This evidence suggests that protecting access to coverage leads to better outcomes for enrollees. The availability of these enforcement tools is critically important to ensure that CMS can act quickly, if needed, to address State noncompliance. Delaying CMS' access to the full range of the enforcement tools it could employ to require States to follow Federal eligibility redetermination requirements and the new reporting requirements in section 1902(tt)(1) of the Act, could thus cause actual harm to beneficiaries.

As discussed, State submission of renewal data is critically important to our ability to monitor State renewal processes and take action when needed to prevent unauthorized disenrollments. CMS must be able to use the compliance tools under section 1902(tt) of the Act to obtain data from States that will help us to continue to quickly identify problems with the redetermination process during the period from April 1, 2023, through June 30, 2024, and, if needed, to take timely action to require States to fix problems including, if appropriate, requiring States to halt procedural disenrollments from Medicaid.

This rule provides critical guidance to help States ensure that they are complying with the data reporting requirements under section 1902(tt)(1) of the Act and that they understand how CAPs and CMPs will be administered in the event that a State does not take all actions necessary for compliance. For example, the rule provides States with certainty regarding how CMS will interpret the requirement to report certain data under section 1902(tt)(1) of the Act *on a timely basis*. A delay in the issuance of guidance resulting from the notice-and-comment process would forestall States' ability to be compliant with Federal requirements that protect beneficiaries.

CMS sees the enforcement authorities—CAPs, suspensions of procedural disenrollments, and CMPs—as tools to promote State accountability for compliance with the reporting and redetermination requirements, and we recognize that the scope or impact of different violations of these requirements may vary. Thus, we believe it is important to consider certain mitigating circumstances when determining whether to require a State to submit a CAP or to require a suspension of procedural disenrollments or impose CMPs. This rule gives States additional information about the factors that CMS will weigh in deciding whether to require CAPs, to require States to suspend procedural disenrollments, or to impose CMPs. CMS needs to be able to focus its limited enforcement resources on the most serious noncompliance. Without this flexibility, CMS would be required to tie up our limited resources on enforcement actions in situations where mitigating circumstances would weigh against such action. This could seriously inhibit or even prevent CMS from taking truly needed enforcement action if a situation were to arise involving serious noncompliance causing harm or a substantial risk of harm.

Recognizing the importance of the guidance in this rule, CMS has moved as quickly as possible within existing constraints to complete rulemaking. Section 1902(tt) of the Act was enacted via the CAA, 2023, on December 29, 2022, took effect 3 months later, on April 1, 2023, and applies to a time-limited period, from April 1, 2023, to June 30, 2024, that began on the day that the statutory language took effect. In other words, the effective date of section 1902(tt) of the Act is the same date as the start of the compliance period, and there was only a 3-month timeframe between the passage of the CAA, 2023 and the effective date. Given the short timeframe and the evolving landscape of State needs relating to implementation, it was not feasible for CMS to have issued a final rule (with or without notice-and-comment) in that 3-month timeframe, because, as is discussed in more detail below, CMS' notice-and-comment rulemaking process ordinarily takes at least 18 months.

Moreover, given the evolving landscape of Federal guidance and State needs before and after the end of the Medicaid continuous enrollment condition, it would not have been feasible for CMS to begin the rulemaking process earlier. When the CAA, 2023 was enacted on December 29, 2022, CMS was immersed in efforts to support States as they prepared operations for the end of the Medicaid continuous enrollment condition. This included working with all 56 States individually on assessing the need for and implementing temporary strategies or plans to ensure State compliance with Federal Medicaid redetermination requirements (often referred to as mitigation plans) and issuing new guidance and flexibilities to enable States to maximize their capacity to maintain the enrollment of eligible beneficiaries at renewal during the unwinding of the Medicaid continuous enrollment condition.

Accelerating the rulemaking process was also not a viable option for CMS given resource constraints, even if doing so would have been feasible. Since enactment of the CAA, 2023, CMS has devoted an extraordinary amount of internal resources to the development of materials, review of readiness, and availability of technical assistance for States as they prepared for and began to return to normal eligibility operations following the end of the FFCRA continuous enrollment condition. We created a series of new resources designed to assist States in protecting the enrollment of eligible individuals as they restarted routine Medicaid renewals, met with every State to assess its planning for unwinding and compliance with Medicaid renewal requirements, and developed new options and strategies through which States could address areas of noncompliance and mitigate negative impacts on eligible individuals. These efforts did not stop when the unwinding process began, and they continue to strain Federal agency resources. During roughly the same timeframe, CMS was also engaged in an unprecedented amount of work to support States, health care providers, and Medicare, Medicaid, and CHIP beneficiaries in the

[27] Sommers, B.D., Gourevitch, R., Maylone, B., Blendon, R.J., Epstein, A.M. (2016). Insurance churning rates for low-income adults under health reform: Lower than expected but still harmful for many. *Health Affairs,* 35(10), 1816–1824.

[28] Guevara, J.P., Moon, J., Hines, E.M., Fremont, E., Wong, A., Forrest, C.B., Silber, H.H., & Pati, S. (2014). Continuity of public insurance coverage: A systematic review of the literature. *Medical Care Research and Review,* 71(2), 115–137.

[29] Brantley, E., Ku, L. (2022). Continuous eligibility for Medicaid associated with improved child health outcomes. *Medical Care Research and Review,* 79(3), 404–413.

transition back to regular operations when numerous access-related policies and flexibilities ended on May 11, 2023, when the COVID–19 PHE (as declared by the Secretary under section 319 of the Public Health Service Act) ended. This included waivers under section 1135 of the Act that were in place for the more than 3 years of that COVID–19 PHE.[30] Notwithstanding this unusual, extraordinary workload throughout most of 2023, CMS has developed and issued this rule as soon as was practicable under the circumstances.

Had CMS proceeded through notice-and-comment rulemaking, the resulting delay would have been significant, thereby increasing the risk that beneficiaries would be harmed by losing coverage due to States' violation of Federal redetermination requirements. CMS' rulemaking cycle from proposed rulemaking to final rule typically takes at least 18 months. This includes drafting the proposed rule and engaging in a rigorous clearance process that concludes with CMS, HHS, and the Office of Information and Regulatory Affairs leadership approval. A proposed rule is typically published in the **Federal Register** with a 60-day public comment period, and then CMS must review, categorize, and consider the public comments received, which may number in the thousands. Then the final rule can be drafted and enter the same rigorous clearance process. If this process began immediately upon enactment of the CAA, 2023 (December 29, 2022) and extended 18 months, when combined with the usual 30- or 60-day delay in effective date following publication in the **Federal Register**, the rule would not have taken effect until the beginning of August 2024 at the earliest, 1 month after the compliance period ended. In the meantime, CMS would have been significantly hampered in its efforts to enforce Federal redetermination requirements and to enforce the reporting requirements that help CMS quickly become aware of possible State violations of those redetermination requirements.

Based on CMS' early and still ongoing work with States and the information States have already reported, CMS has already observed renewal issues and has been working with States to develop mitigation plans to address them. As that work continues and new issues are uncovered, it is important for CMS to be able to draw upon the full range of its enforcement tools. Additionally, other issues may arise in the coming months that could require CMS to take swift action to the full extent of its enforcement authority under section 1902(tt) of the Act. For example, States might fail to comply with requirements to provide appropriate notice informing beneficiaries of the renewal process and the steps needed to renew eligibility, may fail to use available and reliable information sources to assess beneficiaries' eligibility on an *ex parte* basis, may make a determination of ineligibility that is inconsistent with eligibility criteria, or may fail to appropriately notify the individual of the eligibility determination and the beneficiary's right to a fair hearing. In any of these circumstances, a major State violation of requirements could lead to a substantial number of beneficiaries being unlawfully disenrolled from coverage, creating an immediate need for CMS to require States to take corrective action to restore lost benefits to prevent further harm to beneficiaries. Although States and CMS have collaboratively worked to mitigate these risks in preparing for and implementing the end of the Medicaid continuous enrollment condition, if a State in the future is unwilling or unable to comply with Federal renewal or reporting requirements, CMS will have an urgent need to be able to enforce these Federal requirements using the enforcement authority implemented by this rule. And waiting to use that enforcement authority until August 2024 would significantly undermine CMS's ability to prevent more immediate harm to beneficiaries.

In addition, unless the rule is issued without delay, States would not have administrative channels to pursue an appeal before any judicial review of the actions CMS is authorized to take under section 1902(tt)(2)(B)(iii) of the Act. Setting forth a clear administrative appeals process benefits both States and CMS by providing both parties an opportunity to resolve disputes administratively and thus potentially avoid the need for additional judicial review, and to generate a clear record for any further judicial review in Federal court, should it be necessary to resolve the dispute.

For all the reasons cited previously in this rule and summarized in Table 1, which follows, CMS believes good cause exists to exempt this rule from the notice-and-comment and delay in effective date requirements and is proceeding with this rulemaking on an expedited basis, to be effective upon publication.

TABLE 1—GOOD CAUSE

Title (regulatory citation)	Rationale
Reporting Requirements (§ 435.927).	Notice-and-comment rulemaking for § 435.927 is impracticable and contrary to the public interest for the following reasons: • The timeline for such rulemaking would extend beyond the time period during which the reporting requirements implemented by § 435.927 are in effect. • Any delay in issuing clear reporting guidance will negatively impact States' ability to comply with Federal requirements and will negatively impact CMS's ability to monitor States' redetermination processes. • These reporting requirements will help CMS to determine whether States are meeting Federal redetermination requirements. Unless CMS has this information promptly, during the applicable period, CMS will be less able to take swift enforcement action to prevent unauthorized coverage loss (or gaps in coverage) for eligible individuals. Coverage loss can lead to forgone care and adverse health outcomes.
FMAP Reduction (§ 435.928)	Notice-and-comment rulemaking for § 435.928 is impracticable and contrary to the public interest for the following reasons: • The timeline for such rulemaking would extend beyond the time period (July 1, 2023, through June 30, 2024) during which State noncompliance could trigger the FMAP reduction described in this section.

[30] See *https://www.cms.gov/files/document/frequently-asked-questions-cms-waivers-flexibilities-and-end-covid-19-public-health-emergency.pdf*, and *https://www.medicaid.gov/sites/default/files/2023-08/cib050823.pdf*.

TABLE 1—GOOD CAUSE—Continued

Title (regulatory citation)	Rationale
	• The FMAP reduction implemented in § 435.928 is an important component of the tools available to ensure that States comply with the reporting requirements. Without proper reporting, CMS may be unable to effectively monitor States' compliance with redetermination requirements during the reporting period and will be less able to take swift enforcement action to prevent unauthorized coverage loss. This may lead to disenrollment of eligible individuals (and/or gaps in their coverage) and result in adverse health outcomes.
Corrective Action Plans (§§ 430.5, 430.49(b)).	Notice-and-comment rulemaking for § 430.49(b) (along with the definitions at § 430.5 that are applicable to this provision) is impracticable and contrary to the public interest for the following reasons: • The timeline for such rulemaking would extend beyond the time period (April 1, 2023, to June 30, 2024) during which State noncompliance with either the reporting requirements described at § 435.927 or Federal renewal requirements could arise and thereafter be subjected to the CAPs implemented in 430.49(b). • The CAP provisions implemented at § 430.49(b) are an important component of the tools available to ensure that States comply with both the reporting requirements and the Federal redetermination requirements. A delay in implementing these provisions would limit CMS' authority to quickly minimize preventable loss of coverage or gaps in coverage for eligible individuals when they are identified, which may result in forgone care and adverse health outcomes.
Suspension of Procedural Disenrollments and Civil Money Penalties (§§ 430.5, 430.49(c)).	Notice-and-comment rulemaking for § 430.49(c) (along with the definitions at § 430.5 that are applicable to this provision) is impracticable and contrary to the public interest for the following reasons: • The timeline for such rulemaking would extend beyond the time period (April 1, 2023, to June 30, 2024) during which State noncompliance could arise and thereafter be subjected to the enforcement actions implemented in 430.49(c). • A delay in implementing this statutory authority would limit CMS' authority to quickly minimize preventable loss of coverage for eligible individuals, which may result in forgone care and adverse health outcomes.
Mitigating Circumstances (§§ 430.5, 430.49(d)).	Notice-and-comment rulemaking for § 430.49(d) (along with the definitions at § 430.5 that are applicable to this provision) is impracticable and contrary to the public interest, as it would prevent CMS from exercising discretion with respect to the enforcement authority provided by section 1902(tt) of the Act, minimizing its usefulness for enforcing State compliance. CMS needs to be able to focus its limited enforcement resources on the most serious noncompliance. Tying up CMS's limited enforcement resources on enforcement actions in situations where mitigating circumstances would weigh against such action could seriously inhibit or even prevent CMS from taking truly needed enforcement action in situations involving serious noncompliance causing harm or a substantial risk of harm.
State Reconsideration and Appeal Rights (§ 430.3, 430.49(f), and corresponding amendments to 45 CFR part 16).	Notice-and-comment rulemaking for State reconsideration and appeal rights is impracticable and contrary to the public interest for the following reasons: • The timeline for such rulemaking would extend beyond the time period (April 1, 2023, to June 30, 2024) during which State noncompliance could arise and thereafter be subjected to the enforcement actions implemented by this rule. • A delay in establishing appeal rights would impede States' ability to seek administrative resolution to resolve disputes regarding the enforcement actions in this rule without necessitating review in Federal court.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to OMB for review and approval. For the purpose of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of the agency.

• The accuracy of the estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2021 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, the following table presents the BLS' mean hourly wage, our estimated cost of fringe benefits and overhead (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 2—NATIONAL OCCUPATIONAL AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage	Fringe benefit (at 100%)	Adjusted hourly wage
Database Administrators	15–1242	$49.29	$49.29	$98.58
General and Operations Manager	11–1021	59.07	59.07	118.14
Management Analyst	13–1111	50.32	50.32	100.64

TABLE 2—NATIONAL OCCUPATIONAL AND WAGE ESTIMATES—Continued

Occupation title	Occupation code	Mean hourly wage	Fringe benefit (at 100%)	Adjusted hourly wage
Project Management Specialists	13–1082	48.85	48.85	97.70

Wages for State Governments. As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent to estimate the cost of providing fringe benefits. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate the total cost including fringe benefits is a reasonably accurate estimation method.

Cost to State Governments. To estimate State costs, it was important to take into account the Federal government's contribution to the cost of administering the Medicaid program. The Federal government provides Medicaid matching funds at a rate established in statute. All State Medicaid programs generally receive a 50 percent Federal matching rate for qualifying administrative activities. As noted previously, States also receive higher Federal Medicaid matching rates for certain activities, such as certain systems design and development, and for systems maintenance and operations, so the level of Federal Medicaid funding provided to a State can be significantly higher. As such, taking into account the Federal contribution to the costs of administering the Medicaid program for purposes of estimating State burden with respect to collection of information, we elected to use a conservative estimate that the States would contribute 50 percent of the costs, even though the burden will likely be much smaller.

B. Information Collection Requirements (ICRs)

1. ICRs Related to Reporting Requirements (§ 435.927)

The following changes will be submitted to OMB for approval under control number 0938–TBD (CMS–10875). At this time the control number has yet to be determined, but it will be assigned by OMB upon their approval of this IFC's collection of information request. The public can monitor OMB's issuance of the control number (and the control number's expiration date) at *reginfo.gov*.

Under § 435.927, States are required to submit certain monthly data to CMS. The data are already collected by States and reported to CMS under existing requirements that are approved by OMB under control numbers 0938–1119 (CMS–10371), 0938–0345 (CMS–R–284), 0938–1140 (CMS–10387), and 0938–1148 (CMS–10398 #64). However, recognizing that some States might encounter unusual circumstances that interfere with reporting using existing CMS-approved processes, CMS would consider approving alternative processes and timelines for States to report required data if a State is making a good faith effort to submit the required data, as specified in § 435.927(b)(4). For example, CMS would consider allowing States experiencing special circumstances to submit certain summary data via email rather than via T–MSIS, if T–MSIS is the existing process.

Based on CMS' ongoing work with States to report the required data, we estimate that eight States will request that CMS approve an alternative process for submitting data under § 435.927(c)(2) during the compliance period of April 1, 2023, through June 30, 2024. We estimate that for each of the eight States that request and receive approval to use an alternative process to submit required data, it will take a Project Management Specialist 8 hours at $97.70/hour and a Database Administrator 15 hours at $98.58/hour to develop an alternative process, reach agreement with CMS, and submit the required data, for an aggregate of 184 hours (8 States × 23 hours) and $18,082 [(($97.70 × 8 hours) + ($98.58 × 15 hours)) × 8 States]. Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State share would be $9,041.

2. ICRs Related to Corrective Action Plans (CAPs) (§ 430.49(b))

The following changes will be submitted to OMB for approval under control number 0938–TBD (CMS–10875). At this time the control number has yet to be determined, but it will be assigned by OMB upon their approval of this IFC's collection of information request. The public can monitor OMB's issuance of the control number (and the control number's expiration date) at *reginfo.gov*.

This rule authorizes CMS to require States to submit a CAP to CMS if the State is out of compliance with the reporting requirements in section 1902(tt)(1) of the Act or Federal eligibility redetermination requirements (including any alternative processes and procedures approved by CMS, such as renewal strategies authorized under section 1902(e)(14)(A))) of the Act during the compliance period between April 1, 2023 and June 30, 2024.

Based on CMS' ongoing work with States to unwind from the continuous enrollment condition, we estimate that 3 States will be out of compliance with data reporting requirements and 5 States will be out of compliance with Federal redetermination requirements during the compliance period of April 1, 2023, to June 30, 2024. Some States may be out of compliance with both sets of requirements and required to submit just one CAP addressing both issues, but for purposes of estimating State burden, we will assume they are mutually exclusive sets of States for a total of 8 States. We will also assume for purposes of estimating State burden that CMS will require a CAP from all of the 8 noncompliant States (and will not exercise its discretion not to require a CAP from any of them). We recognize that, if our assumptions are incorrect, the aggregate burden may be less or more than estimated here.

We estimate that for each of the 8 States required to submit a CAP to CMS, it will take a Management Analyst 20 hours at $100.64/hour and a General and Operations Manager 8 hours at $118.14/hour to write, clear, and submit a CAP that includes the criteria at § 430.49(b)(3) for an aggregate of 224 hours (8 States × 28 hours) and $23,663 [(($100.64 × 20 hours) + ($118.14 × 8 hours)) × 8 States]. Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State share would be $11,832.

TABLE 3—SUMMARY OF PROPOSED BURDEN ESTIMATES

Regulation section(s)	OMB control No. (CMS ID No.)	Number of respondents	Number of responses per respondent	Hourly labor cost ($/hr)	Time per response (hours)	Total time (hours)	Labor cost ($)	Total state share ($)	Total beneficiary burden (hours)	Total beneficiary cost ($)	Total non-labor cost ($)	Frequency
§ 435.927	0938–TBD (CMS–10875).	8	1	varies	23	184	18,082	9,041	n/a	n/a	n/a	One-Time.
§ 430.49(b) ...	0938–TBD (CMS–10875).	8	1	varies	28	224	23,663	11,832	n/a	n/a	n/a	One-Time.
Total	0938–TBD (CMS–10875).	.....	.....	.....	.....	408	41,745	20,873	n/a	n/a	n/a	One-Time.

C. Submission of PRA-Related Comments

We have submitted a copy of this rule to OMB for its approval of the rule's information collection requirements. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the collections previously discussed in this rule, please visit the CMS website at *https://www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at (410) 786–1326.

If you comment on these information collection requirements, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this interim final rule.

V. Response to Comments

Because of the large number of public comments normally received on **Federal Register** documents, the Department is not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

We have learned through working with States as they unwind from the continuous enrollment condition under the FFCRA and return to normal operations that States face challenges in processing an unprecedented volume of redeterminations. Through routine monitoring and technical assistance, CMS is working with States to address and mitigate policy and operational barriers to meeting all Federal eligibility and enrollment requirements. Congress has given CMS new tools to hold States accountable when States fail to meet Federal redetermination requirements during the period from April 1, 2023, to June 30, 2024.

In this rulemaking, we implement State reporting requirements and CMS' enforcement authorities under section 1902(tt) of the Act. We interpret and implement statutory language and specify parameters related to when States will be required to submit certain data. We also specify how CMS interprets and will calculate the FMAP reduction required under section 1902(tt)(2)(A) of the Act for a State's failure to comply with the reporting requirements in section 1902(tt)(1) of the Act for a quarter during the period from July 1, 2023, through June 30, 2024. We also specify parameters related to when States that are noncompliant with reporting requirements in section 1902(tt)(1) of the Act or with Federal eligibility redetermination requirements must submit a CAP, and when they will be required to suspend some or all disenrollments of eligibility for procedural reasons, and/or pay CMPs. We also specify the conditions under which CMS would lift requirements to suspend procedural disenrollments and CMPs as States come into compliance with Federal redetermination and reporting requirements via submission or implementation of their approved CAPs. Together, the changes in this rule will give States clear guidance about how to comply with the new reporting requirements and how CMS will take enforcement action for failure to comply with these new reporting requirements and Federal eligibility redetermination requirements. The new enforcement tools in section 1902(tt) of the Act are expected to help CMS prevent loss of coverage for eligible beneficiaries.

B. Overall Impact

We have examined the impacts of this rule as required by E.O. 12866 on Regulatory Planning and Review (September 30, 1993), E.O. 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (March 22, 1995; Pub. L. 104–4), E.O. 13132 on Federalism (August 4, 1999), and the Congressional Review Act (CRA) (5 U.S.C. 804(2)). OMB has determined that this rule is non-major under 5 U.S. Code § 801, and therefore, is not subject to the CRA and has also determined that this rule is not significant under 3(f)(1) of E.O. 12866.

We have estimated the potential impacts of this rule on Medicaid enrollment and expenditures. Overall, the rule's impact is expected to be limited. States are already aware of Federal redetermination requirements and, as noted in sections I.C. and I.D of this rule, CMS provides advice and technical assistance to help States comply with these requirements and the new reporting requirements in section 1902(tt)(1) of the Act. When CMS becomes aware of a potential violation of Federal requirements, we first attempt to work collaboratively with the State to understand the nature and scope of the problem and to identify appropriate alternative processes and procedures that the State can adopt to avoid or minimize beneficiary harm until the State can fix the problem and come into full compliance with Federal requirements, consistent with our authority to enforce compliance with section 1902 of the Act under section 1904 of the Act and § 430.35. In addition, the new enforcement authorities in this rule are only applicable to State activities that occur during a time-limited period, generally from April 1, 2023, to June 30, 2024.

This rule implements new enforcement tools that CMS can use to address violations of Federal Medicaid redetermination or reporting requirements that occur during a period that generally aligns with States' unwinding periods. Beginning with the analysis of redetermination requirements, we start with an assumption that in most cases redeterminations would be accurate and follow required processes and, thus, that the new enforcement tools implemented

through this rule will not be widely needed. Even though the Federal government and States already have processes in place to ensure redeterminations are done correctly and States are already required to do so, the new enforcement authorities will give CMS additional tools to enforce compliance with these requirements. As noted in section I.D. and above, CMS attempts to work collaboratively with a State first to understand the nature and scope of any potential violation of Federal requirements and to identify appropriate alternative processes and procedures that the State can adopt to avoid or minimize beneficiary harm until the State can fix the problem and come into full compliance with Federal requirements. However, notwithstanding those efforts, it is possible that a few States might still be noncompliant, thus making it necessary for CMS to use the enforcement tools implemented in this rule.

It is possible that in the course of States coming into compliance with the requirements enforceable through section 1902(tt) of the Act absent this rule, some eligible individuals would remain enrolled who might have otherwise been disenrolled for procedural reasons due to a State's failure to comply with redetermination requirements. The impacts estimated in this section depend on the effectiveness of this rule at ensuring that eligibility redeterminations are done correctly, as well as the assumptions about how many unauthorized procedural disenrollments would have occurred absent this rule.

In the Mid-Session Review of the President's FY 2024 Budget,[31] CMS projected that Medicaid enrollment would decline by about 18 million enrollees due to the unwinding of the Medicaid continuous enrollment condition through the end of fiscal year 2024 (or about 19 percent as measured from the peak of Medicaid enrollment in March-April 2023). This does not include individuals who newly enroll over this period.

To develop the estimates, we started with the following assumptions. First, we assumed that a maximum of five States would be out of compliance with the Federal redetermination requirements under this rule and be subject to CAPs and suspensions of procedural disenrollments and/or CMPs if they did not submit or implement an approvable CAP. We assumed that all States would take the appropriate steps to submit or implement CAPs and, thus, that CMS would require no suspensions of procedural disenrollments and impose no CMPs. Second, we assumed that States out of compliance with Federal redetermination requirements would have about 5 percent more individuals found ineligible and that those individuals would still be eligible and would have remained enrolled if redeterminations were done accurately. Third, we assumed that about 40 percent of enrollees who would have been disenrolled would have ultimately re-enrolled within 12 months. We assumed that this rule would bring all States into compliance and that individuals wrongly disenrolled would be re-enrolled; in future cases, this rule would also prevent those incorrect disenrollments from occurring. We assume that any such effects would start by early 2024.

We estimate that the rule would increase Medicaid enrollment by about 7,000 individuals in fiscal year 2024 and 13,000 individuals in fiscal year 2025 (average annual enrollment). We estimate that total Medicaid spending due to increased enrollment would be about $50 million higher in fiscal year 2024 ($36 million Federal) and about $93 million higher annually in fiscal year 2025 and subsequent years ($66 million Federal).

Actual impacts could be greater than or less than estimated here. Future spending and enrollment could grow faster or slower than projected. More or fewer States could be out of compliance than we have assumed, and the number of unauthorized procedural disenrollments could also be higher or lower than we have assumed. This rule could also be more or less effective than we expect. Moreover, if one or more States did not comply with these requirements, those States could be assessed CMPs that would result in a transfer from States to CMS and could lead to additional actions.

This rule also implements a statutory FMAP reduction for noncompliance with reporting requirements under section 1902(tt)(1) of the Act. States out of compliance with these reporting requirements between July 1, 2023, and June 30, 2024, would be assessed a reduction in FMAP of 0.25 percentage points for each quarter they are out of compliance, and this would increase by 0.25 percentage points for each additional quarter they are out of compliance. States that fail to comply with reporting requirements may also be required to submit a CAP, and if the reporting violations impeded CMS oversight of procedural disenrollments, States that fail to submit or implement an approvable CAP will be required to suspend procedural disenrollments and will also be subject to CMPs. If the reporting violation did not impede CMS' oversight of procedural disenrollments, CMS will delay suspension of procedural disenrollments for 1 month but will still impose CMPs (except in extraordinary circumstances, as discussed in section II.E. of this rule). We assume that at most an additional three States would be out of compliance with reporting requirements for one quarter each. Although States that are noncompliant are at risk of additional enforcement action, we estimate that most States will correct violations without a CAP or, if a CAP is imposed, will implement the CAP to address any violations and not be subject to additional enforcement actions. We estimate that the impact of the States that are noncompliant with reporting requirements would result in a FMAP reduction of $30 million, which would be a transfer from those States to the Federal government.

In total and consistent with the assumptions noted above, the estimated net effects of this rule would be Federal costs of about $6 million in fiscal year 2024 ($36 million in costs for additional enrollment, and $30 million in collections from States assessed an FMAP reduction) and $66 million in fiscal year 2025. For States, the estimated effects are $44 million in costs in fiscal year 2024 ($14 million in costs for additional enrollment, and $30 million in payments related to the FMAP reduction) and $27 million in fiscal year 2025.

The actual impact could be more or less than we have estimated. The key uncertainties are the number of States out of compliance, which States those would be (as Federal spending varies significantly across States, depending on the Medicaid population and spending levels and the FMAP rates for each State), and the number of quarters those States are out of compliance. We anticipate that States would quickly remedy any issues that would result in an FMAP reduction, and thus would be unlikely to be assessed an FMAP reduction in more than one quarter.

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). Executive Order 14094 amends section 3(f) of Executive Order 12866. The amended section 3(f) of Executive Order 12866 defines a ''significant

[31] *https://www.whitehouse.gov/wp-content/uploads/2023/07/msr_fy2024.pdf.*

regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (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) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for rules that are significant under section 3(f)(1) of Executive Order 12866 as amended by Executive Order 14094 ($200 million or more in any 1 year). Based on our analysis, OIRA has designated this rule as not significant under section 3(f)(1). In reviewing the economic effect of this rule, we have assumed that States will generally meet reporting requirements and requirements for Medicaid eligibility redeterminations and continue to meet the conditions for the temporary FFCRA FMAP increase, and thus will not be subject to FMAP reductions, suspensions of procedural disenrollments, CMPs, or loss of Federal matching funds that would rise to the level of $200 million or more in any one year. While we assume that only a handful of States would have failed to comply absent this interim final rule, even in those hypothetical cases, we assume States will come into compliance promptly and avoid the enforcement actions described in this interim final rule, further minimizing the rule's economic impact. For example, we assumed States will use existing contracts to modify systems to ensure data are reported to CMS timely.

The RFA requires agencies to analyze options for regulatory relief of small businesses. 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 nonprofit status or by having revenues of less than $9.0 million to $47.0 million in any one year. Individuals and States are not included in the definition of a small entity. The good cause exception of the APA applicable to this rule allows CMS to waive the regulatory impact analysis typically required under the RFA.

In addition, section 1102(b) of the Act requires CMS 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 a Metropolitan Statistical Area and has fewer than 100 beds. This rule applies to State Medicaid and CHIP agencies and will not add requirements for rural hospitals or other small providers. Therefore, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the 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 2023, that is approximately $177 million. We believe that this rule will not mandate spending by State, local, or tribal governments nor by private sector entities over this level.

C. Administrative Burden

We do not anticipate this rule will significantly impact administrative spending by the Federal Government.

D. Alternatives Considered

In developing this final rule, the following alternatives were considered:

1. Not Finalizing the Rule

We considered not finalizing this rule and considering the provisions of section 1902(tt) of the Act to be self-implementing. However, we believe the authority to require State reporting under section 1902(tt)(1) of the Act, to impose CAPs on States that fail to meet Federal redetermination requirements or the reporting requirements under section 1902(tt)(1) of the Act, and to suspend procedural disenrollments and impose CMPs on States that fail to submit or implement a required CAP, required regulation in order to enable CMS to exercise its full statutory enforcement authority fairly and uniformly. For example, we believe the mitigating circumstances outlined in this rule, which memorialize when and how CMS will exercise its discretion to take enforcement action under section 1902(tt)(2)(B) of the Act, necessitated regulation.

2. Implementing Section 1902(tt) of the Act Through Subregulatory Guidance

We considered not promulgating a regulation but instead implementing section 1902(tt) of the Act through subregulatory guidance. However, CMS believes that the policy interpretations in this rule are different enough from the statutory language to necessitate regulation. For example, while the statute gives CMS discretion regarding whether to require a State to submit a CAP and regarding whether to require suspension of procedural disenrollments or impose CMPs if a State fails to submit or implement that CAP, the rule outlines in detail how CMS will exercise this discretion.

3. Promulgating a Proposed Rule

We considered promulgating a proposed rule rather than an IFC to implement these same provisions. However, as outlined in section III. of this rule, we believe notice-and-comment procedures and a delay in the effective date of this rule are impracticable and/or contrary to the public interest.

E. Limitations of the Analysis

As described previously, we have assumed that all but three States would comply with the reporting requirements, and all but five States would comply with Federal redetermination requirements referenced in this interim final rule and be subject to the CAP requirements at 430.49(b). It is possible that one or more of these States would fail to comply with the CAP requirements, and thus be ineligible for the temporary FFCRA FMAP increase, or be subject to the other penalties discussed in this rule, including suspension of procedural disenrollments and CMPs, and thus that the economic impact of the rule would be greater. In those cases, we would also assume more individuals would be disenrolled than would occur if the State complied with these requirements. We have not attempted to quantify the non-administrative program impact (that is, changes in enrollment and/or spending on benefits, not the costs associated with training/hiring workers, programming systems, or printing notices, for example) of a State failing to comply with the CAP requirements in the interim final rule.

In accordance with the provisions of Executive Order 12866, this regulation

was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on September 27, 2023.

List of Subjects

42 CFR Part 430

Administrative practice and procedure, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

45 CFR Part 16

Procedures of the Departmental Grants Appeals Board.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services and the Department of Health and Human Services amend 42 CFR chapter IV and 45 CFR subtitle A, subchapter A, as set forth below:

Title 42

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 430 continues to read as follows—

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 2. Section 430.3 is amended by revising the introductory text and adding paragraph (d) to read as follows:

§ 430.3 Appeals under Medicaid.

Four distinct types of disputes may arise under Medicaid.

* * * * *

(d) *Imposition of suspensions of procedural disenrollments and civil money penalties under section 430.49 of this part.* Disputes that pertain to CMS' imposition of suspensions of procedural disenrollments and civil money penalties under § 430.49(c) of this part are heard by the Board in accordance with procedures set forth in 45 CFR part 16.

■ 3. Section 430.5 is amended by adding definitions for ''Federal redetermination requirements'' and ''Procedural disenrollment'' in alphabetical order to read as follows:

§ 430.5 Definitions.

* * * * *

Federal redetermination requirements means, for the purposes of § 430.49, Federal requirements applicable to eligibility redeterminations outlined in 42 CFR 435.916, including renewal strategies authorized under section 1902(e)(14)(A) of the Social Security Act or other alternative processes and procedures approved by CMS under section 1902(e)(14)(A) of the Act or section 6008(f)(2)(A) of the Families First Coronavirus Response Act.

Procedural disenrollment means, for the purposes of § 430.49 and 45 CFR part 16, a *termination* of a beneficiary's Medicaid eligibility after advance notice under subpart E of part 431 for reasons that are unrelated to a State's determination of whether the individual meets eligibility criteria to qualify for coverage, including for failure to return a renewal form or documentation needed by the State to make a determination of eligibility.

* * * * *

■ 4. Section 430.49 is added to subpart C to read as follows:

§ 430.49 Corrective action plans, suspensions of procedural disenrollments, and civil money penalties.

(a) *Statutory basis.* This section interprets and implements section 1902(tt)(2)(B) of the Social Security Act.

(b) *Corrective action plans*—(1) *Basis for corrective action.* After consideration of any mitigating circumstances in accordance with paragraph (d) of this section and notwithstanding whether an FMAP reduction has been imposed under § 435.928 of this subchapter, CMS will determine whether to require the State to submit a corrective action plan if CMS finds that the State is not in compliance during the period beginning on April 1, 2023, through June 30, 2024, with either of the following requirements:

(i) The requirement to submit data required under section 1902(tt)(1) of the Act in accordance with § 435.927 of this subchapter; or

(ii) Federal redetermination requirements described at § 430.5.

(2) *Notice of need for corrective action plan.* If, after considering mitigating circumstances as described in paragraph (d) of this section, the Administrator decides to require the State to submit and implement a corrective action plan for noncompliance described in paragraph (b)(1) of this section or to revise or resubmit such a plan, the Administrator will provide the State with a written notice directing the State to submit a corrective action plan to correct the identified areas of noncompliance. Such notice will—

(i) Explain the violation of Federal redetermination or reporting requirements that CMS has identified and the basis for CMS' finding;

(ii) Inform the State of the requirement to submit and implement a corrective action plan:

(iii) Include instructions on the method and deadline by which the State must submit a corrective action plan to CMS; and

(iv) Explain the enforcement actions that CMS may pursue if the State fails to submit or implement an approved corrective action plan, including if CMS disapproves the State's submitted CAP or if the State fails to meet the requirements set forth in the approved CAP, in accordance with this section.

(3) *Content of corrective action plan.* A corrective action plan must describe in detail—

(i) The actions the State will take immediately, if needed to prevent further harm or risk of harm to beneficiaries while it implements the corrective action plan, including to prevent increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, and delays in access to coverage or care;

(ii) The steps the State will take to ensure compliance with Federal requirements, including but not limited to new policies, procedures, operational processes or systems changes it will implement;

(iii) Key milestones and a detailed timeline for achieving compliance; and

(iv) A plan for communicating the steps the State will take to prevent actual harm or risk of harm to beneficiaries and to ensure compliance with Federal requirements per paragraphs (b)(3)(i) and (ii) of this section to State staff, including staff of non-Medicaid agencies or entities to which the agency has delegated authority to conduct redeterminations of eligibility in accordance with § 431.10(c)(1)(i) of this subchapter; CMS; and beneficiaries, as applicable.

(4) *Timeframes for submission, approval, and implementation of corrective action plan*—(i) *Submission.* A State that receives a notice described in paragraph (b)(2) of this section must submit a corrective action plan, including the elements in paragraph (b)(3) of this section, not later than 14 calendar days from the date of the notice of noncompliance.

(ii) *Approval.* CMS must approve or disapprove a corrective action plan submitted by the State within 21 calendar days of the date it is submitted.

If CMS does not approve or disapprove the corrective action plan within 21 calendar days of submission, the corrective action plan will be deemed approved.

(iii) *Implementation.* A State must begin implementation of the corrective action plan not later than 14 calendar days after the date that either the State receives CMS approval, or the corrective action plan is deemed approved.

(5) *Approval or disapproval of corrective action plan.* A corrective action plan will be approved if CMS determines that the plan–

(i) Meets the requirements at paragraph (b)(3) of this section;

(ii) Promptly eliminates or minimizes any harm or risk of harm to beneficiaries, including increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, and delays in access to coverage or care due to the noncompliance to be addressed by the plan; and

(iii) Results in the State achieving compliance in a reasonable time, taking into account systems challenges and circumstances faced by the agencies involved.

(c) *Suspensions of procedural disenrollments and civil money penalties.* (1) After considering any applicable mitigating circumstances in accordance with paragraph (d) of this section and notwithstanding whether the State is subject to an FMAP reduction under § 435.928 of this subchapter, CMS may take one or both of the following actions if the State fails to submit or implement an approved corrective action plan, including if CMS disapproves the State's submitted corrective action plan due to the State's failure to include required elements in accordance with the requirements described in paragraph (b) of this section, or if the State fails to meet the requirements set forth in the approved corrective action plan:

(i) Require the State to suspend some or all procedural disenrollments, in accordance with paragraph (c)(3)(i) of this section; and

(ii) Impose civil money penalties in accordance with paragraph (c)(3)(ii) of this section.

(2) *Notice.* (i) Prior to requiring the State to suspend procedural disenrollments of Medicaid eligibility or imposing civil money penalties, CMS will issue a notice to the State. Such notice will include—

(A) A description of the enforcement action(s) CMS is taking and the basis for such action(s);

(B) Whether CMS is requiring the State to suspend some or all procedural disenrollments and, in the case of a partial suspension, the affected populations;

(C) The date on which the State must begin suspending procedural disenrollments, if applicable;

(D) The daily amount owed for any civil money penalties imposed, the date the penalties will begin to be charged, the timeline for payment (including information on how the timeline for payment would be affected by an appeal), and instructions on how to submit payment;

(E) The steps the State must take to cure its noncompliance and for CMS to lift the enforcement action(s); and

(F) Information on the State's appeal rights as described in paragraph (f) of this section, including the deadline to submit an appeal request, and the effect of requesting an appeal on the applicability of any enforcement actions pending the decision in such appeal. The notice must also provide that the decision outlined in the notice is final unless it is timely appealed as described in paragraph (f) of this section.

(ii) CMS may issue additional notices requiring a State to take additional actions (including paying increased civil money penalties or implementing or broadening the scope of a required suspension of procedural disenrollments) if CMS identifies additional violations of corrective action plan provisions. Such notices will meet the requirements outlined in paragraph (c)(2)(i) of this section.

(3) *Scope of actions*—(i) *Suspensions of procedural disenrollments.* (A) If the noncompliance determined by CMS under paragraph (b)(1) of this section impacts a substantial number of (meaning all or nearly all) individuals who are or should have been found eligible for Medicaid, CMS will require the State to suspend all procedural disenrollments.

(B) If the impact of the noncompliance is limited (for example, to a specific population or geographic area), CMS may limit the suspension of procedural disenrollments to the impacted population(s). After requiring a limited suspension of procedural disenrollments, CMS may later opt to require the State to suspend all procedural disenrollments if CMS subsequently determines that the impact of the noncompliance is greater than was initially determined, or if the State fails to comply with the initial requirement to suspend some procedural disenrollments in accordance with the notice issued under paragraph (c)(2) of this section. In these circumstances, CMS will issue a subsequent notice under paragraph (c)(2).

(ii) *Civil money penalties.* CMS may require the State to pay a civil money penalty of not more than $100,000, as adjusted annually under 45 CFR part 102, for each day that the State has not submitted or implemented an approved corrective action plan in accordance with the requirements described in paragraph (b) of this section or has failed to meet the requirements of the approved plan, until the penalty is lifted due to the State meeting the conditions described in paragraph (e) of this section.

(A) Civil money penalties will start accruing five (5) calendar days after the date of the initial notice described in paragraph (c)(2) of this section and become payable 60 calendar days after the date of the notice, if not timely appealed, or 60 calendar days after issuance of a final determination at the conclusion of any appeal pursuant to paragraph (f) of this section.

(B) The amount of any applicable civil money penalties for failure to submit or implement a corrective action plan, including if CMS disapproves the State's submitted corrective action plan or if the State fails to meet the requirements set forth in the approved corrective action plan, will be determined according to the following formula, after the date specified in paragraph (c)(3)(ii)(A) of this section: Days 1–30 of noncompliance: $25,000/day; Days 31–60 of noncompliance: $50,000/day; and Days 61 or more of noncompliance until lifted in accordance with paragraph (e) of this section: $100,000/day. Each of these amounts is adjusted annually under 45 CFR part 102.

(C) Consistent with paragraph (c)(2)(ii) of this section, if CMS identifies additional violations of corrective action plan provisions, CMS may issue additional notices to increase civil money penalties more quickly than provided for by the formula in paragraph (c)(3)(ii)(B) of this section.

(4) *Noncompliance with requirements to suspend procedural disenrollments or pay civil money penalties.* If the State fails to suspend procedural disenrollments as required pursuant to a notice described in paragraph (c)(2) of this section, or to pay civil money penalties as specified in that notice, or both, CMS may issue an additional notice pursuant to paragraph (c)(2) of this section to increase the civil money penalties to the maximum allowable

daily amount, if not already reached, or may pursue additional enforcement action under section 1904 of the Act and § 430.35 of this subpart, including withholding some or all Federal financial participation.

(d) *Mitigating circumstances.* CMS will consider the following mitigating circumstances when deciding whether to take the following enforcement actions:

(1) *Requirement to submit corrective action plan for violation of redetermination requirements.* In the case of noncompliance relating to a violation of Federal redetermination requirements, CMS may delay requiring, or determine not to require, a State to submit a corrective action plan under paragraph (b) of this section if—

(i) The noncompliance caused neither actual harm nor a substantial risk of harm to beneficiaries, including increased burden for beneficiaries in completing the renewal process, loss of coverage at renewal for individuals who continue to meet the substantive eligibility criteria and whose eligibility should otherwise be retained but for failure to meet a procedural requirement, and delays in access to coverage or care to beneficiaries; or

(ii) CMS determines that there is an emergency or other extraordinary circumstances preventing the State's compliance.

(2) *Requirement to submit corrective action plan for violation of reporting requirements.* In the case of noncompliance relating to a violation of the reporting requirements under § 435.927 of this subchapter, CMS may delay requiring, or determine not to require, a State to submit a corrective action plan under paragraph (b) of this section if—

(i) CMS has determined that the State implementing a corrective action plan is not necessary to ensure that the noncompliance is remedied; or

(ii) CMS determines that there is an emergency or other extraordinary circumstances preventing the State's compliance.

(3) *Suspensions of procedural disenrollments and imposition of civil money penalties.* (i) In the case of a State that has failed to submit or implement an approved corrective action plan relating to a violation of either the reporting requirements under § 435.927 of this subchapter or Federal redetermination requirements, CMS may delay or forgo imposing civil money penalties if CMS determines that the State faces an emergency or other extraordinary circumstances that—

(A) Occurred after the violation resulting in CMS' requirement of a CAP for noncompliance with Federal redetermination requirements or reporting requirements under § 435.927; and

(B) Has significantly impeded the State's ability to submit or implement a corrective action plan.

(ii) In the case of a State's failure to submit or implement a corrective action plan relating to a violation of the reporting requirements under § 435.927 of this subchapter in which the underlying reporting violation does not impede CMS' oversight of the State's procedural disenrollments, CMS will:

(A) Delay suspension of procedural disenrollments for 1 month; and

(B) Impose civil money penalties, except in cases where there are also extraordinary circumstances as described in paragraph (d)(3)(i) of this section.

(e) *Lifting of enforcement actions.* (1) In cases where CMS had sent a State a notice under paragraph (c)(2) of this section for failure to submit or implement an approved corrective action plan—

(i) The State will be required to continue any suspension of procedural disenrollments required pursuant to such notice, and any civil money penalties imposed in accordance with the terms of such notice will continue to be charged, until—

(A) For a State that failed to submit a corrective action plan, the State submits a corrective action plan that CMS determines is approvable consistent with paragraph (b)(5) of this section.

(B) For a State that failed to implement an approved corrective action plan, the State has implemented or resumed implementation of such plan.

(ii) CMS will continue the accrual of civil money penalties from the date specified in the original notice provided to the State under paragraph (c)(2) of this section until CMS determines whether the plan is approvable. If CMS determines that the plan is approvable, CMS will retroactively end the accrual of the civil money penalties on the day the CAP was submitted and cease charging civil money penalties prospectively. If CMS determines that the plan is not approvable, CMS will continue charging civil money penalties imposed under the terms of the enforcement notice without interruption until the State submits an approvable plan.

(2) Where a State has met the conditions under paragraph (e)(1)(i) of this section, CMS will notify the State that the enforcement actions are being lifted. For States that were required to suspend procedural disenrollments, such notice will include the date on which the State may resume such disenrollments. For States that were subject to civil money penalties, such notice will include the date on which such civil money penalties stopped accruing, the total number of days for which civil money penalties accrued and the amount(s) of such civil money penalties, and the total amount of civil money penalties owed.

(f) *Administrative review*—(1) *Appeal to the Departmental Appeals Board.* A State that is dissatisfied with CMS's determination under paragraph (c) of this section that the State must suspend procedural disenrollments or pay civil money penalties because the State has failed to submit or implement an approvable corrective action plan may appeal, pursuant to 45 CFR part 16, the imposition of such suspensions of procedural disenrollments or civil money penalties to the Departmental Appeals Board (the Board) within 30 days after receipt of a notice described in paragraph (c)(2) of this section. The appeal request must comply with 45 CFR 16.7, and the process for counting days to submit an appeal will follow the provisions under 45 CFR 16.19. The appeals process is governed by 45 CFR part 16. If the State does not submit an appeal request within the 30-day timeframe provided for an appeal to the Board, then the decision described in the notice received by the State under paragraph (c)(2) of this section is the final decision of the Secretary and is final agency action within the meaning of 5 U.S.C. 704.

(2) *Reconsiderations by* the *Administrator.* (i) If any party to the appeal is dissatisfied with the Board's decision under paragraph (f)(1) of this section, it may seek the Administrator's reconsideration of that decision within 15 calendar days of receiving notice of the decision pursuant to 45 CFR 16.21.

(A) The request for reconsideration must be filed with the Administrator and must include a copy of the Board's decision, a brief statement of why the party believes the decision was wrong, and a statement of the amount of any civil money penalties in dispute.

(B) The party requesting reconsideration must send a copy of the request described in paragraph (f)(2)(i)(A) of this section to all other parties to the appeal and other participants in the appeal (as described in 45 CFR 16.16) at the same time that the request is filed with the Administrator.

(C) Any other party to the appeal, or other participant in the appeal, may respond to the request for reconsideration in writing and file their

response with the Administrator within 15 calendar days of the date the request for reconsideration is filed with the Administrator.

(D) The Administrator will review the Board's decision and any additional information submitted by the parties and other participants under paragraphs (f)(2)(i)(A) or (C) of this section and, within 60 calendar days after the Board issues notice of its decision under 45 CFR 16.21, will either affirm the Board's decision or issue a new decision.

(ii) Within the 60-day period that is described in paragraph (f)(2)(i)(D) of this section, the Administrator may also modify or reverse the Board's decision even if no party to the appeal has requested reconsideration of that decision.

(iii) If no request for reconsideration is filed under paragraph (f)(2)(i) of this section and the Administrator does not modify or reverse the Board's decision within the 60-day period described in paragraph (f)(2)(ii) of this section, then the decision of the Board is the final determination of the Secretary and is final agency action, as described in paragraph (f)(2)(v) of this section, and the Administrator will provide notice to all parties and other participants of such decision as described in paragraph (f)(2)(iv) of this section.

(iv) The Administrator will provide a notice to all parties and other participants of the final decision together with a notice indicating that this is the final determination of the *Secretary* and is final agency action, as described in paragraph (f)(2)(v) of this section.

(v) The determination of the Administrator pursuant to paragraph (f)(2)(i)(D) or (f)(2)(ii) of this section is the final determination of the *Secretary* and is final agency action within the meaning of 5 U.S.C. 704.

(g) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further State action, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 5. The authority citation for part 435 continues to read as follows—

Authority: 42 U.S.C. 1302.

■ 6. Sections 435.927 and 435.928 are added to subpart J to read as follows:

§ 435.927 Requirements for States to submit certain data on redeterminations.

(a) *Basis.* This section implements section 1902(tt)(1) of the Social Security Act.

(b) *Definitions.* As used in this section—

(1) *Timely* means the following:

(i) Data submitted according to an existing process governed by CMS regulation or guidance (other than data submitted through the Transformed Medicaid Statistical Information System (T–MSIS)) are timely if they are reported by the deadline specified in the applicable CMS regulation or guidance.

(ii) Data submitted under the existing process for the T–MSIS are timely if they are submitted on a monthly basis, before the last day of the subsequent month.

(iii) Data that States submit according to an alternative process approved by CMS or an alternative timeline approved by CMS under the circumstances specified in paragraph (b)(4) of this section are timely if they are submitted on the deadline CMS specifies when it approves the alternative process or timeline.

(2) *Complete* means that all required elements are reported.

(3) *Sufficient quality* means the following:

(i) For data submitted according to an existing process governed by CMS regulation or guidance, the data adhere to specifications outlined in the applicable CMS regulation or guidance.

(ii) For data submitted according to an alternative process approved by CMS under the circumstances specified in paragraph (b)(4) of this section, the data adheres to the specifications approved by CMS when it approves the alternative process.

(4) *Good faith effort* means that—

(i) The State is experiencing significant, unforeseeable, or unavoidable challenges in complying with the reporting requirements of paragraph (c) of this section, or is experiencing significant foreseeable challenges in complying and is working to remediate these challenges but needs additional time to address them;

(ii) The State requested, and CMS approved an alternative process for submitting the data or an alternative timeline; and

(iii) The approved alternative process for submitting the data or timeline is sufficient to ensure CMS can obtain and use the data to meet CMS' obligations to report the data publicly per section 1902(tt)(1) of the Act.

(c) *Reporting requirement.* For data representing activities conducted by a State during the time period beginning April 1, 2023, and ending June 30, 2024, each State must submit to CMS the data described in paragraph (d) of this section, and those data must be timely, complete, and of sufficient quality (as those terms are defined in paragraph (b) of this section). To meet this requirement, a State must:

(1) Submit data via existing CMS-approved processes; or

(2) Submit data through alternative processes approved by CMS, under the circumstances specified in paragraph (b)(4) of this section.

(d) *Required data elements.* States must submit the following data to CMS in accordance with paragraph (c) of this section:

(1) Total number of Medicaid and Children's Health Insurance Program (CHIP) beneficiaries for whom a renewal was initiated.

(2) Total number of Medicaid and CHIP beneficiaries whose Medicaid or CHIP coverage is renewed.

(3) Of the Medicaid and CHIP beneficiaries whose Medicaid or CHIP coverage is renewed, the total number whose coverage is renewed on an *ex parte* basis.

(4) Total number of individuals whose coverage for Medicaid or CHIP was terminated.

(5) Total number of individuals whose coverage for Medicaid or CHIP was terminated for procedural reasons.

(6) Total number of beneficiaries who were enrolled in a separate CHIP.

(7) For each State call center, total call center volume.

(8) For each State call center, average wait times.

(9) For each State call center, average abandonment rate.

(10) For States with State-based Exchanges (SBEs) using a Non-Integrated Eligibility System and not using the Federal Exchange eligibility and enrollment platform:

(i) Total number of individuals whose accounts are received by the SBE or Basic Health Program (BHP) due to a Medicaid/CHIP redetermination.

(ii) Total number of individuals who apply for coverage due to a Medicaid/CHIP redetermination who are determined eligible for a QHP or a BHP.

(iii) Total number of individuals who apply for coverage due to a Medicaid/CHIP redetermination who are determined eligible for a QHP or a BHP, and who make a QHP plan selection or are enrolled in a BHP.

(11) For States with SBEs with an Integrated Eligibility System and not using the Federal Exchange eligibility and enrollment platform:

(i) Total number of individuals who apply for coverage due to a Medicaid/

CHIP redetermination who are determined eligible for a QHP or a BHP.

(ii) Total number of individuals who apply for coverage due to a Medicaid/CHIP redetermination who are determined eligible for a QHP or BHP, and who make a QHP plan selection or are enrolled in a BHP.

(e) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further State action, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

§ 435.928 Reduction in FMAP for failure to submit certain data.

(a) *Basis.* This section implements section 1902(tt)(2)(A) of the Social Security Act.

(b) *Application of the FMAP reduction.* (1) FMAP means the State-specific Federal medical assistance percentage as defined in the first sentence of section 1905(b) of the Act.

(2) If CMS finds that, for a fiscal quarter in the period beginning on July 1, 2023, and ending on June 30, 2024, the State was noncompliant with the requirements of § 435.927, CMS will reduce the State's Federal medical assistance percentage (FMAP) for that fiscal quarter as described in paragraph (b)(4) of this section.

(3) A State is noncompliant in a fiscal quarter if it has failed to comply with the reporting requirements described in § 435.927 for one or more months of the quarter.

(4) The FMAP reduction under paragraph (b)(2) of this section will equal the product of 0.25 percentage points and the number of the fiscal quarters during the period from July 1, 2023, through June 30, 2024, in which the State is noncompliant with the reporting requirements described in § 435.927. When States are noncompliant in multiple quarters during that period, the FMAP reduction will increase by 0.25 percentage points for each successive quarter of noncompliance, even if nonconsecutive, but in no case will the reduction for any single quarter exceed 1 percentage point.

(c) *Severability.* Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further State action, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

Title 45

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

■ 7. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

■ 8. Section 16.22 is amended by revising paragraphs (b)(3) and (4) and adding paragraph (b)(5) to read as follows:

§ 16.22 The effect of an appeal.

* * * * *

(b) * * *

(3) In programs listed in appendix A, B.(a)(1), to this part implement a decision to disallow Federal financial participation claimed in expenditures reported on a statement of expenditures, by recovering, withholding or offsetting payments, if the decision is issued before the reported expenditures are included in the calculation of a subsequent grant;

(4) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation; or

(5) Take action to require a State to suspend procedural disenrollments, as defined at 42 CFR 430.5, or continue the accrual of the civil money penalties a State owes under 42 CFR 430.49(c).

■ 9. Appendix A of part 16 is amended in section B by adding paragraph (a)(7) to read as follows:

Appendix A to Part 16—What Disputes the Board Reviews

* * * * *

B. * * *

(a) * * *

(7) Decisions relating to suspensions of procedural disenrollments and civil money penalties under 42 CFR 430.49(c).

* * * * *

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–26640 Filed 12–4–23; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 22–411; 22–271; FCC 23–73; FR ID 188451]

Expediting Initial Processing of Satellite and Earth Station Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts changes to its rules aimed at expediting the initial license application processing for satellite operators. The Commission establishes timeframes for placing satellite and earth station applications on public notice, eliminates a procedural rule that prevents consideration of requests for waiver of the International Table of Frequency Allocations, and removes the prohibition on licensed-but-unbuilt systems for non-geostationary orbit (NGSO) operators. Additionally, the Commission creates a new, streamlined processing framework for earth station operators to add satellite points of communication under certain circumstances. Finally, the Commission lays the groundwork for a broader Transparency Initiative led by the Space Bureau to provide clarity and access to applicants when interfacing with the Commission's license application processes and filing system.

DATES: Effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Julia Malette, Attorney Advisor, Satellite Programs and Policy Division, Space Bureau, at 202–418–2453 or *julia.malette@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 23–73, adopted September 21, 2023, and released September 22, 2023. The document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-73A1.pdf.* To request materials in accessible formats for people with disabilities, (*e.g.,* Braille, large print, electronic files, audio format, etc.) send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (TTY). A proposed rule relating to further expediting satellite and earth station application processing is published elsewhere in this issue of the **Federal Register**.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this document on small entities. The FRFA is set forth in Section IV below.

Final Paperwork Reduction Act Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

1. In this document, the Federal Communications Commission (Commission) advances opportunities for innovation in the new space age by taking measures to expedite the application processes for space stations and earth stations, consistent with the Commission's objective to ''promote a competitive and innovative global telecommunications marketplace via space services.'' Applications for space services before the Commission continue to increase in complexity and number. Concrete measures to expedite the initial processing of applications for authority to operate space and earth stations under part 25 of the Commission's rules are vital to supporting U.S. leadership in the growing space economy. Accordingly, the rule updates and policy changes the Commission adopts today will: (1) improve the process that Commission staff uses to review space and earth station applications for acceptability for filing and to place the applications on public notice; (2) eliminate processing rules that are no longer necessary; (3) establish timeframes for placing space and earth stations on public notice; and (4) advance other initiatives to expedite the processing of applications. In addition, as part of the Space Innovation agenda, the Space Bureau will undertake a Transparency Initiative. The goal of this initiative is to provide information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations. The Commission believes that this initiative will reduce administrative burdens on both applicants and staff and will further expedite the processing of applications.

II. Background

2. To facilitate application filing and processing, the Commission has improved the standard forms for satellite and earth station applications (FCC Form 312, 312R, and Schedules A and S) and is currently working on improvements to its online filing system for such applications, the International Communications Filing System (ICFS). In addition, the Commission has regularly taken steps to streamline its part 25 rules. As part of previous streamlining efforts, the Commission adopted a 45-day expected period for placing on public notice applications both for initial space station authorizations and for modification of a space station authorization. The Commission also adopted an expected time of 60 days for acting on space station applications after the close of the comment period. For applications for special temporary authority (STA) for a space station, the Commission expected the application would be placed on public notice within 14 days of receipt (if public notice is required) and acted on within 30 days after the close of the comment period, or within 30 days of receipt if public notice is not required. In addition, expected processing times were also announced for earth station applications. These times were 45 days from confirmation of receipt of payment for placing applications for initial earth station authorizations or modifications on public notice, and 60 days after close of the comment period for action; 30 days from confirmation of receipt of payment for placing initial registrations of receive-only earth stations or modifications on public notice, and 45 days after close of comment period for action; and 14 days from confirmation of receipt of payment for applications for special temporary authority for earth stations, and 30 days after close of comment period for action, unless the application does not require public notice before action, in which case the expected time for action is 30 days of receipt. In all cases, the Commission's expectations applied to ''straightforward applications that are not contested'' and were set ''barring any complication.''

3. As we enter the new space age, applications for space services before the Commission continue to increase in complexity and number. In response to this unprecedented era of growth in the space industry, the Commission launched the Space Bureau on April 11, 2023. Space activities are increasing in almost every industry sector. The Commission must, therefore, make expediting the processing of applications a priority of its Space Innovation Agenda. If the current rate of filings for applications continues in 2023, the Commission will receive approximately four times the number of space station applications and three times the number of earth station applications than it received in 2015. In addition, the complexity of applications continues to increase as new and novel space technologies are presented for consideration. The commercial space industry is evolving at a rapid pace, and it is critical that the Commission keeps up with the cadence of applications and complexity of regulatory issues presented.

4. The Notice of Proposed Rulemaking (NPRM) sought comment broadly on changes to Commission rules, policies, or practices to facilitate the acceptance for filing of space and earth station applications under part 25. In particular, the NPRM proposed to remove a procedural rule that formally prevents consideration of waiver requests for operations not in conformance with the International Table of Frequency Allocations. It also sought comment on whether the limits on applications for NGSO systems and unbuilt NGSO systems should be amended, and whether the Commission should provide greater transparency or certainty with respect to its expected application processing timelines. In response to the NPRM, 24 comments, 11 reply comments, and multiple *ex parte* notifications were filed.

III. Discussion

a. Facilitating the Application Process

5. An essential element of expediting the application process is to make it easier for applicants to understand what is required to have an application accepted for filing and to avoid the dismissal of an application. Accordingly, the Commission discusses the steps it takes today, and will take in the future, to provide transparency and guidance regarding Commission licensing procedures, as well as to reduce the risk of an application being dismissed, without considering the merits of the application, due to filing requirements that the Commission deems are no longer needed to serve the public interest.

i. Transparency and Guidance

6. The NPRM sought comment on whether there is additional guidance or other assistance that the Commission should provide to applicants to avoid required information being omitted in their initial filings. Omission of required information can result in delays in processing an application, or even in the dismissal of an application. Commenters who responded to the Commission's procedural and technical inquiries overwhelmingly support the proposal of the Commission issuing guidance on the application process.

7. The Commission believes that the licensing process for space and earth station applications can be expedited by making it more transparent and providing applicants with further guidance on the initial application stages, as several commenters have suggested. The Commission agrees with commenters that clarity and guidance on what is required for an application to be acceptable for filing will result in an increase in complete filings that can be swiftly accepted for filing, which will in turn expedite the processing of space and earth station applications. Clear and transparent guidance to the applicant will aid in expediting application processing for both the applicants and staff. Accordingly, the Space Bureau will undertake a Transparency Initiative to provide such guidance. The goal of this initiative is to provide information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations. The Commission believes that this initiative will reduce administrative burdens on both applicants and staff and will further expedite the processing of applications. The guidance will take a variety of forms, including ''frequently asked questions'' or helpful links on the FCC's website. In other cases, public workshops may be held to explain certain requirements.

8. The initiative will cover a variety of topics, for example, application completeness and orbital debris requirements. Additionally, when the Commission releases the updated International Communications Filing System (ICFS), the system will include multiple forms of guidance for users, including training videos for the ICFS application process and a helpful links page. The Commission believes that this Transparency Initiative will address many of the specific requests that commenters have identified in this record, facilitate new entrants into the space economy, and further expedite the Commission's processes to meet the needs of the innovative and expanding space sector.

9. In addition, the Commission will continue to consider various ways in which the Space Bureau can provide more clarity and guidance on the application process moving forward, including, for example, various methods for increasing transparency around the inter-bureau and inter-agency coordination process. The Commission expects this to be a continuing process and believes that this investment of time and resources will pay off in reducing staff time in reviewing and correcting incomplete applications and applicant time responding to staff requests for missing information, which will in turn expedite the processing of space and earth station applications. The Commission encourages stakeholders to discuss their needs for information and guidance directly with Space Bureau staff in order that they may be considered and addressed in ways that do not require a change in Commission rules.

10. The Commission received a wide variety of comments related to the NPRM's various procedural and technical streamlining questions including suggestions to provide certifications or fill-in template forms in lieu of narratives to the extent possible and SpaceX suggests this could be done as a way of standardizing orbital debris showings. The Commission declines to change showings that require a narrative to certifications at this time, noting that the Commission has recently taken additional steps to utilize certifications where appropriate, such as in the 2020 unified licensing proceeding, which included new certification options for earth station operators. Moreover, as EchoStar noted in its comments, certain showings require a more thorough and nuanced explanation than what could be contained in a certification. But the Commission agrees that providing applicants with more clarity and guidance on orbital debris plans will aid in Commission review, as SpaceX points out, and plans to incorporate such guidance into the Commission's Transparency Initiative.

ii. Reducing Risk of Dismissal

11. The Commission finds that expediting the processing of space and earth station applications requires reducing the risk that an application will be dismissed before full consideration of the merits of the application, thereby necessitating refiling the application and restarting the application process anew. The Commission takes several actions below to address these issues in light of existing reasons for dismissal.

1. Omissions, Inconsistencies, and Errors

12. Existing rules provide that a space or earth station application is considered unacceptable for filing if the application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character. The requirement that applications be ''substantially complete'' when filed has been in place since 1998 and ended the practice of reviewing the accuracy or merits of specific information in an application before placing it on public notice. Under the ''substantially complete'' standard, an application is reviewed to ensure that it contains all information required by the Commission's rules and, if an application fails to include any of the required information, the application is returned without prejudice as being unacceptable for filing.

13. The NPRM noted that in recent years, Commission staff have worked with applicants to correct omissions or inconsistencies in their applications in order for an application to be deemed acceptable for filing under Commission rules. The NPRM sought comment on this practice and potential alternatives that might speed up application review, such as dismissing applications that contained internal inconsistencies or omissions without prejudice to refiling or, conversely, loosening the standards for acceptability of filing.

14. After consideration of the record, the Commission will maintain the practice of not immediately dismissing applications that contain omissions or internal inconsistencies and instead working with applicants to correct such

omissions or inconsistencies so that the application may be acceptable for filing. Most comments encourage the continuation of the practice of communicating with applicants and allowing them opportunities to cure small mistakes or omissions, instead of issuing dismissals. The Commission finds that dismissing space and earth station applications for even minor omissions and inconsistencies, without an opportunity to correct the deficiencies, is inconsistent with the Commission's goal of expediting the processing of space and earth station applications, since substantial time is required to dismiss and refile a corrected application. The Commission agrees that the same result can be achieved in less time by promptly reviewing the application for any deficiencies and communicating these deficiencies to the applicant, and by giving a limited time for the applicant to make corrections or to provide missing information.

15. In order to achieve the goal of expediting application processing, the Commission expects the Space Bureau will provide applicants with limited timeframes to respond to requests for additional information or to promptly rectify inconsistencies or omissions in the application. Limiting the time to respond will encourage applicants to file applications that are as complete and accurate as possible, with only minor errors or omissions that require correction in the limited timeframe for responding and will help ensure that a request for information does not result in unnecessary delay of processing the application if the applicant does not respond in a timely manner. Several comments support time limits for applicants to respond to Commission staff with additional information or corrections so as to avoid a drawn-out initial review process. Failure to respond within those timeframes will risk dismissal of the application under existing rules. Although some comments proposed specific deadlines for applicants to respond to staff inquiries, the Commission declines to adopt specific deadlines at this time. Space and earth station applications can vary greatly depending on the nature of the operations or whether the activities are novel or involve new technology. As such, it is important to allow some flexibility and case-by-case determinations on setting time limits for responses from applicants. The deadline for response will be communicated clearly to applicants as part of requests for additional information or notices to the applicant that there are errors, omissions, or inconsistencies that need to be resolved before finding the application to be acceptable for filing.

16. The Commission finds that it is unnecessary to change its rules in order to implement this practice. Although the existing rules state that an applicant will be dismissed for various omissions or internal inconsistencies, it does not preclude staff from allowing applicants the opportunity to cure omissions or internal inconsistencies before accepting the application for filing. The Commission expects that there will be prompt communications between staff and applicants in order to expedite the application process.

17. The Commission also received several comments on whether to loosen the standard for accepting applications for filing. AWS and OneWeb put forth what they deem to be faster processes for placing applications on public notice. AWS suggests that, at least for earth station applicants, applications could be automatically placed on public notice after a designated period and applicants could work to cure any errors or omissions during the public notice period. OneWeb advocates for a ''check box'' determination method for placing applications on public notice and proposes revisions to § 25.112(a)(1) to enable quicker determination. Boeing also suggests that the Commission could place applications on public notice without necessarily first finding them to be acceptable for filing. Conversely, Viasat asserts that loosening the acceptability for filing standards would not lead to streamlining, but rather, would result in larger numbers of deficient or incomplete applications being reviewed by Commission staff and third parties, wasting limited resources. Similarly, Verizon/AT&T assert that more stringent standards would reduce processing times by incentivizing applicants to submit complete and accurate applications in the first instance if they believe the Commission is more likely to dismiss an application if it is not complete. Kuiper asserts that applications should be complete at the time of filing to avoid inefficiencies in review and suggests that the Commission require applicants to include a checklist table in their application demonstrating completeness and compliance with all relevant rules. Others do not advocate for strengthening or loosening standards, but rather assert that the Commission could streamline the acceptability for filing process through guidance, by more clearly articulating the Commission's ''substantially complete'' threshold.

18. The Commission finds that it is not necessary to loosen its acceptability for filing standards in order to expedite the processing of space and earth station applications. The Commission has previously explained what is meant by ''substantially complete,'' and continues to hold to this understanding: ''[t]he applications must be complete in substance, and must provide all the information required in the application form.'' This is a reasonable standard for finding that an application is acceptable for filing, and acceptance for filing has legal consequences for a GSO-like space station's place in the queue or an NGSO-like space station's place in a processing round. As such, the Commission continues to find that there is merit to holding applications to a ''substantially complete'' standard and to review an application to ensure that it complies with this standard before accepting the application for filing. The Commission is not convinced that looser standards will result in an expedited process, and agrees with commenters who note that looser standards on the front end of application review will likely lead to a more burdensome review of incomplete applications at later stages of the application process. Although the Commission recognizes the interest in straightforward review, such as via a ''check box'' determination, part 25 applications cover many types of operations, which makes it infeasible to capture all elements of such diverse operations in a ''check box'' format. The Commission is also not convinced that more stringent acceptability for filing standards will expedite application processing. Rigidity in the initial application review can lead to premature dismissals, which in turn will take more of staff and applicants' resources. Instead, the Commission believes that the process can be expedited by providing applicants at the initial application stages with greater transparency and guidance, which applicants will be able to access on the Commission's website as part of the Space Bureau's Transparency Initiative.

19. Finally, numerous commenters support changes to the license application forms that would reduce duplication and the need to manually input technical information in various locations, which would reduce the risk of missing or inconsistent information being submitted. Likewise, commenters generally support the inclusion of compliance checks into the application process. Specifically, numerous commenters have suggested that the Commission consider these types of updates to specific licensing forms,

including the Form 312, the Schedule S, and the Schedule B. Additionally, although the Commission did not specifically ask about updates to ICFS, several commenters suggest that the Commission consider updates or a general overhaul of the filing system.

20. The Commission observes that the electronic filing system used for space and earth station applications, ICFS, is already being updated in ways that respond to many of the issues that commenters raise regarding the technicalities of the application process. As a result of these updates, ICFS will have several new features for application forms, including automatic error notifications in the Form 312, data entry alerts to misinformation, and an overall validation prior to submitting a filing. There also will be some pre-filled sections of the application form based on previously entered data. With regard to modification or amendment applications, applicants will be presented with a pre-filled form including the information from their current authorization or pending application that they seek to modify or amend. This pre-filled form can then be adjusted in the areas that the applicant seeks to modify or amend. Additionally, the Schedule B and Form 312 will allow users to delete or remove sections or data that are no longer needed. The Commission is also updating the fields in the Schedule S to better align with technical rules. The Commission finds that these updates address many, but not all, of the changes recommended by the comments. The Space Bureau expects to continue dialogue with system users about possible further improvements after the initial modifications of ICFS are introduced.

2. Conformance With International Frequency Allocations

21. Currently, with the exception of applications for streamlined small satellite and small spacecraft applications, applications will be dismissed if they request authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union. The Commission adopted this rule in 2003, with the purpose of eliminating premature applications filed prior to the ITU adopting a necessary frequency allocation, which can take several years. At the time, the Commission had reasoned that applications that were filed far in advance of adoption of an ITU allocation had a likelihood of being placeholder applications for purposes of warehousing spectrum.

22. The Commission adopts the NPRM's proposal to amend the license application acceptability for filing criteria to place waiver requests for satellite operations not in conformance with the International Table of Frequency Allocations on an equal procedural footing with other requests for waiver of substantive Commission rules. Comments widely support adoption. Furthermore, the limitation on acceptance of applications has caused delay in review of applications for acceptability for filing and has complicated review of space station applications, which is contrary to the goal of expediting the space station application process. In addition, as the Commission observed when it adopted streamlined rules for the processing of applications for small satellites, there may be benefits associated with operations not consistent with the current International Table of Frequency Allocations in certain circumstances. Finally, Commission experience over the last twenty years since the rule was adopted supports the finding that the concerns about warehousing of spectrum and orbital resources through placeholder applications have been effectively addressed through the Commission's milestone and bond requirements, which makes this rule unnecessary. The Commission finds that adoption of this proposal will help avoid the dismissal of an application for failure to meet a rule that is no longer needed to protect against placeholder applications that warehouse spectrum resources.

23. Accordingly, the Commission amends § 25.112 of Commission rules to delete subparagraph (a)(3) and will no longer immediately dismiss applications that request authority to operate a space station in a frequency band that is not allocated internationally for such operations under the ITU Radio Regulations when the applications include a request for waiver of the allocation. Section 25.112(b) also is revised accordingly to remove reference to paragraph (a)(3) of § 25.112. The Commission emphasizes that this decision to allow the Commission to review such applications is not intended to alter the allocation status of these bands. In considering the merits of such requests, the Commission recognizes its obligations as a ratifying member of the ITU, and as the regulatory body that allocates spectrum for commercial use in the United States. Accordingly, any application that includes waiver requests for satellite operations not in conformance with the International Table of Frequency Allocations would need to demonstrate sufficient justification to support the waiver request in light of Article 4.4 of the International Telecommunication Union Radio Regulations (ITU R.R.), which states that Administrations shall not assign frequencies to a station in derogation of the International Table of Frequency Allocations, except on the express condition that the station's use of the frequencies shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the ITU R.R. For example, the Commission agrees with comments that urge, to the extent that there are co-channel operations that might be the subject of potential interference, the request for waiver should address those operations. The Commission may also consider, on a case-by-case basis, as some have suggested, opening rulemaking proceedings and accounting for any relevant ITU process to address potential related allocation issues if appropriate. Moreover, the Commission expects that such applicants would be engaged contemporaneously in activities to work toward modification of the International Table of Allocations at the ITU, and the applicants should consider describing the status of such efforts in their application. The Commission also encourages entities that are considering making a request for authorization for a non-conforming operation to discuss the request with Commission staff prior to filing.

24. A few commenters suggest that the Commission adopt specific requirements related to these non-conforming operations beyond the Commission's rules for considering waivers, and propose other limitations, including for protecting against potential interference to operations in the radioastronomy service (RAS) and earth exploration-satellite service (EESS). Other commenters argue that interference concerns to such services can be managed through coordination. The Commission declines to adopt such proposals and is not convinced that adopting strict engineering protocols is a necessary or appropriate means for preventing interference for every operation, or for operations in certain services. Further, it will not result in expediting the licensing process for applicants or the Commission. Instead, the Commission can process such requests on a case-by-case basis, taking into account the facts and circumstances of individual waiver requests and the potential for harmful interference in

specific cases. Based on the Commission's experience in instances where applicants have been granted limited non-conforming operations, such as in the small satellite context, any waivers that the Commission determines to grant would include non-interference conditions and coordination conditions as necessary.

25. Furthermore, the Commission is not convinced that caps on the number of waivers it grants or on the duration of operations will prevent the potential for harmful interference, and such caps will not further Commission goals to streamline the licensing process. Rather, the Commission emphasizes its review on technical showings of non-interference and on coordination requirements, which will better prevent harmful interference in these circumstances. Similarly, the Commission will not exclude entire bands from consideration for non-conforming use, as some commenters suggested. To preemptively exclude certain bands from possible waiver request consideration would undercut goals of fostering innovation in the satellite industry since the Commission cannot predict what bands will support future development. The Commission believes that the requirements for demonstrating non-interference and coordination, along with the Commission's waiver standards, will provide sufficient protections to existing services.

3. Unbuilt NGSO Systems

26. Commission rules currently contain procedural safeguards against applications that are considered more likely to be speculative or intended to warehouse spectrum resources, including the prohibition on one party having multiple NGSO-like applications or licensed but unbuilt NGSO systems in the same frequency band. This prohibition prevents a party from applying for an additional NGSO-like satellite system license in a particular frequency band if that party already has an application for an NGSO-like satellite system license on file or a licensed-but-unbuilt NGSO-like satellite system in the band. The Commission adopted the unbuilt systems rule, in addition to bond and milestone requirements, as a means to restrain speculation without restricting applicants' business plans and to give licensees an incentive to surrender licenses for satellite systems that they do not intend to build. Recognizing that the unbuilt NGSO systems rule can lead to delays in processing applications by adding complexity to the review in determining whether an applicant has violated the rule, and, considering the current rapid state of development of NGSO systems, the Commission sought comment on whether the limit on unbuilt NGSO systems may be a hinderance to the acceptability of legitimate satellite applications and if so, whether the Commission should amend or eliminate such limitation.

27. After review of the record, the Commission concludes that the goal of expediting the initial processing of space station applications will be advanced by eliminating the part of the Commission's rules in §§ 25.159(b) and 25.137(d)(5) that prohibits a licensee or market access grantee respectively from applying for another NGSO license or grant of market access where the party has an already licensed-but-unbuilt NGSO system for the same frequencies. The Commission finds that it is often time consuming to determine whether the relevant applicant violates this prohibition, for example when there are disputes in the record regarding whether a system is ''unbuilt,'' and the need to make this determination prior to accepting an application for filing can delay placing an application on public notice to permit consideration of the application on the merits. In situations where it was not clear whether the prohibition has been violated by the proposed application, the Space Bureau (and the former International Bureau) has accepted the application for filing, without prejudice to a determination And the Commission is not convinced, as some commenters suggest, that its elimination will lead to speculative license applications or spectrum hoarding. The Commission's current bond and milestone requirements, which were also put in place to deter speculative license applications and spectrum warehousing, remain in place, and the Commission agrees with many commenters who note that these requirements serve as adequate deterrents. The Commission's experience has been that the restriction on unbuilt NGSO systems is unnecessary to deter warehousing of spectrum and orbital resources, in light of the bond and milestone requirements and other safeguards, and the restriction on unbuilt NGSO systems could delay processing times without a corresponding benefit to the public. However, the Commission retains and revises the portion of the rule that prohibits operators from filing multiple applications in the same frequency band where such applications are subject to NGSO-like processing round rules, which require that in the event there is insufficient spectrum in the requested frequency band or there is harmful interference between NGSO FSS licensees, the available spectrum is divided equally among licensees.

28. Several commenters suggested that instead of eliminating the prohibition on licensed-but-unbuilt systems, the Commission could ''soften'' the rule, amend it, more broadly interpret the meaning of ''unbuilt'', or issue waivers on a case-by-case basis. The Commission finds that these suggested changes for nuanced, case-by-case approaches in interpretation would not result in an expedited review process on the whole. Rather additional review, and therefore a more-lengthy application processing timeframe, would be required. Kuiper suggests that the Commission amend the rule to focus on investment and progress. The Commission's current bond and milestone requirements are set up for such purpose. When the Commission adopted the bond requirements in 2003, the Commission reasoned that requiring satellite licensees to make a financial commitment to construct and launch their satellites would help deter speculative applications and thus prevent valuable spectrum resources from lying fallow. When the Commission adopted a revised escalating methodology for bond and milestone rules in 2015, which increases operators' liability over time, the Commission aimed to further incentivize satellite operators to construct and launch spacecraft expeditiously or surrender their authorization early. The Commission agrees with comments that state that the Commission's bond and milestone rules have been effective in deterring speculative applications, and the Commission finds that the licensed-but-unbuilt NGSO-like systems prohibition on filing an application for another NGSO-like satellite system license in that frequency band in § 25.159(b) has become redundant, while also creating an additional hurdle to the application process for NGSO operators. While the Commission agrees that a focus on investment and progress towards completing a system is prudent, it does not agree that amending the unbuilt systems rule to focus on investment is necessary. Rather, the most effective method for streamlining the application process is to eliminate the prohibition on applying for another NGSO system license when an applicant already has a licensed-but-unbuilt NGSO-like system and rely on the Commission's longstanding bond and milestone requirements.

29. Several commenters suggest that at the very least EESS operators should

be exempt from the unbuilt NGSO systems rule given their views that EESS operators often have the ability to share spectrum without causing interference. This point is moot given the decision to eliminate the prohibition on licensed-but-unbuilt systems and therefore there is no longer any need to expressly exempt EESS operators from it. However, the Commission agrees with commenters that EESS NGSO operators provide a relevant example for why the one-size-fits-all unbuilt NGSO systems rule did not account for the nuance of certain NGSO satellite operations, or the way NGSO systems have developed in the 20 years since the rule was implemented. As both Spire and a group of EESS operators point out, EESS operations licenses are routinely granted outside of processing rounds, which the unbuilt systems rule was designed for. Again, the Commission's experience and the record demonstrate that eliminating the prohibition on licensed-but-unbuilt systems is the most efficient method for streamlining, and because of the bond and milestone requirements, the Commission can do so without jeopardizing its goals to prevent spectrum warehousing and speculative applications. Additionally, by revising the remaining language in §§ 25.159(b) and 25.137(d)(5) to clarify that the prohibition on filing multiple applications in the same frequency band is tied to being subject to the Commission's ''modified processing round rules,'' found in § 25.157, EESS operators who are granted licenses or market access outside of processing rounds will not be subject to §§ 25.159(b) or 25.137(d)(5) at all.

30. Several commenters suggest that the Commission take into account how to ensure that elimination of the unbuilt systems rule does not result in the potential for interference for other operators and ensure that ITU Equivalent Power Flux Density (EPFD) limits are adhered to. ViaSat cautions that, if this rule were eliminated, applicants might ''propose to operate multiple NGSO 'systems' that would use the same frequency bands as a way of circumventing the Commission's substantive EPFD limits'' or ''attempt to game the default 'band-splitting' mechanism set forth in § 25.261 of the Commission's rules (which divides spectrum equally among the 'systems' involved in an inline interference event).'' Intelsat raises a similar concern regarding EPFD limits and suggests that the Commission clarify that NGSO systems must continue to adhere to the EPFD limits incorporated in § 25.146(c) of the Commission's rules. This decision to eliminate the unbuilt systems rule does not alter § 25.146(c), which remains in place. Moreover, applicants will continue to be held to Commission and ITU rules on EPFD limits. And, as stated above, the Commission is retaining the portion of the rule that prohibits operators from filing multiple applications in the same frequency band in specific circumstances to avoid the possibility of a single operator receiving unequal division of spectrum in cases where band-splitting is required.

31. SES, while supporting the removal of the unbuilt systems prohibition in § 25.159 so long as other protections are in place, suggests that the Commission ensure that NGSO operators must be limited to one application per processing round. SES argues that ''[p]ermitting an applicant to submit two or more system designs in a [processing] round would multiply the burden on Commission staff and other round participants, who would be forced to evaluate each possible configuration, even if it is clear that the applicant only intends to build and launch one of its proposed options.'' EchoStar disagrees and suggests that applicants might plan to use different NGSO systems for different applications, and given the financial commitments that are necessary, companies are unlikely to file applications frivolously. EchoStar appears to go even further and suggest that the Commission eliminate § 25.159(d), which states, among other things, that ''[i]n the event that a licensee misses three or more milestones within any three-year period, the Commission will presume that the licensee obtained one or more of those licenses for speculative purposes.'' The Commission declines to consider this suggestion further as it is beyond the scope of the Commission's queries related to paragraph (b), and the Commission finds that paragraph (d) in § 25.159 plays a distinct and important role in deterring speculative applications. The Commission agrees with SES that there are different considerations related to its rules on the number of applications per applicant per processing round versus whether the applicant has a licensed-but-unbuilt system. Although NGSO systems have evolved and an operator may have two distinct purposes for seeking multiple applications in the same processing round, the Commission is not convinced that doing away with this aspect of the rules will expedite the application or review process for processing rounds, but rather would require heightened review and consideration that might delay the processing of the application. Additionally, this aspect of the rule serves to ensure that in the event there is insufficient available spectrum in a frequency band, the available spectrum will truly be shared equally among the licensees, as required by § 25.157(e) of Commission rules on NGSO processing rounds. Although commenters state that an applicant could have a legitimate reason to apply for separate systems in the same processing round, the commenters do not provide any concrete examples of what these reasons might be or how, as a general matter, the benefits of allowing multiple applications in the same processing round outweigh the identified potential harms. As a result, there is no basis in the record to determine that the potential harms identified by the Commission in adopting the rule, and identified by comments in this proceeding, could be outweighed by unspecified potential benefits. In sum, the Commission adopts revisions to § 25.159(b) and its equivalent for market access grantees in § 25.137(d)(5) by eliminating the prohibition on licensed-but-unbuilt systems in these rules, but the Commission retains the limitation on the number of applications per NGSO operator per processing round. The Commission has also clarified the text related to the number of applications to demonstrate this limit is tied directly to being subject to the procedures in §§ 25.157 and 25.261. The Commission notes that it has eliminated references to §§ 25.122 (small satellites streamlined licensing procedure) and 25.123 (small spacecraft streamlined licensing procedure) as exceptions to § 25.159(b) and § 25.137(d)(5) because licenses granted under these streamlined procedures are made outside of a processing round and thus not subject to §§ 25.157 and 25.261. Additionally, the Commission revises § 25.159(c) of the rules for clarification and to reflect these changes.

4. Waiver Requests

32. Current rules state that an application will be unacceptable for filing and will be returned to the applicant if it is defective, internally inconsistent, or incomplete, or if it does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements. Current rules also, however, specifically allow the Commission to accept for filing an application that is defective for these reasons if the application contains a request for waiver of any rule, regulation, or requirement with which the application is in conflict. Alternatively, the Commission may

accept the application if the Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement. Thus, the current rules allow an otherwise defective application to be accepted for filing if it contains a request for waiver of a rule that it is in conflict with, or the Commission waives the rule on its own motion.

33. The NPRM asked whether applications omitting necessary waiver requests should be dismissed, and how well-supported should a waiver request need to be to overcome the acceptability for filing requirements, including waivers of filing deadlines or waivers that raise novel issues. This is an important question, given the risk of an application being delayed from being accepted for filing while the applicant and opposing parties argue whether an application complies with Commission rules, where the application did not explicitly request a waiver of the rule in question. As a result of this argument, a decision on the merits of the application instead becomes a procedural question that inhibits accepting the application for filing and placing the application on public notice for comment, which is a prerequisite for acting on the application.

34. The Commission finds that no change to its rules is necessary to address the potential delay of an application being accepted for filing because of a failure to request a waiver of Commission rules. Instead, the Commission encourages applicants to remember to request any necessary waivers of Commission rules or policies in order to avoid dismissal of applications or delay in accepting applications for filing. By filing a waiver request, the applicant removes a potential obstacle to accepting the application for filing and placing the application on public notice. Likewise, the Commission does not need to change any rules in order to answer the question of how well-supported a waiver request needs to be to overcome the acceptability for filing requirements. The current rules simply state that a defective application can be accepted for filing if it is ''accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict.'' Because the waiver request must seek a waiver of a ''specific rule, regulation, or requirement,'' an application cannot satisfy § 25.112(b)(1) with a blanket request for waiver of any unspecified rule that the Commission might find the application in conflict with. The rule does not impose any separate requirements on how well-supported the waiver request needs to be, so the general requirement for any waiver request to show ''good cause'' under Commission rules applies.

35. Some comments suggest that the Commission adopt requirements for, or limitations on, requests of waivers of specific rules. The Commission finds that these suggestions go beyond the generalized goal of expediting the processing of space and earth station applications and are better addressed in the context of specific applications and rulemakings. Accordingly, the Commission will not address them here.

b. Expediting Public Notice of Acceptability for Filing

36. The Commission establishes timelines for Space Bureau staff to either: (1) determine that an application for authority to operate a space or earth station is acceptable for filing and place it on public notice; or (2) notify the applicant that staff has identified questions, errors, or omissions, and that the application will not be placed on public notice until after these questions, errors, or omissions are addressed by the applicant to the satisfaction of the Bureau. For all earth stations and GSO space station applications, the Commission concludes that a 30-day timeline is appropriate. For all NGSO space station applications, the Commission concludes a 60-day timeline is appropriate. In all cases, the timeline is measured in calendar days, starting on the day after the application is filed in ICFS. The Commission finds that expressing clear goals for accepting an application for filing or notifying the applicant of deficiencies will establish expectations for expedited processing of applications for both staff and applicants.

37. The NPRM asked whether the Commission should have deadlines for accepting certain space or earth station license applications for filing or dismissing them as unacceptable for filing. It also sought comment on what a reasonable deadline might be and whether deadlines should depend on the type of application filed. Additionally, it asked whether there should be limitations on any acceptability for filing deadline the Commission might adopt, such as for applications requesting operations not consistent with the International Table of Frequency Allocations, or where the application could involve initiation of a new NGSO processing round, or for contested applications. Finally, it queried whether instituting a deadline would result in more dismissals.

38. Most comments welcome the establishment of timeframes for placing applications on public notice, however, commenters differ on whether the timelines should be definitive deadlines, such as ''shot clocks,'' or more flexible goalposts. Commenters are generally wary of automatic dismissals. AWS explains that a shot clock resulting in automatic dismissal if not approved before the deadline would not streamline the process, rather it would require an additional review burden on both the applicant and the Commission staff. Instead of an automatic dismissal approach, AWS suggests that earth station applications could be automatically placed on public notice after 30 days if the Commission does not deem them acceptable for filing sooner. Inmarsat and SIA also suggest a 30-day shot clock for placing earth station applications on public notice. Boeing puts forth a similar suggestion, proposing that all earth station applications be placed on public notice after 30 days of filing and space stations after 90 days of filing, except in the event the staff determines that the application is incomplete or defective (thus requiring additional time for inquiry to the applicant). EchoStar also generally suggests a 30-day timeline for placing applications on public notice, unless they are deemed incomplete. However, EchoStar disagrees with the notion of making this timeline a shot clock and suggests that extensions to the timeline should be allowed when staff identify genuine issues that require more time to address. Globalstar and Viasat also advocate against firm shot clocks for placing applications on public notice, especially for space station license applications. Globalstar suggests that Commission staff will likely require at least 90 days for making the necessary technical assessments to find space station licenses acceptable for filing. SpaceX advocates for the Commission to adopt the anticipated timeframes the Commission contemplated in 2015 and 2016 for placing applications on public notice as firm shot clocks.

39. The Commission believes that establishing specific timeframes for finding applications to be acceptable for filing and placing them on public notice will aid in expediting the licensing process. Additionally, the Commission agrees with those comments that highlight the need for the Commission to have sufficient time to review applications and notify and engage in dialogue with applicants whose applications may require additional communication between Commission

staff and the applicant due to the novel nature or complexity of the application. Given these considerations, the Commission concludes that maintaining a level of flexibility for dialogue with applicants is necessary when the Space Bureau staff discover errors, omissions, or unclear information. In these cases, the Commission includes an alternative to the specified timelines for determining acceptability for filing. However, in the spirit of transparency, the Commission directs the staff to notify applicants regarding their application status if those applications will not go on public notice within the specified timelines and offer the reasons why the application is not acceptable for filing. Applicants can expect, therefore, that they will receive some form of application status confirmation within the specified timelines, either with the application appearing on an accepted for filing public notice, or with a communication notifying the applicant that the application requires the submission of missing information. The Commission anticipates that the most common form of this communication will be a letter to the applicant from Space Bureau staff, but does not preclude the use of other forms of communication that provide adequate notice to the applicant of the need to submit missing information. The Commission also notes that it has a weekly schedule for placing applications that are accepted for filing on public notice: the earth station public notice is released each Wednesday, and the space station public notice is released each Friday. Therefore, in some circumstances, Space Bureau staff might determine an application is acceptable for filing within the 30- or 60-day timeframe, yet the application might not appear on public notice until the next possible public notice release date following the determination.

40. Notably, the Commission does not require that an application be automatically dismissed if Space Bureau staff does not find it acceptable for filing within the specified timelines. Such a requirement could result in more applicants having to resubmit dismissed applications simply because of expiration of time, which would delay, rather than expedite, the earth and space station application process. The Commission also does not require automatically placing an application on public notice as acceptable for filing if Space Bureau staff does not act within the specified timelines. Although the Commission expects Space Bureau staff to act on applications consistent with the specific timelines established today, the Commission recognizes that unusual circumstances may prevent such timely action. For example, new information may be placed into the record at a very late date that calls into question whether the application is acceptable for filing and does not allow time for Space Bureau staff to notify the applicant that the application is not accepted for filing. It would not serve the public interest to automatically accept the application for filing in such circumstances, simply because of expiration of time.

41. The Commission is mindful that different applications have different levels of complexity, and Commission rules require various considerations depending on the type of application. The Commission appreciates observations that space station applications in particular can require significant time to review, even for acceptability for filing. For NGSO applications, there is often a need for a longer time-period of initial review to reflect the greater complexity related to those applications. For example, deciding whether to accept an application as the lead application in a processing round requires a more substantive review than GSO applications which are not subject to a processing round because opening a new processing round affects not only the lead applicant, but also any other applicants that would apply in that processing round as well as applicants and grantees from prior processing rounds and, potentially, future processing rounds; further, potential lead applicants have often requested waiver of the processing round requirement altogether, which, if granted, would obviate the need to open a new round. Similarly, an application for NGSO space stations can include thousands of satellites in a single application, which greatly increases the amount of information that Space Bureau staff will need to review for acceptability for filing. Additionally, in the Commission's experience, NGSO applicants typically request a larger range of frequencies and utilize more complex and numerous beam patterns than GSO applicants, which again necessitates a longer review period than that for GSO and earth station applications.

42. The Commission also recognizes that the timelines it establishes today differ from some previously established, which did not distinguish between applications for GSO and NGSO space stations, and were for applications considered to be ''straightforward'', ''not contested'', and ''barring any complications.'' The Commission finds that applying these new timelines across application types will provide greater certainty to applicants, and that the initial review timelines for GSO space stations of 30 days and initial review timeline for NGSO space stations of 60 days, reflects the differences identified above in the amount of time required to review the different types of applications. By establishing timelines for initial review that the Commission believes it can consistently meet, the Commission helps to mitigate regulatory uncertainty.

43. The Commission also finds that it is unnecessary to limit these timelines to applications for initial authorizations and for modifications. The remaining categories of filings—amendments, transfers of control, and assignments—to the extent that they require public notice, are not inherently more complex or review intensive than applications for initial authorizations and for modification with respect to determining acceptability. The Commission also applies these timeframes across the board, rather than limiting them to a smaller category such as ''straightforward'' applications. The decision to accept an application for filing need not consider the underlying merits of the application and is generally done prior to receiving comments and objections from other parties, which results in a simpler process than deciding whether to grant or deny an application. In any event, the Commission believes that any staff time spent on determining whether an application is straightforward or not, for example, would be better spent on reviewing the application for public notice and resolving issues that prevent it from being accepted for filing.

44. Although some commenters suggest that the Commission consider longer timeframes for initial space station review, the Commission notes that the initial review, while thorough, is focused on an acceptability for filing determination, not on the merits of the application, and generally does not require the evaluation of comments and oppositions to the application, and the Commission believes that the revised timelines adopted here can be achieved. These new timelines strike a balance between the need to place applications for earth and space station operations on public notice expeditiously, and the time needed for staff to make the determination of whether an application is acceptable for filing under Commission rules.

c. Action on the Merits

45. The NPRM sought comment generally on whether the Commission should adopt broader shot clocks for ultimate ''action taken'' on certain types of space station or earth station applications. The Commission received a wide variety of comments and suggestions on this issue and the record is divided on support for ''action taken'' shot clocks. Some commenters approve of shot clocks for certain types of applications (for example, just for earth station applications), while others argue that all types of space and earth station applications should have shot clocks for Commission action taken. Suggested shot clock timeframes range from 45 days after the close of public notice to one year for ''action taken'' on an application.

46. A number of commenters oppose shot clocks for actions taken, cautioning that the institution of shot clocks for taking action on licenses could jeopardize the thorough review of complex technical issues that the Commission's rules require. Some commenters point out that considering action taken shot clocks is ''premature'' or that the Commission could consider the possibility of shot clocks in the future, after the Space Bureau has been well-established and resourced, but that implementing them should at least be deferred for the time being. As with the acceptability for filing issue, some commenters suggest that the Commission issue timelines instead of shot clocks, which would serve more as goals than obligations for action taken, or that the Commission can toll the shot clocks as needed. Several commenters offer specific suggestions for alternatives to action-taken shot clocks. Intelsat argues for an ''auto grant'' procedure for straightforward applications, and AWS suggests that uncontested earth station applications could begin operations on a non-inference basis after six months, if action is not yet taken on their application.

47. Consistent with several of the commenters' views, the Commission recognizes the need to process applications promptly after accepting them for filing. Nevertheless, the Commission declines at this time to adopt a general, one-size-fits-all shot clock for taking action on license applications. At this point in the proceeding, the record does not show that any timeframe in particular would accommodate these complexities while also accelerating action on more straightforward applications. However, the Commission is dedicated to fostering innovation in the satellite industry and to preserving the United States as an attractive and competitive licensing destination for satellite services. The Commission believes it is important to further consider and address issues raised by commenters regarding timelines for taking action on the merits of an application. The Commission therefore seeks further comment in the FNPRM on proposals regarding action on the merits such as shot clocks and/or timeframes for action.

48. The Commission also finds that certain earth station applications are suitable for a more streamlined application review process, and the Commission discusses in more detail below its decision to expand the category of applications that may be deemed granted after a specific period of time.

49. Within the scope of the inquiry regarding whether the Commission should consider adopting any shot clocks or processing deadlines, the Commission sought comment on which types of license applications the Commission should consider ''straightforward'' and whether to implement processing timelines for such applications in particular. The Commission pointed to its 2016 public notice that identified expected processing timelines for straightforward, uncontested earth station applications, barring any complication, and asked whether these guidelines should be codified, whether a more flexible approach and considerations of other factors was warranted, or whether given the pace of change in space activities and corresponding number of applications presenting unique or complex issues, the Commission should limit the scope of ''straightforward'' applications. After considering the record, the Commission declines at this time to further identify or otherwise separate out processing timelines for ''straightforward'' applications.

50. The record was divided on this issue. Numerous commenters generally support the notion of identifying ''straightforward'' applications and creating processing timeframes for those applications. However, only a few commenters specifically propose examples of applications that the Commission consider as ''straightforward.'' RBC Signals suggests including: (1) applications for earth stations operating with a U.S.-licensed satellite and consistent with standard technical characteristics for the relevant bands; (2) earth station modification applications when it is an application to add a U.S.-licensed satellite or market access grantee operating in previously authorized bands; and (3) a new earth station license that is at a site within a defined distance of similar earth station operations (*e.g.,* 1 mile) and operating within same parameters as pre-existing earth stations within the ''straightforward'' category. Intelsat proposes that uncontested earth or space station applications that pose minimal interference risk should be considered ''straightforward.'' Boeing, TechFreedom, and SpaceX suggest that the Commission should not make such a distinction, and rather should apply shot clocks to all types of applications, regardless of whether they are ''straightforward.''

51. The Commission does not believe the divided record supports the creation of a category of ''straightforward'' applications at this time. The Commission recognizes the potential benefit to creating such categories so long as they are well-defined, and so long as their development and application in specific cases do not hinder the goal of processing applications promptly. At the same time, the Commission recognizes the points made by SpaceX and TechFreedom that creating a carve-out for only ''easy'' or uncontested applications might incentivize the filing of oppositions and increase the number of contested applications. In the same vein the Commission agrees with commenters that the Commission can streamline its rules to expedite processing of routine and novel or complex applications. The Commission is currently faced with an unprecedented influx of earth station and space station applications. The Commission finds that the other concrete steps it is taking today, including removing no longer necessary rules that slow down the application process, committing to issue numerous forms of guidance for streamlining application filing, and creating a 30 and 60-day timeframe for determining acceptability for filing, are the types of practical and necessary processing improvements that the Commission can quickly implement. Additionally, the Commission notes that it will further consider timeframes and/or shot clocks for actions taken on the merits of applications in the FNPRM. Taking into account the divided record on this issue, the Commission concludes that it would not serve the Commission's goals to further identify or carve-out certain types of applications as ''straightforward'' at this time.

d. Expediting Earth Station Applications To Add Points of Communication

52. The Commission takes action to expedite the processing of a common category of earth station applications: applications to modify existing earth station licenses by adding new space stations as points of communication. Specifically, the Commission adopts a new rule, under which applications to add space station points of communication to existing earth station licenses will be deemed granted 35 days after being placed on public notice, under certain conditions described below and provided that no objection to the application is filed. This rule is added as a new paragraph, (i) in § 25.117, which governs modifications of station licenses that require Commission authorization. While the Commission declines to draw lines based on whether to consider this type of application to be ''straightforward,'' the Commission finds that, under a specific set of conditions, the process of adding space station as additional points of communication to existing earth station licenses can be significantly expedited.

53. Commission rules allow earth stations to transmit to any space station in the same radio service that is listed as a point of communication in the earth station license, provided that permission has been received from the space station operator to access that space station. The NPRM specifically asked whether applications to add points of communication to existing earth station licenses should qualify as ''straightforward'' so long as the space station to be added is: (1) either U.S.-licensed, or (2) has been granted U.S. market access within the parameters requested in the earth station application, and the applicant identifies either the call sign of or the earth station license(s) in which the space station was granted market access. The NPRM sought comment on whether these types of applications should be automatically deemed granted 60 days after they are filed, absent other Commission action.

54. Numerous commenters support the consideration of earth station operators' applications to add previously authorized space stations as points of communication as ''straightforward'' and to allow for applications to be deemed granted after 60 days, absent other Commission action. AWS suggests that the Commission consider various benchmark shot clocks within the 60-day period for placing the application on public notice and coordination. Several commenters suggest that the Commission go even further and allow the addition of previously authorized points of communication through notification, such as via § 25.118 of Commission rules, instead of through a license application process. SpaceX proposes that notification, instead of authorization, should be allowed when a space station operator is also the earth station licensee and is requesting to add one of its own previously authorized space stations as a point of contact. Microsoft suggests that earth station operators could add any space station as a point of communication, so long as a certain set of conditions are met. EchoStar suggests that the Commission should permit earth station operators to specify in their application that they will communicate with all FCC-authorized NGSO systems (just as is done with GSO systems currently), which will reduce the number of modifications requiring filing.

55. In contrast, several commenters suggest the Commission proceed with caution on this proposal. For example, Iridium cautions that in the case of earth stations subject to § 25.203(k) of the Commission's rules, applicants must either complete coordination or demonstrate that they will not cause unacceptable interference and therefore proposes that given these requirements, such applications should not be considered ''straightforward'' or subject to the proposed 60-day timeline for being deemed granted. Viasat asserts that adding NGSO systems as points of communication could ''upset'' the EPFD limit calculations and coordination agreements in NGSO system authorizations. Viasat proposes that if the Commission allows for streamlining in adding points of communication, earth station operators should be required to include a certification that the addition will not result in operations or impacts inconsistent with the EPFD analysis or coordination agreements of the NGSO operator.

56. After consideration of the record, the Commission concludes that, in a specific set of instances, it is feasible and appropriate to adopt a licensing procedure by which an application to add a point of communication can be deemed granted 35 days after the application has been found acceptable for filing and also placed on public notice if no sooner action is taken by the Commission. The Commission notes that in some instances an application might be found acceptable for filing within 30 days, but might not be placed on public notice exactly within 30 days due to the weekly schedule of releasing public notices. This timeline takes into account the Commission's new timeframe for finding earth stations to be acceptable for filing within 30 days (or notifying the applicant of the need for further information). Therefore, a substantially complete application to add a point of communication would be found acceptable for filing and placed on public notice within 30 days, starting on the day after the application is filed in ICFS, and then would be deemed granted 35 days after public notice, a total of 65 days for processing. The Commission agrees with commenters that applications requiring coordination, including Federal coordination, require additional time.

57. Initially, this expedited process is premised on the following conditions, which are necessary to balance faster processing for adding points of communication and protecting other spectrum users from interference. First, the Commission notes that Commission staff will retain discretion to remove the application from the deemed-granted process if merited. Additionally, the Commission requires that these modifications be limited in nature, and not part of a larger set of modifications, which might require more lengthy review. Therefore, the modification can be only to add space stations as points of communication. Next, applications will need to demonstrate that the addition of a new point of communication will not cause earth station transmissions to exceed the highest equivalent isotropically radiated power (EIRP), EIRP density, and bandwidth prescribed for any already authorized emission. Finally, this option will only be available in frequency bands that are not shared with Federal or terrestrial wireless users and are not subject to coordination requirements with other non-Federal satellite services. The Commission does, however, seek comment in the FNPRM regarding some additional circumstances in which an earth station modification to add a point of communication could be expedited.

58. The Commission is not convinced, as some have suggested, that all applications for adding a point of communication are appropriate for notification-only consideration. The Commission observes that applications to add space stations as points of communication are only required for space stations that are not on the Permitted List, and for operations that fall outside ''routine'' earth station technical parameters. If a GSO space station is licensed by the Commission, or has been granted access to the U.S. market, and operates in specified frequency bands where GSO FSS has

primary status, then the space station is a Permitted List space station and is automatically included as a point of communication for all U.S.-licensed earth stations that list the Permitted List as a point of communication, provided that the earth station operations with the space station fall within the existing technical parameters and conditions of the earth station license. The Permitted List already represents the Commission's judgment as to which space stations can be added as points of communications to an earth station's license without requiring an application and approval by the Commission. Allowing the addition of any space station as a point of communication, without prior application or approval, in any orbit or service or frequency band, and without regard to whether the operations fall within existing technical parameters would essentially render the Permitted List meaningless, which is an outcome outside the scope of this proceeding to expedite the processing of space and earth station applications. The Permitted List is limited to GSO space stations providing fixed-satellite service, and the Commission has not so far determined that it is possible to include NGSO space stations within the definition of the Permitted List. In the accompanying FNPRM, however, the Commission seeks comment on commenter proposals to create a process for allowing U.S.-licensed earth stations to have automatic authority to communicate with certain approved NGSO space stations, in a manner similar to the how the Permitted List functions for approved GSO space stations.

e. Other Suggestions

59. The NPRM sought comment generally on the issues the Commission identified for streamlining and on other guidance that may assist applicants and speed application processing. In response to the Commission's general questions, some commenters advocate for additional rule changes that they believe will reduce the need to file modification applications, but which are either outside of the scope of this proceeding or which the Commission declines to take action on at this time. Additionally, some of the comments and suggestions more appropriately align with other ongoing Commission proceedings and, as such, are not further considered in this document. Finally, several comments can be addressed by clarifying and explaining existing Space Bureau practices. The Commission values the input that it received in response to the NPRM, and the absence of action today or inclusion in the accompanying Further Notice of Proposed Rulemaking in no way precludes consideration of these ideas as part of other existing proceedings or as part of future rulemaking proceedings.

64. *Suggestions for Modifications without Prior Authorization.* Spire proposes that the Commission adopt a new provision in § 25.118 for EESS spacecraft, permitting operators to notify the Commission of these set of changes. SpaceX suggests that the Commission expand Spire's proposal to include all NGSO systems, not just EESS. The Commission declines to adopt Spire's proposal at this time. While the Commission believes expanding notification-only modifications could have merit, the Commission remains concerned that this proposal in particular would leave important determinations, such as the evaluation of interference risk, solely to the applicant. The Commission notes that it is not creating a new requirement here, rather the Commission is declining to adopt a proposal to amend § 25.118 to include certain additional changes to satellites. Commission rules on modifications remain the same. The Commission notes, however, that some satellite design changes may not require Commission review or notification at all if they create no change to radio frequency, do not affect orbital debris mitigation plans, or otherwise affect the parameters or terms and conditions of the station authorization.

65. Spire additionally proposes that discrepancies related to whether an applicant can make a minor modification through notification or via prior authorization can be alleviated to some degree if the Commission codifies a broad definition of the term ''technically identical.'' Spire proposes that ''[t]he Commission should formally codify the explanation it provided in the 1994 MSS Order that 'technically identical' spacecraft are those that have 'identical satellite antenna footprints and transmission parameters' but which may have de minimis variation among them—including the physical structure or microelectronics.'' Additionally, Spire suggests that the Commission should expressly exempt ''technically identical'' components from modification rules. The Commission declines to adopt a specific definition of ''technically identical'' in the rules at this time because such a definition may become outdated as technology advances. The Commission aims to amend its rules in technologically-neutral and performance-based ways, and in light of this framework the Commission finds it inappropriate to adopt such a definition in the rules based on the current record.

66. *Suggested Changes to the Space Bureau's Special Temporary Authority Process.* Several commenters suggest various approaches to further streamline the license application process for STAs. SpaceX proposes, and other commenters agree, that STAs with an underlying request for full authorization should renew automatically while the underlying application is pending. RBC Signals suggests that the Space Bureau adopt a procedure which allows STA operations to continue while a license application with identical parameters to the STA is under review. And Intelsat suggests that the Commission ''adopt the [§] 1.62 policies previously employed'' for Earth station applications ''wherein operators were not required to file a new STA extension request prior to the grant of the previous STA extension request.''

67. Here the Commission finds that an explanation of the Space Bureau's STA process is merited when considering these comments. Commission rules for special temporary authorizations under part 25 allow operators to apply for STAs for various amounts of time, and state that STAs expire at the end of those allotted terms. These rules stem from the Communications Act, which allows the Commission to grant STAs for up to 180 days if they are placed on public notice per section 309(f) of the Act, and allows the Commission to grant up to 30 and 60-day STAs in certain circumstances without public notice per section 309(c)(2)(G) of the Act. The reasoning behind these rules is simple: special temporary authorizations are meant to be used under exceptional or ''extraordinary'' circumstances, as the Act states and as Commission rulemakings have emphasized. The Space Bureau has applied § 1.62 to special temporary authorizations in that if an applicant with an STA files a new STA application to extend its temporary authorization three days prior to the end of its current license term, it may continue its temporary operations while the new STA application is pending. As such, an operator with an STA may continue its temporary operations while a new application to extend the time period for their authorization is under review and the Commission acknowledges this in its license grants. The Commission notes that the rules allow for STAs for up to 180 days at a time. Despite this, many applicants still file shorter-term STA applications for up to 30 days, which the Commission can issue without placing on public notice, or 60-day durations, which the Commission has the discretion to not

place on public notice if the applicant plans to file an underlying request for regular authority of the service. Additionally, because requests for special temporary authority are meant to be granted under exceptional circumstances and for relatively short duration, any coordination that is needed for the temporary authorization is generally limited to the time period requested by the applicant, or no more than up to 180 days. Additional requests then require additional coordination for the new time period.

68. For all these reasons, the Commission declines to adopt the suggested changes to the STA rules at this time. The Commission recognizes that STA applications are often accompanied by an underlying license or modification application for regular operations, and it can be difficult for applicants to determine the full timeframe for which they might require special temporary authorization. However, the Commission notes that applicants may consider a variety of time frames for their STA needs, including the 180-day STA. The Commission also notes that it does not wish to circumvent the 180-day STA requirements, which is distinguished by the 30 and 60-day STAs only in so far that the Act requires the Commission to place applications for STAs beyond 60 days and up to 180 days on public notice. Therefore, the Commission has discretion to place 30 and 60-day STA applications on public notice, and may choose to do so in the event an individual applicant files numerous shorter-term STA requests that result in longer than a 180-day use. Ultimately, the Commission is hopeful that the Commission's continued streamlining efforts will lead to faster processing of underlying applications and a reduction in the need for extensions to STAs.

69. *Additional Suggestions for Streamlining of Modifications.* SpaceX suggests that the Commission should permit and encourage operators to submit a single modification application that applies an identical change across multiple Earth station licenses. SpaceX proposes, as part of its suggestion, that for any modification that would require re-coordination with other commercial or Federal users, ''the Commission could require the modification application to attach coordination information for each separate site.'' TechFreedom suggests ''a hybrid licensing approach under which the common elements (technical parameters, points of communications, etc.) of a network of earth stations could be licensed on a network basis under a single license with only the individual elements (*e.g.,* location) licensed separately.'' Both SpaceX and TechFreedom assert that these types of changes would dramatically cut down on the amount of modification applications that would require filing and review.

70. The Commission is conscious of commenters' points regarding large numbers of modification applications being filed for common changes, and will consider this issue for future updates to the filing system, which currently cannot support this modification. In response to TechFreedom's suggestion, the Commission notes that it has made similar efforts to streamline common changes, such as through C-band earth station network licensing in § 25.115(c)(2) of Commission rules and the unified licensing system for space stations and blanket earth stations adopted in 2020. In the 2020 order creating the unified licensing system, the Commission declined to include individually licensed earth stations in the process, finding that adding them would ''create more complexity than its streamlining benefit,'' given the need for site-specific information and coordination. This reasoning remains valid. However, the Commission may consider similar suggestions such as TechFreedom's ''hybrid licensing'' approach as the Commission gains more experience with some of the streamlining rules the Commission has more recently put in place, such as the unified licensing system, that have not yet been widely utilized. The Commission may consider further streamlining in a future proceeding.

71. *Emission Designators.* Intelsat and SIA both suggest that the Commission do away with requiring emission designators in earth station applications. SIA asserts that requiring applicants to include emission designators causes confusion, delay, and complexity to the application process ''without providing any meaningful information.'' The Commission declines to consider changes to the emission designator requirements. Emission designators provide a variety of necessary information to inform the licensing process and to make a determination to authorize an operation under Part 25. For example, they provide technical information that Commission staff use to verify and calculate the power spectral density, occupied bandwidth, whether transmissions are analog or digital, etc. Additionally, this information is typically requested as part of the Federal coordination process with NTIA. The Commission also notes that emission designators are required by OET in their license applications as well for similar reasons.

72. *Market Access and Orbital Debris Mitigation Showings.* In response to the NPRM, a few commenters suggest that the Commission ensure market access operators and U.S. licensees are subject to the same rules, in particular they suggest the Commission amend its rules related to orbital debris showings. TechFreedom asserts that applicants for market access are treated more favorably than U.S. licensees in part because ''domestic applications are vetted at the acceptance stage to determine whether their orbital debris showings are sufficient, whereas such showings in market access petitions are not reviewed until a later stage.'' Conversely, OneWeb notes that market access applicants are effectively required to provide the same orbital debris showings as license applicants, but because this is often done through requests for information from Commission staff, OneWeb asserts the determination process is delayed as compared with the process for U.S. licensees.

73. As an initial matter, the Commission notes that § 25.114(d)(14)(v) of the Commission's rules, which addresses orbital debris showings for market access grantees, is the subject of a pending petition for reconsideration filed by SpaceX for the same reasons raised by SpaceX in this proceeding. Therefore, the Commission will consider any changes to that rule in the other proceeding. However, the Commission takes this opportunity to emphasize that the Commission applies the same scrutiny to orbital debris showings for market access grantees and U.S.-licensees, and ultimately determines whether to grant market access based on the same technical information that a U.S.-licensee would provide for orbital debris considerations. The Commission's current rules allow market access applicants to satisfy the requirement to describe the design and operational strategies to minimize orbital debris risk by demonstrating that their debris mitigation plans are subject to direct and effective regulatory oversight by the national authority that licensed their space station operations. Such a showing requires market access applicants to provide supporting documentation and respond to inquiries from Commission staff in order for the staff to compare the foreign rules and determine whether there is an effective regulatory regime in place. This includes submitting an English language version of the debris mitigation rules or regulations of the authority and indicating the current status of the

national licensing authority's review. However, while this provision allows the Commission to accept such equivalent regulatory oversight showings, it does not preclude applicants from alternatively providing the same orbital debris mitigation showings that are detailed elsewhere in § 25.114 of the rules. And, except for a few cases, applicants have generally found it preferable to just provide the Commission with a description of the design and operational strategies for orbital debris mitigation instead of presenting all of the showings necessary to demonstrate the effective regulatory oversight of another national authority.

74. *UMFUS Pre-Application Coordination.* Verizon/AT&T assert in their comments that the Commission could streamline the license application process by requiring earth station operators in bands shared with the Upper Microwave Flexible Use Service (UMFUS) to engage in additional pre-application coordination and certify conformance with § 25.136 of the Commission's rules and Space Bureau guidance in addition to the Part 101 coordination requirements. Additionally, they suggest that the Commission require earth station operators to provide more than visual information about proposed earth station contours, including the antenna gain at the horizon or the maximum equivalent isotropically radiated power at the horizon to validate how the contours were developed. OneWeb, Viasat, Intelsat, and EchoStar disagree with this proposal. The Commission agrees with commenters' assertions that these proposals fall outside the scope of this rulemaking. Similarly, the Commission finds that Viasat's proposal to amend the review process under § 25.136 is also beyond the scope of this rulemaking. The Commission agrees that operators must fully engage in the coordination process identified for specific applications, but does not believe this proceeding, which focuses on expediting the license application process, is the pertinent forum for considering additions to pre-application coordination requirements.

75. *Redefining NGSO systems and EESS Licensing.* Spire suggests that the Commission consider expanding and altering its NGSO licensing framework beyond the streamlined procedure carve out for small satellites in § 25.122. The Commission notes that Spire's suggestions, which concern the overall licensing framework, operator definitions, and NGSO processing rounds, are beyond the scope of this rulemaking. Similarly, Spire's proposals related to amending the U.S. Table of Frequency Allocations for space-to-space transmissions in the S-Band and considering other frequencies for intersatellite links is beyond the scope of this rulemaking. The Commission may consider these suggestions when contemplating future rulemaking proceedings.

76. *Other Ongoing Commission Proceedings.* Several other commenters raise issues that are beyond the scope of this proceeding but may be more appropriate for consideration in other ongoing Commission proceedings. For example, Kuiper suggests that the Commission can streamline its licensing procedures in part by finishing its rulemaking to revise § 25.261 of the Commission's rules. SpaceX asserts these issues are beyond the scope of this rulemaking. We agree and we note that the Commission adopted new rules for satellite system spectrum sharing and issued a further notice of proposed rulemaking on April 20, 2023. Turion Space proposes that In-space Servicing, Assembly, and Manufacturing (ISAM) operations should be authorized by service category and the Commission should develop a new framework for space stations that deploy third-party payloads. The Commission has issued a Notice of Inquiry on ISAM operations and proposals related to these novel operations are more appropriate for consideration in that proceeding and are beyond the scope of this rulemaking. Myriota's suggestions related to Space-as-a-service (SaaS) and licensing antennas hosted at third-party facilities are also beyond the scope of this proceeding, however the Commission notes that similar suggestions have been raised in response to the Commission's ISAM NOI.

77. *Station-keeping Requirements.* Intelsat suggests that the number of modification and STA requests could be cut down by revising § 25.210(j) of the Commissions' rules to permit maintaining GSO satellites within 0.1° of their assigned orbital longitude, which is consistent with the ITU's east-west station-keeping requirements as opposed to the Commission's current rules, which require maintaining satellites within 0.05° of their assigned orbital longitude. Intelsat suggests that this change would give operators increased flexibility for conducting fleet management maneuvers and obviate the need for requests for modifications or STAs in that situation. This suggestion falls outside the scope of this proceeding, which is focused on expediting the application process and not a review of all of the Commission's technical rules. Nonetheless, the Commission notes that it has amended the rule in the past to allow exceptions for end-of-life operations, and has considered waiver requests to this rule for applicants in the past. The Commission believes its current rules and practice are prudent, while allowing operators to apply for a waiver if needed under unique conditions.

78. *Bureau Practices.* Several commenters raise issues that can be clarified by pointing commenters to current Space Bureau practices, procedures, and policies. One commenter suggests that the Commission waive, for good cause, NGSO-like processing rules for EESS operators. This type of waiver has been granted where justified given the nature of EESS operations and the ability for operators to share spectrum. Similarly, requests for email notification when licenses are granted and contact information for Bureau staff are already a part of Space Bureau practice. However, the Commission notes that FCC emails are sent to the designated point of contact on applications and, the Commission reminds applicants to notify the Commission of any updates to their designated point of contact details.

79. *Timing of Orbital Debris Showings.* The Swedish Space Corporation asserts that the Commission should allow applicants to address space debris mitigation plans and deorbiting strategy after a license is granted because these matters require obtaining data from manufacturers and may cause delay before licensing. The commenter could raise this in the Commission's Orbital Debris Mitigation proceeding. While orbital debris assessments are a key component in determining whether to grant a license or market access, in some instances the Commission has authorized licenses on the condition that the applicant must submit its orbital debris plan through a modification and meet the requirements in the Commission's rules prior to commencing operations.

80. *License Conditions.* A number of commenters raise suggestions and observations about the Commission's practices related to license conditions. Commenters suggest, for example, that the Commission could cut down on the license processing time by also limiting the number of conditions applied to each license. TechFreedom suggests this could be achieved in part by adding a new rule to part 25 ''making clear that all licenses are issued subject to any rule changes later adopted.'' Similarly, Intelsat asserts that current license grants are more lengthy than needed due to restatements of various of FCC rule requirements. SpaceX asserts that the Commission should avoid imposing

any conditions that conflict with § 25.118. SpaceX also asserts that the Commission has inconsistently applied conditions to similarly situated applicants in the past and suggests that the Commission should adopt ''consistent conditions—ideally with identical language—that reduce the incentive for operators to claim heightened conditions for their competitors and reduce the need for operators to contest their competitors' applications to ensure equitable treatment.''

81. The Commission finds these comments to be outside the scope of the queries on expediting application processing, and rather directly concern the specifics of license operations. However, the Commission recognizes that authorization conditions do at times include restatements of Commission rules. As commenters point out, all operators are subject to the rules in part 25, unless granted a waiver of a specific rule section. Additionally, it is already well established that licenses are subject to changes in rules that are the result of Commission rulemaking proceedings. Nonetheless, the Space Bureau may consider these suggestions when crafting future license conditions. Regarding SpaceX's suggestion, the Commission notes that certain conditions may apply generally, for example if applications are requesting a particular frequency or waiver of a particular section of Commission rules. In such instances, effort is made to have standardized conditions that are placed in license grants where possible, and the Commission expects the Space Bureau will continue to review license conditions accordingly. Beyond that, however, the Commission notes that each application presents individualized circumstances and operations, and conditions will reflect those differences. For example, the conditions placed on an applicant requesting to launch and operate one NGSO satellite will be different from an applicant requesting to launch and operate a fleet of satellites. In turn, the number of satellites, the size and location of the fleet, and other factors will all play a role in what conditions are placed on an operator.

82. *Experimental Licensing.* Turion Space suggests that the Commission's experimental licensing rules under part 5 of Commission rules should be updated and that the Space Bureau, not OET, should administer the experimental licenses. OET has delegated authority to administer experimental licenses under part 5, in coordination with the Space Bureau when necessary. The Commission notes that part 5 rules cover all manner of experimental licenses and OET has the delegated authority and expertise related to experimental licenses generally. When OET receives experimental license applications for satellite operations, OET and the Space Bureau coordinate given the Bureau's subject-matter expertise on satellite operations.

83. *Physical Characteristics of Spacecraft.* SpaceX suggests that the Commission should cease requiring operators to provide specific dimensions for satellites, claiming requests for such information is inconsistent with Commission rules and policy. The Commission disagrees with SpaceX's interpretation of Commission rules and policy. In a past licensing streamlining proceeding the Commission deleted a specific requirement in § 25.114(c)(10) requiring space station applications to provide, among other things, specific dimensions and mass because the Commission found that the information was either collected elsewhere or was unnecessary. In the case of specific dimensions, this information is often pertinent to the design and operational strategy that operators submit to demonstrate compliance with orbital debris mitigation under § 25.114(d)(14). Although the Commission removed the blanket requirement under § 25.114(c)(10) in 2013, the Commission retains authority under § 25.114(d)(14) to ensure that applicants submit sufficient showings to ensure compliance with orbital debris mitigation requirements concerns and therefore may request or expect operators to provide such information in individual cases.

84. *Public Participation in the Application Process, Informal Complaints, and Commission Discretion on Considering Comments.* TechFreedom and SpaceX suggest that the Commission can further streamline the application process by dismissing any late-filed informal complaints related to an application. Additionally, TechFreedom suggests that the Commission hold informal complaints to the standards set forth in § 1.41 of the Commission's rules. Both commenters suggest that the informal complaint procedure has been used to frustrate and slow down application processing.

85. As commenters suggest, the Commission's rules offer multiple avenues for public participation related to Commission licensing actions: for example, through filing objections or petitions to deny under § 25.154(a), through informal objections under § 25.154(b), as well as other avenues such as § 1.1307 (actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared). Formal pleadings, such as petitions to deny, must generally be made within the 30-day public comment period, however, the Commission has authority to extend the opportunity for public comment. Under FCC rules, pleadings that are not filed in accordance with § 25.154(a), including those not meeting the 30-day deadline, are classified as informal objections under subsection (b). The Commission recognizes that allowing informal objections that are not subject to the 30-day public notice timeframe may slow down the pace of application processing in some instances, especially when a significant number of comments are generated due to an application for innovative services and novel operations. However, allowing public comment under the Commission's existing processes and rules benefits the review process, especially when comments are well thought out, and factually supported. TechFreedom cites to *NetworkIP, LLC* v. *Federal Communications Commission,* 548 F.3d 116 (D.C. Cir., 2008) and proposes that the Commission should extend the court's reasoning in that case ''to the informal complaint procedures for satellite applications'' and hold ''all parties to strict filing deadlines''. The Commission finds the court's decision in *NetworkIP* to be inapposite. In that case, the court found that the FCC's failure to apply its six-month filing deadline by granting a waiver was arbitrary and capricious. 548 F.3d at 128. Unlike the situation in *NetworkIP,* here, by accepting a filing after the 30-day period and classifying it as an informal objection, the Commission is complying with its rules, not waiving them. The Commission believes the benefit of robust debate and input as part of the record outweighs the concerns about delay, and therefore decline to change the informal objection process. However, in those cases where parties file frivolous pleadings, or pleadings meant solely to delay the process, the Commission reminds them that such filings are prohibited under § 1.52 of the Commission's rules.

f. Digital Equity and Inclusion

60. In the NPRM, the Commission noted its continuing efforts to advance digital equity for all, consistent with the Communications Act and with Executive Order 13985. Specifically, the Commission asked how its streamlining proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of

the Commission's relevant legal authority. Both SIA and EchoStar assert that efforts to expedite the licensing process will advance digital equity. EchoStar notes that a simpler, more efficient application process supports the Commission's digital equity and inclusion goals and will make it easier for satellite operators to offer services and lower costs to users across the country, including members of historically disadvantaged groups. Additionally, EchoStar notes that a streamlined process makes it more likely that a wide range of applicants will be able to participate in space business. SIA similarly emphasizes the effect of satellite broadband services in closing the digital divide for rural communities in particular and highlights the important role that satellite remote sensing services can play in natural and cultural resource management on Tribal lands. SIA also urges the Commission to ''continue to adopt rules that remain neutral with respect to the business models of the satellite systems that the Commission authorizes . . . [which] will ensure that the benefits of broadband satellite services will continue to be available to all end user groups, including underserved consumers, and the business, industries, and government infrastructure that support them and their communities.''

61. The Commission agrees with commenters that its efforts to expedite the application process and increase transparency for applicants will aid in lowering barriers to new entrants into the satellite communications industry. The Commission also agrees that supporting efforts to increase connectivity to historically underserved communities is in line with the Commission's mandate under the Communications Act and Commission efforts to comply with Executive Order 13985. With this in mind, the actions the Commission takes today to increase transparency and guidance for applicants are aimed at increasing accessibility, supporting innovation, and furthering the Commission's goal of increasing connectivity for all.

IV. Final Regulatory Flexibility Analysis

62. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Expediting Initial Processing of Satellite and Earth Station Applications Notice of Proposed Rulemaking (NPRM) released in December 2022. The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

a. Need for, and Objectives of, the Final Rule

63. In recent years, the Commission has received an unprecedented number of applications for earth and space station licenses. The final rule facilitates and expedites the acceptance for filing of satellite and earth station applications under 47 CFR part 25 and adopts other streamlining measure to keep pace with growing demand for satellite services and innovative satellite operations. This rulemaking continues to and will promote competition and innovation among satellite and earth station operators, including the market entry of new competitors by removing barriers to applying for licenses.

64. This document changes to Commission rules aimed at reducing barriers and burdens on satellite operators. Specifically, the document removes and reserves § 25.112(a)(3) thus allowing operators to seek a waiver for operations not in conformance with the international table of allocations. Additionally, the document removes the prohibition on licensed-but-unbuilt systems for NGSO operators by amending §§ 25.159(b) and 25.137(d)(5), and creates a new, streamlined processing framework for earth station operators to add satellite points of communication under certain circumstances. Finally, the document lays the groundwork for a broader transparency initiative led by the Space Bureau to provide clarity and access to applicants when interfacing with the Commission's license application processes and filing system.

b. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

65. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

c. Response to Comments by the Chief Counsel for Advocacy of the Small Business

66. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments the Chief Counsel for Advocacy of the Small Business Administration (SBA) filed in this proceeding, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules or policies in this proceeding.

d. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

67. The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

68. Below, the Commission describes and estimate the number of small entities that may be affected by the adoption of the final rules.

69. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

e. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

70. The final rule amends rules that are applicable to earth and space station operators requesting a license or authorization from the Commission, or entities requesting that the Commission grant a request for U.S. market access. The changes adopted in the final rule, as described below, will decrease the burden for small entities and other business operators. Specifically, this final rule eliminates the rule requiring automatic dismissal of applications requesting operations not in conformance with the international table of allocations, eliminates the NGSO unbuilt systems rule, and creates an expedited licensing process for certain earth station operators to add points of communication. Further, in light of these limited changes and rule reductions, the Commission does not believe that small entities will have to hire professionals to comply with the final rule.

f. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

71. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

72. The final rule amends the Commission's rules governing acceptability for filing by removing and reserving § 25.112(a)(3), which led to automatic dismissals of applications that proposed frequency operations not in conformance with the international table of frequency allocations. By removing this barrier, applicants may now apply for a waiver of the international table, just as operators applying under the small satellite or small spacecraft streamlined procedures have been able to do and just as all operators have been able to apply for waivers of the U.S. table of frequency allocations.

73. As an alternative, the Commission could have left 25.112(a)(3) in place. This would have potentially created a barrier to innovative uses of spectrum and stifled the development of the industry, including for small entities. The Commission allowed waivers of the international table of frequency allocations for small satellites and small spacecraft through its streamlined rulemaking processes, found at §§ 25.122 and 25.123 respectively. However, small entities as defined for purposes of the RFA do not always align with the requirements to apply for a license under the small satellite or small spacecraft streamlined process. By removing 25.112(a)(3), all applicants may now seek a waiver for nonconforming use instead of risking automatic dismissal of an application that required time and resources to file.

74. In addition, the final rule removes the prohibition on applicants from applying for an additional NGSO-like satellite system license in a particular frequency band if that party already had a licensed-but-unbuilt NGSO-like satellite system in the band. By removing this prohibition the Commission eliminates an additional barrier to applicants in moving forward with their satellite operations while maintaining safeguards against speculative license applications through the Commission's bond and milestone requirements.

75. As an alternative, the Commission could have allowed applicants to seek waivers of the prohibition on a case-by-case basis. This alternative would have been more costly to small entities, requiring additional resources to craft a request for waiver as part of their application or to engage with outside counsel to assist with crafting the waiver request. Leaving the rule as is would have potentially created a barrier to small entities to apply for a license and expand their operations.

76. The final rule creates a new, streamlined review process under § 25.117 (Modification of station licenses) for earth station operators to add points of communication under specific circumstances. The Commission identified a set of circumstances under which the review process can be expedited and applications for this modification can be deemed granted 35 days after being placed on public notice. This new process will allow applicants to add points of communication to their operations at a quicker pace, thus creating an economic benefit to operators as well as a benefit to the public who will be able to access the services being provided sooner.

g. Report to Congress

77. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

78. *It is ordered*, pursuant to Sections 4(i), 7(a), 301, 303, 307, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303, 307, 309, 310, 332, that this Report and Order *is adopted*, the policies, rules, and requirements discussed herein *are adopted*, Part 25 of the Commission's rules *is amended* as set forth in Appendix A.

79. *It is further ordered* that Part 25 of the Commission's Rules *is amended* as set forth in Appendix A and such rule amendments will become effective 30 days after publication in the **Federal Register**.

80. *It is further ordered* that the Office of the Secretary, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

81. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 2. Amend § 25.112 by removing and reserving paragraph (a)(3) and revising paragraph (b) introductory text.

The revision reads as follows:

§ 25.112 Dismissal and return of applications.

* * * * *

(b) Applications for space station authority found defective under paragraph (a)(4) of this section will not be considered. Applications for authority found defective under paragraph (a)(1) or (2) of this section may be accepted for filing if:

* * * * *

■ 3. Amend § 25.117 by adding paragraph (i) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(i) Unless otherwise ordered by the Commission, an application to add a space station point of communication to an earth station authorization will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided:

(1) The license modification is only to add one or more points of communication;

(2) The modification will not cause the earth station transmissions to exceed the highest EIRP, EIRP density, and bandwidth prescribed for any already authorized emission; and

(3) The new space station point of communication will operate with the earth station only in frequency bands that are not shared with Federal or terrestrial wireless users and are not subject to coordination requirements with other non-Federal satellite services.

■ 4. Amend § 25.137 by revising paragraph (d)(5) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(d) * * *

(5) Entities that have one market access request on file with the Commission for NGSO-like satellite operations in a particular frequency band will not be permitted to request access to the U.S. market for another NGSO-like satellite system in that frequency band in the same processing round subject to the procedures of §§ 25.157 and 25.261.

* * * * *

■ 5. Amend § 25.159 by revising paragraph (b) and paragraph (c) introductory text to read as follows:

§ 25.159 Limits on pending applications and unbuilt satellite systems.

* * * * *

(b) Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band will not be permitted to apply for another NGSO-like satellite system license in that frequency band in the same processing round subject to the procedures of §§ 25.157 and 25.261.

(c) If an applicant has an attributable interest in one or more other entities seeking one or more space station licenses or grants of U.S. market access, the pending applications and licensed-but-unbuilt satellite systems filed by those other entities will be counted as filed by the applicant for purposes of the limits on the number of pending space station applications or requests for U.S. market access and licensed-but-unbuilt satellite systems in this section and in § 25.137(d)(5). For purposes of this section, an applicant has an ''attributable interest'' in another entity if:

* * * * *

[FR Doc. 2023–26699 Filed 12–5–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 231129–0281; RTID 0648–XC365]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Revised Final 2023 and 2024 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS publishes revisions to the final 2023 and 2024 harvest specifications for the 2024 groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) that are required by the final rule implementing Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This action is necessary to revise the 2024 trawl catcher vessel sector's Pacific cod allocation of the total allowable catch and associated halibut and crab prohibited species catch (PSC) limits in the BSAI. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2023 and 2024 harvest specifications for 2024 and associated apportionment of reserves are effective at 0001 hours, Alaska local time (A.l.t.), January 1, 2024, until the effective date of the final 2024 and 2025 harvest specifications for BSAI groundfish, which are anticipated to be published in the **Federal Register** in early 2024.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), the annual Supplementary Information Reports (SIRs) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA) prepared for the final 2023 and 2024 harvest specifications are available from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.* The 2022 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2022, and SAFE reports for previous years are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Avenue, Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from the Council's website at *https://www.npfmc.org.* Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review, the Social Impact Analysis, and the Finding of No Significant Impact (FONSI) prepared for Amendment 122 to the FMP and the implementing rule may be obtained from *https://www.regulations.gov* in docket number NOAA–NMFS–2022–0072 or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Amendment 122 and the Pacific Cod Trawl Cooperative (PCTC) Program

On August 8, 2023, NMFS published a final rule to implement Amendment 122 to the FMP (Amendment 122), which establishes a limited access privilege program to harvest Pacific cod in the BSAI trawl catcher vessel (CV) sector (the PCTC Program). The PCTC Program allocates Pacific cod quota share to qualifying groundfish License Limitation Program license holders and qualifying processors and requires participants to form cooperatives to

harvest the quota. A complete description of the purpose and background of Amendment 122 is in the proposed rule for that action (88 FR 8592, February 9, 2023), as well as the final rule (88 FR 53704, August 8, 2023).

The PCTC Program and Accompanying Changes to the Harvest Specifications

In order to effectively manage the BSAI Pacific cod trawl CV fisheries in the beginning of 2024, NMFS must revise the final 2023 and 2024 harvest specifications (88 FR 14926, March 10, 2023) for 2024 to be consistent with Amendment 122 and implementing regulations. The final rule to implement Amendment 122 revised the Pacific cod trawl CV allocations in the BSAI by implementing the PCTC Program in the BSAI. Additionally, the final rule revised the crab and halibut PSC limits for the BSAI trawl limited access sector to implement the PCTC Program in the BSAI. These regulatory revisions, as well as additional revisions necessary to be consistent with Amendment 122 and implementing regulations (such as groundfish and halibut PSC sideboard limits), will be incorporated into future harvest specifications for the BSAI groundfish fisheries, starting with the proposed 2024 and 2025 harvest specifications, which should be published in December 2023. The final 2024 and 2025 harvest specifications should be published by March 2024.

Revisions to the Final 2023 and 2024 Harvest Specifications for 2024 for the BSAI

Based on the approval of Amendment 122 and its implementing regulations at 50 CFR part 679 (effective September 7, 2023), NMFS is revising the final 2023 and 2024 harvest specifications for 2024 for trawl CV Pacific cod in the BSAI. With this final rule, NMFS revises tables 9 and 16 and adds table 16a in the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) to be consistent with the final rule implementing Amendment 122. Tables 9 and 16 were originally published in the final 2023 and 2024 harvest specifications for the BSAI. This final rule uses the same table numbers and titles for tables 9 and 16 that were used in the final 2023 and 2024 harvest specifications and adds table 16a. However, the title of table 16 is revised to remove the term ''AND 2024'' and the reasons for this revision are addressed in the next section.

Revision to Table 9—Final 2024 Sector Allocations and Seasonal Allowances of the BSAI Pacific Cod TAC

Table 9 lists the final 2024 Pacific cod Community Development Quota (CDQ) and non-CDQ TAC amounts; non-CDQ seasonal allowances by gear; the sector allocations of Pacific cod; and the seasons set forth at § 679.23(e)(5). The table published in the final 2023 and 2024 harvest specifications reflects the trawl CV sector allocation and seasonal allowances, consistent with the regulations in effect when the final 2023 and 2024 harvest specifications were published. Table 9 must be revised to reflect the trawl CV Incidental Catch Amounts (ICAs) and PCTC Program allocations for the A and B seasons in accordance with regulatory changes made under Amendment 122. Pursuant to § 679.131(b), the A and B season trawl CV Pacific cod TAC specified for the BSAI is now allocated between the ICA and the PCTC Program. This is a change from 2023 and prior years, when the trawl CV A and B Pacific cod seasons were not further allocated. This final action revises table 9 to incorporate the correct sector allocations and seasonal allowances for 2024 Pacific cod in the BSAI.

TABLE 9—FINAL 2024 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Values are rounded to the nearest metric ton]

Sector	Percent	2024 Share of gear sector total	2024 Share of sector total	2024 Seasonal allowances	
				Season	Amount
Total Bering Sea TAC	n/a	123,295	n/a	n/a	n/a
Bering Sea CDQ	n/a	13,193	n/a	See § 679.20(a)(7)(i)(B)	n/a
Bering Sea non-CDQ TAC	n/a	110,102	n/a	n/a	n/a
Total Aleutian Islands TAC	n/a	8,425	n/a	n/a	n/a
Aleutian Islands CDQ	n/a	901	n/a	See § 679.20(a)(7)(i)(B)	n/a
Aleutian Islands non-CDQ TAC	n/a	7,524	n/a	n/a	n/a
Western Aleutians Islands Limit	n/a	1,323	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100.0	117,626	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	71,517	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	71,017	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	56,883	n/a	n/a
A-season				Jan 1–Jun 10	29,011
B-season				Jun 10–Dec 31	27,873
Hook-and-line catcher vessels >60 ft LOA	0.2	n/a	234	n/a	n/a
A-season				Jan 1–Jun 10	119
B-season				Jun 10–Dec 31	114
Pot catcher/processors	1.5	n/a	1,752	n/a	n/a
A-season				Jan 1–Jun 10	894
B-season				Sept 1–Dec 31	859
Pot catcher vessels >60 ft LOA	8.4	n/a	9,812	n/a	n/a
A-season				Jan 1–Jun 10	5,004
B-season				Sept 1–Dec 31	4,808
Catcher vessels <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,336	n/a	n/a
Trawl catcher vessels [3]	22.1	25,995	n/a	n/a	n/a
A-Season ICA				Jan 20–Apr 1	1,500
A-season PCTC				Jan 20–Apr 1	17,737
B-season ICA				Apr 1–Jun 10	700
B-season PCTC				Apr 1–Jun 10	2,159
C-season trawl catcher vessels				Jun 10–Nov 1	3,899
AFA trawl catcher/processors	2.3	2,705	n/a	n/a	n/a

TABLE 9—FINAL 2024 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Values are rounded to the nearest metric ton]

Sector	Percent	2024 Share of gear sector total	2024 Share of sector total	2024 Seasonal allowances	
				Season	Amount
A-season				Jan 20–Apr 1	2,029
B-season				Apr 1–Jun 10	676
C-season				Jun 10–Nov 1	
Amendment 80	13.4	15,762	n/a	n/a	n/a
A-season				Jan 20–Apr 1	11,821
B-season				Apr 1–Jun 10	3,940
C-season				Jun 10–Dec 31	
Jig	1.4	1,647	n/a	n/a	n/a
A-season				Jan 1–Apr 30	988
B-season				Apr 30–Aug 31	329
C-season				Aug 31–Dec 31	329

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and Aleutian Islands (AI) Pacific cod TACs, after subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the BS or AI is or will be reached, then directed fishing will be prohibited for non-CDQ Pacific cod in that subarea, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator establishes an ICA of 500 metric tons (mt) based on anticipated incidental catch by these sectors in other fisheries.

[3] The A and B season trawl CV Pacific cod allocation will be allocated to the Pacific Cod Trawl Cooperative Program after subtraction of the A and B season ICAs (§ 679.131(b)(1)). The Regional Administrator establishes ICAs for the A and B seasons of 1,500 mt and 700 mt, respectively, to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Revision to Table 16—Final 2023 and 2024 Prohibited Species Bycatch Allowances for the BSAI Trawl Limited Access Sector

Table 16 lists the seasonal allocations of the 2023 and 2024 crab and halibut PSC limits in the BSAI for the BSAI trawl limited access sector by fishery category and season. These allocations are made pursuant to § 679.21(b) and (e) (as revised). The table published in the final 2023 and 2024 harvest specifications incorporates fishery categories and seasonal apportionments for the trawl CV sector and American Fisheries Act (AFA) catcher/processor (CP) sector. NMFS is removing ''AND 2024'' from the title for table 16 and is adding table 16a to incorporate the correct 2024 PCTC Program allocations to trawl CVs and AFA CPs in accordance with regulatory changes made under Amendment 122. For the PCTC Program, NMFS will apportion the crab PSC limit assigned to the BSAI trawl limited access sector Pacific cod fishery to the trawl CV sector at 90.6 percent and to the AFA CP sector at 9.4 percent (§ 679.131(d)). NMFS will apportion the halibut PSC limit assigned to the BSAI trawl limited access sector Pacific cod fishery to the trawl CV sector at 98 percent and to the AFA CP sector at 2 percent (§ 679.131(c)). NMFS will then apportion the crab and halibut PSC limit to the trawl CV sector for the A and B seasons combined (January 20 through June 10), and C season (June 10 through November 1). Of the crab and halibut PSC limit apportioned to the trawl CV sector, 95 percent will be available for the PCTC Program in the combined A and B seasons and 5 percent is available for the C season.

To implement the crab and halibut PSC reductions under the PCTC Program, NMFS will annually apply a fixed percentage reduction to the combined A and B seasons PSC apportionment derived from the Pacific cod trawl CV sector halibut PSC apportionment because the specific percentage of the total halibut PSC limit assigned to the BSAI trawl limited access sector (§ 679.21(b)(1)(ii)), as well as the total crab PSC limit assigned to the BSAI trawl limited access sector (§ 679.21(e)(3)(i)), may change annually. The total crab PSC reduction under the PCTC Program is 35 percent, and NMFS is fully implementing this reduced PSC limit in the 2024 harvest specifications. The total halibut PSC reduction under the PCTC Program is 25 percent, which will be phased in over 2 years, consistent with the PCTC Program regulations (§ 679.131(c)(1)(iii)). In the first year of the PCTC Program, NMFS is applying a 12.5 percent reduction to the combined A and B seasons trawl CV sector halibut PSC apportionment in the 2024 harvest specifications. In the second year and every year thereafter, NMFS will apply the 25 percent reduction to the combined A and B season trawl CV sector halibut PSC apportionment. This final action revises table 16 to remove ''AND 2024'' because this revision action requires a new table for 2024.

TABLE 16–FINAL 2023 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access fisheries	Prohibited species and area and zone [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	265	7,700	1,192,179	293,234	1,005,879
Rock sole/flathead sole/Alaska plaice/other flatfish [2]					
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish					
Rockfish April 15–December 31	5		1,006		849
Pacific cod	300	975	50,281	50,816	42,424

TABLE 16–FINAL 2023 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR—Continued

BSAI trawl limited access fisheries	Prohibited species and area and zone [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Pollock/Atka mackerel/other species [3]	175	65	5,028	4,235	4,243
Total BSAI trawl limited access PSC	745	8,739	1,248,494	348,285	1,053,394

Note: Seasonal or sector allowances may not total precisely due to rounding.
[1] Refer to § 679.2 for definitions of areas and zones.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[3] "Other species" for PSC monitoring includes skates, sharks, and octopuses.

TABLE 16A—FINAL 2024 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTORS AND PACIFIC COD TRAWL COOPERATIVE PROGRAM

BSAI trawl limited access sector fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	265	7,700	1,192,179	293,234	1,005,879
Rock sole/flathead sole/other flatfish [2]					
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish					
Rockfish, April 15–December 31	5		1,006		849
Total Pacific cod [3]	300	975	50,281	50,816	42,424
AFA CP Pacific cod	6	92	4,726	4,777	3,988
PCTC Program Pacific cod, A and B Season	244	545	28,130	28,429	23,734
Trawl CV Pacific cod, C Season	15	44	2,278	2,302	1,922
PCTC Program unallocated reduction	35	294	15,147	15,308	12,780
Pollock/Atka mackerel/other species [4]	175	65	5,028	4,235	4,243
Total BSAI trawl limited access sector PSC	745	8,739	1,248,494	348,285	1,053,394

[1] Refer to § 679.2 for definitions of areas and zones.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[3] With the implementation of the PCTC Program, the BSAI trawl limited access sector Pacific cod fishery category PSC limits are further apportioned between AFA CPs, PCTC A and B-season, and open access C season (§ 679.131(c) and (d)). In the first year of the Program, 2024, NMFS will apply a 12.5 percent reduction to the A and B season trawl CV sector halibut PSC limit and a 35 percent reduction to the A and B season trawl CV sector crab PSC limit. The proposed 2024 PCTC Program A and B season halibut and crab PSC limits include these reductions. In the second year of the Program and every year thereafter, NMFS will apply a 25 percent and 35 percent reduction to the A and B season trawl CV sector halibut and crab PSC limit, respectively. Any amount of the PCTC Program PSC limit remaining after the B season may be reapportioned to the trawl CV limited access fishery in the open access C season. Because the annual halibut PSC limit for the PCTC Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the reductions to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the PCTC Program.
[4] "Other species" for PSC monitoring includes skates, sharks, and octopuses.
Note: Species apportionments may not total precisely due to rounding.

This final rule is necessary to ensure that appropriate Pacific cod allocations and crab and halibut PSC limits will be in effect for the beginning of the 2024 fishing year for those fishery participants affected by the PCTC Program changes that were established under Amendment 122 and its implementing regulations. These changes to the Pacific cod allocations and crab and halibut PSC limits also will be incorporated in future harvest specifications for the BSAI groundfish fisheries.

Classification

NMFS issues the groundfish harvest specifications pursuant to 305(d) of the Magnuson-Stevens Act. Through previous actions, the FMP and regulations authorize NMFS to issue the groundfish harvest specifications. See 50 CFR part 679. The NMFS Assistant Administrator has determined that these revisions to the final 2023 and 2024 harvest specifications for 2024 are consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator finds good cause to waive prior notice and opportunity for public comment on this action as notice and comment would be unnecessary and contrary to the public interest. Through this action, NMFS revises the final 2024 BSAI harvest specifications to be consistent with the final rule implementing Amendment 122 to the FMP and to ensure that the 2024 trawl CV Pacific cod allocation and PSC limit changes implemented under Amendment 122 and its final rule will be effective at the beginning of the 2024 fishing year. Prior notice and opportunity for public comment on this action is unnecessary because the revisions from this action merely update the 2024 BSAI harvest specifications to reflect allocations and PSC limits implemented and required by the final

rule for Amendment 122: the 2023 and 2024 groundfish harvest specifications have already been subject to notice and comment, and the final rule and Amendment 122 were also already subject to notice and comment. This action does not revise the final 2023 and 2024 BSAI harvest specifications in any substantive manner not previously the subject of notice and comment during the development of Amendment 122 and implementing regulations.

In addition, it is important and necessary that the Pacific cod allocations and PSC limits revised under Amendment 122 and its implementing regulations are effective at the beginning of the 2024 fishing year, rather than waiting to implement the revisions in the final 2024 and 2025 BSAI harvest specifications, which will not be effective until after the start of the 2024 fishing year. The current 2023 and 2024 BSAI harvest specifications became effective before Amendment 122 was published. The Pacific cod fisheries in the BSAI are intensive, fast-paced fisheries. U.S. fishing vessels have demonstrated the capacity to catch the Pacific cod TAC allocations in these fisheries. This fleet in particular targets much of their annual catch early in the year when fish school up to spawn. Much of this fishing will be over by when the final 2024 and 2025 BSAI harvest specifications publish in February or March of 2024. The harvest specifications rely upon annual surveys and analyses to set the following year's allocations. Such surveys were not available in time to assess the data and publish this rule any sooner. Any delay in allocating the 2024 Pacific cod trawl CV TACs under Amendment 122 and its implementing regulations would cause confusion to the industry and potential economic harm through unnecessary discards.

Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing up fishing vessels, allowing them to move from closed fisheries to open fisheries, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace. Accordingly, waiver of prior notice and opportunity for public comment and publication of this final rule is necessary to ensure that the allocations and limitations required under the final rule to implement Amendment 122 will be effective at the beginning of the 2024 fishing year and to provide the regulated community with timely, adequate, and accurate information necessary to allow the industry to plan for the 2024 fishing season, to conduct orderly and efficient fisheries, and to avoid potential disruption to the fishing fleet and processors.

For the same reasons, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date.

NMFS prepared a Final EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS. In January–February 2023, NMFS prepared a SIR for the 2023 and 2024 harvest specifications and determined that a supplemental EIS is not necessary to implement the 2023 and 2024 harvest specifications. Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). NMFS also prepared an EA and FONSI in conjunction with Amendment 122 to the BSAI FMP (See **ADDRESSES**).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. This rule modifies the final 2023 and 2024 harvest specifications to be consistent with Amendment 122 and implementing regulations, for both of which NMFS prepared a FRFA. A FRFA was prepared to evaluate the impacts on small entities resulting from establishing the final 2023 and 2024 harvest specifications, in accordance with Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604). The FRFA was published with the harvest specifications final rule (88 FR 14926, March 10, 2023) and is not repeated here. Additionally, an initial regulatory flexibility analysis (IRFA) and FRFA were prepared for Amendment 122. The FRFA for Amendment 122 incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. A FRFA was not required to implement this rule.

NMFS, however, provides the following information as a plain language guide to assist small entities in complying with this final rule. This final rule is necessary to revise final 2023 and 2024 harvest specifications for 2024 Pacific cod allocations and crab and halibut PSC limits in the BSAI so that the allocations and PSC limits are consistent with new fishery allocations and PSC limits established under the final rule to implement Amendment 122. This action affects all fishermen who participate in the trawl CV and AFA CP sectors Pacific cod fisheries in the BSAI. The specific amounts of Pacific cod TAC apportionments and PSC limit allocations are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures. Additional information on the PCTC Program, including a small entity compliance guide, can be found on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/s3/2023-08/PCTC-Small-Entity-Compliance-Guide-FAQ.pdf.*

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 122–241; Pub. L 122–479.

Dated: November 30, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–26639 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 233
Wednesday, December 6, 2023

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2233; Project Identifier MCAI–2023–00755–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, and Trent 1000–R3 engines. This proposed AD was prompted by reports of wear in the combining spill-valve (CSV) assembly of certain hydro-mechanical units (HMUs). This proposed AD would require removing certain HMUs from service and replacing with a serviceable part or modifying the HMU by replacing the CSV assembly, which is an optional terminating action; and would prohibit installing certain HMUs unless the HMU is a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by January 22, 2024.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2233; 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 NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2233; Project Identifier MCAI–2023–00755–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0119, dated June 12, 2023 (EASA AD 2023–0119) (also referred to as the MCAI), to correct an unsafe condition for all RRD Model Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, and Trent 1000–R3 engines. The MCAI states that occurrences have been reported of finding wear in the CSV assembly of the HMU. This wear can reduce the fuel flow output when the engine is operated at high-power conditions. To address this unsafe condition, the manufacturer published service information that specifies procedures to remove certain HMUs from service and replace with a serviceable part or modify the HMU by replacing the CSV assembly. The MCAI

also specifies an implementation schedule of engine flight-hour limits for replacement of each affected part with a serviceable part and prohibits installation or reinstallation of affected HMUs that have exceeded the allowable engine flight-hour limit unless the HMU is a serviceable part.

The FAA is proposing this AD to prevent thrust reduction, which if not addressed, could result in reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2233.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0119, which specifies procedures for removing certain part-numbered HMUs from service and replacing with a serviceable part or modifying the HMU by replacing the CSV assembly. The EASA AD also specifies prohibiting installation or reinstallation of an affected HMU on any engine unless the HMU is a serviceable part.

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

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2023–0119 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0119 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions within the compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0119. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2233 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 14 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the HMU	7 work-hours × $85 per hour = $595	*$560,000	$560,595	$7,848,330

Operators may modify the HMU to comply with this proposed AD. For modification of the HMU, the FAA estimates the following costs:

Action	Labor cost	Parts cost	Cost per product
Modify the HMU	7 work-hours × $85 per hour = $595	$168,000	$168,595

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.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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

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

(3) Would 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2023–2233; Project Identifier MCAI–2023–00755–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Model Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, and Trent 1000–R3 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by reports of wear in the combining spill-valve assembly of certain hydro-mechanical units. The FAA is issuing this AD to prevent thrust reduction. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0119, dated June 12, 2023 (EASA AD 2023–0119).

(h) Exceptions to EASA AD 2023–0119

(1) Where EASA AD 2023–0119 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where Table 1 of EASA AD 2023–0119 specifies ''26 June 2023;'' replace that text with ''As of the effective date of this AD.''

(3) Where Table 1 of EASA AD 2023–0119 specifies ''01 October 2024;'' replace that text with ''Within 4 months after the effective date of this AD or October 1, 2024, whichever occurs later.''

(4) Where the service information referenced in EASA AD 2023–0019 specifies to discard certain parts, this AD requires those parts to be removed from service.

(5) This AD does not adopt the Remarks paragraph of EASA AD 2023–0119.

(i) Definitions

For the purposes of this AD, the ''implementation date'' is defined as the date the applicable engine flight hours (EFH) limit takes effect.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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 AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@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.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) European Union Aviation Safety Agency (EASA) AD 2023–0119, dated June 12, 2023.

(ii) [Reserved]

(3) For the EASA AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*. You may find EASA AD 2023–0119 on the EASA website at *ad.easa.europa.eu*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26649 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2232; Project Identifier AD–2023–00943–R]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Robinson Helicopter Company Model R22, R22 Alpha, R22 Beta, R22 Mariner, R44, R44 II, and R66 helicopters. This proposed AD was prompted by reports of helicopters losing a tail rotor blade (TRB) tip cap. This proposed AD would require visually checking and inspecting certain part-numbered and serial-numbered TRB tip caps for evidence of corrosion and, depending on the results, removing the corrosion. This proposed AD would also require removing all affected TRBs from service and prohibit installing them on any helicopter. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 22, 2024.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2232; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

• For service information identified in this NPRM, contact Robinson Helicopter Company, Technical Support Department, 2901 Airport Drive, Torrance, CA 90505; phone (310) 539–0508; fax (310) 539–5198; email *ts1@robinsonheli.com;* or at *robinsonheli.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: James Guo, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5357; email: *james.guo@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2232; Project Identifier AD–2023–00943–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to James Guo, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5357; email: *james.guo@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received three reports of TRB tip caps coming loose due to corrosion at the bond on Robinson Helicopter Company Model R44 helicopters. Due to the similarity of the TRB tip caps on Robinson Helicopter Company Model R22, R22 Alpha, R22 Beta, R22 Mariner, R44 II, and R66 helicopters, those model helicopters are also affected by this issue. According to Robinson Helicopter Company, it has also seen TRBs that have corroded to an unserviceable condition, including severe leading edge pitting and degradation of the bond at the tip cap. Robinson Helicopter Company advises that helicopters operating near saltwater are particularly susceptible to corrosion, especially if stored outdoors. Affected TRBs were factory-installed or shipped as spares prior to November 2022. The three reports include a TRB tip cap departing its helicopter. The separate incidents occurred during a run-up check, after landing, and during a landing on different helicopters. Accordingly, this proposed AD would require repetitively checking and inspecting the tips caps of TRB part number (P/N) A029–2 with TRB serial numbers (S/N) up to 11279 inclusive (P/N A029–2 REV A through U inclusive), TRB P/N C029–3 with TRB S/N up to 14329 inclusive (P/N C029–3 REV A through Q inclusive), and TRB P/N F029–1 with TRB S/N up to 3099 inclusive (P/N F029–1 REV A through F inclusive) for evidence of corrosion, removing corrosion, and eventual removal of those TRBs from service.

A debonded TRB tip cap can cause severe vibration and possible failure of the tail rotor gearbox housing. This condition, if not addressed, could result in increased vibrations, reduced controllability, and subsequent loss of control of the helicopter.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Related Service Information

The FAA reviewed Robinson Helicopter Company R22 Service Bulletin SB–120, R44 Service Bulletin SB–112, and R66 Service Bulletin SB–41, each dated December 22, 2022 (SB–120, SB–112, and SB–41). This service information specifies procedures for revising the Pilot's Operating Handbook of affected helicopters by inserting the included ''Special Tail Rotor Tip Preflight Inspection'' page and briefing all pilots and maintenance personnel regarding those inspection procedures. This service information also specifies procedures for replacing, and returning or sending photos of affected TRBs to Robinson Helicopter Company.

The FAA also reviewed Robinson Helicopter Company R22 Service Letter SL–93, R44 Service Letter SL–82, and R66 Service Letter SL–40, each dated June 30, 2021 (co-published as one document) (SL–93, SL–82, and SL–40). This service information specifies procedures for removing corrosion from TRBs, applying protectant, balancing TRBs after corrosion removal or painting, chemical cleaning TRBs, and tap testing the TRB tip cap area.

Proposed AD Requirements in This NPRM

This proposed AD would require visually checking the TRB tip cap area of certain part-numbered and serial-numbered TRBs for an exposed tip cap bond line or bubbled paint, repetitively inspecting those TRBs for evidence of corrosion and, depending on the results, removing the corrosion. The owner/operator (pilot) holding at least a private pilot certificate may check the TRB tip caps for an exposed tip cap bond line or bubbled paint and must enter compliance with the applicable paragraph of the proposed AD into the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The pilot may perform this action because it only involves visually checking the TRB tip caps for an exposed tip cap bond line or bubbled paint. This action could be performed equally well by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

This proposed AD would also require removing those TRBs from service within 10 months and prohibit installing them on any helicopter as of that date.

Differences Between This Proposed AD and the Service Information

The effectivity of Robinson Helicopter Company SB–120, SB–112, and SB–41 identify the helicopter S/Ns that the affected TRBs were factory-installed on and the shipping dates of affected TRB spares, whereas this proposed AD would apply to the specified model helicopters with certain part-numbered and serial-numbered TRBs installed. Robinson Helicopter Company SB–120, SB–112, and SB–41 specify revising the Pilot's Operating Handbook of affected helicopters and briefing all pilots and maintenance personnel regarding the inspection requirements, whereas this proposed AD would not require those actions. Robinson Helicopter Company SB–120, SB–112, and SB–41 do not specify any visual inspections accomplished by a mechanic, whereas this proposed AD would require repetitive visual inspections of the TRBs by persons authorized under 14 CFR 43.3. Robinson Helicopter Company SB–120, SB–112, and SB–41 specify replacing, and returning or sending photos of affected TRBs by December 31, 2024, whereas this proposed AD would require removing affected TRBs from service within 10 months.

SL–93, SL–82, and SL–40 specify procedures for chemical cleaning TRBs, tap testing the TRB tip care area, applying protectant, and balancing TRBs after corrosion removal or painting, whereas this proposed AD would not require those actions.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,701 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Visually checking or inspecting the TRBs (up to two affected TRBs per helicopter) would take about 0.25 work-hour for an estimated cost of up to $22 per helicopter per check cycle, for a U.S fleet cost of up to $59,422 per check cycle. If required, removing any corrosion would take about 2 work-hours and parts would cost about $100 for an estimated cost of $270 per TRB. Replacing a TRB would take about 3.5 work-hours and parts would cost up to about $3,600 for an estimated cost of up to $3,898 per TRB.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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

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

(3) Would 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Robinson Helicopter Company: Docket No. FAA–2023–2232; Project Identifier AD–2023–00943–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Robinson Helicopter Company helicopters, certificated in any category, identified in paragraphs (c)(1) through (3) of this AD.

(1) Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters with tail rotor blade (TRB) part number (P/N) A029–2 with TRB serial numbers (S/N) up to 11279 inclusive (P/N A029–2 REV A through U inclusive), installed;

(2) Model R44 and R44 II helicopters with TRB P/N C029–3 with TRB S/N up to 14329 inclusive (P/N C029–3 REV A through Q inclusive), installed; and

(3) Model R66 helicopters with TRB P/N F029–1 with TRB S/N up to 3099 inclusive (P/N F029–1 REV A through F inclusive), installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by reports of helicopters losing a TRB tip cap. The FAA is issuing this AD to detect and prevent TRB tip cap failures. The unsafe condition, if not addressed, could result in increased vibrations, reduced controllability, and subsequent loss of control of the helicopter.

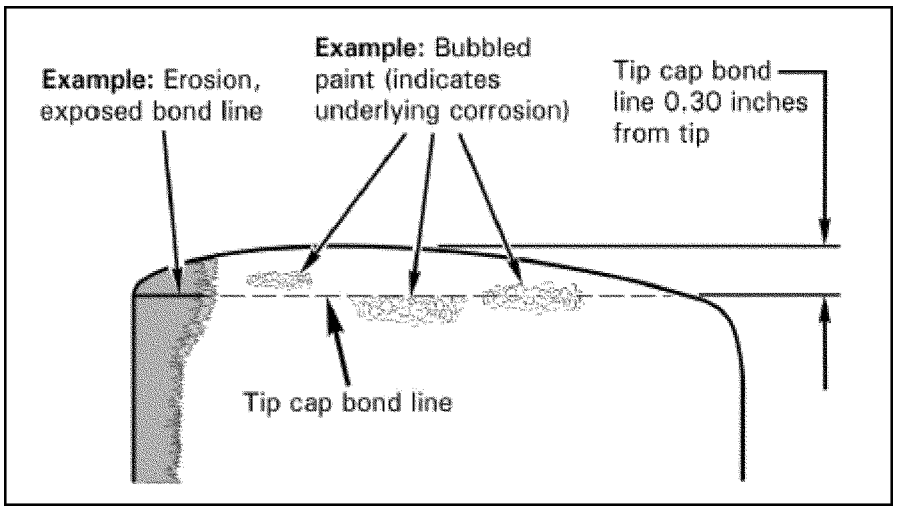
(f) Compliance

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

(g) Required Actions

(1) Within 10 hours time-in-service (TIS) after the effective date of this AD and thereafter before the first flight of each day, visually check each TRB tip cap area (at and adjacent to the tip cap bond line on each surface and edge of the TRB) for an exposed tip cap bond line or bubbled paint, as depicted in Figure 1 of paragraph (g)(1) of this AD. These items may indicate evidence of corrosion. The owner/operator (pilot) holding at least a private pilot certificate may accomplish this TRB tip cap check and must enter compliance with this paragraph of the AD into the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

Figure 1 to Paragraph (g)(1)—TRB Tip Cap Check/Inspection



(2) Within 100 hours TIS or during the next 100 hour or annual inspection after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or during the next 100 hour or annual inspection, whichever occurs first, visually inspect each TRB tip cap area (at and adjacent to the tip cap bond line on each surface and edge of the TRB) for evidence of corrosion, which may be indicated by an exposed tip cap bond line or bubbled paint, as depicted in Figure 1 of paragraph (g)(1) of this AD.

(3) As a result of the actions required by either paragraph (g)(1) or (2) of this AD, if there is evidence of corrosion, an exposed tip cap bond line, or bubbled paint, before further flight, remove all of the corrosion.

Note 1 to paragraph (g)(3): Robinson Helicopter Company R22 Service Letter SL–93, R44 Service Letter SL–82, and R66 Service Letter SL–40, each dated June 30, 2021 (co-published as one document), provide information regarding removing corrosion from TRBs.

(4) Within 10 months of the effective date of this AD, remove all TRBs identified in paragraph (c) of this AD from service.

(5) As of 10 months after the effective date of this AD, do not install a TRB identified in paragraph (c) of this AD on any helicopter.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification 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 West Certification Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-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.

(i) Additional Information

(1) For more information about this AD, contact James Guo, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5357; email: *james.guo@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Robinson Helicopter Company, Technical Support Department, 2901 Airport Drive, Torrance, CA 90505; phone (310) 539–0508; fax (310) 539–5198; email *ts1@robinsonheli.com;* or at *robinsonheli.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(j) Material Incorporated by Reference

None.

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26744 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2230; Project Identifier MCAI–2023–00861–T]

RIN 2120–AA64

Airworthiness Directives; Deutsche Aircraft GmbH (Type Certificate Previously Held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Deutsche Aircraft GmbH Model 328–100 and –300 airplanes. This proposed AD was prompted by operator reports of worn and ruptured bonding straps inside the feeder wing tanks and in both outer and inner wing tanks. This proposed AD would require a one-time detailed inspection of each affected part, and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 22, 2024.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2230; 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 NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–2230.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3228; email *Todd.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2230; Project Identifier MCAI–2023–00861–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3228; email *Todd.Thompson@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0137, dated July 12, 2023 (EASA AD 2023–0137) (also referred to as the MCAI), to correct an unsafe condition for all Deutsche Aircraft GmbH (Type Certificate previously held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes. The MCAI states that operators reported findings of damaged affected parts. The extent of the detected damage of the affected parts did not ensure that appropriately low electrical impedance is obtained and maintained through the affected bonding path. The unsafe condition, which if not detected and corrected, could lead to the loss of bonding function and, in combination with a lightning strike, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion.

The FAA is proposing this AD to address the unsafe condition.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2230.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0137 specifies procedures for a one-time detailed inspection of each affected part for worn and ruptured bonding straps, and applicable corrective actions (replacing the affected parts). 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 **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0137 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0137 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0137 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0137 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,''

compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0137. Service information required by EASA AD 2023–0137 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2230 after the FAA final rule is published.

Interim Action

The FAA considers that this proposed AD would be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 35 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
44 work-hours × $85 per hour = $3,740	$0	$3,740	$130,900

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:

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed 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.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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

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

(3) Would 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Deutsche Aircraft GmbH (Type Certificate Previously Held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2023–2230; Project Identifier MCAI–2023–00861–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Deutsche Aircraft GmbH (Type Certificate previously held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by operator reports of worn and ruptured bonding straps inside the feeder wing tanks and in both outer and inner wing tanks. The FAA is issuing this AD to address damaged bonding straps. The unsafe condition, if not addressed, could result in the loss of bonding function and, in combination with a lightning strike, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion and consequent loss 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 2023–0137, dated July 12, 2023 (EASA AD 2023–0137).

(h) Exceptions to EASA AD 2023–0137

(1) Where EASA AD 2023–0137 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0137.

(3) Where paragraph (2) of EASA AD 2023–0137 specifies if ''any damage is detected as defined in the ASB,'' this AD requires replacing those words with ''any worn or ruptured bonding strap is detected.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify

your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards 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 Validation Branch, FAA; or EASA; or Deutsche Aircraft GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3228; email *Todd.Thompson@faa.gov.*

(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 Union Aviation Safety Agency (EASA) AD 2023–0137, dated July 12, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0137, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety 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 material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26664 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2231; Project Identifier MCAI–2022–01623–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB412 and AB412 EP helicopters. This proposed AD was prompted by reports of cracks in the lateral mounts of the main transmission support case. This proposed AD would require repetitive visual inspections and fluorescent penetrant inspections (FPI) and, depending on the results, corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 22, 2024.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2231; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is identified in this NPRM, contact Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *Ads@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2023–2231.

Other Related Service Information: For Bell Helicopter service information identified in this NPRM, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; phone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *bellflight.com/support/contact-support.*

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2231; Project Identifier MCAI–2022–01623–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY

11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0258, dated December 20, 2022 (EASA AD 2022–0258), to correct an unsafe condition on all Leonardo S.p.A. Model AB212, AB412, and AB412EP helicopters.

This proposed AD was prompted by reports of cracks in the lateral mounts of the main transmission support case. Such cracking is usually caused by excessive corrosion of the surface under a washer and originates from a washer attachment screw threaded hole. Cracking can occur at the upper or lower surfaces of the lateral mount. This condition, if not detected and corrected, could lead to loss of load carrying capabilities of the main transmission, possibly resulting in loss of control of the helicopter. You may examine EASA AD 2022–0258 in the AD docket at *regulations.gov* under Docket No. FAA–2023–2231.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0258 requires repetitive visual inspections and FPIs of the main transmission support case and, depending on the findings, corrective action. Corrective actions include repairing or replacing the main transmission support case hardware including screws, washers, or case bushings, repairing the lateral mounts, or replacing the main transmission support case.

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.

Other Related Service Information

The FAA also reviewed Bell Helicopter Component Repair and Overhaul Manual (CR&O) BHT–412–CR&O Chapter 63, paragraphs 63–57 Transmission Main Support Case—Inspection and 63–58 Transmission Main Support Case—Repair, Revision 12, dated February 28, 2020. This service information specifies procedures for inspecting and repairing the main transmission support case.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0258, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) Ads as the primary source of information for compliance with requirements for corresponding FAA Ads. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0258 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0258 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0258 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0258. Service information referenced in EASA AD 2022–0258 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2231 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2022–0258 applies to Model AB212 helicopters, whereas this proposed AD would not because that model is not FAA type-certificated.

The service information referenced in EASA AD 2022–0258 specifies contacting Product Support Engineering for possible repairs regarding corrosion or pitting in the case bushings that exceeds allowable limits, whereas this proposed AD would require repair done in accordance with a method approved by the FAA, EASA, or Leonardo S.p.a. Helicopters' EASA Design Organization Approval.

Where EASA AD 2022–0258 requires performing an FPI, this proposed AD would require that the FPI be performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 69 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting the main transmission support case would take about 2 work-hours for an estimated cost of $170 per helicopter and $11,730 for the U.S. fleet, per inspection cycle. Performing an FPI of the main transmission support case would take about 2 work-hours for an estimated cost of $170 per helicopter and $11,730 for the U.S. fleet, per inspection cycle.

The FAA has no way of determining the costs pertaining to necessary repairs that are required to be done. Replacing the transmission support case assembly hardware parts including screws, washers, and case bushings would take about 2 work-hours and parts would cost up to $4,000 per helicopter for an estimated cost of up to $4,170 per helicopter. Replacing the main transmission support case would take up to about 47 work-hours and parts would cost about $120,000 for an estimated cost of $123,995 per helicopter.

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.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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

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

(3) Would 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Leonardo S.p.a.: Docket No. FAA–2023–2231; Project Identifier MCAI–2022–01623–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB412 and AB412 EP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the lateral mounts of the main transmission support case. The FAA is issuing this AD to detect and address cracking of the main transmission support case. The unsafe condition, if not addressed, could result in the loss of load carrying capabilities of the main transmission and subsequent loss of control of the helicopter.

(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 2022–0258, dated December 20, 2022 (EASA AD 2022–0258).

(h) Exceptions to EASA AD 2022–0258

(1) Where EASA AD 2022–0258 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the service information referenced in EASA AD 2022–0258 specifies contacting Product Support Engineering for possible repairs regarding corrosion or pitting in a case bushing that exceeds allowable limits, this AD requires repair done in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.a. Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Where paragraphs (3) and (4) of EASA AD 2022–0258 require replacing a component, this AD requires removing the component from service.

(4) Where paragraph (5) of EASA AD 2022–0258 requires replacing the main transmission support case, this AD requires removing the main transmission support case assembly from service.

(5) Where paragraph (2) of EASA AD 2022–0258 requires accomplishing a fluorescent penetrant inspections (FPI) of the main transmission support case, this AD requires that FPI be accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Note 1 to paragraph (h)(5): Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(6) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0258.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation 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 International Validation Branch, mail it to the address identified in paragraph (j) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email.

(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

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 2022–0258, dated December 20, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0258, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu*. You may find the EASA material on the EASA website *ad.easa.europa.eu*.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on November 29, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–26742 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132422–17]

RIN 1545–BO07

Income and Currency Gain or Loss With Respect to a Qualified Business Unit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Tuesday, November 14, 2023. The proposed regulations provide guidance relating to the determination of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by February 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–132422–17) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–132422–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Raphael J. Cohen at (202) 317–6938; concerning submissions of comments, requests for a public hearing, and access to a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2023, the **Federal Register** published a notice of proposed rulemaking and partial withdrawal of notice of proposed rulemaking (REG–132422–17) at 88 FR 78134 (the proposed regulations). The proposed regulations that are the subject of this correction are issued under sections 861, 985 through 989, and 1502 of the Internal Revenue Code.

Need for Correction

As published, the preamble to the proposed regulations contains errors that may prove to be misleading. This document provides a technical correction to the preamble, which clarifies the misleading paragraph.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–132422–17), which was the subject of FR Doc. 2023–24649, published on November 14, 2023, is corrected on page 78156, in the third column, by revising the first full paragraph to read, ''Taxpayers may rely on the proposed regulations (and so much of the final regulations as would not be modified by the proposed regulations) for taxable years ending after November 9, 2023, provided the taxpayer and each member of its consolidated group and section 987 electing group consistently follow the proposed regulations in their entirety and in a consistent manner. Additionally, for taxable years ending after November 9, 2023, and beginning on or before December 31, 2024, taxpayers may rely on only the applicability date provisions in proposed §§ 1.861–9(g)(2)(v), 1.985–5(g), 1.987–14(a), (c), and (d), 1.988–1(i), 1.988–4(b)(2)(ii), and 1.989(a)–1(b)(4) and (d)(4), provided that: (1) the taxpayer and each member of its consolidated group and section 987 electing group consistently follow those provisions in their entirety and in a consistent manner for those taxable years; (2) with respect to any terminating QBU to which proposed § 1.987–14(a)(2) would apply or partnership to which proposed § 1.987–14(a)(3) would apply, the taxpayer and each member of its consolidated group and section 987 electing group consistently follow all of the proposed regulations (and so much of the final regulations as would not be modified by the proposed regulations) in their entirety and in a consistent manner; and (3) to the extent that, under proposed § 1.987–14(c), proposed § 1.987–10 would be applied in lieu of prior § 1.987–10, the taxpayer and each member of its consolidated group and section 987 electing group consistently follow proposed § 1.987–10 in its entirety and in a consistent manner. Thus, for example, a calendar year taxpayer that has consistently followed the method described in the 1991 proposed regulations could continue to follow that method for the 2024 taxable year in reliance on proposed § 1.987–14(a)(1) (and would not need to follow the other parts of the proposed regulations, except to the extent provided in the prior sentence).''

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2023–26785 Filed 12–5–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5, 301, and 602

[REG–134420–10]

RIN 1545–BJ87

Revising Consolidated Return Regulations To Reflect Statutory Changes, Modernize Language, and Enhance Clarity; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–134420–10) published in the **Federal Register** on August 7, 2023, modifying regulations applicable to affiliated and controlled groups of corporations in order to reflect statutory changes, update language to remove antiquated or regressive terminology, and enhance clarity. The correction makes parallel amendments to similar regulations applicable to controlled groups of corporations.

DATES: The comment period for REG–134420–10 (88 FR 52057, August 7, 2023) is reopened, and additional written or electronic comments and requests for a public hearing must be received by February 5, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–134420–10). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket. Send paper submissions to:

CC:PA:01:PR (REG–134420–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 52, Kari DiCecco of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–5500; concerning the proposed regulations under section 414, Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–4148 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–134420–10) that is the subject of this correction is under sections 1502, 1503, 1552, and 1563. The regulations under sections 52 and 414 provide rules similar to the rules under section 1563. An amendment to the regulations under section 1563 without parallel amendments to the regulations under sections 52 and 414 would create inconsistencies. This correction would make parallel changes to the regulations under sections 52 and 414.

Need for Correction

As published, REG–134420–10 created inconsistencies by revising § 1.1563–1 without revising parallel language in two additional regulations.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–134420–10), which was the subject of FR Doc. 2023–14098, is corrected as follows:

1. On page 52062, the second column, after the first full paragraph, the following language is added:

''Sections 52(a) and 414(b) provide rules for controlled groups of corporations that incorporate section 1563(a), with modifications. Sections 52(b) and 414(c)(1) authorize regulations applying the principles of 52(a) and 414(b) to trades or businesses under common control. The regulations under sections 52(b) and 414(c)(1) include constructive ownership rules that mirror the rules under section 1563. Accordingly, the proposed regulations would revise §§ 1.52–1(c)(1) and 1.414(c)–2(b)(1) in the same way as they revise § 1.1563–1(a)(2).''.

2. In the Proposed Amendments to the Regulations, pages 52069 through 52082, ''Par. 6. through Par. 57.'' is redesignated as ''Par. 8. through Par. 59.'' respectively, ''Par. 2. through Par. 5.'' is redesignated as ''Par. 3. through Par. 6.'' respectively, and new ''Par. 2. and Par. 7.'' are added in numerical order.

§ 1.52–1 [Amended]

3. Newly added Par. 2. should read as ''**Par. 2**. Section 1.52–1 is amended by removing the text ''(directly and with the application of § 1.414(c)–4(b)(1), relating to options)'' from paragraph (c)(1) wherever it appears and adding the text ''(directly and with the application of § 1.414(c)–4(b)(1), (2), and (3))'' in its place.''.

§ 1.414(c)–2 [Amended]

4. Newly added Par. 7. should read as ''**Par. 7**. Section 1.414(c)–2 is amended by removing the text ''(directly and with the application of § 1.414(c)–4(b)(1), relating to options)'' from paragraph (b)(1) wherever it appears and adding the text ''(directly and with the application of § 1.414(c)–4(b)(1), (2), and (3))'' in its place.''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2023–26601 Filed 12–5–23; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–406; RM–11969; DA 23–1107; FR ID 188092]

Television Broadcasting Services Greenville, South Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed September 27, 2023, by Carolina Christian Broadcasting, Inc. (Petitioner), the licensee of WGGS–TV, channel 2, Greenville, South Carolina (Station or WGGS). The Petitioner requests the substitution of channel 29 for channel 2 at Greenville, South Carolina (Greenville) in the Table of TV Allotments.

DATES: Comments must be filed on or before January 5, 2024 and reply comments on or before January 22, 2024.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Joseph C. Chautin, III, Esq., Hardy, Carey, Chautin & Balkin, LLP, 1080 West Causeway Approach, Mandeville, Louisiana 70471.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving reception challenges currently experienced by viewers in the WGGS service area, and substantially improving access to the Station's programming. According to the Petition, the Station regularly receives phone calls and email from viewers no longer able to receive the Station's signal. The Petitioner notes that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including a large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on VHF channels. The Petitioner proposes to operate the Station on channel 29 with a 3-node Distributed Transmission System (DTS) facility. While an analysis using the Commission's *TVStudy* software indicates that the Station's move to channel 29 would create a predicted population loss area of 946,964 persons, mostly located around the edge of the channel 2 noise limited contour, almost all of the population would remain ''well-served'' by five or more full power or Class A television signals. According to the Petitioner, only 417 persons predicted to live in the loss area would no longer be considered ''well-served,'' and none of those persons would receive over-the-air television service from fewer than four stations. All viewers within the Station's community of license will continue to be served by the Station.

We believe that the Petitioner's channel substitution proposal for WGGS warrants consideration. Channel 29 can be substituted for channel 2 at Greenville, South Carolina, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules), at coordinates 34–56′–26.4″ N and 82–24′–40.4″ W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules. Although the proposal would result in a loss of service to 946,964 persons, all but 417

persons would remain ''well-served'' by continuing to receive at least five full power or Class A stations. The 417 persons that would no longer be considered to be ''well-served'' would continue to receive service from at least four such stations. This is also a number of persons that the Commission has found to be *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–406; RM–11969; DA 23–1107, adopted November 27, 2023, and released November 27, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under South Carolina, by revising the entry for Greenville to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
South Carolina	
* * * * *	
Greenville	*8, 17, 29, 30.
* * * * *	

[FR Doc. 2023–26676 Filed 12–5–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 88, No. 233

Wednesday, December 6, 2023

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID Revisions to ADS 201 Evaluation Report Requirements

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Reopening of Notice of information collection; request for comment.

SUMMARY: USAID is reopening the comment period for its proposed information collection, ''USAID Revisions to ADS 201 Evaluation Report Requirements''. Reopening the comment period will allow USAID to satisfy the 60-day public comment period required by the Paperwork Reduction Act of 1995 (PRA).

DATES: The comment period for the information collection published in the **Federal Register** on March 28, 2023, at 88 FR 18292, is reopened. Comments should be received on or before December 11, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 4 days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Tania Alfonso, *talfonso@usaid.gov,* 202–712–0144.

SUPPLEMENTARY INFORMATION: USAID, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on the proposed survey. USAID initially published a Notice of the proposed information collection, ''USAID Revisions to ADS 201 Evaluation Report Requirements,'' in the **Federal Register** on March 28, 2023 [88 FR 18292]. Due to a clerical error, the comment period closed after 56 days on May 23, 2023, and therefore did not meet not the statutory 60-day comment period required by the PRA. To meet the 60-day comment period requirement, USAID is reopening the comment period for the Notice until December 11, 2023.

Tania Alfonso,

PPL/LER, Program Cycle Supervisory Team Lead, USAID.

[FR Doc. 2023–26635 Filed 12–5–23; 8:45 am]

BILLING CODE 6116–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Wednesday December 13, 2023 from 1:30 p.m.–2:30 p.m. eastern time. The purpose of the meeting is to vote on approval of a project proposal to study the use of AI in education as the Committee's next topic.

DATES: Wednesday December 13, 2023 from 1:30 p.m.–2:30 p.m. eastern time.

ADDRESSES:

Registration (Audio/Visual): https://www.zoomgov.com/j/1618879363?pwd=MkFGVVJKQmN0WTluWGs4cWxsWmxxdz09.

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 161 887 9363.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link (audio/visual) or teleconference phone line (audio only). An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to *csanders@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email address.

Agenda

I. Welcome & Roll Call

II. Discussion

III. Public Comment

IV. Next

V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of the upcoming expiration of the current Committee appointment term and the resulting timeline under which the Committee must complete its next and final project.

Dated: November 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26716 Filed 12–5–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 11 a.m. ET on Tuesday, January 9, 2024. The purpose of the meeting is to discuss post-report activities and consider the Committee's next topic of study.

DATES: Tuesday, January 9, 2024, from 11 a.m.–12 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_cToacq7_REi61QUD7PrqFA.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 238 8230.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available. Individuals with disabilities who would like to request additional accommodations should email *lschiller@usccr.gov* at least 10 business days prior to the meeting to make their request.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: November 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26717 Filed 12–5–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of this meeting is to discuss, plan, and vote, as needed, on matters related to the Committee's inaugural civil rights project.

DATES: Friday, December 15, 2023, from 12 p.m.–2 p.m. Atlantic time.

ADDRESSES: This meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://www.zoomgov.com/j/1612643265.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 161 264 3265#.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the meeting link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands Advisory Committee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Annoucements and Updates
III. Committee Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: November 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26713 Filed 12–5–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to vote on recommendations and discuss the background section of the Committee's draft report on the New York child welfare system and its impact on Black children and families.

DATES: Friday, January 19, 2024, from 1 p.m.–3 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://bit.ly/3PbvgdX.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 161 785 2445#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Vote: Recommendations
IV. Discussion: Background
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: November 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26714 Filed 12–5–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; School District Review Program

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the School District Review Program, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 5, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to Michael S. Snow at *dcmd.pra@census.gov.* Please reference ''School District Review Program'' in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0010, to the Federal e-Rulemaking Portal: *https://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *https://www.regulations.gov* for public viewing until after the comment period has closed. 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. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Michael S. Snow, Program Manager, by phone at 301–763–9912 or by email to *dcmd.pra@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The School District Review Program (SDRP) is a U.S. Department of Education National Center for Education Statistics (NCES) sponsored program conducted annually by the U.S. Census Bureau. It is of vital importance for each state's allocation under title I of the Elementary and Secondary Education Act as amended by Every Student Succeeds Act of 2015, Public Law 114–95. School district information submitted through this program, along with the decennial census population, Small Area Income and Poverty Estimates, and current population estimates, are used in forming the Census Bureau's estimates of the number of children ages 5 through 17 in families in poverty for each school district. The U.S Department of Education uses these estimates to

allocate more than $16 billion annually in Title I funds.

The SDRP encompasses the review of Type 1, Type 2, and Type 3 school districts as defined by the NCES. Type 1 is a local school district that is not a component of a supervisory union. Type 2 is a local school district component of a supervisory union sharing a superintendent and administrative services with other local school districts. Type 3 is an education agency that performs administrative services for more than one school district, providing a common superintendent for participating districts.

Respondents to the SDRP are the mapping coordinators and Title I Coordinators from the fifty states and the District of Columbia. NCES also anticipates the inclusion of the Commonwealth of Puerto Rico in the next three years. Mapping coordinators are designated by the state departments of education and are tasked with reviewing and providing updates for school district boundaries, federal school district local education agency codes, names, grade ranges, and levels to the Census Bureau. Title I Coordinators are responsible for overseeing the SDRP and reviewing all materials.

There are two phases to the SDRP: the Annotation Phase and Verification Phase. During the Annotation Phase, the Census Bureau provides mapping coordinators with materials containing the latest school district boundaries and school district information that the Census Bureau has on file for their state. Mapping coordinators review the data and submit any changes to the Census Bureau. The Census Bureau reviews and processes the information submitted by the mapping coordinator and updates the Master Address File/Topologically Integrated Geographic Encoding and Reference (MAF/TIGER) System. During the Verification Phase, mapping coordinators verify that the Census Bureau updated the MAF/TIGER System accurately and completely with updates submitted during the Annotation Phase.

II. Method of Collection

Annotation Phase

In the Annotation Phase, mapping coordinators gather school district updates from sources within the state, *e.g.,* local school district officials, counties, and state agencies. They use Census Bureau-provided materials to review and update school district boundaries, names, codes, and geographic relationships. The Census Bureau provides mapping coordinators with school district listings, spatial data in Esri shapefile format, blank submission logs, and Geographic Update Partnership Software (GUPS). The school district listings consist of school district inventories, school district names, levels, grade ranges, and other data about school districts within their state. If the mapping coordinator has non-spatial updates (*e.g.,* name changes, simple consolidations, simple dissolutions, and others), the mapping coordinator updates the Census Bureau provided submission log with those changes. If a mapping coordinator needs to perform spatial updates to a school district boundary, the mapping coordinator uses Census Bureau provided GUPS and spatial data to make updates. GUPS is a free, customized geographic information system application provided by the Census Bureau for mapping coordinators. It is available on the web and as a standalone application that can be installed by a user and contains all functionality necessary for mapping coordinators to make and validate their spatial school district updates. Once mapping coordinators have reviewed and updated the school district information for their state, the mapping coordinator sends it to the Census Bureau, using the Secure Web Incoming Module, the Census Bureau's online application for uploading SDRP submissions. The Census Bureau will update the MAF/TIGER System with the updates sent by the mapping coordinator.

Schedule

- The SDRP Annotation Phase begins in September of each year.
- The SDRP Annotation Phase submission deadline is the last workday in December of each year.

Verification Phase

In the Verification Phase, the Census Bureau sends mapping coordinators newly created listings and digital files, and mapping coordinators use the SDRP verification module in GUPS to review these files and verify that the Census Bureau correctly captured their submitted information. The mapping coordinator can tag the area of issue and send the information to the Census Bureau to make corrections if the Census Bureau did not incorporate their boundary changes or other updates correctly. The Census Bureau does not accept new changes during the Verification Phase.

Schedule

- The SDRP Verification Phase begins and ends in April of each year.

Feedback

The Census Bureau may solicit feedback from respondents to improve the administration of the program and potentially reduce the future burden. Respondents may be asked to provide feedback on materials, manner of data collection, manner of respondent communications, and the usability of our program applications and tools.

III. Data

OMB Control Number: 0607–0987.

Form Number(s): None.

Type of Review: Regular submission, request for a revision of a currently approved collection.

Affected Public: All fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Number of Respondents:
- *Annotation Phase:* 52.
- *Verification Phase:* 52.
- *Feedback:* 52.

Estimated Time Per Response:
- *Annotation Phase:* 30 hours.
- *Verification Phase:* 10 hours.
- *Feedback:* 1 hour.

Estimated Total Annual Burden Hours: 2,132.
- *Annotation Phase:* 1,560 hours.
- *Verification Phase:* 520 hours.
- *Feedback:* 52 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 16, 141, and 193.

NCES Legal Authority: Title I, part A of the Elementary and Secondary Education Act as amended by Every Student Succeeds Act of 2015, Public Law (Pub. L.) 114–95.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated

collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–26732 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813]

Strontium Chromate From Austria: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that strontium chromate from Austria was not sold by Habich GmbH (Habich) in the United States at less than normal value (NV) during the period of review (POR) of November 1, 2021, through October 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 6, 2023.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2019, Commerce published the antidumping duty order on strontium chromate from Austria.[1] On January 3, 2023, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published the initiation of an administrative review of the *Order,* covering one producer/exporter, Habich.[2]

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on July 24, 2023, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review until November 30, 2023.[3]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is strontium chromate, regardless of form (including but not limited to, powder (sometimes known as granular), dispersions (sometimes known as paste), or in any solution). The merchandise subject to the *Order* is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may also enter under HTSUS subheading 3212.90.0050. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margin exists for the period November 1, 2021, through October 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Habich GmbH	0.00 (*de minimis*)

Verification

On April 13, 2023, WPC Technologies (the petitioner) timely requested that Commerce conduct verification of Habich's questionnaire responses.[5] Moreover, no verification was conducted during the two immediately preceding reviews of Habich. Therefore, Commerce intends to verify the information that Commerce relies upon for the final results of this review with respect to Habich, as provided in section 782(i)(3) of the Act.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties with an administrative protective order within five days of the date of publication of the preliminary results in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to Commerce. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[6] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[7]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged

[1] *See Strontium Chromate from Austria and France: Antidumping Duty Orders,* 84 FR 65349 (November 27, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2021–2022 Antidumping Duty Administrative Review,'' dated July 24, 2024.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Strontium Chromate from Austria, 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Petitioner's Letter, ''Request to Verify Habich's Questionnaire Responses,'' dated April 13, 2023.

[6] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[7] *See* 19 351.309(c)(2) and (d)(2).

interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this administrative review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[8] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[11] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless this deadline is extended.[12]

[8] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[9] *See APO and Service Final Rule.*

[10] *See* 19 CFR 351.303(f).

[11] *See* 19 CFR 351.310(d).

[12] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce intends to determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. If Habich's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, and because Habich reported entered values for all of its sales, we intend to calculate importer-specific *ad valorem* assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). If Habich's overall weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* in the final results of review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[13]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Habich for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation [14] if there is no rate for the intermediate company(ies) involved in the transaction.[15]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[13] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[14] *See Order,* 69 FR at 4111.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Habich will be that established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 25.90 percent, the all-others rate established in the LTFV investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

[16] *See Order,* 69 FR at 4111.

Dated: November 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2023–26720 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Solicitation of Nominations for Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the advisory committee on supply chain competitiveness.

SUMMARY: The Department of Commerce, International Trade Administration (ITA), seeks nominations for immediate consideration to fill positions on the Advisory Committee on Supply Chain Competitiveness (''The Committee''). The Committee advises the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness. The Department intends for the Committee to continue to play a key role in formulating recommendations to address current global supply chain challenges, including identifying key bottlenecks in supply chains and actionable solutions to address them, advising on the latest advances in supply chain data and technology and how to apply them to the current challenges in the economy, providing advice to the Department of Commerce on its supply chain-focused work, and developing long term recommendations to make supply chains more resilient. The Department seeks members who, by virtue of their current roles and past experience, bring a track record of effective senior executive leadership on issues impacting the U.S. and global supply chains.

DATES: ITA will accept nominations received by 5:00 p.m. on January 2, 2024, for membership on the Committee until the current two-year charter term ends November 8, 2025.

ADDRESSES: Richard Boll, Office of Supply Chain Services, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; email: *richard.boll@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain Services, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; email: *richard.boll@trade.gov;* phone: 202–482–1135. Please visit the Advisory Committee on Supply Chain Competitiveness website at: *https://www.trade.gov/acscc.*

SUPPLEMENTARY INFORMATION:

I. Background

The Committee advises the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support national economic competitiveness and U.S. export growth, encouraging innovation, facilitate the movement of goods, and improve competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and on regulatory policies and programs and investment priorities that affect the competitiveness of supply chains. The Committee provides detailed policy and technical advice, information, and recommendations to the Secretary regarding:

(1) national, state, or local factors in trade programs and policies that affect the efficient domestic and international operation and competitiveness of U.S. global supply chains from point of origin to destination;

(2) elements of national policies affecting the movement of goods, infrastructure, investment, and regulatory factors that affect supply chain competitiveness and sustainability; and

(3) information and data systems to generate metrics that can be used to quantify and improve supply chain performance.

The Department intends for the Committee to focus on the current challenges facing the supply chain during this charter term.

II. Membership

Members will be selected based on their demonstrated professional or personal qualifications and experience relevant to the functions and tasks of the Committee. Members shall be selected in a manner that ensures that the Committee remains balanced with respect to the diversity of the supply chain sector, including with regard to geographic location and company size. The diverse membership of the Committee ensures perspectives and expertise reflecting the full breadth of the Committee's responsibilities and, where possible, the Department of Commerce will also consider the ethnic, racial and gender diversity of the United States.

Members of the Committee shall represent companies, organizations, and stakeholders involved in the U.S. supply chain, with at least one individual representing each of the following: supply chain firms or their associations; users of supply chains (*e.g.,* retailers, distributors, manufacturers or other sectors); freight transportation providers; ports; and academia. Based on the balance of viewpoints currently represented on the Committee, we encourage representatives of workers in the supply chain, representatives from the agriculture and cold chain sectors, as well as the retail and e-commerce sectors, and the other sectors referenced above.

Other than the experts from academia, all members shall serve in a representative capacity, expressing the views and interests of a U.S. company or U.S. organization with which they are affiliated (*e.g.,* as an employee or director), as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees. The members from academia serve as experts and therefore are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs. Members who serve as SGEs must certify that they are not Federally-registered lobbyists.

Each member of the Committee must be a U.S. citizen and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted.

Members of the Committee will not be compensated for their services or reimbursed for their travel expenses. The Committee shall meet approximately quarterly, or as determined by the DFO. Members shall serve at the pleasure of the Secretary.

III. Request for Nominations

Requirements for all nominations. All nominations for membership on the Committee should provide the following information:

(1) Name, title, and relevant contact information (including phone and email

address) of the individual requesting consideration; and

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938.

Additional requirements for representative nominations. In addition to the above requirements for all nominations, nominations for representatives of companies, organizations, and stakeholders involved in the U.S. supply chain, including supply chain firms or their associations; users of supply chains (*e.g.,* retailers, distributors, manufacturers, or other sectors); freight transportation providers; and ports, should also provide the following information:

(1) A sponsor letter on the letterhead of the sponsoring U.S. company or U.S. organization to be represented, containing a brief description why the nominee should be considered for membership; the nominee maybe and employee, director, or other representative of a company or organization; consideration will be given to the nominee's current affiliation with the company or organization to be represented, as well as prior experience with other companies of organizations that demonstrate the ability to contribute to the work of the Committee:

(2) Short biography of nominee including credentials;

(3) Brief description of the U.S. company or U.S. organization to be represented and its activities and size (number of employees or members and annual sales, if applicable); and

(4) An affirmative statement that the applicant meets all Committee eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

a. For purposes of Committee eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

b. For purposes of Committee eligibility, a U.S. organization is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

Please do not send company or organizational brochures. *Additional requirements for academic nominations.* In addition to the above requirements for all nominations, nominations for experts from academia should also provide the following information:

(1) A description of the nominee's area(s) of expertise;

(2) A concise Curriculum Vitae (CV) or resume that covers education, experience, and relevant publications and summarizes how this expertise addresses supply chain competitiveness;

(3) An affirmative statement that the applicant meets all Committee eligibility requirements.

Nominations may be emailed to *acscc@trade.gov.* Nominees selected for appointment to the Committee will be notified.

Dated: November 30, 2023.

Heather Sykes,

Director, Office of Supply Chain Services.

[FR Doc. 2023–26745 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) was sold at less than normal value during the period of review (POR), November 1, 2021, through October 31, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 6, 2023.

FOR FURTHER INFORMATION CONTACT: Jacob Keller or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4849 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, Commerce published the *Order* on CWP from Korea in the **Federal Register**.[1] On November 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On January 3, 2023, based on timely requests for an administrative review, Commerce initiated an antidumping duty administrative review of 23 companies.[3]

Scope of the Order

The merchandise subject to the *Order* is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

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[1] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 65750 (November 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Preliminary Determination of No Shipments

One company under review, HiSteel Co., Ltd. (HiSteel), timely filed a no-shipment letter, certifying that it made no sales or exports of subject merchandise to the United States during the POR.[5] We received no information from U.S. Customs and Border Protection (CBP) that contradicts HiSteel's no-shipments claim.[6] Therefore, we preliminarily determine that HiSteel had no shipments during the POR. Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to HiSteel, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.[7]

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available. In this review, we preliminarily calculated dumping margins for the two mandatory respondents, Hyundai Steel Company (Hyundai Steel) and Husteel Co., Ltd. (Husteel), of 0.99 and 0.65 percent, respectively, and we have assigned to the non-selected companies a rate of 0.82 percent, which is the weighted-average dumping margins of Husteel and Hyundai Steel weighted by their publicly ranged U.S. sales values.[8]

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period November 1, 2021, through October 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.99
Husteel Co., Ltd	0.65
Companies Not Individually Examined[9]	0.82

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[10] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12] As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings, we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide, at the beginning of their briefs, a public executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, no including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Assessment Rates

Upon completion of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If either of the respondents' weighted-average dumping margins is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[15] If either of the respondents' weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[16] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future

[5] *See* HiSteel's Letter, ''No Shipments Letter,'' dated January 11, 2023.

[6] *See* Memorandum, ''No Shipment Inquiry for HiSteel Co., Ltd.,'' dated November 15, 2023.

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the dumping margins calculated for the examined respondents; (B) a simple average of the dumping margins calculated for the examined respondents; and (C) a weighted-average of the dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[9] *See* Appendix II for a full list of companies not individually examined in this review. However, as we find HiSteel preliminarily to have no shipments, we will not assign HiSteel the non-selected company rate.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[16] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

deposits of estimated duties, where applicable.[17]

For entries of subject merchandise during the POR produced by either of the respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[18] For the companies identified in Appendix II that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established after the completion of the final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the respondents will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent, the all-others rate established in the less-than-fair-value investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: November 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Rate for Non-Examined Companies
V. Preliminary Determination of No Shipments
VI. Affiliation
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

Appendix II—List of Companies Not Selected for Individual Examination

1. Aju Besteel
2. Bookook Steel
3. Chang Won Bending
4. Dae Ryung
5. Daewoo Shipbuilding & Marine Engineering
6. Daiduck Piping
7. Dong Yang Steel Pipe
8. Dongbu Steel
9. EEW Korea Company
10. Histeel
11. Hyundai RB
12. Kiduck Industries
13. Kum Kang Kind
14. Kumsoo Connecting
15. Miju Steel Mfg.
16. NEXTEEL Co., Ltd.
17. Samkand M & T
18. Seah FS
19. SeAH Steel Corporation
20. Steel Flower
21. YCP Co., Ltd

[FR Doc. 2023–26721 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See* section 751(a)(2)(C) of the Act.

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Order,* 57 FR at 49453.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results, Partial Rescission, and Preliminary Intent To Rescind Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Jining Huahui International Co., Ltd. (Huahui) did not make *bona fide* sales of fresh garlic during the period of review (POR) November 1, 2021, through October 31, 2022. Therefore, Commerce preliminarily intends to rescind this administrative review with respect to Huahui. Interested parties are invited to comment on the preliminary results of this review.

DATES: Applicable December 6, 2023.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 or 202–482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2022, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China)for the POR.[1] On November 30, 2022, the petitioners,[2] Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 65750 (November 1, 2022).

[2] The petitioners are the Fresh Garlic Producers Association and its individual members. The members of the Fresh Garlic Producers Association are: Christopher Ranch LLC; The Garlic Company; and Valley Garlic, Inc.

Huahui each timely requested an administrative review.[3] On January 3, 2023, based on these timely requests for administrative review, Commerce initiated this administrative review.[4] On January 13, 2023, the petitioners and Harmoni each withdrew their review requests, leaving Huahui as the sole remaining exporter subject to this review.[5] On July 11, 2023, Commerce extended the time for issuing the preliminary results of this review to November 30, 2023.[6]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The product covered by the order is fresh garlic from China. For a complete description of the scope of this investigation, *see* the Prelimianry Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole, or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. As noted above, the petitioners and Harmoni timely withdrew their review requests. All requests to review the following companies were timely withdrawn: (1) Laiwu Ever Green Food Co., Ltd.; (2) Laiwu Manhing Vegetables Fruits Corp.; (3) Laiwu Taifeng Foods Co., Ltd.; (4) Ningbo Raffini Import & Export Co., Ltd.; (5) Qingdao Muyi International Trading Co., Ltd.; (6) Shandong Bairun Food Co., Ltd.; (7) Shanghai Yongtie Enterprise Management; and (8) Zhengzhou Harmoni Spice Co., Ltd. Because Huahui requested a review of itself, and did not withdraw its request, we are rescinding this review, in part, with respect to the companies in the petitioners and Harmoni's review requests, except for Huahui, pursuant to 19 CFR 351.213(d)(1).

Intent To Rescind Administrative Review

As discussed in the Preliminary Decision Memorandum and *Bona Fide* Analysis Memorandum, Commerce preliminarily finds that the sales made by Huahui serving as the basis for this review are not *bona fide* sales of fresh garlic.[8] Commerce reached this conclusion based on the totality of the record information surrounding Huahui's reported sales, including, but not limited to, the sales prices, the profitability of the resold subject merchandise, the late payments, and the likelihood of future sales.

Because the non-*bona fide* sales were the only reported sales of subject merchandise during the POR, we find that Huahui had no reviewable transactions during this POR. Accordingly, we preliminarily intend to rescind this administrative review.[9] The factual information used in our *bona fides* analysis of Huahui's sales involves business proprietary information. *See* the *Bona Fide* Analysis Memorandum for a full discussion of the basis for our preliminary findings.

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Verification

On April 13, 2023, Commerce received a timely request from the petitioners to verify the information submitted by Huahui in the course of this administrative review, pursuant to section 782(i)(3). Because we intend to rescind this administrative review with

[3] *See* Petitioners' Letter, ''Petitioners' Request for Administrative Review,'' dated November 30, 2022; *see also* Harmoni's Letter, ''Request for Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China,'' dated November 30, 2022; and Huahui's Letter, ''Request for Administrative Review,'' dated November 30, 2022.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023).

[5] *See* Petitioners' Letter, ''Petitioners' Withdrawal of Review Requests,'' dated January 13, 2023; *see also* Harmoni's Letter, ''Harmoni Withdrawal of Review Request,'' dated January 13, 2023.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 11, 2023.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* Preliminary Decision Memorandum; *see also* Memorandum, ''Preliminary *Bona Fide* Sales Analysis for Jining Huahui International Co., Ltd.,'' dated concurrently with, and hereby adopted by, this notice (*Bona Fide* Analysis Memorandum).

[9] *See* 19 CFR 351.213(d)(3).

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

respect to Huahui, we are not conducting a verification.

Assessment Rates

If Commerce proceeds to a final rescission of this administrative review, the assessment rate to which Huahui's shipments are subject will not be affected by this review. If Commerce does not proceed to a final rescission of this administrative review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment reates based on the final results of this review.

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i).

Cash Deposit Requirements

If Commerce proceeds to a final recission of ths administrative review, Huahui's cash deposit rate will continue to be the China-wide rate of $4.71 per kilogram.[14] If Commerce issues the final results for this administrative review, Commerce will instruct U.S. Customs and Border Protection to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

[14] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review,* 75 FR 34976 (June 21, 2010).

Dated: November 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Rescission of Administrative Review, In Part
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2023–26719 Filed 12–5–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with October anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable December 6, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with October anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Respondent Selection

In the event that Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event that Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other

party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Notice of No Sales

With respect to AD administrative reviews, we intend to rescind the review where there are no suspended entries for a company or entity under review and/or where there are no suspended entries under the company-specific case number for that company or entity. Where there may be suspended entries, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it may notify Commerce of this fact within 30 days of publication of this notice in the **Federal Register** for Commerce to consider how to treat suspended entries under that producer's or exporter's company-specific case number.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

status *unless* they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than October 31, 2024.

	Period to be reviewed
AD Proceedings	
INDIA: Stainless Steel Flanges, A–533–877	10/1/22–9/30/23
Balkrishna Steel Forge Pvt. Ltd.	
BFN Forgings Private Limited; Viraj Impoexpo, Ltd.; Fanschen werk Bebitz GmbH; Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; Viraj Impoexpo, Ltd.; and Viraj Profiles Limited [4]	
CD Industries; Kisaan Engineering Works Pvt. Ltd.	
Chandan Steel Limited	
Echjay Forgings Private Limited	
Fivebros Forgings Private Limited	
Goodluck India Limited; Goodluck Engineering Co.	
Hilton Metal Forging Limited	
Jai Auto Pvt. Ltd	
Jay Jagdamba Limited	
Jay Jagdamba Forgings Private Limited	
Jay Jagdamba Profile Private Limited	
Kisaan Die Tech Private Limited	
Pradeep Metals Limited	
R.N. Gupta & Company Limited	
Shree Jay Jagdamba Flanges Private Limited	
JAPAN: Hot-Rolled Steel Flat Products, A–588–874	10/1/22–9/30/23
JFE Shoji Corporation	
JFE Shoji Trade America	
JFE Shoji Trade Corporation	
JFE Steel Corporation	
Nippon Steel & Sumikin Bussan Corporation	
Nippon Steel & Sumikin Logistics Co., Ltd.	
Nippon Steel & Sumitomo Metal Corporation	
Nippon Steel Corporation	
Nippon Steel Trading Corporation (formerly Nippon Steel & Sumikin Bussan Corporation)	
Tokyo Steel Manufacturing Co., Ltd.	
MEXICO: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/22–9/30/23
ArcelorMittal Mexico, S.A. de C.V.	
Comercializadora Eloro S.A.	
Deacero S.A. de C.V.; Deacero S.A.P.I. de C.V.	
Deacero Summit S.A.P.I. de C.V.	
Grupo Villacero S.A. de C.V.	
Ingeteknos Estructurales S.A.	
TA 2000 S.A. de C.V.	
Talleres y Aceros S.A. de C.V.	
Ternium Mexico S.A. de C.V.	
REPUBLIC OF KOREA: Hot-Rolled Steel Flat Products, A–580–883	10/1/22–9/30/23
Aekyung Chemical	
AJU Besteel Co., Ltd.	
Ameri Source Korea	
Chemaven Co., Ltd.	
Cj Cheiljedang Corp.	
Cj Global Logistics Service Inc.	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Geco Industries Co., Ltd.	
Geumok Tech. Co., Ltd.	
Goi Tech Industries Co., Ltd.	
Golden State Corporation	
Gs Global Corp.	
Gs Holdings Corp.	
Hanawell Co., Ltd.	
Hanjin Gls Co., Ltd.	
Hankook Co., Ltd.	
HISTEEL	
Hyosung Corporation	
Hyosung Tnc Corporation	
Hyundai Glovis Co., Ltd.	
Hyundai Rb Co., Ltd.	
Hyundai Steel Company	
Il Jin Nts Co., Ltd.	
Inchang Electronics Co., Ltd.	
J&K Korea Co., Ltd.	
Jeil Industries Co., Ltd.	

	Period to be reviewed
Jeil Metal Co., Ltd.	
Jin Young Metal	
Jun Il Co., Ltd.	
KG Dongbu Steel Co., Ltd.	
KG Steel Corporation	
Kumkang Kind Co., Ltd.	
Lg Electronics Inc.	
Maxflex Corp.	
Mitsubishi Corp. Korea	
Mitsui Chemicals & Skc Polyurethane	
Nexteel Co., Ltd.	
POSCO	
POSCO International Corporation	
Samsung Electronics Co., Ltd.	
SeAH Steel Corporation	
Sja Inc. (Korea)	
Solvay Silica Korea	
Soon Ho Co., Ltd.	
Sumitomo Corp. Korea Ltd.	
Sungjin Precision	
Wintec Korea Inc.	
Wonbangtech Co., Ltd.	
TAIWAN: Corrosion-Resistant Steel Products, A–583–856	7/1/22–6/30/23
Yieh Phui Enterprise Co., Ltd.[5]	
THAILAND: Passenger Vehicle and Light Truck Tires,[6] A–549–842	7/1/22–6/30/23
Bridgestone Company	
Bridgestone Corporation	
Bridgestone Tire Manufacturing	
Thai Bridgestone Co.	
THE NETHERLANDS: Hot-Rolled Steel Flat Products, A–421–813	10/1/22–9/30/23
Tata Steel Ijmuiden BV	
CVD Proceedings	
INDIA: Stainless Steel Flanges, C–533–878	1/1/22–12/31/22
BFN Forgings Private Limited	
Chandan Steel Limited	
Fivebros Forgings Private Limited	
Hilton Metal Forging Limited	
Kisaan Die Tech Pvt Ltd.	
Pradeep Metals Limited	
REPUBLIC OF KOREA: Hot-Rolled Steel Flat Products, C–580–884	1/1/22–12/31/22
DCE Inc.	
Dong Chuel America Inc.	
Dong Chuel Industrial Co., Ltd.	
Dongbu Incheon Steel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Hyewon Sni Corporation (H.S.I.)	
Hyundai Steel Company[7]	
JFE Shoji Trade Korea Ltd.	
POSCO	
POSCO Coated & Color Steel Co., Ltd.	
POSCO Daewoo Corporation	
POSCO International Corporation	
Soon Hong Trading Co., Ltd.	
Sung-A Steel Co., Ltd.	
SPAIN: Ripe Olives,[8] C–469–818	1/1/22–12/31/22
Suspension Agreements	
ARGENTINA: Lemon Juice, A–357–818	10/1/22–9/30/23

Duty Absorption Reviews

During any administrative review covering all or part of a period falling

[4] Commerce has previously found BFN Forgings Private Limited to be part of the collapsed entity noted above. *See, e.g., Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination,* 83 FR 40745 (August 16, 2018).

[5] In the Initiation Notice for orders with July anniversary months (*Initiation of Antidumping and Countervailing Duty Administrative* Reviews, 88 FR 62322 (September 11, 2023) (*July Order Initiation Notice*)), Commerce inadvertently initiated a review of Yieh Phui Enterprise Co., Ltd., though this company is excluded from the order. *See Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order,* 88 FR 58245 (August 25, 2023). Thus, with this initiation notice, we are correcting the *July Order Initiation Notice* and are not conducting an administrative review of Yieh Phui Enterprise Co., Ltd. for the July 1, 2022, through June 30, 2023 period of review.

Continued

between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether ADs have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[9] available at *https://www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[10]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[11] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[12] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: November 30, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–26722 Filed 12–5–23; 8:45 am]

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[6] The companies listed below were inadvertently not included in the *July Order Initiation Notice.*

[7] This company may also be referred to as ''Hyundai Steel Co., Ltd.''

[8] In the initiation notice for orders with August anniversary months (*Initiation of Antidumping and Countervailing Duty Administrative* Reviews, 88 FR 71829 (October 18, 2023), Commerce inadvertently listed ''Camacho S.L.'' as being subject to the calendar year 2022 CVD administrative review of Ripe Olives from Spain.

[9] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[10] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[11] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[12] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–159, C–560–841, C–201–861, C–489–851]

Aluminum Extrusions From the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 6, 2023.

FOR FURTHER INFORMATION CONTACT: Eliza Delong (the People's Republic of China (China)), Thomas Martin (Indonesia), Christopher Williams (Mexico), and Megan Goins (the Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878, (202) 482–3936, (202) 482–5166, or (202) 482–0884, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2023, the U.S. Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of aluminum extrusions from China, Indonesia, Mexico, and Turkey.[1] Currently, the preliminary determinations are due no later than December 28, 2023.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 29, 2023, the petitioners[2] submitted a timely request that Commerce postpone the preliminary determinations in these investigations.[3] The petitioners state that it is necessary to extend the deadline for the preliminary determinations to collect the necessary information for determining the most accurate possible CVD subsidy rates, because the full questionnaire responses are not due until a few days before and after the current preliminary determinations deadline, which gives Commerce little or no time to review responses from respondents, issue supplemental questionnaires, or consider deficiency comments before reaching a preliminary determination.[4]

In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.,* March 4, 2024.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 30, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–26746 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023).

[2] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[3] *See* Petitioners' Letter, ''Request for Postponement of the Preliminary Determination,'' dated November 29, 2023.

[4] *Id.*

[5] Because the extended deadline for these preliminary determinations falls on the weekend (*i.e.,* March 2, 2024), the deadline becomes the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD407]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Transco Lower New York Bay Lateral (LNYBL) Natural Gas Pipeline Maintenance in Sandy Hook Channel, NJ

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Transcontinental Gas Pipe Line Company LLC (Transco), a subsidiary of Williams Partners L.P., for authorization to take marine mammals incidental to pile driving associated with the LNYBL Natural Gas Pipeline Maintenance in Sandy Hook Channel, New Jersey (NJ). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 5, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fleming@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, 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: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 28, 2023, NMFS received a request from Transco for an IHA to take marine mammals incidental to pile driving activities associated with the LNYBL maintenance project in Sandy Hook Channel, NJ. On September 1, 2023 Transco submitted updates to the planned daily duration of pile driving and on October 27, 2023, Transco notified NMFS of changes to project timing. Following NMFS' review of the application, discussions between NMFS and Transco, and reanalysis following the aforementioned project changes, the application was deemed adequate and complete on November 2, 2023. Transco's request is for take of 11 species of marine mammals, by Level B harassment and, for a subset of 3 of these species, Level A harassment. Neither Transco nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Transco is proposing construction activities to stabilize the LNYBL natural gas pipeline that extends 34 miles (mi) [55 kilometers (km)] in Raritan Bay, Lower New York Bay, and the Atlantic Ocean from Morgan, NJ to Long Beach, New York (NY). During routine monitoring of the existing LNYBL, Transco identified seven discrete sections of the gas pipeline with either limited cover or exposure resulting from dynamic conditions. The LNYBL maintenance project is the maintenance of pipeline sections with seven corresponding ''work areas'' that encompass all in-water temporary work spaces within NY and NJ where project-related activities may cause sediment disturbance. To stabilize the pipeline, Transco would place rock over the pipeline at seven distinct work areas. At Work Area 3, near Sandy Hook Channel, NJ, Transco would install 960 sheet piles to provide additional stability and protection, and to mitigate future seabed lowering and erosion along the north flank of Sandy Hook Channel. Proposed activities included as part of the project with potential to affect marine mammals include vibratory and impact pile driving of steel sheet piles at Work Area 3 on 80 days between June and September 2024. Other in-water work described above would not cause take of marine mammals.

Dates and Duration

Pile driving activities are planned to occur between June 15 and September 15, 2024. Pile installation and removal activities are expected to take a total of 80 days. Additional in-water construction activities (*i.e.,* rock placement) would occur through November 2024.

Specific Geographic Region

The proposed pile driving activity will occur at Sandy Hook Channel, where Raritan Bay and Lower New York Bay meet, in NJ state waters (Figure 1) and adjacent to the northwest portion of the New York Bight. Leading to the Port of New York and New Jersey, these bays experience significant commercial and recreational vessel activity. The work area is subject to erosional forces associated with high tidal currents near Sandy Hook Peninsula resulting from sand deposition at the Sandy Hook landmass spit. Depths at Work Area 3 range from 5.3 meters (m) [17.3 feet (ft)] to 10.6 m (34.8 ft). However, the harassment zones would extend 13.6 km (8.5 mi) and reach depths greater than 20 m (66 ft).

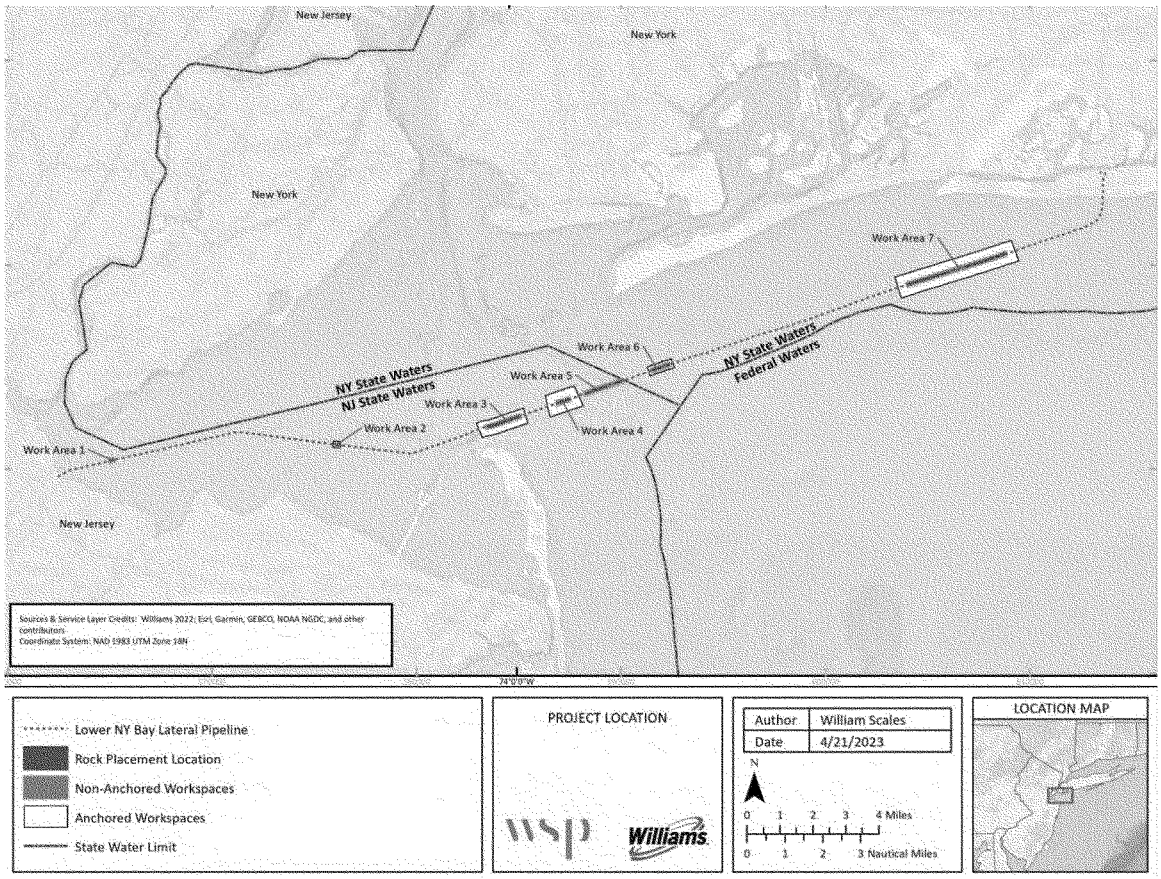

Figure 1. Map illustrating the proposed project location in Sandy Hook Channel, NJ.

Detailed Description of the Specified Activity

Transco plans to maintain the LNYBL, which is a 26-inch (in) [66 centimeter (cm)] diameter concrete coated natural gas pipeline that extends 34 miles in Raritan Bay, Lower New York Bay, and the Atlantic Ocean from Morgan, NJ to Long Beach, NY. Transco plans to install 960 36-in (91 cm) long sheet piles approximately 600 ft (183 m) north of Sandy Hook Channel, to establish a retaining wall approximately 18 ft (5.5 m) south of the pipeline that prevents the currents at Sandy Hook Channel from further eroding the underlying seabed. To reduce potential seabed erosion on the southern (channel) side of the sheet pile wall, armor rock placement will also be placed along the southern side of the sheet piles. The sheet piles will be installed using a barge-mounted vibratory hammer (vibro-hammer) and, when necessary, an impact hammer. A template will be fixed to the barge used for sheet pile installation, which will help position sheet piles and shorten the time needed for sheet pile installation compared to typical sheet pile installation methods. The sheet piles will be stored at a local port and will be brought out to the crane barge using supply barges with tugs. Sheet piles will be installed for approximately 2,400 ft (732 m). Each installed sheet pile will be surveyed for orientation to record the distance from the pipeline.

Vibro-hammers continuously vibrate the sheet pile into the substrate until the desired depth is reached. A vibro-hammer uses spinning counterweights, causing the sheet pile to vibrate at a high speed. The vibrating sheet pile causes the soil underneath it to ''liquefy'' and allow the sheet pile to move easily into or out of the sediment. Once refusal is reached with the vibratory hammer, Transco will switch to a hydraulic impact hammer to attain an acceptable depth. A representative hydraulic impact hammer that may be used is the IHC Hydrohammer S Series—specifically, the S–30, S–40, and S–70. The rams of these Hydrohammers range from 1.5 to 3.5 metric tons with maximum speeds from 50 to 65 blows per minute. Maximum obtainable energy for the largest of the three models (S–70) is 51,630 foot-pounds (70 kilonewton meters) at its highest setting. The minimum rated energy for the smallest hammer (S–30) is 2,213 foot-pounds (3 kilonewton meters).

Active sheet pile installation will occur during daylight hours on 80 days; daily operational time for the vibro-hammer and impact hammer is expected to be 2 hours each, for a maximum total of 4 hours (table 1). Rock placement will follow shortly after sheet pile installation at a given location while sheet piling continues at a nearby location.

Transco also plans to place rock material over six additional discrete locations along the pipeline that are exposed or poorly covered (Work areas 1, 2, 4, 5, 6 and 7), totaling 26.52 acres), using barge or vessel mounted cranes with clamshell type buckets and multibeam sonar and/or ultra-short baseline beacons to support accurate placement. Only the pile driving activities at Work Area 3 have the potential to result in take of marine mammals, thus the rock placement components of the project, including vessel operations and rock placement validation equipment, are not discussed further in this document. Please refer to Transco's application for additional information about project components that are not expected to result in the incidental take of marine mammals.

TABLE 1—PILE INSTALLATION METHODS AND DURATIONS

Pile type	Number of piles	Average piles per day	Average vibratory duration per pile (minutes)	Impact strikes per pile	Estimated total number of minutes per day	Days of installation and removal
36-inch sheet piles	960	12	10	520	240	80

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs (Hayes *et al.,* 2022; Hayes *et al.,* 2023). All values presented in table 2 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Fin Whale	*Balaenoptera physalus*	Western N Atlantic	E, D, Y	6,802 (0.24, 5,573, 2016)	11	1.8
Humpback Whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, N	1,396	22	12.15
Minke Whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-, -, N	21,968 (0.31, 17,002, 2016)	170	10.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Atlantic White-sided Dolphin.	*Lagenorhynchus acutus*	Western N Atlantic	-, -, N	93,233 (0.71, 54,443, 2016)	544	27
Bottlenose Dolphin	*Tursiops truncatus*	Northern Migratory Coastal	-, -, Y	6,639, (0.41, 4,759, 2016)	48	12.2–21.5
		Western North Atlantic Offshore.	-, -, N	62,851 (0.23, 51,914, 2016)	519	28
Common Dolphin	*Delphinus delphis*	Western N Atlantic	-, -, N	172,974 (0.21, 145,216, 2016)	1,452	390
Atlantic Spotted Dolphin	*Stenella frontalis*	Western N Atlantic	-, -, N	39,921 (0.27, 32,032, 2016)	320	0
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016)	851	164
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Harp Seal	*Pagophilus groenlandicus*	Western N Atlantic	-, -, N	7.6M (UNK, 7.1M, 2019)	426,000	178,573
Harbor Seal	*Phoca vitulina*	Western N Atlantic	-, -, N	61,336 (0.08, 57,637, 2018)	1,729	339
Gray Seal [4]	*Halichoerus grypus*	Western N Atlantic	-, -, N	27,300 (0.22, 22,785, 2016)	1,458	4,453

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] This stock abundance estimate is only for the U.S. portion of this stock. The actual stock abundance, including the Canadian portion of the population, is estimated to be approximately 424,300 animals. The PBR value listed here is only for the U.S. portion of the stock, while M/SI reflects both the Canadian and U.S. portions.

As indicated above, all 11 species (with 12 managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project areas are included in Table 3–1 of the IHA application. North Atlantic right whale, short-finned pilot whale, and long-finned pilot whale could potentially occur in the area. However, the spatial and temporal occurrence of these species is rare, and the applicant would shut down pile driving if they enter the project area. In the case of North Atlantic right whale, the take estimation process resulted in calculated exposure of 0.5. Given the low likelihood of the exposure in concert with the proposed requirement to shut down pile driving activities upon observation at any distance, take is not expected to occur. As such, they are not discussed further.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (UME) (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone, principally from Cape Hatteras northward (Hayes *et al.,* 2022). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year, though densities vary seasonally (Edwards *et. al.,* 2015). Fin whales are often found in small groups of up five to seven individuals (NMFS 2023). Fin whales have been observed in the waters off the eastern end of Long Island, but are more common in deeper waters.

While there is no active UME for fin whale, strandings and mortalities are occasionally reported in NJ and NY waters (Hayes *et al.,* 2021, Newman *et al.,* 2012). Between 2015 and 2019, only one fin whale mortality was recorded in the vicinity of the Project area with a vessel strike reported as the likely cause (Henry *et al.,* 2022).

Humpback Whale

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS delineated 14 Distinct Population Segments (DPS) with different listing statuses (81 FR 62259, September 8, 2016) pursuant to the ESA. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the survey area.

Humpback whale sightings and mortalities in the New York Bight have been increasing over the last decade (Brown 2022) including in the bays that intersect with the project area. Between 2011 and 2016, there have been at least 46 humpback whale sightings within Lower New York Bay, Upper New York Bay, and Raritan Bay (Brown *et al.,* 2018). Most sightings occurred during the summer months (July to September), with no documented sightings in the winter (Brown *et al.,* 2018). A total of 617 humpback whale sightings were reported within the New York Bight based on data collected from 2011–2017 (Brown *et al.,* 2018). During winter, the majority of humpback whales from North Atlantic feeding areas mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs, though significant numbers of animals are found in mid- and high-latitude regions at this time and some individuals have been sighted repeatedly within the same winter season, indicating that not all humpback whales migrate south every winter (Clapham *et al.,* 1993).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine (ME) to Florida. Partial or full necropsy examinations have been conducted on 45 percent of the 202 known cases. Of the whales examined, about 40 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Minke Whale

Minke whales occur in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2022). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution. During spring and summer, they appear to be widely distributed from just east of Montauk Point, Long Island, northeast to Nantucket Shoals, and north towards Stellwagen Bank and Jeffrey's Ledge (CeTAP, 1982). During the fall, their range is much smaller and their abundance is reduced throughout their range (CeTAP, 1982).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from ME through South Carolina, with a total of 151 strandings recorded when this document was written. This event has been declared a UME though it is currently considered non-active with closure pending. Full or partial

necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Atlantic White-Sided Dolphin

The Atlantic white-sided dolphin occurs throughout temperate and sub-polar waters of the North Atlantic, most prominently in continental shelf waters to depths of approximately 100 m (330 ft) (Hayes *et al.,* 2022). Atlantic white-sided dolphins of the western North Atlantic stock inhabit waters from central west Greenland to North Carolina (NC) and as far east as the mid-Atlantic ridge (Hamazaki 2002; Doksaeter *et al.,* 2008; Hayes *et al.,* 2022). Seasonal shifts in abundance occur throughout the western North Atlantic region, where the dolphins appear to be more prevalent from Georges Bank to the lower Bay of Fundy from June through September. From October to December, they appear to occur at intermediate densities from southern Georges Bank to the southern Gulf of Maine (Payne *et al.,* 1990; Hayes *et al.,* 2022). Sightings of dolphins south of Georges Bank (Hudson Canyon in particular) occur year-round, but generally at lower densities (Hayes *et al.,* 2022).

Based on observations made during CeTAP surveys in 1982, Atlantic white-sided dolphins were found primarily east and north of Long Island and the project area. The Atlantic white-sided dolphins observed south of Long Island were farther offshore in the deeper water of the continental shelf proper and closer to the continental shelf slope. This species was largely absent from the overall region (Cape Hatteras, NC, to the Gulf of Maine) during the winter (CeTAP 1982).

Historically, Atlantic white-sided dolphins have stranded along the coasts of NY and NJ. However, since 2015, no strandings have been reported in either state (Hayes *et al.,* 2022). During 2013, two Atlantic white-sided dolphins stranded along the Long Island coast (RFMRP 2014) in March and May.

Based on the known occurrence of this species in New England waters east and north of the Project area during the spring, summer, and fall, and the overall lack of presence throughout the region during the winter, it is possible that Atlantic white-sided dolphin could infrequently occur in the vicinity of the Project area during the in-water maintenance period.

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Hayes *et al.,* 2018). The two morphotypes are genetically distinct based upon both mitochondrial and nuclear markers (Hoelzel *et al.,* 1998; Rosel *et al.,* 2009). The offshore form is distributed primarily along the outer continental shelf and continental slope in waters greater than 40 m from Georges Bank to the Florida Keys (Hayes *et al.,* 2018). The Northern Migratory Coastal stock occupies coastal waters from the shoreline to approximately the 20-m isobath between Assateague, VA, and Long Island, NY during warm water months. The stock migrates in late summer and fall and, during cold water months (best described by January and February), occupies coastal waters from approximately Cape Lookout, NC, to the NC/VA border (Garrison *et al.,* 2017). Based on the known distribution of the Northern Migratory Coastal stock, this stock could also occur in the vicinity of the project during the proposed project; however, Sandy Hook, NJ (southeast of Raritan Bay) represents the northern extent of the stock's range (Hayes *et al.,* 2018).

From 2014 to 2018, 50 bottlenose dolphins stranded in NY and 88 stranded in NJ (Hayes *et al.,* 2020). A significant number of strandings occurred in 2013, with 38 strandings in NY and 153 strandings in NJ. The stock identity of these strandings is highly uncertain and may include individuals from the coastal and offshore stocks (Hayes *et al.,* 2020). NMFS declared a UME for bottlenose dolphins in the mid-Atlantic region beginning in early July 2013 and ending March 2015. This UME included elevated numbers of strandings in NY, NJ, Delaware, Maryland, and VA. Incidental take of dolphins proposed for authorization here may be of either the offshore or northern coastal migratory stocks.

Common Dolphin

The common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, common dolphins are typically found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Doksaeter *et al.,* 2008; Waring *et al.,* 2008), but may be found in shallower shelf waters as well. Common dolphins occur primarily east and north of Long Island and may occur in the project area during all seasons (CeTAP, 1982). Between 2015 and 2019, 41 common dolphins stranded in NY and 14 stranded in NJ (Hayes *et al.,* 2022).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Hayes *et al.,* 2020). The Western North Atlantic stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Hayes *et al.,* 2020). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and usually occurring inside or near the 200-m isobaths (Hayes *et al.,* 2020). It has been suggested that the species may move inshore seasonally during the spring, but data to support this theory is limited (Caldwell and Caldwell, 1966; Fritts *et al.,* 1983). No Atlantic spotted dolphins have been stranded along the NY or NJ coasts in recent years.

Harbor Porpoise

Harbor porpoises occur from the coastline to deep waters (>1800 m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf in waters less than 150 m (Hayes *et al.,* 2022). In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoise may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region in the summer, but they are widely dispersed from NJ to ME in the spring and fall (Hayes *et al.,* 2022). In the winter, intermediate densities of harbor porpoises can be found in waters off NJ to NC, and lower densities of harbor porpoises can be found in waters of NY to New Brunswick, Canada. In 2011, six sightings were recorded inside Long Island Sound with one sighting recorded just outside the Sound (NEFSC and SEFSC, 2011). Between 2011 and 2015, 33 harbor porpoises stranded in NY and 17 stranded in NJ (Hayes *et al.,* 2018). Additionally, between 2015 and 2019, 31 harbor porpoises stranded in NY and 32 stranded in NJ (Hayes *et al.,* 2022).

Harp Seal

Harp seals are highly migratory and occur throughout much of the North Atlantic and Arctic Oceans. Breeding occurs between late-February and April and adults then assemble on suitable pack ice to undergo the annual molt.

The migration then continues north to Arctic summer feeding grounds. Harp seal occurrence in the project area is considered rare. However, since the early 1990s, numbers of sightings and strandings have been increasing off the east coast of the United States from ME to NJ (Rubinstein 1994; Stevick and Fernald 1998; McAlpine 1999; Lacoste and Stenson 2000; Soulen *et al.,* 2013). These extralimital appearances usually occur in January–May (Harris *et al.,* 2002), when the western North Atlantic stock is at its most southern point of migration.

Between 2011 and 2015, 78 harp seals stranded (mortalities) in NY and 22 stranded (mortalities) in NJ (Hayes *et al.,* 2018). During 2013, eight harp seals stranded (mortalities and alive) on Long Island (RFMRP, 2014). All of those strandings occurred between January and June. Between 2015 and 2019, 86 harp seals stranded in NY and 15 stranded in NJ (Hayes *et al.,* 2022).

As described above, elevated seal mortalities, including harp seals, occurred across ME, New Hampshire (NH) and Massachusetts (MA), and as far south as Virginia (VA), between July 2018 and March 2020. This event was declared a UME though it is currently non-active with closure pending, with phocine distemper virus identified as the main pathogen found in the seals. Information on this UME is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Harbor Seal

Harbor seals are found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N (Burns, 2009). In the western North Atlantic, harbor seals are year-round inhabitants of the coastal waters of eastern Canada and ME and occur seasonally along the coasts from southern New England to VA. Their presence in the region of the project area increases from October to March, when adults, sub-adults, and juveniles are expected to migrate south from ME. They return north to the coastal waters of ME and Canada in late spring (Katona *et al.,* 1993). The closest known haulout sites for harbor seals in the vicinity of the project area are located 2.9 km (1.8 mi) southwest of the project site (Reynolds 2022) and 16.1 km (10 statute miles) east [Coastal Research and Education Society of Long Island (CRESLI) 2023], outside of the ensonified area. There are approximately 26 haulout locations around Long Island, and CRESLI has documented a total of 31,846 pinnipeds (primarily harbor seals) during surveys since 2006 (CRESLI 2023).

Between July 2018 and March 2020, elevated numbers of harbor seal and gray seal mortalities occurred across ME, NH and MA. This event was declared a UME though it is currently non-active with closure pending. Stranded seals showed clinical signs as far south as VA, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from ME to VA. The main pathogen found in the seals was phocine distemper virus. Information on this UME is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Gray Seal

Gray seals in the project area belong to the western North Atlantic stock and range from NJ to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Hayes *et al.,* 2022). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both ME and MA (Hayes *et al.,* 2022). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Wood *et al.,* 2011). The closest known haulout sites for gray seals in the vicinity of the project area are located 2.9 km (1.8 mi) southwest (Sandy Hook Beach) outside of the ensonified area (Reynolds 2022). Additional haulout sites are likely Little Gull Island in the Long Island Sound (CRESLI, 2023). Gray seals also haul out on Great Gull Island and Little Gull Island in eastern Long Island Sound (DiGiovanni *et al.,* 2015).

Between July 2018 and March 2020, elevated numbers of harbor seal and gray seal mortalities occurred across ME, NH and MA. This event was declared a UME though it is currently non-active with closure pending. Stranded seals showed clinical signs as far south as VA, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from ME to VA. The main pathogen found in the seals was phocine distemper virus. Information on this UME is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile driving. These effects may result in Level A or Level B harassment of marine mammals in the project area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute (ANSI) 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay [ANSI 1986; National Institute of Occupational Safety and Health (NIOSH) 1998; NMFS 2018]. Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of hammers would be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of Transco's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving is the means by which marine mammals may be harassed from Transco's specified activity. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). In general, exposure to pile driving noise has the potential to result

in behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, auditory threshold shifts. Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Masking,* below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Activities for this project include impact and vibratory pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for threshold shift declines.

Behavioral Harassment—Exposure to noise from pile driving also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; National Research Council (NRC) 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or

aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to

those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*e.g.,* fish). Impacts to the immediate substrate during installation of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, without any expected effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

In-water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities in the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* impact and vibratory pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, for phocids because predicted auditory injury zones are relatively large, and seals are expected to be relatively common and are more difficult to detect at greater distances. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or

proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Transco's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa is/are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Transco's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* pile driving).

The project includes vibratory and impact pile driving. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in table 5. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION OF 36-INCH STEEL SHEET PILE

Hammer type	dB rms	dB SEL	dB peak	Literature source
Vibratory	182	N/A	N/A	Quijano *et al.,* 2018.
Impact	190	180	205	Caltrans, 2015.

Note: dB peak = peak sound level; rms = root mean square; SEL = sound exposure level.

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$TL = B * \text{Log10}\ (R1/R2)$, where

TL = transmission loss in dB
B = transmission loss coefficient
*R*1 = the distance of the modeled SPL from the driven pile, and
*R*2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for the Raritan Bay is not available; therefore, the default coefficient of 15 is used to determine the distances to the harassment thresholds.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below (table 6). The resulting estimated isopleths and the calculated Level B harassment isopleths are reported in table 7.

TABLE 6—USER SPREADSHEET INPUTS

36-inch steel sheet piles		
Spreadsheet tab used	(A.1) Vibratory pile driving	(E.1) Impact pile driving
Source Level (SPL)	182 RMS	180 SEL
Transmission Loss Coefficient	15	15
Weighting Factor Adjustment (kHz)	2.5	2
Activity Duration per pile (minutes)	10	N/A
Number of strikes per pile		520
Number of piles per day	12	12
Distance of sound pressure level measurement	1	10

TABLE 7—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS

Hammer type	Level A harassment isopleths (m) | area of harassment zone (km²) *				Level B harassment isopleth (m) | area of harassment zone (km²) *
	LF	MF	HF	PW	
36-Inch Steel Sheet Piles					
Vibratory Pile Driving	27.2	2.4	40.3	16.6	13,594 | 426.13
Impact Pile Driving	2,135.6 | 18.99	76.0 | 0.30	2,543.9 | 25.23	1,142.9 | 7.72	1,000

* Harassment zone areas are clipped by viewshed.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Transco applied the Duke University Marine Geospatial Ecology Laboratory marine mammal habitat-based density models (*https://seamap.env.duke.edu/models/Duke/EC/*) to estimate take from vibratory and impact pile driving (Roberts *et al.,* 2016; Roberts *et al.,* 2023). These density data incorporate aerial and shipboard line-transect data from NMFS and other organizations and incorporate data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and control for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). Most recently, all models were updated in 2022 based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the project area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2023).

For each species, the average monthly density (June–September) near work area 3, Sandy Hook Channel, was calculated (table 8). Specifically, in a Geographic Information Systems, density rasters were clipped to polygons representing the zone of influence for Level A harassment zones for each hearing group and the largest Level B harassment zone, which applies to all hearing groups. Densities in Roberts *et al.,* (2023) are provided in individuals per 100 square km, however they were converted to individuals per square km for ease of calculation. The monthly maximum density of individuals per square km for each zone of influence was averaged over the months of June to September near work area 3 to provide a single density estimate for each species or species group. The available density information provides densities for seals as a guild due to difficulty in distinguishing these species at sea. Similarly, density information for bottlenose dolphins does not differentiate between stocks. The resulting density values (table 8) were used to calculate take estimates of marine mammals for sheet pile installation activities. Note that other data sources were evaluated for pinnipeds (*e.g.,* Save Coastal Wildlife reports) but were found unsuitable due to data quality and applicability.

TABLE 8—AVERAGE MONTHLY DENSITY OF SPECIES IN THE PROJECT AREA

[June–September]

Species	Average monthly density (individual/km^2) used in Level B take calculations at work area 3, Sandy Hook channel (June–September)	Average monthly density (individual/km^2) used in Level A take calculations at work area 3, Sandy Hook channel (June–September)
Fin Whale	1.41361E–04	4.53952E–06
Humpback Whale	9.37889E–05	2.14387E–05
Minke Whale	2.34113E–04	3.12779E–05
Atlantic white-sided dolphin	4.97340E–05	6.98975E–07
Bottlenose dolphin	1.88295E–01	4.76450E–02
Harbor porpoise	1.64816E–04	3.27277E–05
Common dolphin	5.91282E–04	1.24663E–05
Atlantic Spotted Dolphin	2.38665E–04	8.76649E–07
Harp Seals, Gray Seals, Harbor Seals	0.11387	0.11130

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Take estimates are the product of density, ensonified area, and number of days of pile driving work. Specifically, take estimates are calculated by multiplying the expected densities of marine mammals in the activity area(s) by the area of water likely to be ensonified above the NMFS defined threshold levels in a single day (24-hour period). Transco used the construction method that produced the largest isopleth to estimate exposure of marine mammal noise impacts (*i.e.,* the largest ensonified area estimated for vibratory pile driving was used to estimate potential takes by Level B harassment, and the hearing group-specific ensonified areas estimated for impact pile driving were used to estimate potential Level A harassment). Next, that product is multiplied by the number of days vibratory or impact pile driving is likely to occur. The exposure estimate was rounded to the nearest whole number at the end of the calculation. A summary of this method is illustrated in the following formula:

$$\textit{Estimated Take} = D \times ZOI \times \#\ \textit{of construction days}$$

Where:

D = density estimate for each species within the ZOI

ZOI = maximum daily ensonified area (km^2) to relevant thresholds

For bottlenose dolphins, the density data presented by Roberts *et al.,* (2023) does not differentiate between bottlenose dolphin stocks. Thus, the take estimate for bottlenose dolphins calculated by the method described above resulted in an estimate of the total number of bottlenose dolphins expected to be taken, from all stocks (for a total of 6,419 takes by Level B harassment). However, as described above, both the Western North Atlantic Northern Migratory Coastal stock and the Western North Atlantic Offshore stock have the potential to occur in the project area. Because approximately 95% of the project area occurs in waters shallower than 20 m, we assign take to stock accordingly. Thus, we assume that 95 percent of the total proposed authorized bottlenose dolphin takes would accrue to the Western North Atlantic Offshore stock (total 6,098 takes by Level B harassment), and 5 percent to the Western North Atlantic Northern Migratory Coastal stock (total 321 takes by Level B harassment) (table 9).

Additional data regarding average group sizes from survey effort in the

region was considered to ensure adequate take estimates are evaluated. Take estimates for several species were adjusted based upon average groups sizes derived from NOAA Atlantic Marine Assessment Program for Protected Species data from 2010–2019 shipboard distance sampling surveys (Palka *et al.,* 2021). This is particularly true for uncommon or rare species with very low densities in the models. These calculated take estimates were adjusted for these species as follows:

- Atlantic white-sided dolphin: Only 1 take by Level B harassment was estimated but takes proposed for authorization were increased to the average number of dolphins in a group reported in Palka *et al.,* 2021 (n = 12);
- Common dolphin: Only 26 takes were estimated but takes proposed for authorization were increased to the average number of dolphins in a group reported in Palka *et al.,* 2021 (n = 30);
- Atlantic spotted dolphin: Only 9 takes were estimated but takes proposed for authorization were increased to the average number of dolphins in a group reported in Palka *et al.,* 2021 (n = 24);

TABLE 9—PROPOSED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Proposed authorized take		Proposed take as a percentage of stock abundance *
		Level B harassment	Level A harassment	
Fin Whale	Western North Atlantic	5	0	<1
Humpback Whale	Gulf of Maine	3	0	<1
Minke Whale	Canadian East Coast	8	0	<1
Atlantic White-sided Dolphin	Western North Atlantic	12	0	<1
Bottlenose Dolphin	Northern Migratory Coastal	6,098	0	92
	Western North Atlantic Offshore	321	0	<1
Harbor Porpoise	Gulf of Maine/Bay of Fundy	6	0	<1
Common Dolphin	Western North Atlantic	30	0	<1
Atlantic Spotted Dolphin	Western North Atlantic	24	0	<1
Harbor Seal	Western North Atlantic	3,813	69	6.3
Gray Seal	Western North Atlantic			<1
Harp Seal	Western North Atlantic			<1

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Transco has indicated that pile driving will be conducted between June 15 and September 15, a time of year when North Atlantic Right Whales are unlikely to occur near the project area. NMFS proposes the following mitigation measures be implemented for Transco's pile installation activities.

Shutdown Zones—For all pile driving activities, Transco would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones vary based on the activity type and marine mammal hearing group (table 10). In most cases, the shutdown zones are based on the estimated Level A harassment isopleth distances for each hearing group. However, in cases where it would be challenging to detect marine mammals at the Level A harassment isopleth and frequent shutdowns would create practicability concerns (*e.g.,* for phocids during impact pile driving), smaller shutdown zones have been proposed (table 10). Additionally, Transco has agreed to implement a minimum shutdown zone of 60 m during all pile driving activities.

Finally, construction supervisors and crews, Protected Species Observers (PSOs), and relevant Transco staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 10 or 15 minutes have passed without re-detection of the animal.

Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone. In the case of North Atlantic right whale,

construction activities must be halted upon observation of this species at any distance, regardless of its proximity to a harassment zone.

TABLE 10—PROPOSED SHUTDOWN ZONES

Activity	Pile type	Shutdown zones (m)				
		North Atlantic right whale	Low frequency	Mid frequency	High frequency	Phocid
Vibratory Installation	36-inch sheet	Any distance	60			
Impact Installation			1,000	80	200	150

Protected Species Observers (PSOs)—The number and placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Transco would employ at least two PSOs for all pile driving activities.

Monitoring for Level A and Level B Harassment—PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. If a marine mammal enters either harassment zone, PSOs will document the marine mammal's presence and behavior.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown, Level A harassment, and Level B harassment zones for a period of 30 minutes. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. If the shutdown zone is obscured by fog or poor lighting conditions, in-water construction activity will not be initiated until the entire shutdown zone is visible. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed entering or within shutdown zones, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. If a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin.

Soft-Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring—Marine mammal monitoring during pile driving activities must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor), and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity

pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization.

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction activity pursuant to a NMFS-issued incidental take authorization; and,

• PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs should also have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was note implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Visual monitoring will be conducted by a minimum of two trained PSOs positioned at suitable vantage points on or near the maintenance barge. One PSO will have an unobstructed view of all water within the shutdown zone. Remaining PSOs will observe as much as the Level A and Level B harassment zones as possible.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

Transco will submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including: (1) The number and type of piles that were driven and the method (*e.g.,* impact or vibratory); and, (2) Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);

• PSO locations during marine mammal monitoring;

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

• Upon observation of a marine mammal, the following information: (1) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) Time of sighting; (3) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) Distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) Estimated number of animals (min/max/best estimate); (6) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) Animal's closest point of approach and estimated time spent within the harassment zone; (8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones, by species; and,

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. All PSO data would be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *itp.fleming@noaa.gov*) and Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478 or 978–281–9291) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival

(50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 2, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving associated with the Transco LNYBL maintenance project, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment, from underwater sounds generated by pile driving.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for low-frequency, mid-frequency, or high-frequency cetaceans. The potential for harassment would be minimized through the implementation of planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is expected for pinnipeds (harbor seal, harp seal, and gray seal). Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for all marine mammal stocks and species. For eight species, NMFS anticipates no Level A harassment take over the duration of Transco's planned activities; for pinnipeds, NMFS expects no more than 69 takes by Level A harassment across all 3 pinniped species (harbor seal, gray seal, harp seal). If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. Transco would also shut down pile driving activities if marine mammals enter the shutdown zones (table 10) further minimizing the degree of PTS that would be incurred.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

As described above, humpback whales, and gray, harbor and harp seals are experiencing ongoing UMEs. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.,* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth.

In regards to pinnipeds (harbor seals, gray seals and harp seals), we do not expect takes that may be authorized under this IHA to exacerbate or compound upon ongoing UMEs. Between July 2018 and March 2020, elevated seal mortalities occurred across ME, NH and MA, and as far south as VA due to phocine distemper virus (the

UME is still active but pending closure). Since June 2022, a UME has been declared for Northeast pinnipeds in which elevated numbers of sick and dead harbor seals, gray seals, and harp seals have been documented along the southern and central coast of ME (NOAA Fisheries, 2022). Between June 1, 2022 and July 16, 2023, 65 grays seals, 379 harbor seals, and 6 harp seals have stranded. As noted previously, no injury, serious injury, or mortality is expected or will be authorized, and takes of harbor seal, gray seal, and harp seal will be minimized through the incorporation of the required mitigation measures. The population abundance for these species is 61,336, 27,300, and 7.6 million, respectively (Hayes *et al.,* 2022). The 3,882 takes that may be authorized across these species represent a small proportion of each population and as such we do not expect this authorization to exacerbate or compound upon these UMEs.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. No ESA-designated critical habitat or recognized Biologically Important Areas are located within the project area. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. The closest pinniped haulout is located 2.9 km from the work area but does not intersect with the harassment zones.

For all species and stocks, take would occur within a limited, relatively confined area (primarily Raritan Bay) of the stock's range, which is not of particular importance for marine mammals that may occur there. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals outside the bay along the NJ and NY coasts. Additionally, NMFS anticipates that the prescribed mitigation will minimize the duration and intensity of expected harassment events.

Some individual marine mammals in the project area, such as harbor seals or bottlenose dolphins, may be present and be subject to repeated exposure to sound from pile driving activities on multiple days. However, pile driving and extraction is not expected to occur on every day, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between work days. As discussed above, individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Additionally, haulout habitat available for pinnipeds does not intersect with the harassment zones. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would be temporary behavioral changes due to avoidance of the project area and limited instances of Level A harassment in the form of a slight PTS for pinnipeds. Potential instances of exposure above the Level A harassment threshold are expected to be relatively low for most species;
- The availability of alternate areas of similar habitat value nearby;
- Effects on species that serve as prey species for marine mammals from the proposed project are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;
- There are no known important feeding, breeding, or calving areas in the project area.
- The proposed mitigation measures, including visual monitoring, shutdown zones, and soft start, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

We propose to authorize incidental take of 12 marine mammal stocks. The total amount of taking proposed for authorization is well below one-third of the estimated stock abundance for all species except for the western north Atlantic northern coastal migratory stock of bottlenose dolphins (table 9).

The total number of authorized takes for bottlenose dolphins, if assumed to accrue solely to new individuals of the northern migratory coastal stock, is >90 percent of the total stock abundance, which is currently estimated as 6,639. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of these bottlenose dolphins will be harassed by project activities.

Western North Atlantic Northern Migratory Coastal bottlenose dolphins make broadscale, seasonal migrations in coastal waters of the Western north Atlantic. During the warm months, when the project is planned, their range extends from the shoreline to the 20 m isobaths between Assateague, VA to Long Island, NY (Garrison *et al.,* 2017b), an area spanning approximately 300 linear km of coastline. It is likely that the majority of the Western North Atlantic Northern Migratory Coastal bottlenose dolphins would not occur within waters ensonified by project activities.

In summary, the Western North Atlantic Northern Migratory Coastal bottlenose dolphins are not expected to occur in a significant portion of the larger ZOI. Given that the specified activity will be stationary within an area not recognized as any special significance that would serve to attract or aggregate dolphins, we therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidents of take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO).

NMFS is proposing to authorize take of the fin whale, which is listed under the ESA. The NMFS Office of Protected Resources has requested initiation of section 7 consultation with GARFO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Transco for conducting the LNYBL Maintenance Project in Sandy Hook Channel, New Jersey (NJ) between June and August 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 30, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–26704 Filed 12–5–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0015]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force (AF) 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 February 5, 2024.

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 Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 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 AF Information Collections Office, 1800 Air Force Pentagon, Suite 4C146, Washington, DC 20330, ATTN: Ms. Mia Day, or call 703–697–4593.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for AF Reserve Officer's Training Corps (ROTC) Membership; AF ROTC Form 20; OMB Control Number: 0701–0105.

Needs And Uses: The information collection requirement is necessary to determine whether an applicant is eligible to join the AF ROTC program and, if accepted, the enrollment status of the applicant within the program. Upon acceptance into the program, the collected information is used to establish personal records for AF ROTC cadets. Eligibility for membership cannot be determined if this information is not collected.

Affected Public: Individuals or households.

Annual Burden Hours: 4,000.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Annual Responses: 12,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Dated: November 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26757 Filed 12–5–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0118]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency 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 February 5, 2024.

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 Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 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 Defense Counterintelligence and Security Agency, ATTN: Ms. Michele DeMarion, 1137 Branchton Road, Boyers, PA 16018, or call 724–794–5612 ext. 5274.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Standard Form (SF) 87 Fingerprint Charts; SF 87; OMB Control Number: 0705–0002.

Needs and Uses: The SF 87 is a fingerprint card, which is utilized to conduct a national criminal history check, which is a component of the background investigation. The SF 87 is completed by applicants who are under consideration for Federal employment; by Federal employees, to determine whether they should be retained in such employment; by individuals being considered to perform work for the Federal Government under a Government contract or to continue such work; and by persons seeking long-term access to Federal facilities and systems. The SF 87 fingerprint chart is used in background investigations to help establish facts required to determine, for example, whether the subject of the investigation should be adjudicated to be eligible for logical and physical access to Government facilities and systems; suitable or fit for Federal employment; fit to perform work on behalf of the Federal Government under a Government contract; eligible to hold a position that is sensitive for national security reasons; or eligible for access to classified information. The SF 87 form is utilized only when a hardcopy fingerprint chart must be obtained, as opposed to the electronic collection of fingerprints.

Affected Public: Individuals or households.

Annual Burden Hours: 261.

Number of Respondents: 3,136.

Responses per Respondent: 1.

Annual Responses: 3,136.

Average Burden per Response: 5 minutes.

Frequency: As required.

Dated: November 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26768 Filed 12–5–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0119]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day 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 February 5, 2024.

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 Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 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: Samuel Whalen, Ph.D. (*samuel.j.whalen2.ctr@health.mil*), Center for Military Psychiatry and Neuroscience (CMPN), Walter Reed Army Institute of Research (WRAIR) 503 Robert Grant Ave. BLDG 509, Room 115A, Silver Spring, MD 20910 or call at 301–319–9862.

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and Office of Management and Budget (OMB) Number*: Leader Assessment of the DoD's Toolkit for Managing Suicide-Related Events; OMB Control Number: 0704–SPTK.

Needs and Uses:

The Defense Suicide Prevention Office (DSPO) requires assistance from Walter Reed Army Institute of Research (WRAIR) to administer a project evaluating the utilization of the DSPO Postvention Toolkit. In accordance with Department of Defense Instruction (DoDI) 6490.16, *Defense Suicide Prevention Program,* DSPO and the Military Departments must ''ensure that suicide prevention activities are developed from a relevant evidence-base and have an evaluation capability'' prior to implementation. Suicide prevention activities that were in place prior to release of the DoDI 6490.16 must be reviewed for improvement and gather program evaluation data. In addition, Government Accountability Office (GAO) Report GAO–22–105108 (April, 2022), titled ''DoD Should Enhance Oversight, Staffing, Guidance, and Training Affecting Certain Remote Installations,'' recommended that the Under Secretary of Defense for Personnel and Readiness, via DSPO, establish guidance to address commanders' response to suicide attempts, including the extent of any responsibilities related to reintegration of Service members into the workplace following a suicide attempt.

Released in 2020, the DSPO Postvention Toolkit was intended equip DoD personnel with a better understanding of how to support leaders in helping the military community navigate the practical and emotional concerns after a suicide-related event in a way that is sensitive to the unique issues associated with such an event. Sections of the Toolkit were specifically designed to facilitate leader decision making, support, and management of suicide-related events. As of July 2023, the Toolkit has not been evaluated. The proposed project will allow DSPO to meet the DoDI 6490.16 requirement to develop an evaluation plan for the DSPO Postvention Toolkit, while simultaneously meeting GAOs requirements to explore and develop resources to meet the needs of military leaders' in supporting Service member reintegration following suicide attempts.

The scope of this project is to interview approximately 100 military leaders to obtain feedback about the DSPO Postvention Toolkit. This feedback will inform recommendations regarding updates to the toolkit in terms of content and approach. In addition, the interviews will provide pilot data on leader attitudes toward reintegrating Service members following non-lethal suicide-related events and leader attitudes about suicide-related event clusters they may have encountered. Interviews will be conducted with leaders at various levels (*e.g.,* platoon, company, and battalion; officer and enlisted personnel) and across the Military Services (Army, Air Force, Navy, Marine Corps, and Space Force). Requirements for study participation include having been in a leadership role when managing a suicide-related event within the past 5 years.

Affected Public: Active-Duty Service Members (ADSMs) representing each of the Military Services.

Annual Burden Hours: 150.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 90 minutes.

Frequency: Once.

Dated: November 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26779 Filed 12–5–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0024]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy (DoN) 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 February 5, 2024.

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 Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 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 Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, ATTN: Ms. Sonya Martin, or call 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: BUMED PHOP Electronic Behavioral Health Intake Assessment; OMB Control Number: 0703–EBHS.

Needs and Uses: In 2008, the DoN Bureau of Medicine and Surgery (BUMED) created the Psychological Health Outreach Program (PHOP) to address potential gaps in behavioral health-related support for all Service Members (and their Family Members) serving in the DoN Reserve and United States Marine Forces Reserve. The PHOP mission includes the provision of preemptive outreach, psychoeducation, assessment, and case management services intended to connect Service Members/Family Members and Reserve Units as a whole to targeted community resources that help reduce stress, promote resiliency, and support mission readiness. The PHOP is staffed by a nationwide Team of fully licensed clinical behavioral health professionals. To support Service Members and Reserve Units, PHOP continuously engages in a cycle of outreach and referral, wherein PHOP Team Members proactively contact, and are contacted by, Service Members and Command Points of Contact to collaborate on and develop action plans intended to address identified psychosocial issues and/or stressors.

To develop customized action plans in support of Service Members and Reserve Units, PHOP must conduct an assessment of the psychosocial stressors affecting the Service Member or Reserve Unit seeking support. To fully support those experiencing psychological health issues, assessment necessarily includes an evaluation of specific types of issues that may adversely affect one's overall health and wellness. These include an assessment of depressive signs and symptoms, anxiety, trauma-related experiences, alcohol use, sleep quality, and individually identified/reported stressors. Additionally, to ensure PHOP services are delivered to Service Members and Reserve Units with timeliness and accuracy, individual/group contact information must be collected. Moreover, in an effort to provide regionally, culturally, and biologically sensitive support, individual demographics are collected.

Affected Public: Individuals or households.

Annual Burden Hours: 970.

Number of Respondents: 5,821.

Responses per Respondent: 1.

Annual Responses: 5,821.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: November 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26760 Filed 12–5–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0017]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted 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.

DATES: Consideration will be given to all comments received by January 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, (571) 344–1358, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: NAWCAD STEM Education Outreach Programs; NAWCAD Forms 5726/1, 5726/2, and 5726/4; OMB Control Number: 0703–SEOP.

Type of Request: Existing collection currently in use without an OMB Control Number.

NAWCAD SEO Program Request

Number of Respondents: 40.

Responses per Respondent: 1.

Annual Responses: 40.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 20.

NAWCAD SEO Science Fair Mentor Program Student Application

Number of Respondents: 24.

Responses per Respondent: 1.

Annual Responses: 24.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 12.

NAWCAD SEO Program Registration

Number of Respondents: 132.

Responses per Respondent: 1.

Annual Responses: 132.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 44.

Total Burden

Annual Burden Hours: 76.

Number of Respondents: 196.

Annual Responses: 196.

Needs and Uses: The mission of the Naval Air Warfare Center Aircraft Division's (NAWCAD) Strategic Education Office (SEO) is to provide meaningful opportunities for students in the areas of Science, Technology, Engineering, and Mathematics (STEM) through outreach activities to middle school and high school students. The purpose of the STEM programs is to provide interactive learning experiences for middle school and high school students to create awareness of the additional internship opportunities and naval careers encouraging students to pursue STEM education and career fields. Through the Southern Maryland region partnership agreements between federal agencies and educational institutions providing support and services to public and private school students, the NAWCAD SEO assists in orchestrating of variety of engagement activities to include NAWCAD hosted annual STEM centric summer camp programs, classroom speaking and demonstrations, school field trips, mentorships, and the organizing of volunteer support for all activities. To facilitate annual events, information must be collected from local area educational institutions, community groups, and/or students via three forms: NAWCAD 5726/1, ''NAWCAD SEO

Program Request''; NAWCAD 5726/2, ''NAWCAD SEO Science Fair Mentor Program Student Application''; and NAWCAD 5726/4, ''NAWCAD SEO Program Registration.''

Affected Public: Individuals or households; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26758 Filed 12–5–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 31, 2024; 1:00 p.m. to 5:00 p.m. MST

ADDRESSES: This hybrid meeting will be open to the public in person and via WebEx. To attend virtually, please contact the Northern New Mexico Citizens Advisory Board (NNMCAB) Executive Director (below) no later than 5:00 p.m. MST on Friday, January 26, 2024. Hilton Santa Fe Historic Plaza, 100 Sandoval Street, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Bridget Maestas, NNMCAB Executive Director, by Phone: 505–709–7466 or Email: *bridget.maestas@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Presentation on Landfill Covers—Their Purpose and Performance
- Agency Updates

Public Participation: The in-person/online virtual hybrid meeting is open to the public in person or virtually, via WebEx. Written statements may be filed with the Board no later than 5:00 p.m. MST on Friday, January 26, 2024, or within seven days after the meeting by sending them to the NNMCAB Executive Director at the aforementioned email address. Written public comments received prior to the meeting will be read into the record. 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 submit public comments should follow as directed above.

Minutes: Minutes will be available by emailing or calling Bridget Maestas, NNMCAB Executive Director, at *bridget.maestas@em.doe.gov* or at (505) 709–7466.

Signed in Washington, DC on December 1, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–26780 Filed 12–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–8–000]

Natural Gas Pipeline Company of America, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Texas-Louisiana Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Texas-Louisiana Expansion Project (Project) involving installation and operation of facilities by Natural Gas Pipeline Company of America, LLC (Natural) in Montgomery and Liberty Counties, Texas. The Commission will use this environmental document in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. 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 5:00 p.m. Eastern Time on January 2, 2024. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

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 environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this Project to the Commission before the opening of this docket on October 18, 2023, you will need to file those comments in Docket No. CP24–8–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

Natural 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?'' which addresses typically asked questions, including how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(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 FERC Online. 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 FERC Online. 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 Commission. Be sure to reference the Project docket number (CP24–8–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

Natural proposes the construction, installation, modification, operation, and maintenance of facilities at two existing compressor stations in Liberty and Montgomery Counties, Texas. Through installation of the proposed facilities, Natural would add an incremental 300,000 dekatherms/day (Dth/day) of firm gas capacity in Segment 25 of its Louisiana Line 10. When combined with the unsubscribed capacity Natural has reserved for the Project, this would allow Natural to provide up to 467,000 Dth/day of firm transportation service to the Project shippers. Natural states the Project would not result in the termination or reduction in firm service to any of its existing customers.

The Project would consist of the following facilities and activities:

Modifications and Installations at Compressor Station 302 (CS 302) in Montgomery County, Texas

- Uprate the horsepower (hp) of existing compressor controls to increase the horsepower of existing compressor Units 7 and 8 by 1,600 hp each, for a total of 3,200 hp;
- Re-wheel existing compressor Units 7, 8 and 9; and
- Install one new electric motor driven (EMD) compressor unit with a rating of 18,340 hp.

Modification at Compressor Station 343 (CS 343) in Liberty County, Texas

- Re-wheel existing EMD compressor Units 9 and 10.

In addition, Natural has identified in its application certain appurtenant facilities that it intends to construct/install under section 2.55(a) of the Commission's regulations.

The general location of the Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

About 21.5 acres of land would be affected during construction at CS 302 in Montgomery County, Texas. Land affected during operation of new facilities installed at CS 302 would total 1.6 acres. All acreage would be within the existing CS 302 fenceline. About 10.9 acres of land would be affected during construction at CS 343 in Liberty County, Texas. Operational use would be limited to less than 0.2 acre of affected land. Of the 10.9 acres used at CS 343 during construction, less than 9.1 acres would be within the existing fenceline and about 1.9 acres would be outside the fenceline on previously disturbed property that Natural currently owns.

No offsite staging areas or yards are proposed as part of the Project. Natural would use existing public and private roads for temporary construction access to Project workspaces. Following Project activities, Natural would restore all but the required 1.8 acre of operational-use land to its former state. Natural proposes to begin construction around July 1, 2025.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

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. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an environmental assessment (EA) or an environmental impact statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed Project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff would then prepare a draft EIS which would be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

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 environmental document.[3] 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(s), 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.[4] The environmental document 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; 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, 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 and includes a mailing address with their comments. 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 you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP24–8–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

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 eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. 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.

Public sessions or site visits would be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: November 30, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26762 Filed 12–5–23; 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. EC24–11–000.
Applicants: Skysol, LLC.
Description: Supplement to October 23, 2023, Application for Authorization Under Section 203 of the Federal Power Act of Skysol, LLC.
Filed Date: 11/29/23.
Accession Number: 20231129–5149.
Comment Date: 5 p.m. ET 12/11/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–46–000.
Applicants: Northern Orchard Solar PV, LLC.
Description: Northern Orchard Solar PV, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

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[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] 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.

Filed Date: 11/29/23.
Accession Number: 20231129–5190.
Comment Date: 5 p.m. ET 12/20/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–496–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to Extend E&P Agrmt with CA High Speed Rail (RS 247) to be effective 1/30/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5000.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–497–000.
Applicants: Navajo Tribal Utility Authority.
Description: Petition for Waiver of Navajo Tribal Utility Authority.
Filed Date: 11/29/23.
Accession Number: 20231129–5191.
Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24–498–000.
Applicants: MidAmerican Central California Transco, LLC.
Description: § 205(d) Rate Filing: 2023 Annual Update TRBAA Filing to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5051.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–499–000.
Applicants: NextEra Energy Transmission New York, Inc., Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NextEra Energy Transmission New York, Inc. submits tariff filing per 35.13(a)(2)(iii: Joint 205: EPCA among NYISO, NEET NY, National Grid and Alle Catt Wind (SA2812) to be effective 11/15/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5061.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–500–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5244; Queue No. AD1–085 to be effective 1/30/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5070.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–501–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Att V to address GIP and Initiating an Interconnect Req (RR 580) to be effective 2/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5084.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–502–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6154; Queue No. AE1–185 to be effective 1/30/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5088.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–503–000.
Applicants: Greenleaf Energy Unit 2 LLC.
Description: § 205(d) Rate Filing: 2023–11–30 Request for Authorization of Daily Surcharge Payment to be effective 9/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5095.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–504–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Revised Amended-Restated IA, Harbor Cogen (TOT040/SA No. 2) to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5163.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–505–000.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Rate Schedule No. 198—Notice of Cancellation to be effective 2/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5213.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–506–000.
Applicants: Viridon Mid-Atlantic LLC.
Description: Baseline eTariff Filing: Formula Rate Baseline to be effective 1/30/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5222.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–507–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits one Construction Agreement, SA No. 6929 to be effective 1/30/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5227.
Comment Date: 5 p.m. ET 12/21/23.

Docket Numbers: ER24–508–000.
Applicants: NextEra Energy Seabrook, LLC.
Description: § 205(d) Rate Filing: NextEra Energy Seabrook, LLC 2nd Amendment to A&R EP Agreement with NECEC to be effective 11/13/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5229.
Comment Date: 5 p.m. ET 12/21/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 30, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26764 Filed 12–5–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–438–000]

Jade Meadow 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 Jade Meadow 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 December 20, 2023.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: November 30, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26765 Filed 12–5–23; 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: PR24–15–000.
Applicants: Columbia Gas of Pennsylvania.
Description: § 284.123 Rate Filing: Columbia Gas of Pennsylvania, Inc. Statement of Operating Conditions to be effective 11/29/2023.
Filed Date: 11/29/23.
Accession Number: 20231129–5132.
Comment Date: 5 p.m. ET 12/20/23.

Docket Numbers: PR24–16–000.
Applicants: Columbia Gas of Virginia Inc.
Description: § 284.123 Rate Filing: Columbia Gas of Virginia, Inc. Statement of Operating Conditions to be effective 11/29/2023.
Filed Date: 11/29/23.
Accession Number: 20231129–5134.
Comment Date: 5 p.m. ET 12/20/23.

Docket Numbers: PR24–17–000.
Applicants: Southern California Gas Company.
Description: § 284.123(g) Rate Filing: Offshore Delivery Service Rate Revision November 2023 to be effective 11/1/2023.
Filed Date: 11/29/23.
Accession Number: 20231129–5151.
Comment Date: 5 p.m. ET 12/20/23.
§ 284.123(g) Protest: 5 p.m. ET 1/29/24.

Docket Numbers: RP24–181–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (ASARCO) to be effective 1/1/2024.
Filed Date: 11/29/23.
Accession Number: 20231129–5125.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: RP24–182–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (Red Willow_Sempra) to be effective 1/1/2024.
Filed Date: 11/29/23.
Accession Number: 20231129–5129.
Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: RP24–183–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—12/1/2023 to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5024.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–184–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Remove Expired Agreements eff 11–30–2023 to be effective 11/30/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5047.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–185–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing for Agreements Volume and Volume 1 Tariff eff 11–30–23 to be effective 11/30/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5048.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–186–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2023 Leap Year Rate Filing to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5056.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–187–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2023 Special Pool Filing to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5057.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–188–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Dec 1 2023 Releases to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5086.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–189–000.

Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing (TMV and EcoEnergy) to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5091.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–190–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: CIG Qtrly LUF True-up Nov 2023 to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5101.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–191–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20231130 Negotiated Rate to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5102.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–192–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: § 4(d) Rate Filing: Periodic Rate Adjustment—Fuel and L&U Retention Percentages December 2023 to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5105.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–193–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Annual Fuel and L&U Filing 2024 to be effective 1/1/2024.
Filed Date: 11/30/23.
Accession Number: 20231130–5108.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–194–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Update (Hartree 615843_610670_614700 Dec 2023) to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5110.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–195–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rates—Northern to NRG Business 3049 eff 12–1–23 to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5135.
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–196–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 12–1–23 to be effective 12/1/2023.
Filed Date: 11/30/23.
Accession Number: 20231130–5145.
Comment Date: 5 p.m. ET 12/12/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

Filings in Existing Proceedings

Docket Numbers: RP19–78–012
Applicants: Panhandle Eastern Pipe Line Company, LP
Description: Refund Report: RP19–78–000 Refund Report to be effective N/A.
Filed Date: 11/30/23
Accession Number: 20231130–5066
Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: RP24–158–001
Applicants: Midwestern Gas Transmission Company
Description: Tariff Amendment: Amendment to Tariff Part 5.0 Metadata Correction to be effective 11/1/2023.
Filed Date: 11/30/23
Accession Number: 20231130–5001
Comment Date: 5 p.m. ET 12/12/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 30, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26763 Filed 12–5–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–11555–01–ORD]

Board of Scientific Counselors (BOSC) Climate Change and Social and Community Sciences Subcommittee Meeting—December 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a virtual meeting of the Board of Scientific Counselors (BOSC) Climate Change (CC) and Social and Community Sciences (SCS) subcommittees to review and deliberate on their responses to the charge questions posed at two earlier BOSC informational meetings held on June 15, 2023, and June 20, 2023.

DATES: The meeting will be held via videoconference on Wednesday, December 20, 2023, from 12 p.m. to 5 p.m. and Thursday, December 21, 2023, from 12 p.m. to 5 p.m. All times noted are Eastern Time and approximate. The meeting may adjourn early if all business is finished. Attendees should register by December 13, 2023. Requests for making oral presentations at the meeting will be accepted through December 15, 2023. Comments may be submitted through December 15, 2023.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at: *https://bosc-CC-SCS-meeting.eventbrite.com.* Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0765.

• *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Executive Committee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW, Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0765.

• *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW, Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0765. Note: This is not a mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voicemail at: 919–541–4334; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: This meeting is open to the public. Any member of the public interested in accessing the meeting agenda and materials, attending the meeting, or making a presentation at the meeting may visit the BOSC website at *https://www.epa.gov/bosc.* Individuals making an oral presentation will be limited to a total of three minutes. Proposed agenda items for the meeting include but are not limited to subcommittee deliberation on the charge questions.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Tom Tracy at (919) 541–4334 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2023–26778 Filed 12–5–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, December 13, 2023.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov,* select ''News & Events,'' then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of Minutes for October 11, 2023
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Strategic Plan 2024–2029

Portions Closed to the Public

- Report on Insurance Risk
- Federal Managers Financial Integrity Act Review
- Audit Plan for the Year Ended December 31, 2023
- Executive Session of the Audit Committee with Auditor

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–26711 Filed 12–5–23; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10056	Michigan Heritage Bank	Farmington Hills	MI	12/01/2023
10060	Westsound Bank	Bremerton	WA	12/01/2023
10068	Community Bank of West Georgia	Villa Rica	GA	12/01/2023
10101	Community Bank of Arizona	Phoenix	AZ	12/01/2023
10180	Community Bank & Trust	Cornelia	GA	12/01/2023

NOTICE OF TERMINATION OF RECEIVERSHIPS—Continued

Fund	Receivership name	City	State	Termination date
10366	First Georgia Banking Company	Franklin	GA	12/01/2023
10369	Atlantic Bank & Trust	Charleston	SC	12/01/2023
10441	Carolina Federal Savings Bank	Charleston	SC	12/01/2023
10448	Montgomery Bank & Trust	Ailey	GA	12/01/2023
10462	Gulfsouth Private Bank	Destin	FL	12/01/2023

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 1, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–26774 Filed 12–5–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201412.

Agreement Name: MSC/Ellerman Space Charter Agreement.

Parties: MSC Mediterranean Shipping Company SA; Ellerman City Liners Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes MSC to charter space to Ellerman in the trade between ports in Sweden, Poland, Lithuania, Germany, the United Kingdom, Belgium and France on the one hand, and ports on the East Coast of the United States on the other hand.

Proposed Effective Date: 12/1/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/84531.

Dated: December 1, 2023.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2023–26767 Filed 12–5–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of 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(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 January 5, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Midfed Acquisition Corp., Wilmington, Delaware;* to become a savings and loan holding company by acquiring Midland Capital Holdings Corporation, and thereby indirectly acquiring Midland Federal Savings and Loan Association, both of Bridgeview, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26789 Filed 12–5–23; 8:45 am]

BILLING CODE 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 applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of 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(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* 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 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 21, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Karen K. Spies, Graettinger, Iowa;* to retain voting shares of Emmetsburg Bank Shares, Inc., and thereby indirectly retain voting shares of Iowa Trust & Savings Bank, both of Emmetsburg, Iowa.

2. *Andrew Prather and Tina Prather, both of Petersburg, Illinois; Elizabeth A. Prather, Virginia, Illinois; and the Laura J. Prather Trust, Laura J. Prather, trustee, both of Creve Coeur, Missouri;* as members of the Prather Family Control Group, a group acting in concert, to retain voting shares of Petefish, Skiles Bancshares, Inc., and thereby indirectly retain voting shares of Petefish, Skiles & Company, both of Virginia, Illinois, and The First National Bank of Beardstown, Beardstown, Illinois.

3. *George Bley, II, and Michelle Bley, both of Palm Harbor, Florida; and Jan E. Rohde, Springfield, Illinois;* as members of the Bley Family Control Group, a group acting in concert, to retain voting shares of Petefish, Skiles Bancshares, Inc. and thereby indirectly retain voting shares of Petefish, Skiles & Company, both of Virginia, Illinois, and The First National Bank of Beardstown, Beardstown, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26788 Filed 12–5–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: Document Identifiers: CMS–1561 and CMS–1561A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Health Insurance Benefit Agreement; *Use:* The CMS–1561 form applies to specific types of health care providers and opioid treatment programs and the CMS–1561A form applies to rural health clinics (RHCs). The CMS–1561 and CMS–1561A forms are health insurance benefits agreements that are essential for the Centers for Medicare and Medicaid Services (CMS) to ensure that applicants to the Medicare program have made a binding commitment to comply with all applicable Federal requirements. The CMS–1561/1561A forms are essential in that they allow CMS to ensure that applicants are in compliance with the requirements. Applicants will be required to sign the completed form and provide operational information to CMS to assure that they continue to meet the requirements after approval. The collection is made only once, when the provider or RHC submits their application for participation in Medicare by signing the completed CMS–1561 or CMS–1561A form (as applicable). *Form Number:* CMS–1561/1561A (OMB control number: 0938–0832); *Frequency:* Once only; *Affected Public:* Private sector—(Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 2,050; Total *Annual Responses:* 2,050; *Total Annual Hours:* 2,050. (For policy questions regarding this collection

contact Caroline Gallaher at 410–786–8705).

Dated: November 30, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–26738 Filed 12–5–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for (Office of Management and Budget (OMB) Review; Sexual Risk Avoidance Education Program Performance Analysis Study—Extension OMB #0970–0536)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) and the Family and Youth Services Bureau in the Administration for Children and Families (ACF) request an extension without changes to a currently approved information collection activity as part of the Sexual Risk Avoidance Education (SRAE) Program Performance Analysis Study (PAS). The goal of the study is to collect, analyze, and report on performance measures data for the SRAE program (OMB Control No. 0970–0536; expiration date 12/31/2023). The purpose of the requested extension is to continue the ongoing data collection and submission of the performance measures by SRAE grantees. Materials under the submission will be updated to reflect only surveys currently in use.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purpose of the SRAE program is to educate youth on how to voluntarily refrain from nonmarital sexual activity and prevent other youth risk behaviors. Data will continue to be used to determine if the SRAE grantees are meeting performance benchmarks related to their program's mission and priorities.

The SRAE PAS collects performance measures data from SRAE grantees, program providers, and participants. The data include information on program structure, cost, and support for implementation; program attendance, reach, and dosage; the characteristics of youth involved in programming; youth sexual and other risky behavior prior to program participation; and youth sexual and other risky behavior intentions at program exit. The performance measures help the ACF program office and grantees to monitor and report on progress in implementing SRAE programs and inform technical assistance.

Some of the performance measures data come from youth participants through surveys SRAE grantees administer at program entry and exit. There are separate versions of the entry and exit surveys for middle school youth, which exclude some of the more sensitive items that are included in the versions for high school and older youth. There is also a shorter version of the entry survey for programs conducting impact studies, to reduce the burden on participants in those programs who are likely responding to other surveys as part of their impact study. Although there was a version of the exit survey for programs conducting impact studies in the past, youth in these programs complete the same version of the exit survey as other youth. As the shorter exit surveys are no longer in use, they will be removed through this request.

Respondents: General Departmental (GDSRAE), State (SSRAE), and Competitive (CSRAE) grantees, their subrecipients, and program participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
(1) Participant Entry Survey					
GDSRAE participants	378,390	1	0.1333	50,439	16,813
SSRAE participants	952,899	1	0.1333	127,021	42,340
CSRAE participants	60,408	1	0.1333	8,052	2,684
(2) Participant Exit Survey					
GDSRAE participants	302,712	1	0.1667	50,462	16,821
SSRAE participants	762,319	1	0.1667	127,079	42,360
CSRAE participants	48,326	1	0.1667	8,056	2,685
(3) Performance reporting data entry form: grantees					
GDSRAE grantees	119	6	16	11,424	3,808
SSRAE grantees	39	6	16	3,744	1,248
CSRAE grantees	34	6	16	3,264	1,088

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
(4) Performance reporting data entry form: subrecipients					
GDSRAE subrecipients	252	6	13	19,656	6,552
SSRAE subrecipients	426	6	13	33,228	11,076
CSRAE subrecipients	63	6	13	4,914	1,638

Estimated Total Annual Burden Hours: 149,113.

Authority: 42 U.S.C 1310.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–26791 Filed 12–5–23; 8:45 am]

BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0482]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before February 5, 2024.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV.*

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0482–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Continued Evaluation of the National Hypertension Control Initiative.

Type of Collection: Revision.

OMB No.: 0990–0482–OS/Office of Assistant Secretary for Health (OASH)/Office of Minority Health (OMH).

Abstract: As part of the federal response to COVID–19, the U.S. Department of Health and Human Services (HHS)/Office of Secretary (OS)/Office of Assistant Secretary for Health (OASH)/Office of Minority Health (OMH) has funded a new initiative involving two cooperative agreements with the American Heart Association (AHA) to improve COVID–19-related health outcomes by addressing hypertension (high blood pressure) among racial and ethnic minority populations.

The $32 million project from the HHS Office of Minority Health (OMH) and the Health Resources and Services Administration (HRSA) Bureau of Primary Health Care will support the implementation of the National Hypertension Control Initiative (NHCI), a national initiative to improve blood pressure control among the most at-risk populations, including racial and ethnic minorities.

The NHCI will support 350 participating HRSA-funded health centers by providing patient and provider education and training for effective hypertension control and integration of remote blood pressure monitoring technology into treating hypertension for patients served by participating health centers. The project will also utilize the American Heart Association's targeted media campaigns and existing partnerships with community-based organizations (CBOs) to help reach Black, Latino, and other impacted communities with (i) culturally and linguistically appropriate messages, (ii) access to blood pressure screenings, and (iii) connection to health centers to encourage proper treatment and management of hypertension of screened individuals. This initiative serves to increase the number of adult patients with controlled hypertension and reduce the potential risk of COVID-related health outcomes.

AHA aims to conduct an evaluation to assess the feasibility of the implementation of each of the three NHCI strategies. The findings of this evaluation will inform the improvement and tailoring of AHA's communication approaches about the importance of and techniques for improving blood pressure control, including the benefits of accurately measuring, rapidly acting, and having a patient-focused approach to blood pressure control.

Methodology

The current proposed evaluation of the NHCI project will use a mixed methods design, integrating both quantitative and qualitative data collection and analyses. Three main goals of data collection will be to: (1) track and monitor Community Health Workers' (CHW) progress on activities related to knowledge and practices for blood pressure control and general health quarterly, (2) assess the reach and success of NHCI project strategies implemented by CHC partners.

Specifically, the AHA will engage in:

Primary Data Collection

CHW Application. Collecting information on participating Community Health Workers (CHWs) at a single point in time to assist with placement in workforce activities related to blood pressure control.

CHW Assessment Form. Monitoring the placement and community-based goals of CHWs participating in the NHCI at a single point in time.

CHW Empowered To Serve (ETS) Program Modules. Administering health lessons and quizzes to Community Health Workers (CHWs) working with Community-based Organizations and Community Health Centers to assess

knowledge, skills, and practices both before (pre) and after (post) completion of the modules.

CHC Surveys. Conducting online data collection on participation and use of NHCI services and supports with CHC staff, with a single collection for each survey.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
CHW: Application	CHW	300	1	30/60	150
CHW: Assessment	CHW	300	1	1	300
CHW: Empowered to Serve (ETS) Program Modules: Pre-test.	CHW	300	9	10/60	450
CHW: Empowered to Serve (ETS) Program Modules: Pre-test.	CHW	300	9	10/60	450
CHCs: Use of Azara/Population Health Tool	CHC	40	1	1	40
CHCs: JumpStart Modules	CHC	350	1	1	350
CHCs: Uniti Health	CHC	350	1	1	350
Total					2,090.0

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–26739 Filed 12–5–23; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Notice is hereby given of a change to the meeting of the Advisory Committee to the Director, National Institutes of Health, that is being held on December 14, 2023, from 9:00 a.m. to 4:45 p.m., and December 15, 2023, from 9:00 a.m. to 2:45 p.m., National Institutes of Health, 9000 Rockville Pike, Building 1, Wilson Hall, One Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on November 17, 2023, FR Doc 2023-25376, 88 FR 80320. This notice is being amended to inform the public that access to this meeting will be provided exclusively through live videocast. Individuals who plan to attend must do so virtually. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.* The meeting date and time will remain the same.

Dated: December 1, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26776 Filed 12–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting 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; Small Business for Endocrine, Metabolic Systems and Reproduction.

Date: December 15, 2023.

Time: 3:30 p.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 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: December 1, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26790 Filed 12–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is directed to a device to measure placental oxygen saturation in pregnant women from 20 weeks of pregnancy to delivery. The device monitors maternal tissue oxygen saturation, blood oxygen saturation, breathing rate, heart rate, and heart rate variability from signal, fetal movement activity and potentially fetal heart rate and heart rate variability. This technology was discovered and is being developed by the National Institute on Child Health and Human Development (NICHD). The NICHD is currently seeking a licensee and/or collaborator to further develop this technology.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing and collaboration opportunity should be directed to: Zarpheen Jinnah, Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530, MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702. Telephone: (240)–276–5530;

Facsimile: (240)–276–5504; Email: *zarpheen.jinnah@nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to this invention.

SUPPLEMENTARY INFORMATION: The following patent application is available for licensing and/or collaboration under a Cooperative Research and Development Agreement (CRADA):

US Provisional Application No. 63/451,066.

Achieving expeditious commercialization of federally funded research and development is consistent with the goals of the Bayh-Dole Act, codified as 35 U.S.C. 200–212.

Background and Description of Technology

Monitoring placental oxygenation level and maternal physiological signals can be useful to assess mother and fetus well-being during pregnancy. Additionally, fetal movement has long served as a measure for fetal well-being and nervous system development helping to identify adverse pregnancy outcomes. Identification of complications during pregnancy can allow for earlier interventions, including medications to reduce risk of perinatal mortality and maternal gene therapy. Researchers at NICHD have created a wearable and wireless device and protocol for continuously monitoring the placental oxygenation levels, multiple physiological signals and movement activities of a fetus and mother. The device includes a compact control board, a flexible near-infrared spectroscopy (NIRS) probe, and multiple accelerator probes. A classification algorithm based on Monte-Carlo simulations of multiple layers model computes oxygen saturation of the placenta. There are one or more accelerator probes attached to different body parts of the mother to detect mother movement activities and to eliminate the effect of mother movement on fetal movement. The overall data acquisition rate of this device is 10 Hz or more. With this acquisition rate, the output of the device contains extra physiological signal such as maternal respiratory and cardiac functions, and fetal cardiac functions.

Potential Commercial Applications

A low cost wearable device, similar to a smart watch, in which a pregnant woman can wear regularly to monitor both mother and fetus health conditions.

Competitive Advantages:

- Wearable and non-invasive placenta and fetal monitoring device.
- Capable of 24/7 continuous monitoring of mother and fetal well-being.

Development Stage

Clinical development.

Dated: November 30, 2023.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023–26736 Filed 12–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–89]

30-Day Notice of Proposed Information Collection: Labor Standards Deposit Account Voucher, OMB Control No.: 2501–0021

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 5, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email: *PaperworkReductionActOffice@hud.gov.* telephone (202)-402–5535. This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 4, 2023 at 88 FR 51847.

A. Overview of Information Collection

Title of Information Collection: Labor Standards Deposit Account Voucher.

OMB Approval Number: 2501–0021.

Type of Request: This is an extension of a currently approved collection.

Form Number: HUD–4734.

Description of the need for the information and proposed use: HUD, State, Local and Tribal housing agencies administrating HUD-assisted programs must enforce Federal Labor Standards requirements, including the payment of prevailing wage rates to laborers and mechanics employed on HUD-assisted construction and maintenance work that is covered by these requirements. Enforcement activities include securing funds to ensure the payment of wage restitution that has been or may be found due to laborers and mechanics who were employed on HUD-assisted projects. Also, funds ae collected for the payment to the U.S. Treasury of liquidated damages that were assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA). If the labor standards discrepancies are resolved, HUD refunds associated amounts to the depositor. As underpaid laborers and mechanics are located, HUD sends wage restitution payments to the workers.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–4734 Labor Standards Deposit Account Voucher	15	1	15	.10	1.5	$37.01	$55.56
Total	15	1	15	.10	1.5	37.01	55.56

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Office, Chief Data Officer.

[FR Doc. 2023–26783 Filed 12–5–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–88]

30-Day Notice of Proposed Information Collection: Federal Labor Standards Questionnaire and Complaint Intake Form, OMB Control No.: 2501–0018

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 5, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Room 8210, Washington, DC 20410; email: *PaperworkReductionActOffice@hud.gov.* telephone (202)-402–5535. This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 4, 2023 at 88 FR 51846.

A. Overview of Information Collection

Title of Information Collection: Federal Labor Standards Questionnaire and Complaint Intake Form.

OMB Approval Number: 2501–0018.

Type of Request: This is an revision of a currently approved collection.

Form Number: HUD–4730E, HUD–4730SP and HUD–4731.

Description of the need for the information and proposed use: The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–4730E—English Federal Labor Standards Questionnaire ...	400	1	400	.50	200	$37.01	$7,402
HUD–4730S—Spanish Cuestionario de Normas Laborales Federales	100	1	100	.50	50	37.01	1,850.50

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–4731 Complaint Intake Form	500	1	500	.50	250	37.01	9,252.50
Total	1000		1000		500	37.01	18,505

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–26782 Filed 12–5–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NM_FRN_MO#4500172085; NMNM–145860]

Notice of Proposed Withdrawal and Opportunity for Public Meeting, Red Rock Wildlife Area, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the Bureau of Land Management (BLM), the Secretary of the Interior proposes to withdraw 312.16 acres of public lands and 400 acres of Federal mineral interest underlying non-Federal surface from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, to protect desert bighorn sheep habitat within the Red Rock Wildlife Area, for a period of 50 years, subject to valid existing rights. Publication of this notice segregates the lands for up to two years from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws, while the application is being processed. This notice initiates a 90-day public comment period and announces the opportunity to request a public meeting on the proposed withdrawal.

DATES: Comments and requests for a public meeting must be received by March 5, 2024.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Land Management (BLM), Attn: David McCarthy, BLM Las Cruces District Office, 1800 Marquess St., Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: David McCarthy, Realty Specialist, BLM Las Cruces District Office, at 575–525–4314, by email at *mccarthy@blm.gov* or at the address noted above. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM has filed a petition/application requesting the Secretary of the Interior to withdraw the following described public lands and Federal mineral interest underlying non-Federal surface from location and entry under the United States mining laws subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws, for a period of 50 years:

New Mexico Principal Meridian

Public Lands

T. 18 S., R. 18 W.,
Sec. 9, Lots 1 thru 4, S½NE¼SW¼, S½NW¼SE¼, and SE¼SE¼;
Sec. 16, Lots 1 thru 5.
The area described contains 312.16 acres.

Federal Mineral Interest Underlying Non-Federal Surface

T. 18 S., R. 18 W.,
Sec. 15, NW¼NW¼ and W½SW¼;
Sec. 16, NW¼SE¼;
Sec. 21, NE¼NE¼, W½NE¼, and W½NW¼;
Sec. 22, NW¼NW¼.
The areas described aggregate 400 acres.
The total areas described aggregate 712.16 acres.

The Secretary of the Interior has approved the petition to file a withdrawal application. The Secretary's approval constitutes her proposal to withdraw and segregate the subject lands (43 CFR 2310.1–3e).

The use of a right-of-way, interagency agreement, cooperative agreement, or surface management under 43 CFR subpart 3809 regulations would not adequately constrain non-discretionary uses and would not provide adequate protection for the resource values on these lands.

There are no suitable alternative sites available.

No water is necessary to fulfill the purpose of the withdrawal application. Records relating to this withdrawal application may be examined by contacting the BLM at the above address and phone number.

For a period until March 5, 2024, persons who wish to provide comments or request a public meeting for the withdrawal application must submit those in writing to the contact listed in the **ADDRESSES** section above. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register**, local newspaper, and on the BLM website at *www.blm.gov* at least 30 days before the scheduled date of the meeting.

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 the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

For a period until December 6, 2025, subject to valid existing rights, the BLM lands described in this notice will be segregated from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, while the withdrawal application is being processed, unless the application is denied, canceled, or the withdrawal is approved prior to that date.

The public lands described in this notice would remain open to such forms of disposition as may be allowed by law on the public lands. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature and which would not significantly impact the values to be protected by the requested withdrawal may be allowed with the approval of the authorized officer during the temporary segregation period.

This withdrawal application will be processed in accordance with the regulations set-forth at 43 CFR 2300.

(Authority: 43 U.S.C. 1714)

Melanie G. Barnes,

State Director, New Mexico.

[FR Doc. 2023–26756 Filed 12–5–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Agency Information Collection Activities; New Collection: Information Management Standard Assessment Questionnaires

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of new information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the National Indian Gaming Commission (NIGC or Commission) is providing notice to, and seeking comments from, the general public and other Federal agencies about a new information collection, to be administered by its CJIS (Criminal Justice Information Services) Audit Unit (CAU).

DATES: Submit comments on or before February 5, 2024.

ADDRESSES: Comments should be directed to the attention of: Tim Osumi, National Indian Gaming Commission and may be mailed to 1849 C Street NW, MS 1621, Washington, DC 20240; faxed to (202) 632–7066; or, electronically transmitted to *info@nigc.gov,* subject: PRA new collection.

FOR FURTHER INFORMATION CONTACT: Tim Osumi via email at *tim.osumi@nigc.gov;* telephone at (202) 264–0676; fax at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701, *et seq.,* was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (NIGC) and outlined a comprehensive framework for the regulation of gaming on Indian lands. Among the IGRA's requirements is that persons who apply for a ''key employee'' (KE) or ''primary management official'' (PMO) position at a tribal gaming operation must undergo a background investigation ((§ 2710(b)(2)(F)(i)). Similarly, the IGRA requires that persons who have direct or indirect financial interest in, or management responsibility for, a tribal gaming management contract, must undergo a background investigation and be evaluated for suitability as part of the NIGC's management contract review process ((§ 2711(a), (e)(1)(D)). In keeping with these background investigative statutory requirements, NIGC regulations 25 CFR 522.2(g), 25 CFR 556.4(a)(14), and 25 CFR 537.1(b)(2) stipulate that prospective KEs/PMOs and management contractors must submit their fingerprints to the Federal Bureau of Investigations (FBI) and undergo a criminal history record information (CHRI) check.

Although CHRI checks are integral to the tribal KE/PMO applicant licensing process, tribes do not possess the necessary statutory authority to directly access FBI CHRI for this purpose. The NIGC, as a Federal agency empowered under the IGRA to access CHRI (§§ 2706(b)(3) & (7), 2708), accepts tribal fingerprint submissions and transmits them to the FBI for this purpose. In return, the FBI provides CHRI check results to the NIGC and the NIGC shares these results with the requesting tribe. In this process, the NIGC assumes the role of a CJIS Systems Agency (CSA), a duly authorized agency on the CJIS network that provides service to criminal justice users with respect to the criminal justice information (CJI) from the various systems managed by the Federal Bureau of Investigations (FBI) CJIS Division.

The roles and responsibilities under which the NIGC, FBI, and tribes process CHRI checks are memorialized in Memoranda of Understanding between the FBI and the NIGC and between the NIGC and each requesting tribe. One such responsibility is to monitor the dissemination of CHRI to ensure FBI-compliant privacy and security standards are followed. This responsibility is detailed in FBI CJIS Security Policy, Policy Area 11 (CJISSECPOL 5.11.2) which specifies that the NIGC, as a CSA, is required to establish a process to periodically audit tribes that receive CHRI to ensure compliance with applicable statutes, regulations and policies. To fulfill this obligation, the NIGC has established a CJIS Audit Unit (CAU), which is tasked with coordinating with tribal authorities to ensure that NIGC-disseminated CHRI is handled and managed in accordance with applicable statutes, regulations, and policies.

In performing its oversight duties, the CAU will deploy questionnaires to gather information. This information will be used to assess and document tribal compliance with privacy and security standards and will enable the CAU to identify information management risk factors that may require remediation. This information collection is a vital tool for the NIGC CAU to be able to perform its function and the performance of this function helps to ensure that the NIGC can continue to support the successful operation of tribal gaming under IGRA.

II. Request for Comments

The Commission welcomes any comments on these collections concerning: (i) whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and dollar costs) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of

information unless it has a valid OMB Control Number.

It is the Commission's policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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 may ask in your comment that the Commission withhold your PII from public review, the Commission cannot guarantee that it will be able to do so.

II. Data

Title: Information Management Standard Assessment Questionnaires.

OMB Control Number: 3141–xxxx.

Brief Description of Collection: The collection involves questions that seek information about tribal security and privacy protections governing the processing, handling, and storing of NIGC-disseminated CHRI. The questions closely track the FBI's standard CJIS compliance questionnaires but have been streamlined and adapted to tribal specific standards. The information collected is generally policies, procedures, system configurations as well as some type and amount of measurable evidence that confirms their proper implementation.

Respondents: Indian tribal gaming operations.

Estimated Number of Annual Respondents: 140.

Estimated Number of Annual Responses: 140.

Estimated Time per Response: 37.5 minutes.

Frequency of Responses: Annually.

Estimated Total Annual Burden Hours on Respondents: 87.5.

Estimated Total Non-hour Cost Burden: $0.

Dated: November 29, 2023.

Edward Simermeyer,

Chairman.

[FR Doc. 2023–26775 Filed 12–5–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 254R5065C6, RX.59389832.1009690]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary Maintenance
EXM Emergency Extraordinary Maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District
WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract action:

31. White Rock Oil & Gas, Lower Yellowstone Project, Montana. Consideration of an excess capacity contract for conveyance of private M&I water supply.

Completed contract action:

30. Greenfields ID, Sun River Project, Montana: Consideration for a preliminary lease of power privilege for Pishkun Inlet. Consideration for additional sites is ongoing. Contract executed on September 18, 2023.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

45. Provo River Water Users Association, Provo River Project, Utah: Contract for XM at Deer Creek Dam pursuant to Title IX, Subtitle G of Public Law 111–11.

46. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Contract for the use of return flows from the Weber Basin Project.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract action:

23. Yuma ID, Gila Project, Arizona. Potential title transfer of an office building and land to Yuma ID pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

Columbia-Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

The Columbia-Pacific Northwest—Interior Region 9 has no updates to report for this quarter.

California-Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

Completed contract actions:

24. Santa Barbara County Water Agency, Cachuma Project, California: Execution of a second amendment to extend the term of the water service contract for 3 years. Contract executed on September 29, 2023.

25. Cachuma Operations and Maintenance Board, Cachuma Project, California: Execution of a second amendment to extend the term of the water service contract for 3 years. Contract executed on September 29, 2023.

Christopher Beardsley,

Director, Mission Assurance and Protection Organization.

[FR Doc. 2023–26755 Filed 12–5–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1378]

Certain Organic Light-Emitting Diode Display Modules and Components Thereof; Notice of 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 31, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Samsung Display Company, Ltd. of the Republic of Korea. Letters supplementing the complaint were filed on October 31, November 13, and November 14, 2023. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, or in the sale of certain organic light-emitting diode display modules and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or to prevent the establishment of an industry in the United States. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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.*

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 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 30, 2023, *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)(A) of section 337 in the importation into the United States, or in the sale of certain products identified in paragraph (2) by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or to prevent the establishment of an industry in the United States;

(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 ''OLED display modules, OLED display panels, and components of OLED display modules or panels'';

(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:

Samsung Display Co., Ltd., #1, Samsung-ro, Giheung-gu, Yongin-si, Gyeonggi-do, 17113, Republic of Korea

(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:

BOE Technology Group Co., Ltd., No. 12 Xihanzhong Road, BDA, Beijing, 100176, China

Mianyang BOE Optoelectronics Technology Co., Ltd., No. 198, Kefa RD, Mianyang, Sichuan, 621000, China

Ordos Yuansheng Optoelectronics Co., Ltd., No. 37 Science RD, Equipment Manufacturing Base, Dongsheng District, Ordos, Inner Mongolia Autonomous Region, 017020, China

Chengdu BOE Optoelectronics Technology Co., Ltd., No. 1188 Cooperation RD, Hi-tech Zone (west area), Chengdu, Sichuan, 611743, China

Chongqing BOE Optoelectronics Technology Co., Ltd., No. 7, Yunhan RD, Shuitu Hi-tech Industrial Zone, Chongqing, 400700, China

Wuhan BOE Optoelectronics Technology Co., Ltd., No. 691 Linkonggang RD, Dongxihu District, Wuhan, Hubei, 430040, China

BMOT f/k/a Kunming BOE Display Technology, No. 215, Building A2, No. 1 Yunshui RD, Da Ban Qiao subdistrict office of Yunnan Dianzhong New Area, 650211, China

BOE Technology America Inc., 2350 Mission College Blvd., Suite 600, Santa Clara, CA 95054

(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), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant 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 30, 2023.

Sharon Bellamy,

Supervisory and Hearings and Information Officer.

[FR Doc. 2023–26735 Filed 12–5–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1380]

Certain Video Capable Electronic Devices, Including Computers, Streaming Devices, Televisions, and Components and Modules Thereof; Notice of 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 31, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Nokia Technologies Oy of Finland and Nokia Corporation of Finland. Supplements were filed on November 7, 13, and 17, 2023. The complaint, as supplemented, 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 video capable electronic devices, including computers, streaming devices, televisions, and components and modules thereof by reason of the infringement of certain claims of U.S. Patent No. 7,724,818 (''the '818 patent''), U.S. Patent No. 10,536,714 (''the '714 patent''), U.S. Patent No. 11,805,267 (''the '267 patent''), U.S. Patent 8,077,991, (''the '991 patent''), and U.S. Patent No. 8,050,321 (''the '321 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 limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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.*

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 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 30, 2023, *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 6–9, 11, 15, 21, and 23 of the '818 patent, claims 1–30 of the '714 patent, claims 1–36 of the '267 patent, claims 1, 5, 6, 8–13, 17, 18, 20–24, 26, 29–33, 35, and 38 of the '991 patent, and claims 8–11 of the '321 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 ''laptop computers, desktop computers, tablet computers, streaming devices, televisions, and components and modules thereof'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(1), (f)(1), (g)(1);

(4) 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 complainants are:

Nokia Technologies Oy, Karakaari 7, FIN–02610, Espoo, Finland

Nokia Corporation, Karakaari 7, FIN–02610, Espoo, Finland

(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:

HP, Inc., 1501 Page Mill Road, Palo Alto, CA 94304

Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109

Amazon.com Services, LLC, 410 Terry Avenue North, Seattle, WA 98109

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) 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), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants 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 30, 2023.

Sharon Bellamy,

Supervisory and Hearings and Information Officer.

[FR Doc. 2023–26743 Filed 12–5–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1658 (Preliminary)]

Truck and Bus Tires From Thailand

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of truck and bus tires from Thailand, provided for in subheadings 4011.20.10 and 4011.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under § 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigation. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

Background

On October 17, 2023, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Pittsburgh, Pennsylvania, filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of truck and bus tires from Thailand. Accordingly, effective October 17, 2023, the Commission instituted antidumping duty investigation No. 731–TA–1658 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 30, 2023 (88 FR 74208). The Commission conducted its conference on November 7, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on December 1, 2023.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 77960 (November 14, 2023).

The views of the Commission are contained in USITC Publication 5478 (December 2023), entitled *Truck and Bus Tires from Thailand: Investigation No. 731–TA–1658 (Preliminary).*

By order of the Commission.

Issued: December 1, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–26786 Filed 12–5–23; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1379]

Certain Video Capable Electronic Devices, Including Computers, Streaming Devices, Televisions, Cameras, and Components and Modules Thereof; Notice of 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 31, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Nokia Technologies Oy of Finland and Nokia Corporation of Finland. Supplements were filed on November 13 and 17, 2023. The complaint, as supplemented, 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 video capable electronic devices, including computers, streaming devices, televisions, cameras, and components and modules thereof by reason of the infringement of certain claims of U.S. Patent No. 7,532,808 (''the '808 patent'') and U.S. Patent No. 8,204,134 (''the '134 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 limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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.*

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 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 30, 2023, *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 1–3, 6, 7, 9–12, 15–17, 20–25, 28–30, 32–34, 36, 39–41, 43, 44, 47–49, 51–54, 58–60, and 62–65 of the '808 patent, and claims 1–22 of the '134 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 ''laptop computers, desktop computers, tablet computers, streaming devices, televisions, cameras, and components and modules thereof'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) 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 complainants are:

Nokia Technologies Oy, Karakaari 7, FIN–02610, Espoo, Finland

Nokia Corporation, Karakaari 7, FIN–02610, Espoo, Finland

(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:

HP, Inc., 1501 Page Mill Road, Palo Alto, CA 94304

Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109

Amazon.com Services LLC, 410 Terry Avenue North, Seattle, WA 98109

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) 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), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants 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 30, 2023.

Sharon Bellamy,

Supervisory and Hearings and Information Officer.

[FR Doc. 2023–26740 Filed 12–5–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Proposed Extension of Information Collection; Equal Access to Justice Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before February 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *hernandez.nora@dol.gov.*

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (EAJA) (5 United States Code section 504(a)(2)) provides payment of fees and expenses to eligible parties who have prevailed against a Federal agency in certain administrative proceedings. These requirements are codified in the Department of Labor's regulations in 29 Code of Federal Regulations part 16, subpart B. To obtain an award, the statute and associated DOL regulations require parties to file an application. Other agencies may have their own EAJA regulations.

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 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 OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Type of Review: Extension of a currently approved collection.

Agency: DOL–OASAM.

Title of Collection: Equal Access to Justice Act.

OMB Number: 1225–0013.

Affected Public: Individuals or households.

Number of Respondents: 10.

Number of Responses: 10.

Annual Burden Hours: 50 hours.

Annual Respondent or Recordkeeper Cost: $25.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Paperwork Reduction Act Departmental Clearance Officer.

[FR Doc. 2023–26747 Filed 12–5–23; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hazardous Waste Operations and Emergency Response

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Hazardous Waste Operations and Emergency Response Standard requires information that is needed by employers and employees to comply with standards and regulations addressing workers engaged in hazardous waste site activities and emergency response to releases of hazardous materials. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 7, 2023 (88 FR 61619).

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 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3)

years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Hazardous Waste Operations and Emergency Response.

OMB Control Number: 1218–0202.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 27,186.

Total Estimated Number of Responses: 1,399,634.

Total Estimated Annual Time Burden: 251,002 hours.

Total Estimated Annual Other Costs Burden: $3,769,483.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Officer.

[FR Doc. 2023–26749 Filed 12–5–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Recurrence

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Collecting and analyzing demographic data aligns with the following executive orders Executive Orders: Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, signed by President Biden in January 2021; Executive Order 14075, Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, also signed by President Biden in January 2021; Executive Order 14031, Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, signed in May 2021; and Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, signed in December 2021. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August, 7, 2023 (88 FR 52214).

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 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Notice of Recurrence.

OMB Control Number: 1240–0009.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 149.

Total Estimated Number of Responses: 149.

Total Estimated Annual Time Burden: 75 hours.

Total Estimated Annual Other Costs Burden: $63.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–26748 Filed 12–5–23; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for the Historically Black Colleges and Universities (HBCU) Research Study Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that 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 on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed collection of information from Historically Black Colleges and Universities (HBCUs) for the HBCU Research Study. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send comments to Sunil Iyengar, National Endowment for the Arts, via email (*research@arts.gov*).

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- 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 submissions of responses.

Dated: November 30, 2023.

RaShaunda Thomas,

Deputy Director, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2023–26710 Filed 12–5–23; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250–SLR–2 and 50–251–SLR–2; ASLBP No. 24–981–01–SLR–BD01]

Florida Power & Light Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Florida Power & Light Company (Turkey Point Nuclear Generating Units 3 and 4)

This proceeding involves the twenty-year subsequent license renewal of Renewed Facility Operating Licenses DPR–31 and DPR–41, which currently authorize Florida Power & Light Company to operate Turkey Point Nuclear Generating Units 3 and 4 until, respectively, July 19, 2032 and April 10, 2033. In response to a notice published in the **Federal Register**, *see* 88 FR 62110 (Sept. 8, 2023), Miami Waterkeeper filed a hearing request.

The Board is comprised of the following Administrative Judges:

Emily I. Krause, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: November 30, 2023.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2023–26715 Filed 12–5–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0065]

Information Collection: Medical Use of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled ''Medical Use of Byproduct Material.''

DATES: Submit comments by January 5, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0065 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0065.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23284A132 and ML23284A131.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not

want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, 10 CFR part 35 ''Medical Use of Byproduct Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 1, 2023, 88 FR 50182.

1. *The title of the information collection:* 10 CFR part 35, Medical Use of Byproduct Material.
2. *OMB approval number:* 3150–0010.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking source are reportable on occurrence. A specialty board certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition and infrequently revise the information.
6. *Who will be required or asked to respond:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation from this material to humans for medical use. A specialty board certification entity desiring to have its certifying process and board certificate recognized by NRC.
7. *The estimated number of annual responses:* 313,994 (234,284 reporting responses + 7,327 recordkeepers + 72,383 third party disclosure responses).
8. *The estimated number of annual respondents:* 7,340 (862 NRC licensees + 6,465 Agreement State licensees + 13 specialty board certification entity).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,117,570 hours (61,807 reporting + 1,043,235 recordkeeping + 12,528 third party disclosure).
10. *Abstract:* Part 35 of title 10 of the *Code of Federal Regulations,* ''Medical Use of Byproduct Material,'' contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. Part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation to humans for medical use. These requirements also provide voluntary provisions for specialty boards to apply to have their certification processes recognized by the NRC so that their board-certified individuals can use the certifications as proof of training and experience.

Dated: November 30, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–26718 Filed 12–5–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Initial Certification of Full-Time School Attendance, RI 25–41

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on the following expiring information collection (ICR), without change: Initial Certification of Full-Time School Attendance, RI 25–41. OPM uses RI 25–41 to determine if a child is eligible to receive survivor benefits.

DATES: Comments are encouraged and will be accepted until January 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function or fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, OPM is soliciting comments for this collection (OMB No. 3206–0099). This information collection was previously published in the **Federal Register** on May 3, 2023, at 88 FR 27929, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. OPM is particularly interested in comments that:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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 submissions of responses.

RI 25–41, Initial Certification of Full-Time School Attendance is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older under 5 U.S.C. 8341(A)(4) and chapter 84, section 8441(4)(C).

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB Number: 3206–0099.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1,800.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–26772 Filed 12–5–23; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99060; File No. PCAOB–2023–02]

Public Company Accounting Oversight Board; Order Granting Approval of Auditing Standard Governing the Auditor's Use of Confirmation

I. Introduction

On October 4, 2023, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to section 107(b) [1] of the Sarbanes-Oxley Act of 2002 (''SOX'') and section 19(b) [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt Auditing Standard (''AS'') 2310, *The Auditor's Use of Confirmation* (AS 2310); rescind AS 2310, *The Confirmation Process* (AS 2310); and amend several other existing auditing standards (collectively, the ''Amendments''). The Amendments were published for comment in the **Federal Register** on October 17, 2023.[3] We received three (3) comment letters in response to the notice.[4] This order approves the Amendments, which we find to be consistent with the requirements of SOX and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Amendments

On September 28, 2023, the Board unanimously adopted the Amendments.[5] The Amendments are intended to strengthen and modernize the requirements for the confirmation process by describing principles-based requirements for all methods of confirmation, including paper-based and electronic means of communications. In addition, the new standard is more directly integrated with the PCAOB's risk assessment standards by incorporating certain risk-based considerations and emphasizing the auditor's responsibilities for obtaining relevant and reliable audit evidence through the confirmation process. This should promote investor protection by enhancing the quality of audits. The requirements contained within the Amendments are discussed further below.

A. Changes to PCAOB Standards

Among other things, the Amendments enhance the existing confirmation requirements by:

- Including principles-based requirements that are designed to apply to all methods of confirmation. These methods include longstanding practices, such as the use of paper-based confirmation requests and responses sent via regular mail; methods that involve electronic means of communications, such as the use of email or an intermediary to facilitate direct electronic transmission of confirmation requests and responses; and methods that have yet to develop.
- Expressly aligning the requirements for the auditor's use of confirmation with the requirements of the Board's risk assessment standards, including AS 1105. The Amendments specify certain risk-based considerations and emphasize the auditor's responsibility to obtain relevant and reliable audit evidence when performing confirmation procedures.[6]
- Strengthening the requirements for the use of confirmation procedures in certain situations. The Amendments add a requirement that the auditor should perform confirmation procedures for cash held by third parties, carry forward the existing requirement that the auditor normally should perform confirmation procedures for accounts receivable, and include a new provision that the auditor may otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source for cash and accounts receivable.[7] In addition, the Amendments carry forward the existing requirement that the auditor consider confirming the terms of certain other transactions.[8]
- Addressing situations in which it would not be feasible for the auditor to obtain information directly from a knowledgeable external source. The Amendments provide that if it would not be feasible for the auditor to obtain audit evidence directly from a knowledgeable external source for accounts receivable, the auditor should perform other substantive procedures, including tests of details, that involve obtaining audit evidence from external sources indirectly.[9]
- Mandatory communications with the audit committee regarding certain audit responses to significant risks. Under the Amendments, for significant risks associated with cash or accounts receivable, the auditor is required to communicate with the audit committee when the auditor either did not perform confirmation procedures or otherwise obtained audit evidence by directly accessing information maintained by a knowledgeable external source.[10]
- Reflecting the relatively insignificant amount of audit evidence obtained when using negative confirmation requests. Under the Amendments, the use of negative confirmation requests may provide sufficient appropriate audit evidence only when combined with other substantive procedures. The Amendments include examples of situations in which the use of negative confirmation requests in combination with other substantive procedures may provide sufficient appropriate audit evidence.[11]
- Emphasizing the auditor's responsibility to maintain control over the confirmation process. The Amendments state that the auditor should select the items to be confirmed,

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on The Auditor's Use of Confirmation, and Other Amendments to PCAOB Standards,* Release No. 34–98689 (Oct. 5, 2023) [88 FR 71684 (Oct. 17, 2023)], *available at https://www.sec.gov/rules/pcaob/2023/34-98689.pdf.*

[4] We received comment letters from Deloitte & Touche LLP (Nov. 2, 2023), PricewaterhouseCoopers LLP (Nov. 6, 2023), and Gopal Krushna Panda (Nov. 6, 2023). Copies of the comment letters received on the Commission notice of the Amendments are available on the Commission's website at *https://www.sec.gov/comments/pcaob-2023-02/pcaob202302.htm.*

[5] *See The Auditor's Use of Confirmation, and Other Amendments to PCAOB Standards,* PCAOB Release No. 2023–008 (Sept. 28, 2023), *available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket_028/2023-008_confirmation-adopting-release.pdf?sfvrsn=e18cef74_4.*

[6] *See* AS 2310.03, as amended.

[7] *See* AS 2310.24 through .27, as amended.

[8] *See* AS 2310.30, as amended.

[9] *See* AS 2310.25, as amended.

[10] *See* AS 2310.28, as amended.

[11] *See* AS 2310.12 and .13, as amended.

send confirmation requests, and receive confirmation responses.[12]

• Providing more specific direction for circumstances where the auditor is unable to obtain relevant and reliable audit evidence through confirmations. The Amendments identify situations where other procedures should be performed by the auditor as an alternative to confirmations. The Amendments also include examples of such alternative procedures that may provide relevant and reliable audit evidence.[13]

B. Applicability and Effective Date

The Amendments will be effective for all audits of financial statements for fiscal years ending on or after June 15, 2025. The PCAOB has proposed application of the Amendments to include audits of emerging growth companies (''EGCs''),[14] as discussed in Section IV below.

III. Comment Letters

The comment period on the Amendments ended on November 7, 2023. We received three (3) comment letters.[15] The commenters generally supported the Amendments and encouraged us to support the PCAOB's plans to monitor implementation, conduct post-implementation review, and monitor advancements in technology that may affect application of the Amendments. We acknowledge the importance of monitoring the implementation of the Amendments and the Commission staff works closely with the PCAOB as part of our general oversight mandate.[16] As part of that oversight, Commission staff will keep itself apprised of the PCAOB's activities for monitoring the implementation of the Amendments and update the Commission, as necessary. Additionally, one commenter made suggestions for expanded explanations and examples. The adopting release addresses the points raised by the commenter.

SOX requires us to determine whether the Amendments are consistent with the requirements of SOX and the securities laws or are necessary or appropriate in the public interest or for the protection of investors.[17] In making this determination, we have considered the comments we received, as well as the feedback received and modifications made by the PCAOB throughout its rulemaking process.

IV. Effect on Emerging Growth Companies

In the notice of filing of the Amendments, the Board recommended that the Commission determine that the Amendments apply to audits of EGCs.[18] section 103(a)(3)(C) of SOX, as amended by section 104 of the Jumpstart Our Business Startups Act of 2012, requires that any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The provisions of the Amendments do not fall into these categories.[19]

Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.'' The Amendments fall within this category. Having considered those statutory factors, we find that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.

With respect to the Commission's determination of whether the Amendments will apply to audits of EGCs, the PCAOB provided information, including data and analysis of EGCs identified by the Board's staff, from public sources that sets forth its views as to why it believes the Amendments should apply to audits of EGCs. In addition, the Board sought public input on the application of the Amendments to the audits of EGCs. Commenters generally supported the application of the Amendments to the audits of EGCs. The Board noted that while the associated costs may be higher for EGC audits than for non-EGC audits, due to the scalability of the risk-based requirements, the costs of performing the procedures are unlikely to be disproportionate to the benefits of the procedures. Overall, the Amendments are expected to enhance audit quality and contribute to an increase in the credibility of financial reporting by EGCs.

We agree with the Board's analysis and further emphasize the price efficiency benefits discussed by the PCAOB noting that improvements in the quality of the audit may be more pronounced on the audits of EGCs, thereby potentially creating a larger increase to the price efficiency of EGCs by providing investors with more accurate information. Price efficiency helps investors make more informed investment decisions—facilitating issuers', including EGCs', access to capital—thus enhancing capital formation. Additionally, while the Amendments could impact competition in the EGC market if the indirect costs to audited companies disproportionately impact EGCs relative to their competitors, as the costs associated with the Amendments are expected to be relatively modest, any impact on competition is likely to be relatively small. As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Amendments to the audits of EGCs is necessary or appropriate in the public interest.

V. Conclusion

The Commission has reviewed and considered the Amendments, the information submitted therewith by the PCAOB, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Amendments are consistent with the requirements of SOX and the securities laws and are necessary or appropriate in

[12] *See* AS 2310.14 through .17, as amended.

[13] *See* AS 2310.11, .19, .23, and Appendix C, as amended.

[14] The term ''emerging growth company'' is defined in section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act,* Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)], *available at https://www.sec.gov/rules/final/2017/33-10332.pdf.*

[15] *See* Supra note 4.

[16] *See* section 107 of SOX.

[17] *See* section 107(b)(3) of SOX. SOX also specifies that the provisions of section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* section 107(b)(4) of SOX. section 19 of the Exchange Act covers the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by SOX and section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

[18] *See* the Notice of Filing of Proposed Rules, *supra* note 3.

[19] While the precise scope of this category of rules under section 103(a)(3)(C) is not entirely clear, we do not interpret this statutory language as precluding the application of Board rules requiring inclusion of additional factual information about referred-to auditors and the scope of their work in connection with the audits of EGCs. In our view, this approach reflects an appropriate interpretation of the statutory language and is consistent with our understanding of the Congressional purpose underlying this provision.

the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Amendments to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to section 107 of SOX and section 19(b)(2) of the Exchange Act, that the Amendments (File No. PCAOB–2023–02) be and hereby are approved.

By the Commission.
Dated: December 1, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–26773 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99046; File No. SR–NYSENAT–2023–27]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

November 30, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 20, 2023, NYSE National, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Rule 6.6810 (Consolidated Audit Trail—Definitions); Rule 7.28 (NMS Market Access); Rule 7.31 (Orders and Modifiers); and Rule 11.5320 (Prohibition Against Trading Ahead of Customer Orders). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update citations to Rule 600(b) of Regulation NMS in Rule 6.6810 (Consolidated Audit Trail—Definitions); Rule 7.28 (NMS Market Access); Rule 7.31 (Orders and Modifiers); and Rule 11.5320 (Prohibition Against Trading Ahead of Customer Orders).

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[4] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definition of Intermarket Sweep Order (formerly Rule 600(b)(30)), Listed Option (formerly Rule 600(b)(35), and NMS Participant (formerly Rule 600(b)(53)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows.

- The citation to the definition of Listed Option in Rule 6.6810(y) would be changed to Rule 600(b)(43).
- The citation to the definition of NMS Participant in Rule 7.28(a) would be changed to Rule 600(b)(65).
- The citation to the definition of automated quotation in Rule 7.31(e)(3) and Rule 11.5320, Commentary .04, would be changed to Rule 600(b)(38).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Reg NMS. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change raises no novel legal or regulatory issues and modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and result in increased clarity within the Exchange's rules. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

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.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSENAT–2023–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2023–27. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2023–27 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26726 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99045; File No. SR–CboeBZX–2023–095]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Fidelity Ethereum Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

November 30, 2023.

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 November 17, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Fidelity Ethereum Fund (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on October 31, 2023 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fidelity Ethereum Fund [4] under BZX Rule 14.11(e)(4),[5] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[6]

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[7] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Fidelity Ethereum Fund

FD Funds Management LLC is the sponsor of the Trust (the ''Sponsor''). Fidelity Digital Assets Services, LLC (''FDAS''), a regulated custodian licensed by the New York Department of Financial Services (the ''Custodian''), will be responsible for custody of the Trust's Ether (''ETH''). Delaware Trust Company is the trustee (''Trustee''). The Trust will engage Fidelity Service Company, Inc. (''FSC''), a Sponsor affiliate, to be the administrator (''Administrator''). A third-party transfer agent (the ''Transfer Agent'') will facilitate the issuance and redemption of Shares of the Trust and respond to correspondence by Trust Shareholders and others relating to its duties, maintain Shareholder accounts, and make periodic reports to the Trust. Another affiliate of Sponsor, Fidelity Distributors Corporation, will be the distributor (''Distributor'') in connection with the creation and redemption of ''Baskets'' of Shares.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets will consist of ETH held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

When the Trust sells or redeems its Shares, it will do so in blocks of Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, ETH to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver ETH to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Background

Ethereum is free software that is hosted on computers distributed throughout the globe. It employs an array of logic, called a protocol, to create a unified understanding of ownership, commercial activity, and business logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. It is widely understood that no single intermediary or entity operates or controls the Ethereum network (referred to as ''decentralization''), the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ETH, which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the ''Ethereum Blockchain''), and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset platforms or in individual peer-to-peer transactions. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a limited-purpose, peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs.

Heretofore, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain exposure to ETH. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether or (ii) over-the-counter ether funds (''OTC ETH Funds'') with high management fees and potentially volatile premiums and discounts; [8]

[4] The Trust will file with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[5] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[6] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[7] 15 U.S.C. 80a–1.

[8] The premium and discount for OTC ETH Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC ETH Fund went from 238.63% to 5.1%. While the price of ether appreciated significantly during this period and NAV per share increased by 101.40%, the price per share decreased by 37.49%. This means that investors are holding shares of a fund with roughly $4.8 billion in assets under management that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC ETH Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of ether. That is to say—the price of ether could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to ether, the easiest option for a buy and hold strategy for such vehicles is often an OTC ETH Fund, meaning that even investors that do not directly buy OTC ETH Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

Meanwhile, investors in other countries, including Germany, Switzerland and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ETH. Investors across Europe have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.[9]

To this point, the lack of an ETP that holds spot ETH (a ''Spot ETH ETP'') exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot ETH ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC ETH Funds are not afforded the benefits and protections of regulated Spot ETH ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC ETH Funds. An investor who purchased the largest OTC ETH Fund in January 2021 and held the position at the end of 2022 would have suffered a 69% loss due to the premium/discount, even if the price of ETH did not change. Many retail investors likely suffered losses due to this premium/discount in OTC ETH Fund trading; all such losses could have been avoided if a Spot ETH ETP had been available. Additionally, many U.S. investors that held their digital assets in accounts at FTX,[10] Celsius Network LLC,[11] BlockFi Inc.[12] and Voyager Digital Holdings, Inc.[13] have become unsecured creditors in the insolvencies of those entities. If a Spot ETH ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot ETH ETP. To this point, approval of a Spot ETH ETP would represent a major win for the protection of U.S. investors in the crypto asset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ETH, on centralized platforms.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[14] With this in mind, the CME Ether Futures (''CME ETH Futures'') market, which launched in February 2021, is the proper market to consider in determining whether there is a related regulated market of significant size.

The Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933 (''Bitcoin Futures ETPs''),[15] finding that the CME Bitcoin Futures market represents a regulated market of significant size. Meanwhile, the Commission has continued to disapprove proposals to list and trade funds that would hold spot bitcoin on the seemingly conflicting basis that the CME Bitcoin Futures market is not a regulated market of significant size.[16] In the recently decided Grayscale Investments, LLC v. Securities and Exchange Commission,[17] however, the court resolved this conflict by finding that the SEC had failed to provide a coherent explanation as to why it had approved the Bitcoin Futures ETPs while disapproving the proposal to list and trade shares of the Grayscale Bitcoin Trust and vacating the disapproval order.[18]

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME ETH Futures market represents a regulated market of significant size as it relates both to the CME ETH Futures market and to the spot ETH market and that this proposal should be approved.

Investment Objective

According to the Registration Statement, the investment objective of the Trust is to seek to track the performance of ETH, as measured by the performance of the Fidelity Ethereum Index (the ''Index''), less the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold ETH and will value its Shares daily as of 4:00 p.m. Eastern time using the same methodology used to calculate the Index and process all creations and redemptions in transactions with authorized participants. The Trust is not actively managed.

The Index

The Index is designed to reflect the performance of ETH in U.S. dollars. The current digital trading platform composition of the Index is Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. The Index methodology was developed by Fidelity Product Services, LLC (the ''Index Provider'') and is administered by the Fidelity Index Committee. Coin Metrics, Inc. is the third-party calculation agent for the Index.[19]

The Index is constructed using ETH price feeds from eligible ETH spot

[9] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot ETH ETPs.

[10] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[11] *See* Celsius Network LLC, et al., Case No. 22–10964.

[12] *See* BlockFi Inc., Case No. 22–19361.

[13] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[14] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order''). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' *See* Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot ether market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

[15] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[16] The proposed spot bitcoin funds are nearly identical to the Trust but proposed to hold bitcoin instead of ETH (''Spot Bitcoin ETPs'').

[17] Grayscale Investments, LLC v. Securities and Exchange Commission, et al., Case No. 22–1142 (the ''Grayscale Order'').

[18] *Id.*

[19] The Sponsor's affiliates have an ownership interest in Coin Metrics, Inc.

markets and a volume-weighted median price (''VWMP'') methodology, calculated every 15 seconds based on VWMP spot market data over rolling 5-minute increments to develop an ETH price composite. The Index market value is the volume-weighted median price of ETH in U.S. dollars over the previous five minutes, which is calculated by (1) ordering all individual transactions on eligible spot markets over the previous five minutes by price, and then (2) selecting the price associated with the 50th percentile of total volume. Using rolling five-minute segments means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or such malicious actors would need to replicate efforts multiple times across eligible ETH spot markets, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot ETH volume in a five-minute window to have any influence on the NAV.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ETH holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [20] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index.

Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the digital trading platforms on which ETH are traded. Depth of book information is also available from ETH trading platforms. The normal trading hours for ETH trading platforms are 24 hours per day, 365 days per year.

The ETH Custodian

The Sponsor has selected FDAS to be the Trust's Custodian. FDAS is a New York state limited liability trust [21] that serves as ETH custodian to institutional and individual investors. The Custodian maintains a substantial portion of the private keys associated with the Trust's ETH in ''cold storage'' or similarly secure technology. Cold storage is a safeguarding method with multiple layers of protections and protocols, by which the private key(s) corresponding to the Trust's ETH is (are) generated and stored in an offline manner. Private keys are generated in offline computers that are not connected to the internet so that they are resistant to being hacked. Cold storage of private keys may involve keeping such keys on a non-networked computer or electronic device or storing the public key and private keys on a storage device or printed medium and deleting the keys from all computers.

The Custodian may receive deposits of ETH but may not send ETH without use of the corresponding private keys. In order to send ETH when the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into a software program to sign the transaction, or the unsigned transaction must be sent to the ''cold'' server in which the private keys are held for signature by the private keys. At that point, the Custodian can transfer the ETH. The Trust's Transfer Agent will facilitate the settlement of Shares in response to the placement of creation orders and redemption orders from Authorized Participants. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will hold cash on a temporary basis. The Trust will enter into a cash custody agreement with an unaffiliated regulated bank as custodian of the Trust's cash and cash equivalents.

Net Asset Value

As described in the Registration Statement, for purposes of calculating the Trust's NAV per Share, the Trust's holdings of ETH will be valued using the same methodology as used to calculate the Index. NAV means the total assets of the Trust including, but not limited to, all ETH and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The NAV of the Trust is calculated by taking the fair market value of its total assets based on the volume-weighted median price of ETH used for the calculation of the Index, subtracting any liabilities (which include accrued expenses), and

[20] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[21] New York state trust companies are subject to rigorous oversight similar to other types of entities, such as nationally chartered banking entities, that hold customer assets. Like national banks, they must obtain specific approval of their primary regulator for the exercise of their fiduciary powers. Moreover, limited purpose trust companies engaged in the custody of digital assets are subject to even more stringent requirements than national banks which, following initial approval of trust powers, generally can exercise those powers broadly without further approval of the OCC. In contrast, NYDFS requires in their approval orders that limited purpose trust companies obtain separate approval for all material changes in business.

dividing that total by the total number of outstanding Shares. The Administrator calculates the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. Eastern time. Trading during the core trading session on the Exchange typically closes at 4:00 p.m. Eastern time. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern time and almost always by 8:00 p.m. Eastern time). The pause between 4:00 p.m. Eastern time and 5:30 p.m. Eastern time (or later) provides an opportunity to algorithmically detect, flag, investigate, and correct unusual pricing should it occur.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, ETH to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver ETH to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by the time noted in the Authorized Participant Agreement or as provided separately to all Authorized Participants. The day on which an order is received is considered the purchase order date. The total deposit of ETH required is an amount of ETH that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of ETH that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of ETH held by the Trust as of the opening of business on that business day, adjusted for the amount of ETH constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of Shares associated with a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Commodity-Based Trust Shares—Rule 14.11(e)(4)

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity [22] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the

[22] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. The CFTC has stated that: ''Certain digital assets, including BTC, ETH, LTC, and at least two fiat-backed stablecoins, tether (''USDT'') and the Binance USD (''BUSD''), as well as other virtual currencies as alleged herein, are ''commodities,'' as defined under Section 1a(9) of the [Commodities Exchange] Act, 7 U.S.C. 1a(9).'' *See* Commodity Futures Trading Commission v. Changpeng Zhao, Binance Holdings Limited, Binance Holdings (IE) Limited, Binance (Services) Holdings Limited, and Samuel Lim, March 27, 2023 at 9.

Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the ETH underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and ETH Futures via the Intermarket Surveillance Group (''ISG''), from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[23]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[24] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

CME ETH Futures[25]

CME began offering trading in Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.[26] The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME ETH Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 76,293 CME ETH Futures contracts traded in July 2023 (approximately $7.3 billion) compared to 70,305 ($11.1 billion) and 158,409 ($7.5 billion) contracts traded in July 2021, and July 2022 respectively.[27]

The number of large open interest holders[28] and unique accounts trading CME ETH Futures have both increased, even in the face of heightened Ether price volatility.

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[23] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

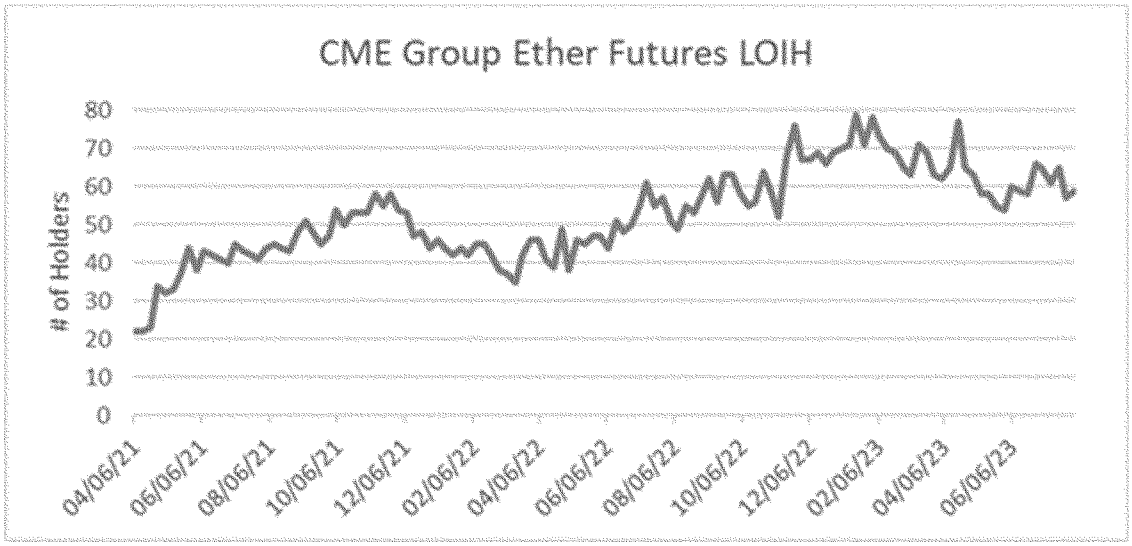
[24] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[25] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[26] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[27] Source: CME, 7/31/23.

[28] A large open interest holder in CME ETH Futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. At a price of approximately $1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than $2.3 million in CME ETH Futures.


CME Group Ether Futures LOIH
# of Holders
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10
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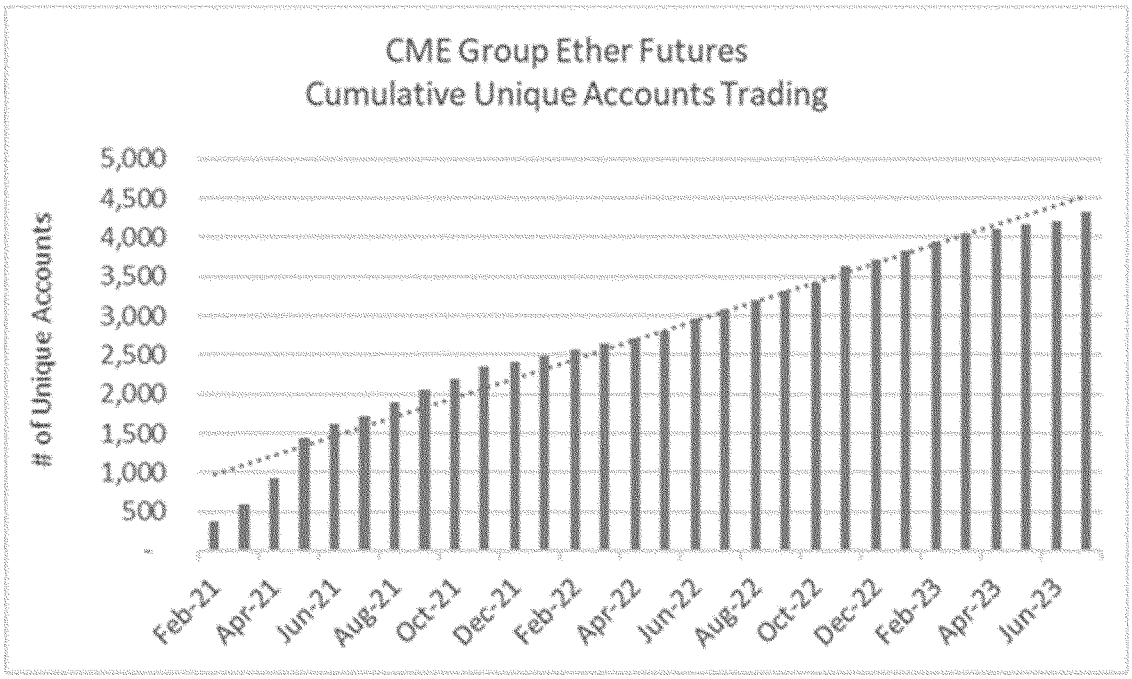
CME Group Ether Futures
Cumulative Unique Accounts Trading
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Apr-21
Jun-21
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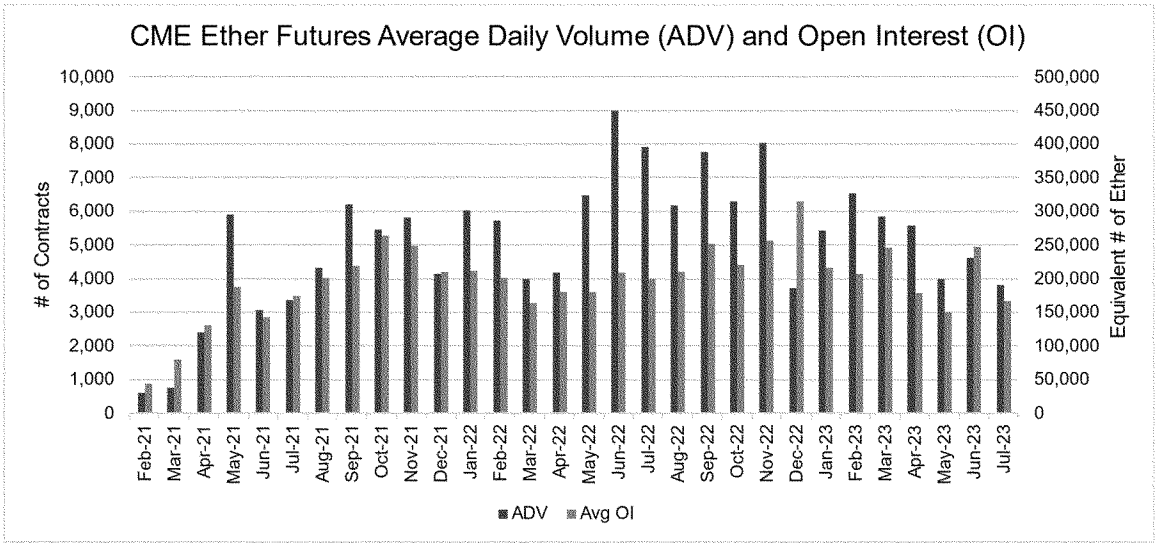

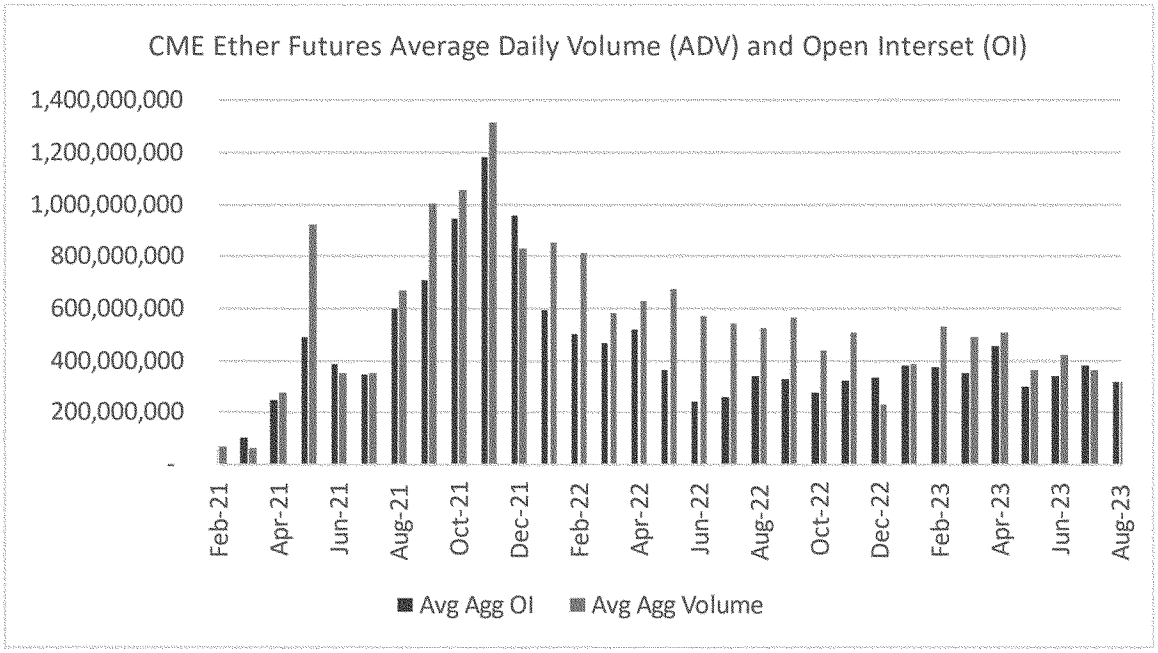

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Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[29] including Commodity-Based Trust Shares,[30] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [31] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently

[29] *See* Exchange Rule 14.11(f).

[30] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[31] The Exchange believes that ETH is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [32] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[33]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[34] [35]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively), applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[36]

The assumptions from this statement are also true for CME ETH Futures. CME ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME BTC futures contracts . . . indirectly by trading outside of the CME BTC futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures. This view is also consistent with the Sponsor's research.

The Commission has stated in a prior disapproval order that ''the lead-lag relationship between the bitcoin futures market and the spot market . . . is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.'' [37] The Commission further noted that ''in particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.'' [38]

Based on the Commission's prior guidance and the commonality shared between bitcoin markets and ETH markets, Sponsor conducted a detailed price discovery study through its lead-lag analysis of ETH spot and futures

[32] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[33] *See* Wilshire Phoenix Disapproval.

[34] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[35] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ETH primarily through CME ETH Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

[36] *See* Teucrium Approval at 21679.

[37] Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, 84 FR 55382, 55411 (Oct 16, 2019).

[38] *Id.*

trading across markets located globally. As discussed below, Sponsor's analysis concludes that the CME ETH Futures market is the leading market for price discovery across USD ETH markets located globally, including ETH spot markets and offshore, unregulated ETH futures markets. Thus, Sponsor's analysis supports the conclusion that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME ETH Futures market to manipulate the Trust.

In ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets'' [39] (Robertson and Zhang, 2022), the authors demonstrate that, for analyzing intraday information flow and accounting for the varying levels of sparsity among bitcoin markets, the framework of correlation-based lead-lag analysis using the Hayashi-Yoshida (HY) estimator [40] to compute correlation, along with lead-lag seconds and lead-lag ratio is suitable. Based on the similar market infrastructure (high level of sparsity) in both CME ETH Future market and CME Bitcoin Future market, Sponsor applied the same rationale and used the lead-lag framework on ETH spot and futures markets. Sponsor obtained tick level trade data for ETH spot prices and futures prices used in its analysis from Coin Metrics for the period spanning from January 1, 2021 to June 30, 2021. Sponsor's analysis used all available spot and futures ETH markets, but, in order to exclude any impacts caused by exchange rate movements, Sponsor limited the dataset to ETH–USD and ETH–USDT trades. Sponsor's results suggest that the CME ETH futures market plays the most important leading role in price discovery during the time period included in the analysis. As such, the part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for both Bitcoin Futures ETPs and Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.[41] The Sponsor notes that ETH total 24-hour spot trading volume has averaged $9.4 billion over the year ending September 1, 2023.[42] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (''Coinbase''), an operator of a United States-based spot trading platform for ETH that represents a substantial portion of US-based and USD denominated ETH trading,[43] to enter into a surveillance-sharing agreement (''Spot Crypto SSA'') and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot Crypto SSA is expected to be a bilateral surveillance-sharing agreement between the Exchange and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot Crypto SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ETH trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.[44] This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ETH trading activity on the Coinbase trading platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.[45]

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than $5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors

[39] Robertson, Kevin, and Jiani Zhang. (2022) ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets.'' Available at SSRN: *https://ssrn.com/abstract=4012165* or *http://dx.doi.org/10.2139/ssrn.4012165.*

[40] Hayashi, Takaki, and Nakahiro Yoshida. ''On covariance estimation of non-synchronously observed diffusion processes.'' *Bernoulli* 11, no. 2 (2005): 359–379. *http://www.jstor.org/stable/3318933.* The authors proposed a novel method (HY estimator) of estimating the covariance of two diffusion processes when they are observed only at discrete times in a non-synchronous manner. This methodology addresses the issue that the traditional realized covariance estimator encounters, which is that the choice of regular interval size and data interpolation scheme can lead to unreliable estimation. The new method Hayashi and Yoshida introduced in this paper is free from any interpolation and therefore avoids the bias and other problems caused by it.

[41] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market. . .But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[42] Source: TokenTerminal.

[43] According to a report from The Block, Coinbase represented 45%% of USD denominated exchange trading volume in August 2023. *https://www.theblock.co/data/crypto-markets/spot/usd-support-exchange-volume-market-share.*

[44] For additional information regarding ISG and the hallmarks of surveillance-sharing between ISG members, see *https://isgportal.org/overview.*

[45] The Exchange also notes that it already has in place ISG-like surveillance sharing agreement with Cboe Digital Exchange, LLC and Cboe Clear Digital, LLC.

through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [46] in general and Section 6(b)(5) of the Act [47] in particular in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [48] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[49]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[50] [51]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively), applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and

[46] 15 U.S.C. 78f.

[47] 15 U.S.C. 78f(b)(5).

[48] The Exchange believes that ETH is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[49] *See* Wilshire Phoenix Disapproval.

[50] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[51] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ETH primarily through CME ETH Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[52]

The assumptions from this statement are also true for CME ETH Futures. CME ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME BTC futures contracts . . . indirectly by trading outside of the CME BTC futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures. This view is also consistent with the Sponsor's research.

The Commission has stated in a prior disapproval order that ''the lead-lag relationship between the bitcoin futures market and the spot market . . . is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.'' [53] The Commission further noted that ''in particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.'' [54]

Based on the Commission's prior guidance and the commonality shared between bitcoin markets and ETH markets, Sponsor conducted a detailed price discovery study through its lead-lag analysis of ETH spot and futures trading across markets located globally. As discussed below, Sponsor's analysis concludes that the CME ETH Futures market is the leading market for price discovery across USD ETH markets located globally, including ETH spot markets and offshore, unregulated ETH futures markets. Thus, Sponsor's analysis supports the conclusion that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME ETH Futures market to manipulate the Trust.

In ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets'' [55] (Robertson and Zhang, 2022), the authors demonstrate that, for analyzing intraday information flow and accounting for the varying levels of sparsity among bitcoin markets, the framework of correlation-based lead-lag analysis using the Hayashi-Yoshida (HY) estimator [56] to compute correlation, along with lead-lag seconds and lead-lag ratio is suitable. Based on the similar market infrastructure (high level of sparsity) in both CME ETH Future market and CME Bitcoin Future market, Sponsor applied the same rationale and used the lead-lag framework on ETH spot and futures markets. Sponsor obtained tick level trade data for ETH spot prices and futures prices used in its analysis from Coin Metrics for the period spanning from January 1, 2021 to June 30, 2021. Sponsor's analysis used all available spot and futures ETH markets, but, in order to exclude any impacts caused by exchange rate movements, Sponsor limited the dataset to ETH–USD and ETH–USDT trades. Sponsor's results suggest that the CME ETH futures market plays the most important leading role in price discovery during the time period included in the analysis. As such, the part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for both Bitcoin Futures ETPs and Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.[57] The Sponsor notes that ETH total 24-hour spot trading volume has averaged $9.4B over the year ending September 1, 2023.[58] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order, ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

[52] *See* Teucrium Approval at 21679.

[53] Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, 84 FR 55382, 55411 (Oct 16, 2019).

[54] *Id.*

[55] Robertson, Kevin and Jiani Zhang. (2022) ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets.'' Available at SSRN: *https://ssrn.com/abstract=4012165* or *http://dx.doi.org/10.2139/ssrn.4012165.*

[56] Hayashi, Takaki and Nakahiro Yoshida. ''On covariance estimation of non-synchronously observed diffusion processes.'' *Bernoulli* 11, no. 2 (2005): 359–379. *http://www.jstor.org/stable/3318933.* The authors proposed a novel method (HY estimator) of estimating the covariance of two diffusion processes when they are observed only at discrete times in a non-synchronous manner. This methodology addresses the issue that the traditional realized covariance estimator encounters, which is that the choice of regular interval size and data interpolation scheme can lead to unreliable estimation. The new method Hayashi and Yoshida introduced in this paper is free from any interpolation and therefore avoids the bias and other problems caused by it.

[57] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[58] Source: TokenTerminal.

The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (''Coinbase''), an operator of a United States-based spot trading platform for ETH that represents a substantial portion of US-based and USD denominated ETH trading, to enter into a Spot Crypto SSA and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot Crypto SSA is expected to be a bilateral surveillance-sharing agreement between the Exchange and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot Crypto SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ETH trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ETH trading activity on the Coinbase trading platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than $5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

Commodity-Based Trust Shares—Rule 14.11(e)(4)

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ETH derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about ETH and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ETH holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ETH will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at [sic].

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors,

including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the trading platforms on which ETH are traded. Depth of book information is also available from ETH trading platforms. The normal trading hours for ETH trading platforms are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–095. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–095 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26731 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

[59] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99044; File No. SR–NASDAQ–2023–049]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New LSTY Routing Option Under Rule 4758

November 30, 2023.

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 November 16, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new LSTY routing option under Rule 4758.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 4, Rule 4758 to add subsection (a)(1)(A)(x)b. for a new routing option [3] called LSTY. The proposed LSTY voluntary routing option arose out of client interest in Nasdaq amending its rules to create a new routing strategy similar to the existing LIST strategy.[4] Clients currently using the LIST routing strategy have requested that Nasdaq provide a version of this strategy that will look to access available liquidity at their limit price or better by rerouting to away market centers in the event their order is locked or crossed by an away market center while the order is on the book. This proposed change will introduce a new variation of the LIST strategy, called LSTY, that will share all existing functionality with LIST with the exception of routing to away market centers after an order is booked.

After the security has opened on its primary listing market, a LIST order that has not been designated opening only and that has not been fully executed, rejected, or cancelled will be returned to the Nasdaq system (the ''System''). Thereafter, the order will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. Any remaining shares are posted on the Nasdaq book. In addition, if a LIST order is entered after the security has opened on the primary listing market (but prior to two minutes before market close) and the order has not been designated to participate in the opening only, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table, with remaining shares posted on the book.

Once the order is on the book, orders entered with the LIST routing option do not route the order to the locking or crossing market center. With the proposed LSTY routing option, once on the book, should the order subsequently be locked or crossed by another market center, the System will route the order to the locking or crossing market center.

Two minutes before market close, all LIST orders on the book will begin routing to the security's primary listing market for participation in its closing process. If a LIST order is received at or after a time that is two minutes before market close but before market close, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table; remaining shares will be routed to the security's primary listing market to participate in its closing process.

In sum, LSTY is a routing option that is a variation of the LIST routing option and shares all the existing functionality with the exception that after an order is booked, if the order is subsequently locked or crossed by another market center, the System will route the order to the locking or crossing market center. The System will only route an order to the locking or crossing market center after the security has opened on the primary listing market and prior to two minutes before market close.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the proposed rule change will satisfy the objectives of Section 6(b)(5) of the Act by providing market participants with an additional voluntary routing strategy that is similar to the existing LIST strategy, except where that System will route an order to the locking or crossing market center should the order subsequently be locked or crossed by another accessible market center once the order is on the book. The proposed change is designed to route to locking or crossing quotations, which clears locked or crossed market conditions and helps support fair and orderly markets that protects investors and the public interest.

Nasdaq also believes the proposal is not designed to permit unfair discrimination among market participants because the proposal is for a voluntary routing option and will be available to any market participant that so chooses to use it. Additionally, as the Exchange notes above, the LSTY routing option is similar to the existing LIST routing option already offered by the Exchange.

For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposed routing option is voluntary and similar to an existing routing option. Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

For the foregoing reasons, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[3] Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies (also called ''routing options'') offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a ''Routable Order.'' Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. *See* Rule 4703(f).

[4] LIST is a routing option designed to allow orders to participate in the opening and/or closing process of the primary listing market for a security. *See* Nasdaq Rule 4758(a)(1)(A)(x).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that it wants to implement the LSTY routing option during the 4th quarter of 2023 and granting the waiver would allow market participants and their customers to benefit more immediately from the increased order handling flexibility provided by the LSTY routing option. In addition, the Exchange stated that the proposed rule change presents no unique or novel issues that have not already been addressed by the Commission. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–049. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–049 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26725 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99057; File No. SR–NYSECHX–2023–23]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

November 30, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 20, 2023, NYSE Chicago, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Rule 6.6810 (Consolidated Audit Trail—Definitions); Rule 7.31 (Orders and Modifiers); Article 1, Rule 1 (Definitions); Article 1, Rule 2 (Order Types, Modifiers, and Related Terms); Article 9, Rule 17 (Prohibition Against Trading Ahead of Customer Orders); and Article 20, Rule 5 (Prevention of Trade-Throughs). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update citations to Rule 600(b) of Regulation NMS in Rule 6.6810 (Consolidated Audit Trail—Definitions); Rule 7.31 (Orders and Modifiers); Article 1, Rule 1 (Definitions); Article 1, Rule 2 (Order Types, Modifiers, and Related Terms); Article 9, Rule 17 (Prohibition Against Trading Ahead of Customer Orders); and Article 20, Rule 5 (Prevention of Trade-Throughs).

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[4] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definition of Automated Quotations (formerly Rule 600(b)(3), Intermarket Sweep Order (formerly Rule 600(b)(30)), Listed Option (formerly Rule 600(b)(35), and Trading Center (formerly Rule 600(b)(78)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows.

- The citation to the definition of Listed Option in Rule 6.6810(y) would be changed to Rule 600(b)(43).
- The citation to the definition of Intermarket Sweep Order in Rule 7.31(e)(3); Article 1, Rule 2(b)(3)(B); and Article 9, Rule 17, Interpretations and Policies .04, would be changed to Rule 600(b)(38).
- The citation to the definition of Trading Center in Article 1, Rule 1(nn) would be changed to Rule 600(b)(95).
- The citation to the definition of automated quotation in Article 20, Rule 5, Interpretations and Policies .01(c)(2) and (c)(3), .02, and .02(c) would be changed to Rule 600(b)(6).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Reg NMS. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change raises no novel legal or regulatory issues and modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and result in increased clarity within the Exchange's rules. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[4] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSECHX–2023–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–23. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–23 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26730 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99042; File No. SR–NASDAQ–2023–048]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Entry and All-Inclusive Annual Fees for Certain Companies

November 30, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify entry and all-inclusive annual fees for certain companies, as described below. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2024.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) modify the entry fee for a Company that first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange's all-inclusive annual listing fees for certain domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets; and (iii) replace the tiered all-inclusive annual listing fee structure with a flat fee of $81,000 for an Acquisition Company, as defined below.

All revised fees will be applied in the same manner to all issuers and the changes will not disproportionately affect any specific category of issuers. While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2024.

Entry Fees on the Nasdaq Global Market

Currently, Nasdaq charges companies listing pursuant to Rule 5910(a)(1)(A)(i) a $270,000 entry fee the first time the company lists a class of its securities (not otherwise identified in the Rule 5900 Series) on the Nasdaq Global and Global Select Market. Nasdaq is proposing to increase the entry fee for these companies from $270,000 to $295,000 to better align its fees with the value of a listing to issuers and to reflect costs in servicing these listings, such as from the remodeling of a portion of the New York Headquarters used for company events, including market opening and closing bells, conducting the required associated regulatory oversight, and Nasdaq's advocacy efforts on behalf of the public company model. In establishing these fee changes Nasdaq also considered the competitive atmosphere in which the Exchange operates.

Nasdaq does not propose to increase the minimum entry fees described in Rule 5910(a) charged for additional classes of equity securities, Acquisition Companies, Closed-End Funds, and any

[12] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

class of rights.[3] The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current fee levels. Further, issuers of those types of listings are not generally entitled to the types of services provided and resources offered in connection with a primary equity security listing. As such, the Exchange has not incurred the same level of cost increases associated with them.

While the new entry fees are effective upon filing and Nasdaq has proposed that they be operative on January 1, 2024, Nasdaq will offer a short period for any company that applies before January 1, 2024 to complete the listing process and list under the current fee schedule. Specifically, any company that submits its application to Nasdaq before January 1, 2024, and lists before February 15, 2024, would be subject to fees under the existing fee schedule. Nasdaq believes that it is appropriate to continue to apply the prior fee schedule for these companies because they will be substantially far along in the process of going public at the time of this filing and may have made decisions based on that fee schedule.

All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than Acquisition Companies (*i.e.,* companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM–5101–2), ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee described in Listing Rule 5920 ranges from $47,000 to $84,000; for Acquisition Companies listing on the Capital Market the all-inclusive annual fee ranges from $70,000 to $81,000; and for ADRs listed on the Capital Market the all-inclusive annual fee ranges from $47,000 to $56,500.[4] On the Global and Global Select Markets, the all-inclusive annual fee described in Listing Rule 5910 for companies other than Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships ranges from $50,000 to $173,500; for Acquisition Companies on the Global and Global Select Markets the all-inclusive annual fee ranges from $70,000 to $81,000; for ADRs the all-inclusive annual fee ranges from $50,000 to $89,500.[5] In each case, a company's all-inclusive annual fee is based on its total shares outstanding.[6]

Nasdaq proposes to amend the all-inclusive annual fee for certain domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,[7] effective January 1, 2024:

Global/Global Select Markets

	Total shares outstanding	Annual fee before the proposed change	Annual fee effective January 1, 2024
Equity securities other than, in part, Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$50,000	$52,500
	10+ to 50 million shares	62,000	65,500
	50+ to 75 million shares	84,000	85,000
	75+ to 100 million shares	112,000	113,500
	100+ to 125 million shares	140,000	141,500
	125+ to 150 million shares	151,500	157,500
	Over 150 million shares	173,500	182,500
ADRs	Up to 10 million ADRs and other listed equity securities.	50,000	52,500
	10+ to 50 million ADRs and other listed equity securities.	56,500	59,500
	50+ to 75 million ADRs and other listed equity securities.	67,000	70,500
	Over 75 million ADRs and other listed equity securities.	89,500	94,000

Capital Market

	Total shares outstanding	Annual fee before the proposed change	Annual fee effective January 1, 2024
Equity securities other than Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$47,000	$49,500
	10+ to 50 million shares	62,000	65,500
	Over 50 million shares	84,000	85,000

[3] Nasdaq also is not proposing to amend the Entry Fees on the Nasdaq Capital Market.

[4] Nasdaq is not proposing to amend the all-inclusive annual fee for Closed-end Funds and Limited Partnerships on any Nasdaq tier.

[5] Rule 5930 sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities; and Rule 5940 sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products that are listed on the Nasdaq Global Market. Nasdaq is not proposing to amend these rules.

[6] REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. *See* Listing Rules 5910(b)(2) and 5920(b)(2).

[7] In establishing the fee changes described in this rule filing, Nasdaq considered various factors that distinguish companies, including market tier, shares outstanding, and security type, as well as the perceived use of various Nasdaq regulatory and support services by companies of various characteristics to better align fees with the size of the companies that pay those fees. Pricing for similar securities on other national securities exchanges was also considered. Based on this analysis, Nasdaq does not propose to modify the structure and the number of fee tiers within the annual fee schedule at this time.

	Total shares outstanding	Annual fee before the proposed change	Annual fee effective January 1, 2024
ADRs	Up to 10 million ADRs and other listed equity securities.	47,000	49,500
	Over10 million ADRs and other listed equity securities.	56,500	59,500

Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2024.

Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities, such as from the remodeling of a portion of the New York Headquarters used for company events, including market opening and closing bells, conducting the required associated regulatory oversight, and Nasdaq's advocacy efforts on behalf of listed companies, and the corresponding value of such listing to companies. In establishing these fee changes Nasdaq also considered the competitive atmosphere in which the Exchange operates.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq currently charges an all-inclusive annual listing fee for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers: [8]

Up to 50 million shares $70,000
Over 50 million shares $81,000

Nasdaq now proposes to replace the tiered structure for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets with a flat fee of $81,000 effective January 1, 2024. Nasdaq proposes to make this change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat all-inclusive annual listing fee for Acquisition Companies because the value of the listing for an Acquisition Company, given the limited scope of operations and the requirement to engage in a merger or acquisition with one or more unidentified companies within a 36 months of the effectiveness of the Acquisition Company's IPO registration statement, is substantially similar regardless of the number of shares the Acquisition Company has outstanding.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq notes that the Exchange operates in a highly competitive marketplace for the listing of companies.[11] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Moreover, new competitors can enter the space, including existing exchanges without listing programs.[12] Accordingly, competitive forces constrain the Exchange's listing fees and changes to the listing fees can have a direct effect on the ability of Nasdaq to compete for new listings and retain existing listings.

Entry Fees on the Nasdaq Global Market

Nasdaq believes that the modification of the entry fees on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings and conducting the required associated regulatory oversight while also considering competitive dynamics and continuing to attract new listings. Nasdaq proposes to make the aforementioned fee change to better reflect the value of such listing to companies. While newly listing companies would pay a higher initial listing fee under the proposed fee than under the current rule, the Exchange believes that this increase is not unfairly discriminatory, as the resources the Exchange expends in connection with the initial listing of those companies are consistent with the proposed fees. Nasdaq does not propose to increase the entry fees described in Rule 5910(a) charged for additional classes of equity securities, Acquisition Companies, Closed-End Funds, and any class of rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current fee levels, as those types of listings do not generally entitle issuers to the types of services provided in connection with a primary common or preferred stock listing of an operating company and the Exchange has therefore not incurred the same level of cost increase associated with them. As such, Nasdaq does not think it is unfairly discriminatory to increase the entry fees only for operating companies listing their primary equity security.

Nasdaq also does not think it is unfairly discriminatory to allow companies that apply to list before January 1, 2024, and list before February 15, 2024, to pay the existing fee schedule. These companies will be substantially far along in the process of going public at the time of this filing and may have made decisions based on the existing fee schedule.

All-Inclusive Annual Listing Fees

Nasdaq believes that the proposed amendments to Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual fees listing fees as set

[8] *See* Listing Rules 5910(b)(2)(F) and 5920(b)(2)(G).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[12] In that regard, Nasdaq notes that CBOE BZX has announced a new listing offering. *See* ''Cboe Launches New Global Listing Offering for Companies and ETFs of the Purpose-Driven Innovation Economy'' (June 2, 2023), available at *https://ir.cboe.com/news/news-details/2023/Cboe-Launches-New-Global-Listing-Offering-for-Companies-and-ETFs-of-the-Purpose-Driven-Innovation-Economy-06-02-2023/default.aspx.*

forth above are reasonable because of the increased costs incurred by Nasdaq, including due to price inflation. In that regard, the Exchange notes that its general costs to support listed companies and conduct the required associated regulatory oversight have increased. The Exchange also continues to expand and improve the services it provides to listed companies, the technology to deliver those services and the customer experience at the Nasdaq MarketSite. These improvements include the remodeling of a portion of Nasdaq's New York Headquarters used for company events, including market opening and closing bells, and the investment in technology to support ongoing trading.

The Exchange also believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of certain of the fees to reflect increases in operating costs and the perceived value of a listing, including as a result of Nasdaq's advocacy efforts on behalf of listed companies. Similarly, as the fee structure remains effectively unchanged apart from increases in the rates paid by certain issuers, as described above, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer of equity securities.

The Exchange believes that the proposal to increase annual fees for operating companies is not unfairly discriminatory because Nasdaq will maintain the current fee structure, based on shares outstanding, and the same fee schedule will apply to all such issuers. While the Exchange does not propose to increase the minimum annual fees charged for various products including Closed-end Funds, Limited Partnerships, and securities covered by Rule 5930 (that sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities), Rule 5935 (that sets forth the all-inclusive annual listing fees applicable to Non-Convertible Bonds) and Rule 5940 (that sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products), the Exchange believes that this is not unfairly discriminatory because the benefits the issuers of those other types of securities receive in connection with their listings are consistent with the current fee levels paid by those issuers. Specifically, those types of listings do not generally benefit to the same extent from services provided by the Exchange and the Exchange's advocacy efforts as do issuers of operating company equity securities.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq believes the proposed change to apply a flat all-inclusive annual fee for all listed Acquisition Companies is reasonable, and not unfairly discriminatory, because the value of the listing to an Acquisition Company, and Nasdaq's costs in regulating and supporting the listing of an Acquisition Company, is substantially similar regardless of the number of shares the company has outstanding or its market tier, and, as revised, all Acquisition Companies would pay the same fee. While some companies would pay a higher fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares the company has outstanding. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that a proposed flat all-inclusive annual listing fee for Acquisition Companies is reasonable given the competitive landscape.[13]

The proposed renumbering of certain rules to improve their clarity and readability is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The market for listing services is extremely competitive and listed companies may freely choose alternative venues, both within the U.S. and internationally. For this reason, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings. The Exchange also does not believe that the proposed rule change will have any meaningful impact on competition among listed companies because all similarly situated companies will be charged the same fee.

[13] *See, e.g.,* Section 902.11 of the NYSE Listed Company Manual imposing a flat annual fee of $85,000 on Acquisition Companies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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)(ii) of the Act.[14]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–048. 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 (*https://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

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–048 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26724 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99047; File No. SR–MIAX–2023–46]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 30, 2023.

Pursuant to the provisions of 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 November 16, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to extend the waiver period for certain non-transaction fees applicable to Market Makers[3] that trade solely in Proprietary Products[4] until June 30, 2024.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products until June 30, 2024.

Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[5] The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section 1)a)xi), SPIKES—for those fees.[6] Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning June 1, 2019, through December 31, 2023.[7] In particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members,[8] and monthly MIAX Express Interface (''MEI'') Port[9] fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of June 1, 2019 through December 31, 2023. The Exchange now proposes to extend the waiver period for the same non-

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section 1)b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section 1)b)i). *See* Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39).

[7] *See* Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28); 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39); 91498 (April 7, 2021), 86 FR 19293 (April 13, 2021) (SR–MIAX–2021–06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47); 97887 (July 12, 2023), 88 FR 45936 (July 18, 2023) (SR–MIAX–2023–28).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, *infra* note 15.

transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2024. In particular, the Exchange proposes to waive Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2024.

Membership Application Fees

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM'').[10] A Market Maker is assessed a one-time Membership Application fee of $3,000.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from December 31, 2023 until June 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in an increase of potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2024.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. MIAX assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit fee according to the following table:[11]

Type of trading permit	Monthly MIAX trading permit fee	Market Maker assignments (the lesser of the applicable measurements below) Ω	
		Per class	% of national average daily volume
Market Maker (includes RMM, LMM, PLMM).	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	* 17,000.00	Up to 100 Classes	Up to 50% of Classes by volume.
	* 22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from December 31, 2023 to June 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness to potential Members seeking a Trading Permit that the Exchange intends to assess such a fee after June 30, 2024.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit fees currently assessed to Market Makers in Section 3)b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon Membership type. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port (''FIX Port''),[12] which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the

[10] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] *See* Fee Schedule, Section 3)b).

[12] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, Section 5)d)i).

Clearing Trade Drop Port (''CTD Port''),[13] which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port''),[14] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from December 31, 2023 until June 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2024.

MEI Port Fees

MIAX assesses monthly MEI Port fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port fees on Market Makers according to the following table:[15]

Monthly MIAX MEI fees	Market Maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of national average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
17,500.00*	Up to 100 Classes	Up to 50% of Classes by volume.
20,500.00*	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from December 31, 2023 until June 30, 2024, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after June 30, 2024.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section 5)d)ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market

[13] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section 5)d)iii.

[14] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv.

[15] *See* Fee Schedule 5)d)ii).

makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers that trade solely in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2024, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2024, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until June 30, 2024. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

exclusion to Market Makers (and not EEMs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until June 30, 2024 for Market Makers that trade solely in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX, including options on SPIKES. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers applies only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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)(ii) of the Act,[18] and Rule 19b–4(f)(2) [19] thereunder. 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–46. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–46 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26727 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99049; File No. SR–NYSE–2023–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

November 30, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 20, 2023, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Rule 7.31 (Orders and Modifiers); Rule 5320 (Prohibition Against Trading Ahead of Customer Orders); Rule 6140 (Other Trading Practices); and Rule 6810 (Consolidated Audit Trail—Definitions). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update citations to Rule 600(b) of Regulation NMS in Rule 7.31 (Orders and Modifiers); Rule 5320 (Prohibition Against Trading Ahead of Customer Orders); Rule 6140 (Other Trading Practices); and Rule 6810 (Consolidated Audit Trail—Definitions).

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[4] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definition of Intermarket Sweep Order (formerly Rule 600(b)(30)), Listed Option (formerly Rule 600(b)(35)), and NMS Stock (formerly Rule 600(b)(47)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows.

- The citation to the definition of Intermarket Sweep Order in Rule 7.31(e)(3) and Rule 5320, Supplementary Material .04 would be changed to Rule 600(b)(38).
- The citation to the definition of NMS Stock in Rule 6140(a) and Rule 6810(qq) would be changed to Rule 600(b)(55).
- The citation to the definition of Listed Option in Rule 6810(y) would be changed to Rule 600(b)(43).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Reg NMS. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change raises no novel legal or regulatory issues and modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and result in increased clarity within the Exchange's rules. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

[4] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–45. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–45 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26728 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99056; File No. SR–NYSEAMER–2023–61]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

November 30, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 20, 2023, NYSE American LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update citations to Rule 600(b) of Regulation National Market System (''Regulation NMS'') in Rule 7.31E (Orders and Modifiers); Rule 5320—Equities (Prohibition Against Trading Ahead of Customer Orders); Rule 6140—Equities (Other Trading Practices); Rule 6810 (Consolidated Audit Trail—Definitions); and Rule 7410—Equities (Definitions). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update citations to Rule 600(b) of Regulation NMS in Rule 7.31E (Orders and Modifiers); Rule 5320—Equities (Prohibition Against Trading Ahead of Customer Orders); Rule 6140—Equities (Other Trading Practices); Rule 6810 (Consolidated Audit Trail—Definitions); and Rule 7410—Equities (Definitions).

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[4] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definition of Intermarket Sweep Order (formerly Rule 600(b)(30)), Listed Option (formerly Rule 600(b)(35)), and NMS Stock (formerly Rule 600(b)(47)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows.

- The citation to the definition of Intermarket Sweep Order in Rule 7.31E(e)(3), Rule 5320—Equities, Supplementary Material .04, and Rule 7410(h) would be changed to Rule 600(b)(38).
- The citation to the definition of NMS Stock in Rule 6140—Equities(a) and Rule 6810(qq) would be changed to Rule 600(b)(55).
- The citation to the definition of Listed Option in Rule 6810(y) would be changed to Rule 600(b)(43).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[4] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

Section 6(b)(5) of the Exchange Act,[5] in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Reg NMS. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change raises no novel legal or regulatory issues and modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and result in increased clarity within the Exchange's rules. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

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.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–61. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–61 and should be submitted on or before December 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26729 Filed 12–5–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for First Quarter FY 2024

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice for the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after October 31, 2023.

DATES: Issued on November 30, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Blocker, Office of Financial Assistance, U.S. Small Business Administration, at *robert.blocker@sba.gov;* or (202) 619–0477.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The interest rate will be 4.000 for loans approved on or after October 31, 2023.

Robert Blocker,

Chief, Disaster Loan Policy Division, Office of Financial Assistance.

[FR Doc. 2023–26397 Filed 12–5–23; 8:45 am]

BILLING CODE 8026–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0014]

Request for Comments and Notice of a Public Hearing Regarding the 2024 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative (USTR) conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

DATES:

January 30, 2024 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from the public.

February 13, 2024 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.

February 21, 2024: The Special 301 Subcommittee will hold a public hearing at the Office of the United State Trade Representative, 1724 F Street NW, Rooms 1&2, Washington, DC. If necessary, the hearing may continue on the next business day. Those who intend to testify at the public hearing must submit a notice of intent to appear by the deadlines stated above. Please consult the USTR website at *https://ustr.gov/issue-areas/intellectual-property/Special-301* for confirmation of the date and location and the schedule of witnesses.

February 28, 2024 at 11:59 p.m. EST: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.

On or about April 26, 2024: USTR will publish the 2024 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the submission instructions in section IV below. The docket number is USTR–2023–0014. For alternatives to on-line submissions, please contact USTR at *Special301@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Claire Avery-Page, Director for Innovation and Intellectual Property, at *Special301@ustr.eop.gov* or (202) 395–6862. You can find information about the Special 301 Review at *https://www.ustr.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2024, USTR will conduct a public hearing as part of the review process and will allow hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries the acts, policies or practices of which deny adequate and effective protection for IP rights or deny fair and equitable market access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the United States-Mexico-Canada Agreement (USMCA) (as defined in section 3 of the USMCA Implementation Act). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will

[12] 17 CFR 200.30–3(a)(12), (59).

publish the annual Special 301 Report about April 26, 2024.

II. Public Comments

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential or other orders, and administrative, court or other determinations that should factor into the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states or other subdivisions of a country in which an act, policy or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective IP protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Hearing

The Special 301 Subcommittee will convene a public hearing on February 21, 2024, in Rooms 1 and 2, 1724 F Street NW, Washington, DC, at which interested persons, including representatives of foreign governments, may appear to provide oral testimony. If necessary, the hearing may continue on the next business day. Because the hearing will take place in Federal facilities, attendees must show photo identification and will be screened for security purposes. Please consult the USTR website at *https://ustr.gov/issue-areas/intellectual-property/Special-301* to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR also will post the transcript and recording of the hearing on the USTR website as soon after the hearing as possible. Witnesses must deliver prepared oral testimony, which is limited to five minutes, before the Special 301 Subcommittee in person and in English. Subcommittee member agencies may ask questions following the prepared statement.

Witnesses not from foreign governments must submit a notice of intent to testify and a hearing statement by January 30, 2024, and foreign government witnesses must submit a notice of intent to testify and a hearing statement by February 13, 2024. The submissions must be in English and must include: (1) the name, address, telephone number, email address, and firm or affiliation of the individual wishing to testify, and (2) a hearing statement that is relevant to the Special 301 review.

IV. Submission Instructions

All submissions must be in English and sent electronically via *Regulations.gov* using docket number USTR–2023–0014. To submit comments, locate the docket (folder) by entering the number USTR–2023–0014 in the 'search for dockets or documents on agency actions' window at the *Regulations.gov* home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name or Organization_2024 Special 301_Review_Comment, or Notice of Intent to Testify or Hearing Statement. Please include the following information in the 'start typing comment here' field: '2024 Special 301 Review' and whether the submission is a comment, a request to testify at the hearing, or a hearing statement. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'start typing comment here' field. For further information on using *Regulations.gov*, please select 'FAQ' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'start typing comment here' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at *Special301@ustr.eop.gov*.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2023–0014 in the 'search' field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.

[FR Doc. 2023–26737 Filed 12–5–23; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0546; Summary Notice No. 2023–49]

Petition for Exemption; Summary of Petition Received; Mammoth Freighters, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this notice must identify the petition docket number and

must be received on or before January 4, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–0546 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal regulations (14 CFR) 11.35, 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.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Valerie Smith, AIR–646, Federal Aviation Administration, phone 404–474–5380, email *valerie.l.smith@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, District of Columbia on November 30, 2023.

Daniel J. Commins,

Manager, Integration and Performance Branch.

Petition for Exemption

Docket No.: FAA–2023–0546.

Petitioner: Mammoth Freighters, LLC.

Section(s) of 14 CFR Affected: §§ 25.785(j), 25.812(e), 25.813(b), 25.857(e), 25.1447(c)(1), 25.1449.

Description of Relief Sought: The petitioner is seeking relief from the affected sections of 14 CFR, to support supplemental type certificate approval for the conversion of Boeing Model 777–200LR and 777–300ER series airplanes from an all-passenger configuration to an all-cargo configuration and allow for supernumerary access into the Class E cargo compartment during flight.

[FR Doc. 2023–26705 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2372]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Application for Certificate of Waiver or Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. This collection affects persons who have a need to deviate from certain regulations that govern use of airspace within the United States. The request also describes the burden associated with authorizations to make parachute jumps and operate unmanned aircraft (including moored balloons, kites, unmanned rockets, and unmanned free balloons) and small unmanned aircraft systems.

DATES: Written comments should be submitted by February 5, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Chris Morris, 800 Independence Ave. SW, Washington, DC 20591.

By email: chris.morris@faa.gov.

FOR FURTHER INFORMATION CONTACT: Raymond Plessinger by email at: *raymond.plessinger@faa.gov;* phone: (717) 774–8271.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0027.

Title: Application for Certificate of Waiver or Authorization.

Form Numbers: FAA form 7711–2.

Type of Review: Renewal.

Background: The information collected by FAA Form 7711–2, Application for Certificate of Waiver or Authorization, is reviewed and analyzed by the FAA to determine the type and extent of the intended deviation from prescribed regulations. A certificate of waiver or authorization to deviate is generally issued to the applicant (individuals and businesses) if the proposed operation does not create a hazard to persons, property, or other aircraft, and includes the operation of unmanned aircraft. Applications for certificates of waiver to the provisions of parts 91 and 101 are made by using FAA Form 7711–2. Application for authorization to make parachute jumps (other than emergency or military operations) under part 105, section 105.15 (airshows and meets) also uses FAA Form 7711–2. Application for other types of parachute jumping activities are submitted in various ways; *e.g.,* in writing, in person, by telephone, etc.

Persons authorized to deviate from provisions of part 101 are required to give notice of actual activities. Persons operating in accordance with the provisions of part 101 are also required to give notice of actual activities. In both instances, the notice of information required is the same. Therefore, the burden associated with applications for certificates of waiver or authorization and the burden associated with notices of actual aircraft activities are identified and included in this request for clearance.

Regarding operation of small unmanned aircraft systems under part 107, to obtain a certificate of waiver, an applicant will have to submit a request containing a complete description of the proposed operation and a justification, including supporting data and documentation as necessary that establishes that the proposed operation can safely be conducted under the terms of a certificate of waiver. The FAA expects that the amount of data and analysis required as part of the application will be proportional to the specific relief that is requested.

Respondents: 26,495, including approximately 5,500 annual

applications for waivers from certain sections of part 107.

Frequency: On occasion.

Estimated Average Burden per Response: 45 minutes for non-part 107 waivers; 45.7 hours for part 107 waivers.

Estimated Total Annual Burden: 19,871 hours (not-part 107) + 251,520 (part 107) = 271,391 hours.

Issued in Washington, DC, on November 30, 2023.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2023–26702 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on request to release airport property for land disposal at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

SUMMARY: The FAA proposes to rule and invites public comment on the release and sale of eleven parcels of land at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

DATES: Comments must be received on or before January 5, 2024.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Brian Fornwalt, Airport Manager, Liberal Mid-America Regional Airport, 302 Terminal Road, PO Box 2199, Liberal, KS 67901, (620) 626–0188.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release and sell eleven tracts of land in the airport industrial park totaling approximately 10.27 acres of airport property at the Liberal Mid-America Regional Airport (LBL) under the provisions of 49 U.S.C. 47107(h)(2). The Airport Manager has requested from the FAA the release of eleven tracts of airport property be released for sale for commercial use. The FAA determined the request to release and sell property at Liberal Mid-America Regional Airport (LBL) meets the procedural requirements of the Federal Aviation Administration and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport (LBL) is proposing the release and sale of eleven tracts of land in the airport industrial park totaling approximately 10.27 acres of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the release of land and surface rights at the Liberal Mid-America Regional Airport (LBL) from the conditions of the AIP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value and the property will continue to be used for commercial businesses by the existing tenants on these tracts.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, request an appointment and inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport.

Issued in Kansas City, MO, on December 1, 2023.

Edward A. Hyatt,

Acting Director, FAA Central Region, Airports Division.

[FR Doc. 2023–26777 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0055; Notice 1]

Blue Bird Body Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Blue Bird Body Company (Blue Bird) has determined that certain model year (MY) 2019–2024 Blue Bird Vision and MY 2020–2024 Blue Bird All American school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus Emergency Exits and Window Retention and Release.* Blue Bird filed two noncompliance reports, both dated August 9, 2023, and subsequently petitioned NHTSA (the ''Agency'') on September 13, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Blue Bird's petition.

DATES: Send comments on or before January 5, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no

limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Daniel Lind, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview: Blue Bird determined that certain MY 2019–2024 Blue Bird Vision and MY 2020–2024 Blue Bird All American school buses do not fully comply with paragraph S5.5.3(b) of FMVSS No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217).

Blue Bird filed two noncompliance reports, both dated August 9, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Blue Bird petitioned NHTSA on September 13, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Blue Bird's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 28,765 and 403 MY 2019–2024 Blue Bird Vision and MY 2020–2024 Blue Bird All American school buses, manufactured between July 1, 2019, and August 3, 2023, were reported by the manufacturer.

III. Noncompliance: Blue Bird explains that the Emergency Exit Label in the subject vehicles contains lettering that does not meet the height required by paragraph S5.5.3(b) of FMVSS No. 217. Specifically, the lettering height was 0.88 cm and therefore does not meet the minimum lettering height requirement of 1 cm.

IV. Rule Requirements: Paragraph S5.5.3(b) of FMVSS No. 217 includes the requirements relevant to this petition. Concise operating instructions describing the motions necessary to unlatch and open the emergency exit shall be located within 15 centimeters of the release mechanism on the inside surface of the bus. These instructions shall be in letters at least 1 centimeter high and of a color that contrasts with its background.

V. Summary of Blue Bird's Petition: The following views and arguments presented in this section, ''V. Summary of Blue Bird's Petition,'' are the views and arguments provided by Blue Bird. They have not been evaluated by the Agency and do not reflect the views of the Agency. Blue Bird describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Blue Bird contends that the subject noncompliance is inconsequential to motor vehicle safety because the difference between 1 centimeter and 0.882 centimeters would be difficult to differentiate without the use of precise measuring equipment. A 0.118 cm difference is less than 3/64ths of an inch or 0.047 inches, which Blue Bird argues would be unrecognizable and would not cause the instructions to be unclear to passengers or impact their ability to open the door in an emergency.

In 2022, NHTSA denied a petition by Collins Bus Corporation (Collins) in which the lettering height on the affected buses was 2 mm less than 1 cm. Collins contended that some of the lettering in the labeled message exceeds the requirement by 1mm. Therefore, the difference of the noncompliant lettering being 2 mm smaller than required should be deemed inconsequential. However, NHTSA was not persuaded by Collins's assertion that a 2 mm measurement is not any less significant than a 1 mm measurement. Blue Bird says that NHTSA's decision in this case implies that a 0.118 cm variation from the required lettering height at a single location can be considered inconsequential.

Moreover, Blue Bird believes that Vernier caliper jaws, when used for the official measurement of letter height can introduce inaccuracies, particularly in discerning small variations from the required height. Blue Bird says manual error in the repeatability of both the measurement device and the user could lead to discrepancies that exceed the difference between the Blue Bird text size from the requirement. Blue Bird contends that the photo provided of the measurement in this case illustrates the potential for human error in identifying a small variation. According to Blue Bird, ''the caliper is not positioned flat against the decal, and only one location on the decal was measured.'' Therefore, Blue Bird believes that a discrepancy of 0.118 cm could be attributed to a slight angle of the calipers or measurements conducted at various points on the signage.

According to Blue Bird, its lettering meets all other FMVSS No. 217 labeling requirements, specifically, (1) operating instructions must be ''concise'' and describe ''the motions necessary to unlatch and open the emergency exit,'' (2) operating instructions must ''be located within 15 centimeters of the release mechanism on the inside surface of the bus,'' and (3) operating instructions must be ''of a color that contrasts with [their] background.''

Blue Bird asserts NHTSA has not put forth any claim or reasoning indicating that a 0.118 cm variation from the 1 cm lettering height requirement ''compromises a passenger's ability to safely view or understand the lettering.'' Furthermore, Blue Bird contends that NHTSA's prior determination on the Collins petitions notes the substantial difference between a 1 mm and a 2 mm variation from the requirement. Additionally, Blue Bird believes it has effectively demonstrated that the manual use of Vernier calipers can introduce ''discrepancies and variations when distinguishing variations as small as .118 cm.''

Blue Bird concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49

U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Blue Bird no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Blue Bird notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–26733 Filed 12–5–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of persons whose property and interests in property have been unblocked pursuant to Executive Order 13288 of March 10, 2003, ''Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe'', as amended by Executive Order 13391 of November 22, 2005, ''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe.'' Additionally, OFAC is publishing an update to the identifying information of persons currently included on the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On November 30, 2023, OFAC removed from the SDN List the person listed below, whose property and interests in property were blocked pursuant to E.O. 13288, as amended by E.O. 13391. On November 30, 2022, OFAC determined that circumstances no longer warrant the inclusion of the following person on the SDN List under this authority. This person is no longer subject to the blocking provisions of Section 1(a) of E.O. 13288, as amended by E.O. 13391.

Individual

1. BONYONGWE, Happyton Mabhuya; DOB 6 Nov 1960; POB Chikomba District, Zimbabwe; nationality Zimbabwe; Director General, Central Intelligence Organization (individual) [ZIMBABWE]

Dated: November 30, 2023.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–26781 Filed 12–5–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 1, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

1. HS ATLANTICA LIMITED, 80 Broad Street, Monrovia, Liberia; Identification Number IMO 6356766 [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the marine sector of the Russian Federation economy.

2. STERLING SHIPPING INCORPORATED, Unit 27610–001, Building A1, IFZA Business Park, Dubai Silicon Oasis, Dubai, United Arab Emirates; Identification Number IMO 5206051 [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

3. STREYMOY SHIPPING LIMITED, Unit 27610–001, Building A1, IFZA Business Park, Dubai Silicon Oasis, Dubai, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Identification Number IMO 5724311 [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

On December 1, 2023, OFAC also identified the following vessels as property in which a blocked person has an interest, under the relevant sanctions authority listed below:

Vessels

1. HS ATLANTICA (5LIP5) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9322839; MMSI 636022401 (vessel) [RUSSIA–EO14024] (Linked To: HS ATLANTICA LIMITED).

Identified as property in which HS Atlantica Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. NS CHAMPION (A8FD9) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9299719; MMSI 636012384 (vessel) [RUSSIA–EO14024] (Linked To: STERLING SHIPPING INCORPORATED).

Identified as property in which Sterling Shipping Incorporated, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. VIKTOR BAKAEV (D5BN6) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9610810; MMSI 636015565 (vessel) [RUSSIA–EO14024] (Linked To: STREYMOY SHIPPING LIMITED).

Identified as property in which Streymoy Shipping Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: December 1, 2023.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–26766 Filed 12–5–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity: Department of Veterans Affairs (VA) Veteran Readiness and Employment (VR&E) Longitudinal Study Survey Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on Tuesday, November 28, 2023, that contained an error. The 60-day Public Comment notice identified a date of when public comments should be submitted for Agency Information Collection Activity. This document corrects the notice by removing the ''Agency Information Collection Activity: Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Longitudinal Study Survey Questionnaire'' and replacing with ''Agency Information Collection Activity: Department of Veterans Affairs (VA) Veteran Readiness and Employment (VR&E) Longitudinal Study Survey Questionnaire''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0786'' in any correspondence.

Correction

In FR Doc. 2023–26141, published on Tuesday, November 28, 2023, 88 FR 227, make the following corrections. On pages 83206 and 83207, replace ''Agency Information Collection Activity: Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Longitudinal Study Survey Questionnaire'' with ''Agency Information Collection Activity: Department of Veterans Affairs (VA) Veteran Readiness and Employment (VR&E) Longitudinal Study Survey Questionnaire''.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26759 Filed 12–5–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0768]

Agency Information Collection Activity Under OMB Review: Program of Comprehensive Assistance for Family Caregivers (PCAFC)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0768.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0768'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC) (VA Form 10–10CG).

OMB Control Number: 2900–0768.

Type of Review: Revision of a currently approved collection.

Abstract: Authority for this information collection is found in Public Law (Pub. L.) 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010, as amended in title 38 United States Code chapter 17 by adding a new section, 1720G, ''Assistance and Support Services for Caregivers.'' Section 1720G required the Department of Veterans Affairs (VA) to develop a Program of Comprehensive Assistance for Family Caregivers and Support Services. Under the law, Primary Family Caregivers may be eligible to receive a stipend, access to health care coverage, mental health counseling, comprehensive caregiver education and training, and expanded respite services. Caregivers also may be eligible for travel benefits when they accompany the Veteran for care or attending training.

In order to administer these benefits to caregivers, it is necessary that the VA receive information about the nature of benefit being sought and the persons who will be serving as caregivers and receiving benefits. This information is collected with VA Form 10–10CG, which is currently approved under Office of Management and Budget (OMB) Control Number 2900–0768. VA requests a three-year renewal of the PRA clearance for 10–10CG from OMB to continue with the collection of this information, which is necessary to administer VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC).

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 **Federal Register** Notice with a 60-day comment period

soliciting comments on this collection of information was published at 88 FR 186 on September 27, 2023, pages 66554 and 66555.

Affected Public: Individuals or Households.

Estimated Annual Burden: 27,668 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 110,671.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26752 Filed 12–5–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,

No. 233 December 6, 2023

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA–HQ–OW–2022–0801; FRL–5423.2–01–OW]

RIN 2040–AG16

National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; request for public comment; notice of public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA). In this document, EPA is proposing to require water systems to replace lead service lines, remove the lead trigger level, reduce the lead action level to 0.010 mg/L, and strengthen tap sampling procedures, among other changes that would improve public health protection and simplify the rule relative to the 2021 Lead and Copper Rule Revisions (LCRR). This proposed rule provides improvements in the additional following areas: corrosion control treatment, public education and consumer awareness, requirements for small systems, and sampling in schools and child care facilities. EPA's proposed rule aims to address potential disproportionate impacts of lead in drinking water in communities, including through proposed lead service line replacement and public education, among other areas of the proposed rule.

DATES: Comments must be received on or before February 5, 2024. Comments on the information collection provisions submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) are best assured of consideration by OMB if OMB receives a copy of your comments on or before January 5, 2024. Public hearing: EPA will hold a virtual public hearing on January 16, 2024, information is available at *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.* Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0801, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Ground Water and Drinking Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: 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 detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Goldberg, 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) 564–1379; email address: *LCRI@epa.gov.* For more information visit *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.* Individuals who have speech or other communication disabilities may use a relay service to reach the phone number above. To learn more about how to make an accessible telephone call, visit the web page for the Federal Communications Commission's Telecommunications Relay Service, *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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I. Executive Summary

The United States Environmental Protection Agency's (EPA) mission is to protect human health and the environment. There is no known safe level of lead exposure. Exposure to drinking water contaminated with lead can cause serious human health impacts including neurodevelopmental problems in children and heart disease in adults. Young children and pregnant people are especially susceptible to the impacts of lead exposures. Reduction in lead in drinking water will reduce negative neurodevelopmental outcomes for children as well as reducing a range of health risk to adults. EPA is proposing the Lead and Copper Rule Improvements (LCRI) to significantly reduce exposure to lead through drinking water. The proposal builds on the 2021 Lead and Copper Rule Revisions (LCRR) and the original 1991 Lead and Copper Rule (LCR). In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at Docket ID No. EPA–HQ–OW–2022–0801 at *https://www.regulations.gov/.*

EPA conducted a review of the LCRR in accordance with Executive Order 13990 [1] and announced its intention to strengthen the LCRR with a new rulemaking, the LCRI, to address key issues and opportunities identified in the review. The proposed LCRI addresses the priorities EPA identified in the LCRR review by proposing to equitably replace all lead service lines (LSLs) in the nation, better identify where LSLs are and act in communities most at risk of lead exposure, and streamline and improve implementation of the rule. This proposed LCRI is the culmination of numerous meaningful consultations with stakeholders and the public during the LCRR review and development of the proposed LCRI.

EPA has found based upon its evaluation of available data and stakeholder input that although the LCRR would improve public health protection in comparison to the previous version of the rule, there are significant opportunities to further improve upon it to achieve increased protection of communities from lead exposure through drinking water. The proposed LCRI strengthens key elements of the rule in three main focus areas: Replacing All Lead Service Lines, Reducing Complexity for Public Health Protection, and Increasing Transparency and Informing the Public. The proposal also includes an updated benefits and costs analysis, updates the compliance dates, and outlines the public participation process.

Replacing All Lead Service Lines

Historically, lead pipes,[2] as well as lead-bearing fixtures and solder, were commonly used in water distribution systems and home plumbing. Previous efforts to reduce lead in drinking water prioritized corrosion control to reduce lead levels at the tap. Following corrosion control, some water systems would be required to take additional actions, including service line replacement and public education. Replacing the lead service lines does not eliminate lead from tap water because plumbing systems inside homes and buildings (*i.e.,* premise plumbing) can also contain lead components. Buildings and homes older than 1986 can still have LSLs connecting the building's plumbing system to the main water supply line under the street. These lines can deteriorate or corrode, releasing lead particles into the drinking water (Sandvig et al., 2008). The science is clear that there is no known safe level of exposure to lead in drinking water, especially for children. Among other effects, lead exposure can cause 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. In children, even at low

[1] Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 20, 2021).

[2] EPA does not believe that there are lead water mains in the United States and if they do occur it is extremely rare. The poor structural integrity of lead pipes that are more than two inches in diameter means that lead was primarily used in pipes of smaller diameter such as service lines. Conversely, the water mains that distribute water throughout a city or town tend to be six inches or larger in diameter. The common water main materials include ductile iron, PVC, asbestos cement, HDPE, and concrete steel. The oldest water mains are cast iron and asbestos cement (Folkman, 2018).

levels, lead exposure can cause health effects like lower intelligence quotient (IQ), learning and behavioral problems. In adults, health effects include risk of heart disease, high blood pressure, kidney or nervous system problems, and cancer. When LSLs are present, they represent the greatest lead exposure source through drinking water (Sandvig et al., 2008).[3] Based on over 30 years of implementing the LCR, EPA has determined that requiring lead service line replacements based on 90th percentile lead levels is insufficient to protect public health.

As a result, EPA is proposing the elimination of all LSLs and certain galvanized service lines from water systems in 10 years or less. The proposed LCRI provides, in limited circumstances, additional time for some systems to complete system-wide full service line replacement. EPA proposes that water systems must replace LSLs and certain galvanized service lines regardless of the lead levels occurring in tap or other drinking water samples. This proposal would significantly reduce the potential for lead releases into drinking water. In addition, while corrosion control is generally effective at reducing lead to low levels, elimination of LSLs can result in even greater public health protection by eliminating a lead exposure source and minimizes the opportunities for error that have often occurred over the years.

Knowing where lead pipes are is critical to replacing them efficiently and equitably. Under the proposed LCRI, all water systems would be required to regularly update their service line inventories, create a service line replacement plan, and identify all service lines of unknown material by the replacement deadline. EPA is proposing that water systems use a validation process to ensure the service line inventory is accurate. Water systems would also be required to track lead connectors in their inventories and replace them as they are encountered. LSLs in communities throughout the United States can often be found in lower-income and underserved neighborhoods. Under the proposed LCRI, water systems are encouraged to prioritize service line replacement in the most efficient, effective, and equitable way to eliminate exposure to lead and protect public health.

Reducing Complexity and Improving Public Health Protection

The proposed LCRI reduces the complexity of the rule and includes provisions that support more efficient implementation by water systems while reducing lead exposure in more communities. EPA is proposing to lower the lead action level to 0.010 mg/L and eliminate the lead trigger level to simplify the rule and require water systems to act earlier. Water systems with continually high levels of lead determined by having multiple lead action level exceedances would be required to conduct additional outreach to consumers about lead in the drinking water and make filters certified to reduce lead available for consumers.

EPA also proposes an updated tap sampling protocol that would require systems to collect first liter and fifth liter samples at sites with LSLs. This new method would better represent water that has been stagnant within the service line and the plumbing, helping water systems better understand the effectiveness of their corrosion control treatment. EPA is also proposing to further streamline the rule by deferring the optimal corrosion control treatment and re-optimized optimal corrosion control treatment processes for systems that can remove 100 percent of lead and galvanized requiring replacement (GRR) service lines within five years of the date the system is triggered into the corrosion control treatment steps.

The LCRI proposal retains flexibilities for small systems serving 3,300 persons or fewer, allowing them to choose among three options if they exceed the lead action level: installing optimized corrosion control treatment, installing and maintaining point-of-use devices, or replacing all lead-bearing plumbing. Lead service line replacement would no longer be available as a remedial action when small systems exceed the lead action level since the proposed LCRI requires all systems to conduct mandatory service line replacement.

To reduce duplicative sampling efforts, EPA is proposing to expand the allowable waivers for water systems to conduct sampling and public education in schools and child care facilities to include some sampling efforts conducted prior to the rule compliance date, such as sampling conducted through the Water Infrastructure Improvements for the Nation (WIIN) Act grant program.

Increasing Transparency and Informing the Public

To increase transparency and better inform the public of lead exposure and health risks, EPA is proposing to improve the public education requirements by updating the content and delivery frequency for more proactive messaging about lead in drinking water. The proposal also introduces new public education requirements for lead and copper.

The proposed rule would require systems to provide additional information when notifying consumers who are served by a lead, GRR, or unknown service line annually. In addition, when a system samples for lead or copper at a residence, it must deliver to residents the results within three days, regardless of the lead or copper levels in the sample. Water systems that exceed the lead action level would be required to provide public education no later than 60 days after the end of a sampling period and continue providing public education with this same frequency until the system no longer exceeds the action level. This public education is in addition to the requirement for water systems to provide public notification of a lead action level exceedance within 24 hours.

Water systems would also be required to deliver public education and notice materials to residents when water-related work is conducted that could disturb lead, galvanized requiring replacement, or unknown service lines, including disturbances caused when systems are conducting inventories. When systems are working to replace LSLs, they would be required to encourage customers to allow full replacement of their lead lines. Systems would be required to reach out four times using at least two different methods to contact customers.

The annual Consumer Confidence Reports are one important way that customers learn about the quality of their drinking water. As part of the LCRI rulemaking, EPA also proposes to revise the Consumer Confidence Report requirements to include an informational statement about lead that has been updated to improve risk communication, updated lead health effects language, information about the system's efforts to sample in schools and child care facilities, and how to access the community's service line replacement plan.

[3] Sandvig et al. (2008) found that LSLs contributed an average of approximately 50 to 75 percent of the total lead mass measured at the tap, while premise piping and the faucet contributed approximately 20 to 35 percent and 1 to 3 percent, respectively. At sites with no LSL, premise piping and the faucet contributed a greater percentage of lead mass to the total lead mass measured at the tap (approximately 55 percent and 12 percent, respectively), while main samples ranged from approximately 3 to 15 percent.

Benefits and Costs Analysis

The Safe Drinking Water Act (SDWA)[4] requires that EPA determine whether the benefits of the proposed rule justify the costs. As part of its Health Risk Reduction and Cost Analysis (HRRCA), EPA must evaluate quantifiable and nonquantifiable health risk reduction benefits and costs of compliance with the proposed treatment techniques. In accordance with these requirements, the EPA Administrator has determined that the quantified and nonquantifiable benefits of the proposed LCRI justify the costs (see section VIII. of this document for additional discussion on EPA's HRRCA).

To evaluate these benefits and costs, EPA determined which entities would be affected by the LCRI, quantified costs using available data, and described nonquantifiable costs. EPA quantified benefits by estimating and monetizing avoided reductions in IQ, cases of attention-deficit/hyperactivity disorder (ADHD) in children, lower birth weights in children, and cases of cardiovascular disease premature mortality in adults associated with LSL and GRR service line replacement, corrosion control treatment (CCT) installation and re-optimization, and the temporary use of point-of-use devices and water filters in systems with multiple action level exceedances. Prior efforts to quantify benefits associated reductions of lead in drinking water have focused on neurodevelopmental outcomes in children because of the lifelong impact on their ability to thrive. The current benefits assessment also incorporates recent scientific analyses that allow better quantifying benefits to adults. Because existing techniques for quantifying cardiovascular disease premature mortality yield larger benefits per person than for neurological impacts on children, the total benefits are driven by the cardiovascular disease premature mortality benefits. The larger monetized benefit to adults is not intended to distract from EPA's focus on reducing children's exposure to lead.

In addition, EPA qualitatively assessed the potential for the proposed rule's additional lead public education and service line inventory lead connector and public access requirements that target consumers directly, schools and child care facilities, health agencies, and people living in homes with LSLs and GRR service lines to promote averting behavior on the part of the exposed public, including LSL and GRR service line replacement, resulting in reductions in the negative health impacts of lead. Health benefits qualitatively evaluated include cardiovascular morbidity effects, renal effects, reproductive and developmental effects (apart from ADHD), immunological effects, neurological effects (apart from children's IQ), and cancer. In addition, people served by systems required to install or re-optimize CCT under the proposed LCRI and living in homes with premise plumbing containing lead, but not an LSL or GRR service line, will receive health benefits from reduced lead exposure which were not quantified in the analysis of the proposed rule. Increased use of CCT resulting from the proposed rule's lead requirements may reduce the negative health impacts of copper such as acute gastrointestinal conditions and health effects associated with Wilson's Disease. Other unquantifiable co-benefits associated with the increased use of corrosion inhibitors by systems include extending the useful life of plumbing components and appliances (*e.g.,* water heaters), reduced plumbing maintenance costs, reduced treated water loss from the distribution system due to leaks, and reduced potential liability and damages from broken pipes in buildings.

To support eliminating LSLs, the Infrastructure Investment and Jobs Act (Pub. L. 117–58), also referred to as the Bipartisan Infrastructure Law (BIL), included $15 billion specifically appropriated for lead service line replacement (LSLR) projects and associated activities directly connected to the identification of LSL and planning for the replacement of LSLs.

Compliance and Public Process

SDWA requires EPA to establish and enforce drinking water regulations. EPA delegates primary enforcement responsibility (called primacy) for public water systems to States and Indian Tribes if they meet certain requirements. Currently, primacy agencies are enforcing the Lead and Copper Rule. Water systems must comply with the LCRR beginning October 16, 2024. EPA intends to promulgate the LCRI prior to that date; in addition to proposing new and improved requirements, EPA is proposing to revise the compliance dates for most of the LCRR's requirements.

EPA conducted a review of the LCRR in accordance with Executive Order 13990 and announced its intention to strengthen the LCRR with a new rulemaking, the LCRI, to address key issues and opportunities identified in the review. This proposed LCRI is the culmination of numerous meaningful consultations with stakeholders and the public during the LCRR review and development of the proposed LCRI. Public participation and consultations with key stakeholders are critical in developing an implementable rule that protects public health to the extent feasible. Throughout the review of the LCRR and the engagements and consultations conducted in the development of the proposed LCRI, EPA engaged with many stakeholders and received valuable feedback that the Agency considered to develop this proposed rule (see section IV.C. and section X. of this document on EPA's LCRR review engagements and EPA's Statutory and Executive Order Reviews).

The Agency is requesting comment on this action and has identified specific areas where public input will be especially helpful for EPA in developing the final rule (see section IX. of this document on specific topics highlighted for public comment). In addition to seeking written input, EPA will be holding a public hearing on January 16, 2024. Details on participating in the public hearing are provided in section II.B. of this document.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2022–0801, at *https://www.regulations.gov* (EPA's preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information where 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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on providing effective comments.

[4] Public Law 93–523, as amended (42 U.S.C. 300f *et seq.*).

B. Participation in a Virtual Public Hearing

EPA is hosting a virtual public hearing on January 16, 2023, to receive public comment and will present the proposed requirements of the draft National Primary Drinking Water Regulation (NPDWR). The hearing will be held virtually from approximately 11 a.m. until approximately 7 p.m. eastern time. EPA will begin pre-registering speakers and attendees for the virtual hearing upon publication of this document in the **Federal Register**. To attend and/or register to speak at the virtual hearing, please use the online registration form available at: *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.*

The last day to pre-register to speak at the hearing will be January 9, 2023. On January 12, 2023, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate, sequential order at: *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.* The number of online connections available for the hearing is limited and will be offered on a first come, first-serve basis. To submit visual aids to support your oral comment, please contact *LCRI@epa.gov* for guidelines and instructions by January 12, 2023.

Registration will remain open for the duration of the hearing itself for those wishing to provide oral comment during unscheduled testimony; however, early registration is strongly encouraged to ensure proper accommodations and adequate timing. EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Please note that the public hearing may close early if all business is finished.

EPA encourages commenters to provide EPA with a copy of their oral testimony electronically by submitting it to the public docket at *https://www.regulations.gov,* Docket ID: EPA–HQ–OW–2022–0801. Oral comments will be time limited to maximize participation, which may result in the full statement not being given during the virtual hearing itself. Therefore, EPA also recommends submitting the text of oral comments as written comments to the rulemaking docket. EPA will also accept written comments submitted to the public docket, as provided above, from persons not making an oral comment. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at: *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.* While EPA expects the hearing to go forward as set forth above, please monitor the Agency's website or contact *LCRI@epa.gov* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates about the public virtual hearing.

If you require any accommodations for the day of the hearing, such as language translation, captioning, or special accommodations, please indicate this and describe your needs when you register. All requests for accommodations should be submitted by January 9, 2023. Without this one-week advance notice, EPA may not be able to arrange for accommodations. Please contact *LCRI@epa.gov* with any questions related to the virtual public hearing.

C. Previous Opportunities for Public Engagement

EPA provided numerous opportunities for public engagement and input on these proposed regulations. EPA conducted a series of virtual meetings with stakeholders, States, communities impacted by lead exposure, and the public and obtained verbal and written feedback on the LCRR and the proposed LCRI. A summary of the LCRR review and stakeholder engagements is described in section IV.C. of this document, and a summary of the external engagements for the proposed LCRI is described in section X. of this document. The input received during these exchanges was considered in developing the proposed LCRI requirements as described in the subsequent sections of this document.

III. General Information

The proposed LCRI builds upon the previous lead and copper rules. This proposal would revise the most recent lead and copper rule, the LCRR, which was promulgated on January 15, 2021 (86 FR 4198, USEPA, 2021a). Key revisions in this proposed LCRI address the opportunities identified in the Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (or LCRR review) including proactive and equitable replacement of all LSLs, strengthening compliance with tap sampling to better identify communities most at risk of elevated lead in drinking water to better compel actions to reduce health risks, and reducing the complexity of the regulation from the action and trigger level construct and ensuring that the rule is more easily understandable (86 FR 71574; USEPA, 2021b). The proposed LCRI was developed considering the input received in numerous meaningful consultations and engagements over several years, including during LCRR review and in stakeholder outreach conducted to inform the development of this proposal.

A. What is EPA proposing?

EPA is proposing revisions to require mandatory full service line replacement of LSLs and GRR service lines under the control of the water system regardless of the system's 90th percentile lead level. Water systems would be required to complete replacements within ten years, with limited exceptions. EPA is proposing to revise the requirements for updates to the service line inventories under the LCRR to require systems to categorize all unknown service lines in order to identify all LSLs and GRR service lines by the replacement deadline. Systems would also be required to track lead connectors in their inventories and replace them whenever encountered. All water systems with known or potential LSLs or GRR service lines would need to prepare a service line replacement plan that would help to ensure an equitable replacement of all LSLs or GRR service lines by the replacement deadline. EPA is also proposing to lower the lead action level from 0.015 mg/L to 0.010 mg/L, which would result in more water systems controlling corrosion and providing public education to reduce drinking water lead exposure. Systems that exceed the lead action level three or more times in a five-year period would be required to take additional actions to provide public education and make filters available. EPA is also proposing an updated tap sampling protocol that would require the use of the higher of the first- or fifth-liter values at LSL sites to be used when calculating the system's 90th percentile at sites with LSLs. The first- and fifth-liter values represent water that has been stagnant in premise plumbing (plumbing within buildings) and within the service line as well as more accurately identify where higher lead levels might be present.

EPA is proposing that States set optimal water quality parameters for medium systems (serving greater than 10,000 persons and less than or equal to 50,000 persons) with corrosion control

treatment and that these systems meet those parameters for the system to demonstrate that optimal corrosion control treatment (OCCT) is being maintained. EPA is proposing to defer OCCT or re-optimized OCCT for systems that can replace all LSLs and GRR service lines within five years of the date they are triggered into CCT steps at a 20 percent annual replacement rate. EPA is also proposing that systems with OCCT meeting their optimal water quality parameters are not required to re-optimize their CCT more than once following a lead action level exceedance, unless required to do so by the State upon finding that it is necessary.

EPA is proposing to update the public education requirements, instituting changes to content and delivery frequency for more proactive messaging about lead in drinking water and introducing new public education requirements for lead and copper.

EPA is proposing to revise the small system compliance flexibility provision to eliminate LSLR as a compliance option, as all systems would conduct mandatory service line replacement regardless of their 90th percentile lead level. EPA is also proposing to change the eligibility threshold for the flexibility for community water systems (CWSs) to those serving 3,300 or fewer persons.

EPA is proposing to retain the requirements for CWSs to conduct sampling and public education in schools and child care facilities but to expand the available waivers to include sampling efforts conducted prior to the rule compliance date, including sampling conducted through the WIIN Act grant program. EPA is also proposing to restructure and clarify areas of the rule where requirements would not change in an effort to increase the clarity of the rule and increase systems' ability to implement the rule.

Exhibit 1 compares the major differences among the pre-2021 LCR (promulgated in 1991 and last revised in 2007), the LCRR, and the proposed LCRI. In general, only the changes between each rulemaking are shown in Exhibit 1. Asterisks (*) in the pre-2021 LCR and LCRR columns denote requirements that would be retained in the proposed LCRI.

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Exhibit 1—Comparison of Pre-2021 LCR, LCRR, and the Proposed LCRI Revised Requirements

Pre-2021 LCR	LCRR	Proposed LCRI
	Service Line Inventory	
• Systems were required to complete a materials evaluation by the time of initial sampling. • No requirement to update materials evaluation.	• All systems must develop an initial LSL inventory within 3 years of final rule publication. • The inventory must include a location identifier for each LSL and GRR service line. • The inventory must be made publicly accessible; and available online for systems serving >50,000 people.* • The LSL inventory must be updated based on the system's tap sampling frequency but no more than annually.	• All systems must review records for information on connector materials and include lead connectors in the baseline inventory by the compliance date. • The inventory must include a street address with each service line and connector. • Service line inventory must be updated annually. • Systems must respond to customer inquiries on incorrect material categorizations within 60 days. • Systems must validate the accuracy of the non-lead service line category in their inventory no later than 7 years after the compliance date unless on a shortened or deferred deadline. • Systems must identify all unknown service lines by the applicable mandatory replacement deadline.
	Service Line Replacement	
Replacement Plan • No requirement.	**Replacement Plan** • All systems with at least one lead, GRR, or unknown service line must develop an LSLR plan. • The plan must include an LSLR prioritization strategy.	**Replacement Plan** • All systems with at least one lead, GRR, or unknown service line must develop the service line replacement plan (as required in LCRR), but also include additional plan elements including a strategy to inform customers and consumers about the plan and replacement program and an identification of any legal requirements or water tariff agreement provisions that affect a system's ability to gain access to conduct full service line replacement. • Updates the language on the replacement prioritization strategy.

Pre-2021 LCR	LCRR	Proposed LCRI
		• Service line replacement plan must be made publicly accessible; and available online for systems serving > 50,000 people.
LSLR • Replacement programs are based on the lead 90th percentile (P90) level, CCT installation, and/or source water treatment. • Systems with LSLs with P90 lead > 0.015 mg/L after CCT installation must annually replace at least 7 percent 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.[a] • Full LSLR, partial LSLR, and LSLs with lead sample results ≤ 0.015 mg/L ("test-outs") count toward the 7 percent replacement rate. • Systems can discontinue LSLR after 2 consecutive 6-month monitoring periods at or below the lead action level. • Requires replacement of LSLs only.	**LSLR** • Replacement programs are based on P90 lead level for CWSs serving > 10,000 people: o If P90 > 0.015 mg/L: Must fully replace 3 percent of LSLs and GRR service lines per year based upon a 2-year rolling average (mandatory replacement) for at least 4 consecutive 6-month monitoring periods. o If 0.010 mg/L < P90 ≤ 0.015 mg/L: Implement a goal-based LSLR program and consult the primacy agency (or State) on replacement goals for 2 consecutive 1-year monitoring periods. • CWSs serving ≤ 10,000 people and all non-transient, non-community water systems (NTNCWSs) that select LSLR as their compliance option must complete LSLR within 15 years if P90 > 0.015 mg/L. See the *Small System Flexibility* section of this exhibit. • Annual LSLR rate is applied to the number of LSLs and GRR service lines when the system	**Service Line Replacement** • Mandatory full service line replacement program, not based on P90 level. • All CWSs and NTNCWSs with one or more lead, GRR, or unknown service line in their inventory must replace LSLs and GRR service lines under their control in 10 years. Systems required to replace >10,000 lines per year or systems exceeding 0.039 replacements per household per year would be eligible for deferred deadlines beyond the 10-year replacement deadline. Systems must replace service lines by a shortened deadline if determined feasible by the State. • Systems must replace service lines at a minimum average annual rate of 10 percent calculated across a rolling 3-year period, unless subject to a shortened or deferred deadline. • Average annual replacement rate is applied to the number of LSLs and GRR service lines in the baseline inventory submitted by the compliance date plus the number of unknown service lines updated annually. • Systems must conduct reasonable efforts (at least 4 attempts) to engage property owners about full service line replacement, when applicable. • LCRR requirements remain for counting only full service line replacements towards replacement rate, completing

Pre-2021 LCR	LCRR	Proposed LCRI

	first exceeds the trigger or action level plus the number of unknown service lines at the beginning of the year.
	• Only full LSLR (replacement of the entire length of the service line) counts toward mandatory rate and goal-based rate.
	• All systems replace their portion of an LSL if notified by consumer of private side replacement within 45 days of notification of the private replacement. If the system cannot replace the system's portion within 45 days, it must notify the State and replace the system's portion within 180 days.*
	• Following each LSLR, systems must:*
	  ○ Provide pitcher filters and cartridges to each customer for 6 months after replacement. Provide pitcher filters and cartridges before the affected portion of the line or the fully replaced service line is returned to service.
	  ○ Collect a lead tap sample at locations served by the replaced line within 3 to 6 months after replacement.
	• Requires replacement of lead connectors when encountered.*
		customer-initiated replacements, providing a filter and offer tap sampling following replacements, and replacing lead connectors when encountered.
		• Systems conducting partial service line replacement must offer to replace the remaining portion of the service line not under their control (within 45 days for emergencies).[a]

Pre-2021 LCR	LCRR	Proposed LCRI
	• Systems must make 2 good faith efforts to engage customers about LSLR. • Systems conducting partial LSLR must offer to replace the remaining portion of the service line.[a]	
LSL-Related Outreach • When a water system plans to replace the portion it owns, it must offer to replace the customer-owned portion at the owner's expense.[a] • If a 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** • Notify consumers annually if they are served by a lead, GRR, or unknown service line.* • Deliver notice and educational materials to consumers during water-related work that could disturb LSLs. • 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 must include information about the LSLR program in public education (PE) materials that are provided in response to P90 > action level.	**Service Line Related Outreach** • Deliver notice and educational materials to consumers during water-related work that could disturb lead, GRR, or unknown service lines, including disturbances due to inventorying efforts. • If the system fails to meet the mandatory service line replacement rate, conduct public outreach activities to encourage consumers with lead, GRR, and unknown service lines to participate in the service line replacement program. • Removes goal-based program outreach activities.
Action Level and Trigger Level		
• P90 level above lead action level of 0.015 mg/L or copper action level of 1.3 mg/L requires additional actions.	• P90 level above lead action level of 0.015 mg/L or copper action level of 1.3 mg/L requires more actions than the previous rule.	• Removes the lead trigger level. • P90 level above lead action level of 0.010 mg/L or copper action level of 1.3 mg/L requires actions including installation or re-optimization

Pre-2021 LCR	LCRR	Proposed LCRI
• Lead action level exceedance requires 7 percent LSLR (includes partial replacements), CCT recommendation and possible study and installation, and PE within 60 days after the end of the monitoring period.	• Defines lead trigger level of 0.010 < P90 ≤ 0.015 mg/L that triggers additional planning, monitoring, and treatment requirements. • Lead action level exceedance requires 3 percent LSLR (no partial replacements), CCT installation or re-optimization, PE, and public notification (PN) within 24 hours. • Trigger level exceedance requires goal-based LSLR and steps taken towards CCT installation or re-optimization.	of CCT, and PE and 24-hour PN (for lead action level exceedances). • Mandatory full service line replacement of LSLs and GRR service lines is independent of P90 lead levels.
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 or containing lead pipes and sites served by LSLs. • Systems must collect 50 percent of samples from LSLs, if available.	**Sample Site Selection** • Changes priorities for collection of samples with a greater focus on LSLs. • Prioritizes collecting samples from sites served by LSLs. All samples must be collected from sites served by LSLs, if available.* • No distinction in prioritization of copper pipes with lead solder by installation date. • Adds 2 tiers to focus tap sample site selection tiering criteria on LSLs first.	**Sample Site Selection** • Combines the tap sample site selection tiering criteria for CWSs and NTNCWSs. • Revises Tier 3 sites to include sites served by a lead connector as well as sites served by a galvanized service line or containing galvanized premise plumbing that are identified as ever being downstream of an LSL or lead connector in the past.
Collection Procedure • Requires collection of the first-liter sample after water has sat stagnant for a minimum of 6 hours.	**Collection Procedure** • Requires collection of the fifth-liter sample in homes with LSLs after water has sat stagnant for a minimum of 6 hours. Maintains first-	**Collection Procedure** • Requires collection of the first- and fifth-liter samples in homes with LSLs after water has sat stagnant for a minimum of 6 hours. • Requires the higher value of the first- and fifth-liter lead

Pre-2021 LCR	LCRR	Proposed LCRI
	liter sampling protocol in homes without LSLs. • 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.*	concentration in homes with LSLs to be used to calculate the 90th percentile value for lead. • Clarifies the definition of a wide-mouth bottle.
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. Monitoring schedule based on the number of consecutive years meeting the following criteria: ○ Serves ≤ 50,000 people and P90 is at or below the lead and copper action levels. ○ Serves any population size, meets State-specified optimized water quality parameters (OWQPs), and P90 ≤ lead action level.	**Monitoring Frequency** • Samples are analyzed for lead and copper, only copper, or only lead. This occurs when lead monitoring is conducted more frequently or at more sites than copper, and at LSL sites where a fifth-liter sample is only analyzed for lead. • Lead monitoring schedule is based on the P90 level for all systems as follows: ○ P90 > 0.015 mg/L: Semi-annually at the standard number of sites. ○ 0.010 mg/L < P90 ≤ 0.015 mg/L: Annually at the standard number of sites. ○ P90 ≤ 0.010 mg/L: Annually at the standard number of sites and triennially at reduced number of sites using same criteria as the LCR except copper P90 level is not considered.	**Monitoring Frequency** Monitoring schedule is based on both lead and copper P90 levels for all systems as follows: • All water systems with lead, GRR, and/or unknown service lines must begin by collecting a standard number of samples semi-annually. • Systems may retain or qualify for reduced monitoring based on the number of consecutive monitoring periods: ○ P90 ≤ action level for 2 consecutive 6-month periods: Annual monitoring at standard number of sites for lead and reduced number of sites for copper. ○ P90 < practical quantitation limit (PQL) for 2 consecutive 6-month periods: Triennial monitoring at the reduced number of sites. • Additional criteria for small and medium systems to qualify for triennial monitoring. • Based on rule criteria, systems serving ≤ 3,300 people can apply for a 9-year monitoring waiver.

Pre-2021 LCR	LCRR	Proposed LCRI
o applies to any system g/L and copper P90 ≤ 0.65 6-month monitoring vstems serving ≤ 3,300 -year monitoring waiver.	• Based on rule criteria, systems serving ≤ 3,300 people can apply 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 action level(s) are subject to CCT requirements (e.g., CCT recommendation, study if required by the State, CCT installation). They can discontinue CCT steps if no longer exceed both action levels for 2 consecutive 6-month monitoring periods. • Systems must operate CCT to meet any OWQPs designated by the State that define optimal CCT. • There is no requirement for systems to re-optimize.	**CCT** • Specifies CCT requirements for systems with 0.010 < P90 lead level ≤ 0.015 mg/L: ○ No CCT: Must conduct a CCT study if required by the State. ○ With CCT: Must follow the steps for re-optimizing CCT, as specified in the rule. • Systems with P90 lead level > 0.015 mg/L: ○ No CCT: Must complete CCT installation regardless of subsequent P90 levels if system has started to install CCT. ○ With CCT: Must re-optimize CCT. • CWSs serving ≤ 10,000 people and all NTNCWSs can select an option other than CCT to address lead. See the *Small System Flexibility* section of this exhibit.	**CCT** • Systems with P90 lead level > 0.010 mg/L: ○ No CCT: Must complete CCT installation regardless of their subsequent P90 levels if system has started to install CCT. ○ With CCT: Must re-optimize CCT. ○ Systems with OCCT meeting OWQPs need only re-optimize OCCT once, unless required to do so by the State. • CWSs serving ≤ 3,300 people and all NTNCWSs can select an option other than CCT to address lead. See the *Small System Flexibility* section of this exhibit. • Deferred OCCT or re-optimized OCCT for systems that can complete removal of 100 percent LSLs and GRR service lines within 5 years of the date they are triggered into CCT steps at a 20 percent annual replacement rate. Systems with CCT must maintain CCT during the 5-year service line replacement program.
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.	**CCT Options** No changes from the LCRR.

Pre-2021 LCR	LCRR	Proposed LCRI
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.	**WQPs** • Eliminates WQPs related to calcium hardness (i.e., calcium, conductivity, and temperature). • All other parameters are the same as in the LCR.	**WQPs** No changes from the LCRR.
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 action level. • 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 action level(s) for 2 consecutive 6-month monitoring periods. • To qualify for reduced WQP distribution monitoring, P90 lead level must be ≤ 0.010 mg/L and the system must meet its OWQPs.*	**WQP Monitoring** • Systems with CCT (unless deemed optimized) serving ≥ 10,000 people must conduct regular WQP monitoring at entry points and within the distribution system. • Systems serving <10,000 people and systems without CCT serving ≤ 50,000 people that exceed the lead and/or copper action level(s) must conduct WQP monitoring until they no longer exceed lead and/or copper action level(s) for 2 consecutive 6-month monitoring periods. • Systems without CCT serving > 10,000 but ≤ 50,000 people that exceed the lead action level that are required to install CCT, must continue to conduct WQP monitoring.
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.	**Sanitary Survey Review** No changes from the LCRR.
Find-and-Fix No required follow-up samples or additional actions if an individual	**Find-and-Fix** If individual tap samples > 0.015 mg/L lead, find-and-fix steps include:	**Distribution System and Site Assessment** • Change the name from "Find-and-Fix" to "Distribution

Pre-2021 LCR	LCRR	Proposed LCRI
sample exceeds the lead action level.	• Conduct WQP monitoring at or near the site > 0.015 mg/L. • Collect tap sample at the same tap sample site within 30 days. ○ For LSL, collect any liter or sample volume. ○ If LSL is not present, collect 1-liter first draw after stagnation. • Perform needed corrective action. • Document customer refusal or non-response after 2 attempts. • Provide information to local and State health officials.	System and Site Assessment" to describe this requirement more precisely. • Requirements from the LCRR affect systems with individual tap samples > 0.010 mg/L lead. • Clarifies that the distribution system sample location must be within a half mile radius of each site with a result > 0.010 mg/L.
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 lead P90 > 0.010 mg/L to select their compliance option to address lead with State approval: • Systems can choose CCT, LSLR, provision and maintenance of point-of-use (POU) devices, or replacement of all lead-bearing plumbing materials. • If the system's P90 lead level > 0.015 mg/L, the system must implement the compliance option.	Allows CWSs serving ≤ 3,300 people and all NTNCWSs with P90 levels > lead action level and ≤ copper action level to conduct the following actions in lieu of CCT requirements to address lead with State approval: • Choose a compliance option: (1) provision and maintenance of POU devices or (2) replacement of all lead-bearing plumbing materials. • Removes the compliance option to conduct LSLR in 15 years. Maintains option for systems following CCT requirements: • With CCT: Collect WQPs and evaluate compliance options and OCCT. • No CCT: Evaluate compliance options and CCT.
Public Education and Outreach		
• Systems with P90 > lead action level must provide PE to customers about lead sources, health	• Water systems must provide updated lead health effects language in PN and PE materials. CWSs must provide	• Revises the mandatory lead health effects language to improve completeness and clarity.

Pre-2021 LCR	LCRR	Proposed LCRI

effects, measures to reduce lead exposure, and additional information sources.
• Systems with P90 > lead action level must offer lead tap sampling to customers who request it.
• Systems must provide lead consumer notice to individuals served at tested taps within 30 days of learning results.
• For water systems serving a large proportion of consumers with limited English proficiency, consumers can contact the system to get PE materials translated in other languages.
	updated health effects language in the Consumer Confidence Report (CCR).
	• For water systems serving a large proportion of consumers with limited English proficiency, consumers can contact the system to get PE materials translated in other languages.
	• If P90 > lead action level:
	  ○ LCR PE requirements apply.
	• Water systems must provide the lead consumer notice to consumers whose individual tap sample is > 0.015 mg/L lead as soon as practicable but no later than 3 days.
	• Water systems must deliver notice and educational materials to consumers during water-related work that could disturb LSLs.*
	• CWSs must provide information to local and State health agencies.*
	Also see the *Public Notification, Consumer Confidence Report, and LSL-Related Outreach* sections of this exhibit.
		• Water systems must provide the updated health effects language in PN and all PE materials. CWSs must provide updated health effects language in the CCR.
		• For water systems serving a large proportion of consumers with limited English proficiency, all PE materials must include a translated statement regarding the importance of the materials and consumers can contact the system to get the materials translated in other languages.
		• Water systems must deliver consumer notice of lead and copper tap sampling results to consumers whose tap was sampled as soon as practicable but no later than 3 days after receiving the results.
		• If P90 > lead action level:
		  ○ LCRR PN requirements apply.
		  ○ Water systems must conduct PE no later than 60 days after the end of the tap sampling period until the system no longer exceeds the action level unless the State approves an extension.
		• Water systems with multiple lead action level exceedances (at least 3 action level exceedances in a 5-year period) must conduct additional public outreach activities and make filters available.
		• Water systems must offer to sample the tap for lead for any customer with an LSL, GRR service line, or unknown service line who requests it.
		Also see the *Public Notification, Consumer Confidence Report, and*

Pre-2021 LCR	LCRR	Proposed LCRI
		Service Line Related Outreach sections of this exhibit.
Public Notification		
• If P90 > action level: ○ No PN required for P90 > action level. • Tier 2 PN required for violations to § 141.80 through § 141.85. • Tier 3 PN required for violations to § 141.86 through § 141.89. Also see the *Public Education and Outreach* section of this exhibit.	• If P90 > lead action level: ○ Systems must notify consumers of P90 >action level within 24 hours (Tier 1 PN). • Tier 2 PN required for violations to § 141.80 (except § 141.80(c)) through § 141.84, § 141.85(a) through (c) and (h), and § 141.93. • Tier 3 PN required for violations to § 141.86 through § 141.90. Also see the *Public Education and Outreach* section of this exhibit.	• If P90 > lead action level: ○ LCRR Tier 1 PN requirements apply. • Tier 2 PN required for violations to § 141.80 (except § 141.80(c)) through § 141.84, § 141.85(a) through (c) (except § 141.85(c)(3)) and (h) and (j), and § 141.93. • Tier 3 PN required for violations to § 141.86 through § 141.90 and § 141.92. • Water systems must provide updated lead health effects language in PN. Also see the *Public Education and Outreach* section of this exhibit.
Consumer Confidence Report		
• All CWSs must provide educational material in the annual CCR.	• CWSs must provide updated health effects language in the CCR. • All CWSs are required to include information on how to access the LSL inventory and how to access the results of all tap sampling in the CCR. • Revises the mandatory health effects language to improve accuracy and clarity.	• Revises the mandatory lead health effects language and informational statement about lead in the CCR to improve completeness and clarity. • CWSs must provide updated health effects language in the CCR. • CWSs must provide an updated informational statement about lead in the CCR. • CWSs must include a statement in the CCR about the system sampling for lead in schools and child care facilities and may direct the public to contact their school or child care facility for further information. • CWSs with lead, GRR, or unknown service lines must include a statement in the CCR about how to access the service line inventory and replacement plan. Also see the *Public Education and Outreach* section of this exhibit.
Change in Source of Treatment		

Pre-2021 LCR	LCRR	Proposed LCRI
Systems on a **reduced** tap monitoring schedule must obtain prior State approval before changing their source or treatment.	Systems on **any** tap monitoring schedule must obtain prior State approval before changing their source or treatment. These systems must also conduct tap monitoring biannually.	No changes from the LCRR.
Source Water Monitoring and Treatment		
Periodic source water monitoring for lead and copper is required for systems with: • Source water treatment; or • P90 > action level and no source water treatment.	States can waive continued source water monitoring for lead and copper if the: • System has already conducted source water monitoring for a previous P90 > action level; • State has determined that source water treatment is not required; and • System has not added any new water sources.	No changes from the LCRR.
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 care facilities that are classified as NTNCWSs must sample for lead and copper.	• CWSs must conduct sampling at 20 percent of elementary schools and 20 percent of child care facilities per year and conduct sampling at secondary schools on request for first testing cycle (5 years) and conduct sampling on request of all schools and child care facilities thereafter. • Sample results and PE must be provided to each sampled school/child care facility, State, and local or State health department. • Excludes facilities constructed on or after January 1, 2014. • Waives schools and child care facilities that were sampled under a	Expands on LCRR requirements to include: • Waivers for CWSs to sample in schools and child care facilities during the first 5-year testing cycle if the facility has been sampled between January 1, 2021, and the LCRI compliance date. • Requires CWSs to include a statement about the opportunity for schools and child care facilities to be sampled in the CCR. • Excludes facilities constructed or had full plumbing replacement on or after January 1, 2014.

Pre-2021 LCR	LCRR	Proposed LCRI
	State or other program after October 16, 2024.	
Primacy Agency (or State) Reporting		
States must report information to EPA that includes, but is not limited to: • All P90 levels for systems serving > 3,300 people, and only levels > 0.015 mg/L for smaller systems. • Systems that are required to initiate LSLR and the date replacement must begin. • Systems for which OCCT has been designated.	Expands on LCR requirements to include: • All P90 values for all system sizes. • The number of lead, GRR, and unknown service lines for every water system. • The goal-based or mandatory replacement rate and the date each system must begin LSLR. • OCCT status of all systems including OWQPs specified by the State. • For systems triggered into source water treatment, the State-designated date or determination for no treatment required.	Revises and expands on LCRR special primacy requirements. States must report information to EPA that includes, but is not limited to: • The current numbers of lead, GRR, unknown, and non-lead service lines, and lead connectors in each system's inventory. • The numbers and types of service lines replaced and the replacement rate for every system conducting mandatory service line replacement. • The deadline for the system to complete replacement of all lead and GRR service lines. • The expected date of completion of service line replacement. • The P90 values of systems with an action level exceedance within 15 days of the end of the monitoring period or, if earlier, within 24 hours of receiving the notice from the system.

[a] Note: See section V.B.4. for further information on cost sharing.

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B. Does this action apply to me?

Entities that could potentially be affected by the proposed LCRI include the following:

Category	Examples of potentially affected entities
Public water systems	Community water systems (CWSs); Non-transient, non-community water systems (NTNCWSs).
State and Tribal government agencies	Agencies responsible for developing, ensuring compliance with, and enforcing NPDWRs.

This Exhibit is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be affected by this action if promulgated. To determine whether a facility or activities could be affected by this action, please read the full preamble and proposed rule.

As part of this notice for the proposed rule, ''State'' refers to the agency of the State, Tribal, or territorial government that 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 SDWA, the term ''State'' means the relevant Regional Administrator of the EPA. For questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Dates for Compliance

EPA is proposing that water systems begin to comply with the LCRI three years after promulgation of the final rule. In accordance with SDWA section 1412(b)(10), the Administrator, or a State (in the case of an individual system), may allow up to two additional years to comply with a treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements. Where a State, or EPA where it has primacy, chooses to provide such an extension, the system would have up to five years from the rule's promulgation date to begin compliance with the treatment technique. EPA is not proposing to provide a two-year extension nationwide because EPA has not determined that an additional two years is necessary for water systems nationwide to make capital improvements to begin compliance with the LCRI. Systems have been subject to more stringent requirements for lead service line replacement and corrosion control treatment since the promulgation of the LCRR that allowed time to prepare and obtain funding for any necessary capital improvements. Moreover, there is significant funding available through the Bipartisan Infrastructure Law and other sources for LSL identification and replacement. Finally, EPA notes that the requirements in the proposed LCRI for which capital improvements may be necessary would not be required to be completed by the compliance date for the rule. Instead, the compliance date marks the beginning of an extended time period for systems to conduct lead service line replacement and install new or re-optimized corrosion control treatment under the revised requirements. EPA does not believe that systems nationwide need an additional two years to comply with the rule as proposed.

Under SDWA section 1416, States may exempt water systems from any treatment technique requirement for no more than three years after the otherwise applicable compliance date. For a small system that does not serve more than 3,300 persons and which needs financial assistance for the necessary improvements, an exemption may be renewed for one or more two-year periods, but not to exceed a total of six years. No exemption may be granted without a finding that:

- Due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to SDWA section 1452(d)),[5] the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply;
- The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;
- The granting of the exemption will not result in an unreasonable risk to health; and
- Management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this title, or if compliance cannot be achieved, improve the quality of the drinking water.

IV. Background

A. Overview of Lead and Lead Exposures Through Drinking Water

Lead is toxic to humans and animals, causing harmful health effects. Lead is a naturally occurring element found in small amounts in the Earth's crust. Lead and lead compounds have been used in a wide variety of products found in and around homes, including paint, ceramics, pipes and plumbing materials, solders, gasoline, batteries, ammunition, and cosmetics. Lead can enter drinking water when plumbing materials that contain lead corrode, especially where the water is highly acidic or has a low mineral content that corrodes pipes and fixtures. The most common sources of lead in drinking water are lead pipes, faucets, and fixtures. In homes with lead pipes that connect the home to the water main, also known as lead service lines or LSLs, these pipes are typically the most significant source of lead in water. Lead pipes are more likely to be found in older cities and homes built before 1986. Among homes without LSLs, the most common source of lead in drinking water is from brass or chrome-plated brass faucets and plumbing with lead solder.

B. Human Health Effects of Lead and Copper

1. Lead

Exposure to lead can cause harmful health effects for people of all ages, especially pregnant people, infants, and young children (CDC, 2022a; CDC, 2022b; CDC, 2023). Lead has acute and chronic impacts on the body. 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 (ATSDR, 2020).

Developing fetuses, infants, and young children are most susceptible to the harmful health effects of lead (ATSDR, 2020). Exposure to lead is known to present serious health risks to the brain and nervous system of children (USEPA, 2013). Young children and infants are particularly vulnerable to the physical, cognitive, and behavioral effects of lead due to their sensitive developmental stages. There is no known safe level of exposure to lead. Scientific studies have demonstrated that there is an increased risk of health effects in children even when their blood lead levels are less than 3.5 micrograms per deciliter) (CDC, 2022c) and in adults even when blood lead levels are less than 10 micrograms per deciliter) (NTP, 2012). Low-level lead exposure is of particular concern for children because their growing bodies absorb more lead per pound than adults do, and their developing brains and nervous systems are more sensitive to the damaging effects of lead (ATSDR, 2020).

EPA estimates that drinking water can make up at least 20 percent of a person's total exposure to lead (56 FR 26548, USEPA, 1991). When a child is not routinely exposed to other sources of lead (*e.g.,* dust from legacy lead paint or legacy contaminated soils), most of their exposure may come from drinking water. Infants who consume mostly formula mixed with tap water can, depending on the level of lead in the water system and other sources of lead in the home, receive 40 to 60 percent of their exposure to lead from drinking water used in the formula (53 FR 31516, USEPA, 1988; Stanek et al., 2020).

[5] The term ''disadvantaged community'' used in SDWA section 1416 here refers to the statutory definition of ''disadvantaged community'' provided at SDWA section 1452(d)(3): ''[T]he term 'disadvantaged community' means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.''

Scientists have linked lead's effects on the brain with lowered IQ and attention disorders in children, among other health impacts (USEPA, 2013; Lanphear et al., 2019; Ji et al., 2018). In 1991, EPA established a maximum contaminant level goal (MCLG) for lead of zero. SDWA requires EPA to set MCLGs at the level at which no known or anticipated adverse effects on the health of persons would occur, allowing for a margin of safety. EPA established the MCLG of zero in part due to there being no clear threshold for some non-carcinogenic health effects and due to lead being a probable carcinogen (USEPA, 1991).

Blood lead levels are an indication of current exposure. Over time, lead can accumulate in the body. Lead is stored in a person's bones, binding to calcium, and it can be released later in life. For example, when calcium is mobilized in the mother's body during pregnancy, lead that is released from the pregnant person's bones and can pass to the fetus. Lead can also be passed through breastmilk to the nursing infant or child. Lead exposure can result in serious health effects to the developing fetus and infant. Studies document increased risk of miscarriage, low birth weight, and reduced gestation time (USEPA, 2013). In utero and early childhood exposure to lead is associated with increased risk to the baby's brain and/or nervous system, manifesting as, for instance, an increased risk of learning or behavioral problems in life (USEPA, 2013). Some studies also suggest lead exposure is associated with risk to the developing renal (kidney) system (USEPA, 2013).

As noted above, studies also have documented an association between adult blood lead levels and increased risk of cardiovascular disease, manifesting as an increase in risk of cardiovascular disease premature mortality. Occupational exposure to lead is also associated with a number of significant health effects in adults as well, particularly renal and gastrointestinal. The 2013 Integrated Science Assessment for Lead (USEPA, 2013), the U.S. Department of Health and Human Services (HHS) National Toxicology Program (NTP) Monograph on Health Effects of Low-Level Lead (NTP, 2012), the Agency for Toxic Substances and Disease Registry (ATSDR) 2020 Toxicological Profile for Lead (ATSDR, 2020), and peer-reviewed studies have documented associations between lead and cancer (Wei and Zhu, 2020) as well as lead and adverse cardiovascular (Park and Han, 2021), renal (Harari et al., 2018), reproductive (Shi et al., 2021; Lee et al., 2020), immunological (Krueger and Wade, 2016), and neurological effects (Andrew et al., 2022). EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead (USEPA, 2004a). EPA is currently updating the Integrated Science Assessment for Lead (USEPA, 2023a). For a more detailed explanation of the health effects associated with lead for children and adults, see Appendix D of the Economic Analysis (USEPA, 2023b).

2. Copper

Copper is an essential trace element required for several metabolic processes; however, excess copper intake is toxic and linked to various adverse health effects. Acute gastrointestinal conditions are the most common adverse health effects observed among adults and children. Chronic exposure to copper is particularly a concern for people with Wilson's disease, an autosomal recessive genetic disorder of copper metabolism affecting 1 in 30,000 individuals (Ala et al., 2007). These individuals are prone to copper accumulation in body tissue, which can lead to liver damage, neurological, and/or psychiatric symptoms (Dorsey and Ingerman, 2004). Additional information on the health effects associated with copper are available in Appendix E of the Economic Analysis (USEPA, 2023b).

C. Regulatory History

Exercising its longstanding authority under the SDWA, on June 7, 1991, EPA promulgated the LCR with the goal of improving public health by reducing lead and copper levels at consumer taps (56 FR 26460, USEPA, 1991). The LCR established maximum contaminant level goals (MCLGs) of 0 mg/L for lead and 1.3 mg/L for copper. In addition, the LCR established an NPDWR consisting of treatment technique requirements that include LSLR, CCT, source water treatment, and public education. The LCR established requirements for CWSs and NTNCWSs to conduct monitoring at consumer taps. The rule established action levels of 0.015 mg/L for lead and 1.3 mg/L for copper. If more than 10 percent of tap sample results (*i.e.,* the 90th percentile value of tap sample concentrations), collected during any monitoring period, exceed the action level, water systems must take actions including installing and/or re-optimizing CCT, conducting public education, treating source water if it contributes to lead and copper levels at the tap, and replacing lead service lines if the system continues to exceed the action level after completing CCT steps and installing CCT. An action level exceedance is not a violation of the rule; however, failure to take the subsequent required actions (*e.g.,* LSLR, CCT, PE) results in a violation of the treatment technique or monitoring and reporting requirements.

On January 12, 2000, EPA promulgated minor revisions to the LCR (LCRMR) (65 FR 1950, USEPA, 2000a). These minor revisions streamlined the LCR, promoted consistent national implementation, and reduced the reporting burden on affected entities. The LCRMR did not change the MCLGs or action levels for lead and copper or change the rule's basic requirements. One of the provisions of the LCRMR required States to report the 90th percentile lead value to EPA's Safe Drinking Water Information System (SDWIS) database for all water systems serving greater than 3,300 persons. States must report the 90th percentile lead 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.[6]

From 2000 to 2004, the District of Columbia experienced incidences of elevated drinking water lead levels, prompting EPA to undertake a review of the LCR to determine ''whether elevated drinking water lead levels were a national problem'' and to identify actions to improve rule implementation (72 FR 57784, USEPA, 2007a; USEPA, 2007b; Brown et al., 2011). EPA specifically considered the number of systems that failed to meet the lead action level, if a significant percentage of the population received water that exceeded the action level, how well the LCR worked to reduce drinking water lead levels, and if the rule was being effectively implemented, particularly with respect to monitoring and public education requirements. As part of the national review, EPA held four expert workshops to discuss elements of the LCR, collected and evaluated lead concentration data and other information required under the LCR, and evaluated State implementation efforts to better understand challenges and needs experienced by States and water systems. In March 2005, EPA released a Drinking Water Lead Reduction Plan, outlining a series of short- and long-term goals to improve implementation of the LCR, including revisions to the LCR (USEPA, 2005). On October 10, 2007, EPA promulgated a set of short-term regulatory revisions

[6] In 2004, EPA published minor corrections to the LCR to reinstate text that was inadvertently removed from the rule during the previous revision (69 FR 38850, USEPA, 2004c).

and clarifications (72 FR 57782, USEPA, 2007a). The short-term revisions strengthened implementation of the LCR in the areas of monitoring, treatment, customer awareness, LSLR, and improving compliance with the public education requirements.

Long-term issues, requiring additional research and input, were identified for a subsequent set of rule revisions. EPA conducted extensive engagement with stakeholders to inform subsequent rule development, including a 2011 Scientific Advisory Board (SAB) consultation on the science of partial LSLR and the formation of a National Drinking Water Advisory Council (NDWAC) Working Group in 2014 to provide recommendations (USEPA, 2011; NDWAC, 2015). In 2016, EPA released a white paper summarizing NDWAC recommendations and identifying key areas for rule development, noting that ''lead crises in Washington, DC, and in Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities, have underscored significant challenges in the implementation of the current rule, including a rule structure that for many systems only compels protective actions after public health threats have been identified'' (USEPA, 2016a). Notably, the white paper discussed the issue of mandatory, proactive LSLR as an opportunity to eliminate a primary source of lead in drinking water rather than only replacing LSLs after a lead action level exceedance, and how to address lead exposure risks resulting from partial LSLR. Other identified issues included the need for stronger CCT requirements, including re-evaluation after source water or treatment changes, improved tap sampling procedures to address concerns about practices used to avoid action level exceedances, and increased public transparency such as access to information about LSLs and sharing of data.

These long-term issues were intended to be addressed in the LCRR which was promulgated on January 15, 2021 (86 FR 4198, USEPA, 2021a). The LCRR focused on six key areas for revision: identifying sites with significant sources of lead in drinking water, strengthening CCT requirements, closing loopholes in LSLR requirements, increasing sampling reliability, improving risk communication, and introducing a new lead sampling requirement at schools and child care facilities as part of public education. Specifically, the LCRR included new requirements for water systems to develop, and make publicly accessible, LSL inventories and annually notify consumers if they are served by an LSL, GRR service line, or service line of unknown material. Additionally, the LCRR removed provisions allowing partial service line replacement or ''test-outs'' (*i.e.,* where a service line sample measures below the lead action level) to count towards LSLR requirements. The rule also revised monitoring requirements to prioritize sampling at sites most likely to contain lead sources, require a fifth-liter sample be taken at LSL sites, and prohibit the use of language in sampling instructions that may result in samples that underestimate lead levels.

The LCRR also established a lead trigger level at 0.010 mg/L to require systems to take actions before an action level exceedance, including taking steps to plan for CCT installation, re-optimizing CCT if the system already installed CCT, establishing a goal-based LSLR program, and increasing monitoring frequency. The LCRR made several changes to the CCT requirements and established a requirement for water systems to conduct follow-up actions at sites with individual compliance sample concentrations exceeding 0.015 mg/L.

In the LCRR, EPA also revised its Public Notification Rule in 40 CFR part 141, subpart Q and made changes to the reporting requirements for action level exceedances to implement 2016 amendments to section 1414 of SDWA to require public notification within 24 hours if the system exceeds the lead action level.

The LCRR added new public education requirements, including requirements to notify persons served by a known or suspected LSL, and timely notify individuals when their lead tap sampling results exceed the lead action level of 0.015 mg/L. Under the LCRR, systems that exceed the lead trigger level of 0.010 mg/L not only had to conduct goal-based LSLR but also are required to conduct additional public outreach activities about lead in drinking water and opportunities to replace LSLs if the system fails to meet the goal replacement rate.

The LCRR also added a new small system flexibility provision that allowed CWSs serving 10,000 or fewer persons and all NTNCWSs that exceeded the trigger level to choose and implement one out of four compliance options (*i.e.,* CCT, LSLR, point-of-use devices, replacement of lead-bearing plumbing) if the system exceeds the lead action level.

On January 20, 2021, President Joseph R. Biden issued Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 20, 2021). Executive Order 13990 required Federal agencies to ''review and . . . take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with'' the ''national objectives,'' as provided in the executive order, including to ''be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making'' by listening to the science, to promote and protect public health and advance environmental justice, among others. EPA was required to review the LCRR because EPA promulgated the LCRR within the time frame specified by the executive order, and the LCRR addresses public health through drinking water.

Additionally, after promulgation of the LCRR, EPA heard from stakeholders on a range of concerns about the LCRR, including the lack of requirements or incentives to replace all LSLs, the inclusion of the trigger level made the rule unnecessarily complicated, and the implementation burdens on systems and States.

To allow EPA to engage with stakeholders and review the LCRR before it took effect, on March 12, 2021, EPA published the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective Date (86 FR 14003, USEPA, 2021c), which delayed the effective date of the LCRR from March 16, 2021, to June 17, 2021. On the same day, EPA published the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates (86 FR 14063, USEPA, 2021d), which proposed further delaying the effective date of LCRR to December 16, 2021 to allow EPA to ''conduct a review of the LCRR and consult with stakeholders, including those who have been historically underserved by, or subject to discrimination in, Federal policies and programs prior to the LCRR going into effect'' (86 FR 14063, USEPA, 2021d). On June 16, 2021, EPA issued a final rule delaying the LCRR effective date to December 16, 2021, and the compliance date from January 16, 2024 to October 16, 2024 ''to maintain the same time period between the effective date and the compliance date in the LCRR'' (86 FR 31941, USEPA, 2021e).

As part of the LCRR review, EPA held a series of virtual engagements from April to August 2021 to obtain public input on the LCRR. Consistent with Executive Order 13990, EPA engaged with States, Tribes, and water utilities as well as people who have been

underrepresented in past rulemaking efforts. EPA also sought input from community stakeholders in places that have concerns due to lead in drinking water, particularly from individuals and communities that are most at-risk of exposure to lead in drinking water.

Throughout this process, EPA hosted a series of 10 virtual community roundtables with stakeholders in: Pittsburgh, PA; Newark, NJ; Malden, MA; Washington, DC; Newburgh, NY; Benton Harbor and Highland Park, MI; Flint and Detroit, MI; Memphis, TN; Chicago, IL; and Milwaukee, WI. Each roundtable included a range of participants representing local governments, community organizations, environmental groups, local public water utilities, and public officials. Participants shared their experiences with lead in their communities and provided EPA with verbal and written comments on the LCRR. EPA also held a roundtable with representatives from Tribes and Tribal communities, a national stakeholder association roundtable, a national co-regulator meeting, two public listening sessions, and a meeting with organizations representing elected officials. Summaries of the meetings and written comments from the public can be found in the docket, EPA–HQ–OW–2021–0255 at *https://regulations.gov/*.

On December 17, 2021, EPA published the results of the LCRR review (86 FR 71574, USEPA, 2021b). EPA described the comments received as part of the public engagement efforts conducted as part of the LCRR review and determined that there are regulatory and non-regulatory actions the Agency can take to reduce drinking water lead exposure. While EPA found that the LCRR improved public health protection relative to the LCR, the Agency also concluded that there are significant opportunities to further improve the rule to support the goal of proactively removing LSLs and protecting public health more equitably (86 FR 71574, USEPA, 2021b). EPA also announced in the review notice that the LCRR would go into effect to support near-term development of actions to reduce lead in drinking water. At the same time, EPA committed to developing a new proposed rule, the LCRI, to strengthen key elements of the rule. EPA identified the following policy objectives informed by the LCRR review: ''Replacing 100 percent of lead service lines is an urgently needed action to protect all Americans from the most significant source of lead in drinking water systems; equitably improving public health protection for those who cannot afford to replace the customer-owned portions of their LSLs; improving the methods to identify and trigger action in communities that are most at risk of elevated drinking water lead levels; and exploring ways to reduce the complexity of the regulations'' (86 FR 71574; USEPA, 2021b). EPA also stated that it does not expect to propose changes to the requirements for information to be submitted in the initial LSL inventory or the associated October 16, 2024 compliance date. EPA described the importance of maintaining this date, stating that ''continued progress to identify LSLs is integral to lead reduction efforts regardless of potential revisions to the rule. The inventory provides critical information on the locations of potentially high drinking water lead exposure within and across public water systems, which will allow for quick action to reduce exposure'' (86 FR 71579, USEPA, 2021b). Specifically, EPA noted that development of inventories nationwide over the near-term would assist water systems, States, Tribes, and the Federal Government in determining the prevalence of these lead sources and would, among other things, enable water systems to begin planning for LSLR and apply for funding.

D. Statutory Authority

Establishment and Review of National Primary Drinking Water Regulations

EPA is publishing these proposed improvements to the LCRR under the authority of SDWA, including sections 1412, 1413, 1414, 1417, 1445, and 1450 of the SDWA. 42 U.S.C. 300f *et seq.*

Congress passed SDWA in 1974, responding to ''accumulating evidence that our drinking water contains unsafe levels of a large variety of contaminants.'' *Envtl. Def. Fund, Inc.* v. *Costle,* 578 F.2d 337, 339 (D.C. Cir. 1978). In passing SDWA, Congress intended to ensure ''that water supply systems serving the public meet minimum national standards for protection of public health.'' H.R. Rep. No. 93–1185, at 1 (1974), reprinted in 1974 U.S.C.C.A.N. 6454. SDWA is the primary Federal law that protects the tap water provided to consumers by water systems across the country. The primary regulatory tool for this protection is section 1412 of SDWA under which EPA is authorized to issue standards for drinking water served by water systems. These standards—entitled ''national primary drinking water regulations'' (NPDWRs)—are accompanied by the setting of a ''maximum contaminant level goal'' (MCLG), which is set at a level at which there are no known or anticipated adverse human health effects with an adequate margin of safety. 42 U.S.C. 300g–1((a)(3) and (b)(4). Lead and copper are subject to existing NPDWRs. Based on the health effects described above, in 1991, EPA established the MCLG for lead at 0 mg/L, and the MCLG for copper at 1.3 mg/L.

SDWA section 1412(b)(9) states that ''The Administrator shall, not less often than every 6 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). When EPA promulgates a revised NPDWR, the Agency follows the applicable procedures and requirements in section 1412 of SDWA, including those related to (1) the use of best available, peer-reviewed science and supporting studies; (2) presentation of information on public health effects that is comprehensive, informative, and understandable; and (3) a health risk reduction benefits and cost analysis of the rule in sections 1412(b)(3)(A), (B), and (C) of SDWA, 42 U.S.C. 300g–1(b)(3)(A)–(C).

Establishment of the Lead and Copper Rule as a Treatment Technique

In 1991, EPA promulgated the LCR, which established a treatment technique in lieu of a maximum contaminant level (MCL) for lead and copper (56 FR 26460, USEPA, 1991). This proposed rule, LCRI, would revise the LCRR, which maintained the NPDWR as a treatment technique. Section 1412(b)(7)(A) of SDWA authorizes EPA to ''promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant.'' 42 U.S.C. 300g–1(b)(7)(A). EPA's decision to promulgate a treatment technique rule for lead instead of a MCL in 1991 has been upheld by the United States Court of Appeals for the District of Columbia Circuit. *American Water Works Association* v. *EPA,* 40 F.3d 1266, 1270–71 (D.C. Cir. 1994). See section V.A. for discussion on EPA's findings and rationale supporting a treatment technique determination.

Statutory Requirements Related to the Prevention of Adverse Health Effects to the Extent Feasible

In establishing treatment technique requirements, the Administrator is required to identify those treatment techniques ''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). ''Feasible'' is defined in section 1412(b)(4)(D) of SDWA as ''feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)''. Specifically, EPA must assess the ''best technology,'' as opposed to generally available technology, that has been tested beyond the laboratory under full-scale conditions; however, the technology need not be in widespread, full-scale use (SDWA section 1412(b)(4)(D)). The legislative history of this provision makes it clear that ''feasibility'' is to be defined relative to ''what may reasonably be afforded by large metropolitan or regional public water systems'' (H.R. Rep. No. 93–1185 (1974), reprinted in 1974 U.S.C.C.A.N. 6454, 6471). See also S. Rep. No. 104–169, at 3 (1995) (feasibility is based on best available technology affordable to ''large'' systems) and *City of Portland* v. *EPA,* 507 F.3d 706 (D.C. Cir. 2007) (upholding EPA's treatment technique for *Cryptosporidium* and the Agency's interpretation that ''feasible'' means technically possible and affordable, and does not include a cost/benefit determination). As a result, EPA may not set different standards based solely on what is reasonably afforded by small and medium systems. However, if EPA cannot identify any affordable technologies for a particular category of small systems, EPA must identify variance technologies that ''achieve the maximum reduction or inactivation efficiency that is affordable'' and protect public health (SDWA section 1412(b)(15)(A) and (B)).

SDWA provides for two exceptions to the requirement that a treatment technique ''prevent known or anticipated adverse effects on the health of persons to the extent feasible''. First, under SDWA section 1412(b)(5), EPA is authorized to require the use of a treatment technique to achieve a contaminant level other than the feasible level if the feasible level would result in an increase in the health risk of drinking water by increasing the concentration of other contaminants or interfere with the efficacy of drinking water treatment techniques or processes that are used to comply with other NPDWRs. Second, under SDWA section 1412(b)(6)(A), if EPA determines that the benefits of a treatment technique would not justify the costs of compliance, EPA may promulgate a treatment technique for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

Notice and Recordkeeping Requirements

Section 1414(c) of SDWA, as amended by the WIIN 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)(1)(D). SDWA section 1414(c)(2) states that the Administrator ''shall by regulation . . . prescribe the manner, frequency, form, and content for giving notice''. 42 U.S.C. 300g–3(c)(2). Section 1414(c)(2)(C) of SDWA specifies additional requirements related to the public notice if the action level exceedance has the potential to have serious adverse effects on human health as a result of short-term exposure, including that it must ''be distributed as soon as practicable, but not later than 24 hours'' after the water system learns of the action level exceedance, and that the system must report the exceedance to both the State and the Administrator within that same time period (42 U.S.C. 300g–3(c)(2)(C)(i) and (iii)). If a water system or State does not issue the required public notice, SDWA section 1414(c)(2)(D) directs EPA to issue the required public notice ''not later than 24 hours after the Administrator is notified of the exceedance.'' EPA interprets section 1414(c)(2)(C)(iii) of SDWA to require systems to report only lead action level exceedances to the Administrator because the requirements under section 1414 (c)(2)(D) are only triggered in the event of an action level exceedance and not any violation of an NPDWR.

Section 1417(a)(2) of SDWA states that public water systems ''shall identify and provide notice to persons that may be affected by lead contamination of their drinking water'' where the 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)(A)(i) and (ii).

Section 1445(a) of SDWA provides that every person subject to a requirement of SDWA or grantee shall establish and maintain records, make reports, conduct monitoring, and provide information to the Administrator as reasonably required by regulation to assist the Administrator in establishing regulations under SDWA, determining compliance with SDWA, administering any program of financial assistance under SDWA, evaluating the health risks of unregulated contaminants, and advising the public of such risks. 42 U.S.C. 300j–4(a).

Primacy Enforcement of National Primary Drinking Water Regulations

While EPA always retains its independent enforcement authority, the Agency may authorize States, territories, and Tribes for primary enforcement responsibility (''primacy''; primacy agencies are also referred to as ''States'' in this preamble) to implement the NPDWRs under SDWA section 1413(a)(1) when EPA has determined, among other conditions, that the State has adopted regulations that are no less stringent than the promulgated NPDWR. 42 U.S.C. 300g–2(a)(1). Conditions for State primacy include, among other things, adequate enforcement, including monitoring, inspections, recordkeeping, and reporting. To obtain primacy for this rule, States must adopt regulations no less stringent than the NPDWR within two years of promulgation unless EPA grants the State a two-year extension. EPA must approve or deny State primacy applications within 90 days of submission to 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 a new regulation while EPA's decision on the primacy application is pending. 42 U.S.C. 300g–2(c). Section 1413(b)(1) of SDWA requires EPA to establish regulations governing the primacy application and review process ''with such modifications as the Administrator deems appropriate.'' In addition to proposed revisions to the LCRR that are more stringent, this notice includes proposed changes to the primacy requirements related to this rule.

Section 1450 of SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out their functions under the Act. 42 U.S.C. 300j–9.

E. Anti-Backsliding Analysis

Backsliding Analysis of LCRI Relative to LCR and LCRR

Section 1412(b)(9) of SDWA is known as the anti-backsliding provision. Under this provision, EPA is required to ensure that ''each revision'' of an NPDWR

''shall maintain, or provide for greater, protection of the health of persons''. EPA has adopted a holistic framework that gives meaning to the text, structure, and purpose of the anti-backsliding provision based on the best reading of the statutory provision. EPA has interpreted the term ''each revision'' to refer to a revision of an NPDWR, meaning that each new rule that revises a current regulation, shall maintain, or provide for greater health protection. The plain meaning of ''revision'' is broad in scope and may contain multiple parts. A treatment technique rule is an integrated set of actions designed to reduce the level of exposure to a contaminant. As such, in assessing whether a treatment technique rule maintains or provides for greater health protection, EPA evaluates the entire treatment technique rule as a whole, not on a component-by-component basis.

As described in the LCRR rulemaking, EPA has interpreted the backsliding analysis for a treatment technique rule to be ''based on an assessment of public health protection as a result of implementation of a rule as a whole, rather than a comparison of numerical benchmarks within the treatment technique rule'' (86 FR 4216, USEPA, 2021a). Therefore, when analyzing each revision against the anti-backsliding standard, EPA has compared the whole of the proposed LCRI (*i.e.,* the ''revision''), along with components of the LCRR that EPA is not revising, against the whole of the LCRR to assess whether the new rule would maintain or improve public health protection. Further, EPA compared the whole of the proposed LCRI to the whole of the LCRR because the LCRR is the most recent revision to the NPDWR for lead and copper.

Recognizing that water systems and States are not yet required to comply with the LCRR until October 16, 2024, EPA has also assessed the improved public health protection of the proposed LCRI, along with elements of LCRR not proposed for revision, relative to the LCR as currently implemented. Therefore, EPA compared the whole of the proposed LCRI to the whole of the LCR, in addition to the LCRR.

EPA anticipates the proposed LCRI would improve public health protection more than either the LCR or LCRR in accordance with section 1412(b)(9) of SDWA. Below, EPA has evaluated and provided a more detailed breakdown of some of the most significant components that would make the proposed LCRI, as a whole, more protective compared to the LCR and LCRR. Specifically, EPA compared the proposed LCRI to the LCRR because the LCRR is the most recent revision to the NPDWR for lead and copper. Also, EPA compared the proposed LCRI to the LCR because that is the NPDWR that water systems are currently implementing; at present, water systems do not have to comply with the LCRR until October 16, 2024.

The central feature of the proposed LCRI is the mandatory replacement of LSLs and GRR service lines regardless of a lead action level exceedance; this is a more preventive approach than under either the LCR or LCRR. Replacement of LSLs and GRR service lines has been shown to significantly reduce lead levels in drinking water (Camara et al., 2013; Deshommes et al., 2018; Trueman et al., 2016), which can improve public health by reducing the associated health impacts from lead exposures. The LCR only required water systems to replace LSLs systemwide if a system exceeded the lead action level and allowed them to stop once lead levels were reduced below the lead action level. The LCRR requires that systems replace LSLs if they exceed the lead action level and initiate a goal-based replacement program if they exceed the lead trigger level. The proposed LCRI would result in mandatory systemwide replacement of LSLs and GRR service lines regardless of 90th percentile lead levels and at a faster replacement rate, leading to significant public health benefits resulting from the elimination of these major lead sources. While EPA projected that 339,000 to 555,000 LSLs under control of the system would be expected to be replaced under the LCRR of a 35-year period, the proposed LCRI requirements would require replacement of all LSLs and GRR service lines under control of the system (USEPA, 2020e, Exhibit C–1). This is a key element of the proposed LCRI and is intended to provide both broader and more certain lead risk reduction than any of the prior lead rules.

In the LCRI, EPA is proposing to remove the lead trigger level and reduce the lead action level to 0.010 mg/L, which would require water systems to take actions sooner than under the LCR and LCRR and at lower lead levels while also simplifying rule requirements to enhance effective implementation. This change would maintain or provide greater health protection at all systems including those without LSLs or GRR service lines as a result of the actions required of a system after an action level exceedance (*e.g.,* installation or re-optimization of corrosion control treatment, public education). Similarly, EPA's proposal to require use of the higher result of the first and fifth liter tap sample at LSL sites is expected to result in more systems that are required to install or re-optimize corrosion control and provide notification and public education. While EPA is also proposing to revise the OCCT requirements to not require systems that exceed the action level to re-optimize their OCCT if they re-optimized once after the compliance date for LCRI and are meeting their optimal water quality parameters, the proposed LCRI would maintain or improve public health protection for those systems. This is because resources would be better devoted to other mitigation activities rather than repeating the same steps, as well as the proposed LCRI would require those systems that continue to exceed the action level to conduct additional public education activities and make filters available upon meeting the proposed criterial for having ''multiple lead action level exceedances'' (see section V.I.). Also, if there have been no significant source water or treatment changes (actions which themselves can require a CCT study) a re-optimization study may yield the same result as its previous study.

In addition, the LCRR allows small systems serving 10,000 persons or fewer to choose between four compliance options if they exceed the lead action level: LSLR, CCT installation, full lead-bearing plumbing replacement, and use of point-of-use devices. The proposed LCRI would require small water systems with LSLs or GRR service lines to conduct mandatory service line replacement regardless of lead levels instead of choosing between service line replacement and the other compliance options. Accordingly, under the proposed LCRI, small water systems with LSLs would be required to remove a significant source of lead and protect against corrosion with either OCCT, point-of-use devices, or plumbing replacement. Thus, the proposed LCRI would provide greater protection of public health than the LCRR for systems with LSLs or GRR service lines. For small systems, specifically those serving 3,300 or fewer persons (for which EPA is proposing to lower the threshold from 10,000 under the LCRR), without LSLs or GRR service lines that exceed the lead action level, they could choose and implement lead-bearing plumbing replacement or point-of-use device installation and maintenance in lieu of CCT if approved by the State.

EPA is proposing additional improvements across other rule areas that will result in more actions taken at lower lead levels to better protect public health. Exhibit 1 in section III.A. summarizes these changes and

illustrates comparisons among the pre-2021 LCR, LCRR, and proposed LCRI requirements.

As a whole, the proposed LCRI would improve public health protection relative to the LCR and LCRR for the reasons described above. This is supported by a comparison of the monetized benefits. See Chapter 5, section 5.6.1 of the proposed LCRI Economic Analysis (USEPA, 2023b) for LCRR to LCRI monetized estimated health benefits comparisons and Appendix C, of the proposed LCRI Economic Analysis for pre-2021 LCR to LCRI monetized estimated health benefits comparisons. Through this revision of the NPDWR for lead and copper, EPA is proposing a more stringent and comprehensive set of lead reduction requirements compared to the LCR or LCRR, including mandatory service line replacement; a reduced action level for CCT, which would, among other things, serve as a screen for small and medium water systems based on lead levels that are generally representative of OCCT; and more robust and meaningful public education. Further, EPA is aiming to improve public health protections in communities facing the greatest risks from lead in drinking water, particularly in areas facing cumulative environmental justice impacts, through equity-driven proposed requirements for public education and a strategy to prioritize service line replacement in parts of communities based on factors including but not limited to local communities, such as those disproportionately impacted by lead and populations most sensitive to the effects of lead. Therefore, EPA anticipates that the proposed LCRI, as a whole, would improve public health protections relative to the LCR and LCRR in accordance with SDWA section 1412(b)(9).

As part of the anti-backsliding analysis that the proposed LCRI, as a whole, would improve public health protection relative to the LCR and LCRR, EPA is also considering the proposed change to the LCRR compliance dates for actions other than the service line inventory, associated notification and reporting requirements, and the 24-hour public notification requirement in 40 CFR part 141, subpart Q. EPA began reviewing the LCRR in 2021. Through the consultations EPA conducted as part of the LCRR review and the engagements and consultations EPA held to support the development of the proposed LCRI, many stakeholders, including States and water systems, provided feedback on the challenge of implementing successive changes to the LCR over a short period of time. Because of these challenges, as explained further below, EPA is proposing that water systems continue to implement the LCR requirements and the LCRR inventory requirements between promulgation of the LCRI and the proposed compliance date of three years after promulgation.

EPA previously recognized that the LCRR is an improvement in public health protection over the LCR, especially in light of the inventory requirements of the LCRR. The improvement of public health attributable to the LCRR compared to the LCR is based primarily on the changes to the treatment technique requirements of LSLR, OCCT, and public education—actions that occur over extended periods of time in response to tap sampling results that exceed certain thresholds. EPA does not expect those projected improvements from the LCRR to be realized if EPA promulgates yet another new regulatory framework for controlling lead just as compliance with the LCRR is required. Moreover, EPA expects that, if compliance with the entire LCRR is required starting October 16, 2024, it would negatively affect water systems' abilities to realize the greater health risk reduction benefits of the proposed LCRI.

If the LCRI is promulgated as proposed, and LCRI compliance is required in the third year of LCRR implementation, systems and States would be simultaneously tasked with implementation of two different rules at the same time they are engaged in the startup activities for the LCRI. The startup activities for water systems include reading and training on the rule to understand its new requirements, creating a staffing plan, and securing funds for compliance. The startup activities for a State include adopting State regulations, modifying data systems, and conducting internal and external training. Compounding that challenge is the fact that systems and States would be catching up on the LCRR startup activities that they may have postponed in response to EPA's announcement of the proposed LCRI rulemaking. If water systems are required to simultaneously implement the LCRR for the first time and prepare for LCRI compliance, EPA expects that it would be beyond the capacity of both water systems and States and therefore, the expected benefits of one or both rules would not be realized.

Allowing water systems to transition from compliance with the LCR to compliance with the LCRI, while requiring systems to comply with the LCRR inventory requirements in the interim, would result in more full service line replacements and thus, broader and faster health risk reduction than if adequate planning for LCRI compliance did not take place because of the diversion of scarce system and State resources towards short-term implementation of the LCRR.

F. White House Lead Pipe and Paint Action Plan and EPA's Strategy To Reduce Lead Exposures and Disparities in U.S. Communities

The development of a proposed NPDWR, the LCRI, is a key action of the Lead Pipe and Paint Action Plan, released by the Biden-Harris Administration in 2021 (The White House, 2021). The aim of the plan is to mobilize resources from across the Federal Government through funding made available from the Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law (BIL), to reduce lead exposure from pipes and paint containing lead. The plan includes a goal of eliminating all LSLs and remediating lead paint.

In October 2022, EPA published the Strategy to Reduce Lead Exposures and Disparities in U.S. Communities (or ''Lead Strategy'') to ''advance EPA's work to protect all people from lead with an emphasis on high-risk communities'' (USEPA, 2022a). This Agency-wide Lead Strategy promotes environmental justice in communities challenged with lead and includes four key goals: (1) reduce community exposures to lead sources; (2) identify communities with high lead exposures and improve their health outcomes; (3) communicate more effectively with stakeholders; and (4) support and conduct critical research to inform efforts to reduce lead exposures and related health risks. The development of the LCRI is a key action within EPA's Lead Strategy and ''reflects EPA's commitment to fulfilling the Biden-Harris Administration's historic commitment of resources to replace lead pipes and support lead paint removal under the Lead Pipe and Paint Action Plan'' (USEPA, 2022a).

G. Bipartisan Infrastructure Law and Other Financial Resources

There are a number of pathways for systems to receive support for LSLR and related activities, including low- to no-cost financing through the Drinking Water State Revolving Fund (DWSRF), lead remediation grants established by the WIIN Act and incorporated into SDWA at sections 1459A, 1459B, and 1464 and low-cost financing from the Water Infrastructure Finance and Innovation Act (WIFIA) program. EPA strongly encourages water systems to

evaluate these available funding opportunities to support LCRI implementation and full service line replacement.

The BIL appropriated $30.7 billion in supplemental DWSRF funding and reemphasized the importance of LSLR under the DWSRF program by including $15 billion specifically appropriated for ''lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines.'' The dedicated LSLR appropriation and the General Supplemental appropriation under the BIL as well as annual base appropriations for the DWSRF can pay for LSLR and related activities. Full service line replacement is an eligible cost under the DWSRF regardless of the ownership of the property on which the service line is located. The BIL requires that States provide 49 percent of their LSLR and General Supplemental capitalization grant amounts as additional subsidization in the form of principal forgiveness and/or grants to disadvantaged communities, as defined under SDWA 1452(d)(3). This 49 percent additional subsidization requirement in the BIL is greater than the additional subsidization requirement under SDWA section 1452(d)(2) for annual base DWSRF appropriations, and as such, the BIL makes available additional DWSRF funding for LSLR and associated activities that does not need to be repaid.

Corrosion control planning and design as well as associated capital infrastructure projects are also eligible for DWSRF funding under the DWSRF General Supplemental appropriation under the BIL as well as the DWSRF annual base appropriations. However, corrosion control treatment is not an eligible activity for DWSRF funding from the $15 billion specifically appropriated in BIL for LSLR and associated activities. States may use set-aside funds to assist water systems' development of corrosion control strategies and LSL inventories and replacement plans. In addition, States can also use DWSRF set-aside funds to provide operators with ongoing educational opportunities, such as how to perform lead monitoring and testing (USEPA, 2019a). Water systems are encouraged to contact their State's DWSRF program to learn about project eligibilities and requirements.

The WIIN Act established three drinking water grant programs that are available to support activities to reduce lead exposures in drinking water. The Reducing Lead in Drinking Water grant program awards funding for the reduction of lead in drinking water in disadvantaged communities as defined under SDWA section 1452(d)(3). This grant program focuses on two priority areas: (1) reduction of lead exposures in the nation's drinking water systems through water infrastructure and treatment improvements; and (2) reduction of children's exposure to lead in drinking water at schools and child care facilities (USEPA, 2023c). The Voluntary School and Child Care Lead Testing and Reduction grant program awards funding to States, territories, and Tribes to assist local and Tribal educational agencies in voluntary testing and remediation for lead contamination in drinking water at schools and child care facilities (USEPA and USHHS, 2023). The Small, Underserved, and Disadvantaged Communities grant program awards funding to States, territories, and Tribes to assist certain public water systems in meeting SDWA requirements, including the lead and copper National Primary Drinking Water Regulations (USEPA, 2021f).

EPA administers the WIFIA program, a Federal credit program, to accelerate investment in the nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects, including those eligible for funding through DWSRFs (USEPA, 2023d). Similar to DWSRF, WIFIA also provides financial assistance for full service line replacement unless a portion has already been replaced or is being concurrently replaced with another funding source.

EPA also provides water technical assistance (WaterTA) to support communities in identifying lead sources, developing removal and remediation plans, and applying for water infrastructure funding. EPA collaborates with States, Tribes, territories, community partners, and other key stakeholders to implement WaterTA efforts. For example, the administration and expenses funds appropriated under BIL enabled the establishment of numerous Environmental Finance Centers (EFCs) that help underserved communities that have historically struggled to access Federal funding, such as DWSRF, receive the support they need to access resources for water infrastructure improvements, including LSLR.

In January 2023, EPA announced the ''Lead Service Line Replacement Accelerators'' initiative (USEPA, 2023e). This major initiative will provide targeted technical assistance services to help underserved communities access funds from the BIL and replace lead pipes that pose risks to the health of children and families. The initiative involves the U.S. Department of Labor and four States (*i.e.,* Connecticut, Pennsylvania, New Jersey, and Wisconsin), and the initiative will work with 40 communities across those States in 2023. The Accelerators initiative will support these States in strategically deploying funding from the BIL for LSLR while developing best practices that can serve as a roadmap for the rest of the country. EPA will provide hands-on support to guide communities through the process of LSLR, including support in developing LSLR plans, conducting inventories to identify lead pipes, increasing community outreach and education efforts, and supporting applications for Federal funding. For additional information on EPA funding, see: *https://www.epa.gov/ground-water-and-drinking-water/funding-lead-service-line-replacement.* For additional information on technical assistance, see: *https://www.epa.gov/water-infrastructure/water-technical-assistance-waterta.*

In addition to the EPA-administered funding for service line replacement and other lead reduction actions, other Federal programs outside of EPA offer significant opportunities to further support these actions. Examples include Federal and State funds from the American Rescue Plan (ARP), Community Development Block Grant (CDBG) programs through the U.S. Department of Housing and Urban Development (HUD), Rural Development through the U.S. Department of Agriculture (USDA), and the Public Works Program through the U.S. Department of Commerce Economic Development Administration (EDA).

ARP funds are eligible to fund LSLR as well as replacement of internal plumbing and faucets and fixtures in schools and daycare centers. Recipients of ARP funds budgeted over $345 million for lead remediation projects as of September 30, 2022 (The White House, 2023). For example, Washington, DC, budgeted $30 million to increase funding available to assist residents in replacing lead water service lines to their homes. Additionally, Buffalo, New York, will use $10 million to expand its existing program to remove LSLs in 1,000 additional homes (Department of the Treasury, n.d.).

HUD CDBG programs support community development through activities that address needs, such as infrastructure, economic development projects, public facilities installation, and community centers (USHUD, 2020).

In 2017, North Providence, Rhode Island, utilized CDBG funding from HUD to replace customer-owned LSLs (USEPA, 2023p). HUD's Healthy Homes Production grant program and Healthy Homes Supplements to HUD's Lead Hazard Reduction grant programs are available to address a wide range of housing-related hazards including LSLR (USHUD, 2023).

USDA Rural Development provides a variety of grant and loan programs to rural communities, organizations, businesses, and individuals to finance infrastructure repair and replacement, including LSLR (USEPA, 2020a).

The EDA Public Works Program supports physical infrastructure improvements in economically distressed communities (USEPA, 2020a). With the creation of the Low-Income Household Water Assistance Program (LIHWAP) in 2021, States have an additional funding source to assist low-income households with water and wastewater bills and reduce the financial burden of water systems. In 2021, over $1.1 billion was appropriated for LIHWAP.[7]

States are using the available Federal funding sources as well as providing their own funding to support LSLR. As of February 2023, Illinois EPA has provided almost $89 million for LSLR (IEPA, 2023). Illinois EPA's DWSRF is providing funding to numerous systems' LSLR projects, including over $4 million in funding for the City of Sycamore and $3.9 million for the City of Batavia (IEPA, 2023). Other States are also providing funding for LSLR. New York's Lead Service Line Replacement Program received $20 million in State funding in 2017 and an additional $10 million in 2019 for communities meeting specific eligibility characteristics, including income, measured blood lead levels, and age of homes (NYDOH, 2021). The State of Minnesota approved $240 million for replacing LSLs, mapping and inventory activities, and informing residents about the benefits of LSLR. The State of Minnesota established an LSLR grant program, where the awarded grants must cover 100 percent of the cost of replacing the customer's portion of an LSL and prioritize replacing LSLs that are an imminent threat to public health and safety, areas with children, lower-income residents, and where replacements will provide the most efficient use of the grant funding (such as in coordination with main replacement) (State of Minnesota, 2023). The funding will be available in 2024 until June 30, 2033, which corresponds to the year the State has set as their official goal for replacing all LSLs (State of Minnesota, 2023). Regional authorities, like the Massachusetts Water Resources Authority (MWRA), are also providing funding to support LSLR. MWRA provided $100 million in loan funds for LSL investigation and replacement projects in their metropolitan Boston communities (MWRA, 2023).

EPA developed ''Strategies to Achieve Full Lead Service Line Replacement,'' which is a guidance document that discusses funding sources including additional ways systems have financed full service line replacement (USEPA, 2019a). For example, the City of Green Bay, WI, used funding from a stadium tax to fund customer-side LSLR (USEPA, 2019a). EPA also developed ''Funding and Technical Resources for Lead Service Line Replacement in Small and Disadvantaged Communities,'' which is a guide to help small and disadvantaged communities identify potential Federal funding sources and technical assistance for LSLR (USEPA, 2020a).

H. Lead Exposure and Environmental Justice, Equity, and Federal Civil Rights

Environmental Justice

Stakeholder feedback and EPA's environmental justice analysis informed the Agency's understanding of how the proposed LCRI could benefit communities with environmental justice concerns. As described in section IV.C., EPA developed these proposed revisions after engaging with community stakeholders in cities with concerns about lead in drinking water during the LCRR review by holding two public listening sessions on the topic of environmental justice to support the proposed LCRI rulemaking. EPA also prepared an environmental justice analysis for this proposed rule to inform EPA's understanding of how the proposed LCRI could impact communities with environmental justice concerns (USEPA, 2023f). EPA is proposing requirements that would achieve more equitable outcomes, especially in how service line replacement programs are planned and implemented. EPA is proposing requirements that would help to ensure that communication about the replacement program and the risks of lead in drinking water are more accessible to all consumers including individuals with limited English proficiency. Specific proposed requirements, and their anticipated impacts on equity, are described in full in section V. For example, EPA is proposing a requirement for water systems to make their service line replacement plans accessible and publicly available to inform the public of how full service line replacement will be prioritized (see section V.B.7.). Section V.B.5. includes a discussion on proposed requirements as incentives to overcome access issues and section V.5.9. describes environmental justice concerns and how the proposed rule may impact those concerns. In addition, as discussed in the previous section, Federal funds are available to support equity including BIL funds that require that States provide 49 percent of their LSLR and General Supplemental capitalization grant amounts as additional subsidization in the form of principal forgiveness and/or grants to disadvantaged communities, as defined under SDWA 1452(d)(3) (see section IV.G.).

Applicability of Federal Civil Rights Laws

EPA ensures compliance with Federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex and age, respectively Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title IX of the Education Amendments of 1972 (Title IX), Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (Section 13) and the Age Discrimination Act of 1975. EPA's nondiscrimination regulations at 40 CFR parts 5 and 7 implement these Federal civil rights statutes and contain important civil rights baseline elements that are legally required for applicants and recipients of EPA financial assistance.

All applicants for and recipients of EPA financial assistance have an affirmative obligation to comply with these laws, as do any subrecipients of the primary recipient, and any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

The civil rights laws prohibit any program or activity receiving EPA financial assistance from discrimination based on race, color, national origin (including limited-English proficiency), disability, sex, and age. Accordingly, water systems must take reasonable steps to provide meaningful access to their programs and activities to individuals with limited-English proficiency. Recipients must provide individuals with disabilities an equal

[7] Consolidated Appropriations Act, 2021 (Pub. L. 116–260), Div. H, Sec. 533, and American Rescue Plan Act (Pub. L. 117–2), Sec. 2912.

opportunity to participate in or benefit from their programs and activities.

When developing service line replacement plans, water systems that are recipients or subrecipients of EPA financial assistance should ensure compliance with Federal civil rights laws. As a best practice, one component of such a plan may be the analysis of the demographic data that recipients of EPA financial assistance are required to collect under 40 CFR 7.85(a). EPA encourages water systems to engage with local community-based organizations and community members about the service line replacement process and in the development of the service line replacement plan. EPA also encourages States to consider if any State law or regulation may create barriers that could lead to challenges for water systems to meet their obligations under Federal civil rights laws. To support this effort, EPA is proposing a special primacy requirement for States to identify any potential barriers to full service line replacement, which is discussed further in section VII.C.

V. Proposed Revisions to 40 CFR Subpart I Control of Lead and Copper

A. Regulatory Approach

Section 1412(b)(7)(A) of SDWA authorizes the EPA Administrator ''to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing an MCL, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant'' (42 U.S.C. 300g–1(b)(7)(A)). In the 1991 LCR, EPA evaluated the best information available at the time consistent with the statutory standard and determined that lead and copper met the criteria for establishing a treatment technique rule. For the proposed LCRI, EPA is finding, as it did in 1991, that an MCL for lead is not feasible to ascertain the level of the contaminant within the meaning of the Act and in a way that would achieve the basic purposes of the statute. Specifically, as described in more detail below, EPA considered whether the level of lead and copper can be ascertained at the tap, whether it was possible to determine single national numerical standards for lead and copper at the tap that is reflective of the effectiveness of treatment applied by water systems, and whether the fact that lead and copper are both present in water systems' distribution system and building premise plumbing, make it infeasible for EPA to establish MCLs for lead and copper. In making this finding, EPA conducted a new analysis of the issue by re-evaluating the information and data and analyses underlying EPA's conclusion in the 1991 LCR and evaluating the new information and data available since LCR was promulgated.

The primary rationale for promulgating the LCR as a treatment technique rule was due to the nature of lead and copper contamination. As EPA described in 1991, and is still accurate today, lead and copper do not generally occur in source water, but instead are introduced in drinking water by the corrosive action of water in contact with plumbing materials containing lead and copper. These sources of lead and copper were and continue to be present in both the water system's distribution system and in plumbing materials in homes. In 1991, EPA explained that lead and copper levels at the tap can be highly variable ''due to many factors including the amount of lead and copper in the resident's plumbing or in the PWS's distribution system . . . temperature, age of plumbing components, chemical and physical characteristics of distributed water, and the length of time water is in contact with those materials'' (56 FR 26473, USEPA, 1991). EPA noted that while it is feasible to accurately measure the level of lead or copper in an individual sample, the inherent variability across sites and systems makes it ''technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the best available treatment technology'' (53 FR 31527, USEPA, 1988). EPA discussed how if EPA were to select an MCL, it must be ''as close as feasible'' to the MCLG in accordance with the statutory standard. EPA analyzed lead and copper tap sampling data to determine if there is a ''precise level [of lead] at the tap'' that could be feasibly met by large water systems if they were to apply treatments representing best available technology to the water systems themselves (56 FR 26473, USEPA, 1991). EPA found that even when minimizing some of the sources of variability (*e.g.,* the time the water is in contact with the plumbing materials, age and type of plumbing material), lead and copper levels still varied considerably. Lead and copper levels varied at the same system both before and after the application of corrosion control treatment, between different systems, and between individual homes within the same system (56 FR 26473–26475, USEPA, 1991). EPA concluded that because of the sources of variability described above, there is no precise level that would be generally considered ''feasible'' based upon application of best available treatment in all water systems and further found that the level that is as close as ''feasible'' to an MCLG would vary in systems throughout the country based on the sources of lead and copper, the corrosivity of the water, and how the water chemistry responds to corrosion control treatment (56 FR 26473, USEPA, 1991).

Second, EPA explained an additional challenge for establishing MCLs for lead and copper was because much of the lead and copper sources are privately owned and/or are outside of the control of the public water system. At the time, EPA received comments stating that by ''only establish[ing] MCLs for lead and copper for the water as it leaves the control of the public water system'' (56 FR 26472), and therefore monitoring for compliance in the distribution system, EPA could reduce some of the variability associated with lead and copper levels and address the problem of water system responsibility for conditions outside of their control. The Agency determined that setting an MCL for lead and copper at the point the water leaves the control of the public water system would be inconsistent with the SDWA definition of an MCL as ''the maximum level allowed of a contaminant in water which is delivered to any user of a public water system''. Specifically, EPA reasoned that MCLs for lead and copper would have to be assessed with monitoring at customers' taps to accurately represent the level of the contaminants in drinking water delivered to the user, noting that, ''EPA has established monitoring requirements for inorganic and organic contaminants that require monitoring in the distribution system because this is easier and provides just as accurate an assessment of tap levels as tap sampling itself'' (56 FR 26478, USEPA, 1991). EPA determined that monitoring for lead and copper in the distribution system for compliance with MCLs ''would not adequately protect the public from lead and copper introduced by the interaction of corrosive water delivered by the public water system with lead and copper-bearing materials in the homeowners' plumbing'' (56 FR 26472–26473, USEPA, 1991). Despite the fact that lead and copper sources may be outside the control of the water system, EPA determined that ''public water systems can affect, at least to some degree, water tap lead and copper levels through adjustment of the corrosivity of water delivered by the water system'' (56 FR 26473, USEPA, 1991). However, as explained in the

1991 rulemaking, due to the factors described above (*e.g.,* variability of lead and copper in drinking water, treatment effectiveness, and sources of lead and copper), water systems can affect drinking water corrosivity, but not in a way that is technically feasible to set MCLs.

Third, EPA reasoned in the 1991 rulemaking that the definition of a public water system under SDWA precludes the Agency from promulgating a ''regulation that holds a [public water system] liable for conditions that are beyond its control'' (56 FR 26476, USEPA, 1991). EPA posited that an MCL would not be considered ''feasible'' if a significant number of water systems would be in noncompliance due to conditions outside of their control. EPA contemplated an alternative approach of establishing MCLs that would meet the statutory standard for an MCL in SDWA section 1412(b)(4)(B) and 1412(b)(4)(D)—''as close to the maximum contaminant level goal as is feasible''—*i.e.,* ''feasible with the use of the best available technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)''. The resulting MCLs would need to be high enough to enable most systems to meet them after installing treatment (accounting for the variability of lead and copper levels that would persist after treatment installation, given the sources of lead and copper). However, EPA found that such an approach would lead ''to unnecessarily high exposures of significant segments of the population'' and noted that systems below this higher MCL ''would not be required to install any treatment to be in compliance'' (56 FR 26477, USEPA, 1991). Therefore, EPA concluded that such an approach would be inconsistent with the objective of the statute to prevent ''known or anticipated adverse effects on the health of persons to the extent feasible'' (SDWA 1412 (b)(7)(A)).

Considering the above facts, analyses, and statutory requirements, EPA concluded that it was not feasible to set MCLs for lead and copper and promulgated a rule comprised of four treatment techniques: corrosion control treatment, source water treatment, lead service line replacement, and public education. As described in section I.C. of this preamble, EPA introduced action levels for lead and copper to implement the treatment technique requirements in the rule. The action levels are compared to the 90th percentile of lead and copper samples collected from consumer taps to determine if the water system must take actions under the rule. In 1991, EPA explained how the action levels are not MCLs, and they do not function as MCLs. For more information about action levels, including the lead action level EPA is proposing for the LCRI and EPA's determination about why and action level was not an MCL under the LCR and would still not be an MCL under the proposed LCRI, see section V.E.2. of this document.

EPA's 1991 decision to promulgate a treatment technique rule for lead was challenged and upheld by the D.C. Circuit Court of Appeals (*American Water Works Association* v. *EPA* (''*AWWA*''), 40 F.3d 1266, 1270–71 (D.C. Cir. 1994)). Because the Court agreed with EPA's analysis, described above, that it is not feasible to ascertain the level of lead in drinking water, the Court upheld EPA's decision not to implement an MCL for lead (*AWWA,* F.3d 1266, 1270–71).

For the proposed LCRI, EPA has re-evaluated whether a treatment technique rule in lieu of an MCL is consistent with the statute. As part of the Agency's analysis, EPA re-evaluated the information considered and conclusions made in promulgating the LCR in 1991, in addition to the best information and data available in more than thirty years since the LCR was promulgated, including from stakeholder feedback received during the LCRR review. Based on the analysis being conducted for the proposed LCRI, EPA is proposing to determine that information and factors consistent with the Act that cause lead and copper variation identified in the 1991 LCR and supported in the LCRR continue to apply today. Therefore, it is not feasible to establish MCLs for lead and copper consistent with the SDWA.

New information available since the 1991 LCR continues to show that the variability of lead and copper levels make it infeasible to ascertain the level of the contaminant and does not meet the statutory standard for an MCL under SDWA. Several reasons contribute to EPA's determination on lead and copper variation supporting the use of a treatment technique. First, as noted in the LCR, ''lead release can be unpredictable over time and across households, can originate from many sources owned by the water system and the customer, can vary based on the sample technique used, and can be affected by customer water use habits'' (53 FR 31527, USEPA, 1988). Studies continue to show that the levels of lead and copper measured at the tap after treatment is variable due to several factors including, but not limited to, the amount of lead in any individual site's plumbing, the age of plumbing components, the physical and chemical characteristics of the water, the length of time water is in contact with material, and consumer water use patterns (Triantafyllidou et al., 2021). Studies show that lead levels can widely vary at a single site depending on the sampling protocol (Del Toral et al., 2013; Lytle et al., 2019; Lytle et al., 2021; Masters et al., 2021; Triantafyllidou et al., 2015). For example, Del Toral et al. (2013) showed that there was significant variability in lead concentrations from water samples collected at the same site as well as among different LSL sites across Chicago, Illinois. EPA's analysis of 2019 State of Michigan Lead Tap Monitoring Data as part of the LCRR (see docket item no. EPA–HQ–OW–2017–0300–1617) also demonstrated variability among collected water samples grouped by combinations of LSL status, CCT status, and liter sampled (USEPA, 2020c, Exhibit F–4). Even when using the same sampling protocol, variation in lead at a single site can still occur due to water use patterns and highly variable release of particulate lead (Clark et al., 2014; Masters et al., 2016; Xie and Giammar, 2011).

For the proposed LCRI, EPA analyzed lead data from the dataset collected for the Six-Year Review 4 (2012 to 2019) for systems with different characteristics (*e.g.,* CCT and LSL status) to further evaluate how lead and copper levels at the tap can vary. Six-Year Review 4 data were voluntarily provided to EPA from 46 States, Washington, DC, and 10 Tribal programs and territories and includes the LCR compliance data reported to the State. EPA used Safe Drinking Water Information System Federal Reporting Services (SDWIS/FED) (2012 to 2020) data and information on LSL status to select a subset of 7,161 systems with identified CCT and LSL status (USEPA, 2023b). Similar to an analysis conducted for the LCR, EPA evaluated the magnitude of difference between two points in the distribution as a measure of variability (56 FR 26474, USEPA, 1991). Because the 90th percentile is used to require actions under the LCR, EPA used a ratio of the 90th percentile (P90) and the 50th percentile or median (P50) for lead and copper values for each system in each year of data in the dataset (2012 to 2019). For example, if there are 100 samples, the 50th percentile is the 50th highest concentration and the 90th percentile is the 90th highest concentration. If the P90/P50 ratio is

close to one, it means that the values are similar and there is low variability among the measured lead levels at that system in a given year. Prior to calculating percentiles, EPA assigned a numerical value for non-detects. The true value of the non-detect could be anywhere between zero and the minimum reporting level (MRL) reported with a sample result. As a conservative estimate, EPA substituted one-half of the reported MRL associated with each sample result. For sample results without a reported MRL value, EPA substituted one-half of the most commonly reported MRL for lead or copper in the State the system is located in, or nationally (0.005 mg/L for lead and 0.01 mg/L for copper) if State-level MRL data was not available. This approach is commonly used for evaluating Six-Year Review data (USEPA, 2016b). EPA also applied full MRL substitution to show the range of possible results. The results in Exhibit 2 show the P90/P50 ratios calculated for selected systems representing different sizes, CCT, and LSL status. Exhibit 3 shows the results for copper. The results show high variability across systems as well as instances where a system has low variability in samples for one year and high variability in another. Systems with CCT and systems without LSLs also experience variability in lead levels both within a single sample collection year and between collection years. Higher ratios (*e.g.,* >10) in Exhibits 2 and 3 are often due to the P50 value being a non-detectable concentration In other words, these systems had some tap samples with high levels of lead or copper and others where lead or copper was not detected. Additional details and full results for all systems analyzed, including results using full MRL substitutions, are found in the data file ''Lead and Copper Variability Analysis'' in docket no. EPA–HQ–OW–2022–0801.

Exhibit 2: System Variability in First Liter Lead Samples

System Size	CCT	LSL	P90/P50 Lead Levels							
			2012	2013	2014	2015	2016	2017	2018	2019
> 50,000	Yes	Yes	1.0	3.2	3.7	7.4	15.5	5.0	2.9	4.8
> 50,000	Yes	Yes	3.8	4.3	4.7	4.0	4.0	4.7	4.5	4.9
> 50,000	Yes	Yes	7.2	8.9	8.8	5.9	15.4	15.0	13.5	16.1
> 50,000	Yes	Yes	ND[1]	6.0	ND	1.0	5.4	6.0	5.6	4.0
> 50,000	Yes	Yes	--	--	10.6	3.3	3.0	2.7	2.9	3.4
10,000 to 50,000	No	Yes	--	--	4.9	4.3	6.5	4.1	4.2	5.0
10,000 to 50,000	Yes	Yes	--	--	9.9	5.9	3.8	2.4	3.1	2.1
≤3,300	Yes	No	1.0	2.0	1.0	4.2	4.4	6.0	1.0	3.6
≤3,330	No	No	12.4	13.0	1.7	1.5	14.8	6.4	10.8	8.0

Source: "Lead and copper variability analysis.xlsx" in EPA-HQ-OW-2022-0801.

Notes:

[1]ND indicates that all collected samples had non-detectable concentrations of lead. Non-detect values were substituted with ½ the MRL for lead prior to calculating quantiles.

Exhibit 3: System Variability in First Liter Copper Samples

System Size	CCT	LSL	P90/P50 Copper Levels							
			2012	2013	2014	2015	2016	2017	2018	2019
> 50,000	Yes	Yes	2.0	2.0	2.6	2.6	2.8	3.6	2.5	2.5
> 50,000	Yes	Yes	2.0	2.3	2.5	2.3	2.5	2.6	3.5	2.3
> 50,000	Yes	Yes	2.1	2.0	2.0	2.3	2.5	2.3	2.6	2.2
> 50,000	Yes	Yes	ND[1]	5.2	5.0	2.0	2.4	2.8	3.1	3.5
> 50,000	Yes	Yes	--	--	5.1	10.9	6.5	5.9	5.4	7.2
10,000 to 50,000	No	Yes	--	--	1.8	2.0	1.5	1.9	1.7	3.3
10,000 to 50,000	Yes	Yes	--	--	3.7	3.2	2.5	2.3	2.5	2.2
≤3,300	Yes	No	2.8	1.8	2.3	1.8	1.9	1.7	2.0	1.3
≤3,330	No	No	38.2	30.8	1.0	1.0	23.5	18.4	4.6	14.0

Source: "Lead and copper variability analysis.xlsx" in EPA-HQ-OW-2022-0801.

Notes:

[1]ND indicates that all collected samples had non-detectable concentrations of lead. Non-detect values were substituted with ½ the MRL for copper prior to calculating quantiles.

Second, the conditions of plumbing materials also continue to vary from water system to water system, and from site to site within a water system, such that lead in drinking water continues to be subject to high levels of variability. Studies have shown that LSLs are the predominant contributor of lead in drinking water where they are present. A study published by the AWWA Research Foundation (2008) found that LSLs contribute an estimated 50 to 70 percent of the mass of lead at the tap for sites served by LSLs (Sandvig et al., 2008). Another study found that removal of LSLs resulted in an average reduction of lead content at the tap by 86 percent (Lytle et al., 2019). However, while removal of LSLs is critical to reducing lead in drinking water, premise plumbing materials also continue to be a source of lead in drinking water (Elfland, 2010; Kimbrough, 2007; Rockey et al., 2021). In addition, premise plumbing materials can be a source of particulate lead. For example, brass particles and lead solder particles were identified as the cause of severe tap water contaminations during three field investigations in North Carolina and Washington, DC (Triantafyllidou and Edwards, 2012). The Agency notes that even where systems remove all LSLs, it will not sufficiently allow for the discontinuation of CCT because of the presence of other lead and copper sources that will remain in the plumbing of consumers' homes and other buildings (USEPA, 2020c). Accordingly, EPA is aware that systems without LSLs can exceed the lead action level, for example, due to the corrosion of premise plumbing containing lead. Under the LCRR, EPA estimated between 2.3 and 4.7 percent of CWSs without LSLs will exceed the current lead action level of 0.015 mg/L (USEPA, 2023b, Chapter 3, Exhibit 3–25). Thus, the factors that cause lead and copper variation will continue to exist.

Third, despite changes to the allowable amount of lead in ''lead free'' plumbing, many older buildings can still be a source of lead. SDWA section 1417 prohibits the use of any pipe, any pipe or plumbing fitting or fixture, solder, or flux in the installation or repair of any public water systems or in plumbing in a residential or nonresidential facility that provides water for human consumption that is not ''lead free'' as defined in section 1417(d). The 2011 Reduction of Lead in Drinking Water Act revised the definition of ''lead free'' in SDWA section 1417(d) from eight percent to a weighted average of 0.25 percent,[8] lowering the amount of lead that may be in plumbing materials used in repairs or new installations starting in 2014. The Lead Free Rule (85 FR 54236, USEPA, 2020d) requires third-party certification for new plumbing products as of September 1, 2023. However, SDWA section 1417 does not require anyone to replace previously installed plumbing materials that are not ''lead free'' as currently defined, and many buildings in the U.S. were constructed prior to 2014. Further, even products that meet the new definition of ''lead free'' may contain trace amounts of lead that can leach into drinking water (42 U.S.C. 300g–6(d)(1)). Therefore, premise plumbing in these buildings will continue to be a source of lead in drinking water. As illustrated both in peer-reviewed studies and through reported compliance data, lead levels vary at single sites over time, between sites within a system, and between systems, both for systems with and without LSLs and CCT.

EPA heard from stakeholders that the Agency's reasons for not setting an MCL for lead are inconsistent, stating that EPA's primary rationale is based on not holding water systems responsible for sources of lead not owned by the water system while including provisions in the LCRR for LSLs that apply regardless of water system ownership. This argument misconstrues the comprehensive set of reasons for EPA's decision to not set an MCL for lead. In deciding whether to set an MCL for a particular contaminant or set a treatment technique rule, the primary focus of the statutory analysis is not on who is ''responsible'' for lead in drinking water, but whether it is feasible to ascertain the level of lead in drinking water. As described above, the variability of lead and copper levels make it ''technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the

[8] The term ''lead free'' provided here is defined under SDWA section 1417(d) as follows: ''[T]he term 'lead free' means—(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and (B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.''

best available treatment technology'' (53 FR 31527, USEPA, 1988). While premise plumbing is a contributor to lead and copper at the tap, EPA found, and continues to find, that the quality of water delivered to customers can be controlled by systems and that ''water systems can affect, at least to some degree, water tap lead and copper levels through adjustment of the corrosivity of water delivered by the system'' (56 FR 26473, USEPA, 1991). For example, studies indicate that CCT can reduce drinking water lead levels at the tap (Cardew, 2009; Hayes et al., 2008; Tully et al., 2019).

In addition to the above points, stakeholders have claimed that EPA has established MCLs for other drinking water contaminants, such as disinfection byproducts (71 FR 388, USEPA, 2006), and stated that such contaminants are similarly prone to sampling variability. However, the preamble for the Stage 2 Disinfectants and Disinfection Byproducts Rule does not suggest that disinfection byproduct sampling is subject to the same level of sampling variability as lead sampling or that disinfection byproducts are as affected by sampling variability that it impacts the ability of water systems to accurately ascertain disinfection byproduct contamination from water samples (71 FR 388, 394, USEPA, 2006). The variability in lead and copper materials from site to site is one difference between the lead and copper and the disinfection byproduct rules. While both rules require systems to evaluate water quality within the distribution system, due to the reasons stated above, the LCR also requires sampling at consumer taps, which is variable across sites. Put simply, there is no indication that the level of purported sampling ''variability'' associated with disinfection byproducts can be reasonably compared to that of lead contamination in drinking water.

Another critical distinction between the lead and copper rules and the disinfection byproduct rules is that, unlike for lead, water systems disinfecting the water supply are the source of disinfection byproducts. Water systems introduce disinfectants, such as chlorine and chloramine, into the drinking water supply (71 FR 394, USEPA, 2006). These disinfectants interact with organic and inorganic material in source waters to form disinfection byproducts. Water systems have the ability to control and account for the formation of disinfection byproducts, such as through source water treatment. On the other hand, lead is rarely found in source water (86 FR 4231, USEPA, 2021a) and is instead introduced into the drinking water supply through corrosion in lead pipes and fixtures, sometimes from lead pipes and fixtures outside the direct control of the water system. As such, there is no inconsistency between regulating disinfection byproducts through an MCL while finding that a treatment technique is necessary for lead.

Considering the above information and analysis, EPA is determining that the same conditions that prompted EPA to promulgate a treatment technique rule for lead and copper in 1991, still exist today and justify continued use of a treatment technique rule for regulating lead and copper. This includes the nature of lead contamination, where much of the lead in drinking water continues to originate in the distribution system and from sources outside the control of water systems, the condition of water systems' plumbing and distribution system varying from system to system, and the variability of lead and copper levels at the tap. In addition to finding that it is not feasible to set an MCL for lead and copper at the tap, EPA also notes the benefit of a treatment technique. EPA can set requirements that compel the system to take various actions to reduce lead in drinking water, while an MCL would not compel action until, and unless, the MCL is exceeded (USEPA, 2020b). EPA is not authorized to require a specific treatment when promulgating an MCL (see SDWA sections 1412(b)(4)(E) and 1412(b)(7)(A)).

EPA has reasoned that the conditions that led the Agency to make the findings necessary to promulgate a treatment technique rule for lead and copper in 1991 still apply and are supported by an evaluation of the best information and data available since the LCR was promulgated. For these reasons, the Agency is proposing to continue to regulate lead and copper through four treatment techniques: (1) service line replacement, (2) CCT, (3) public education, and (4) source water treatment.

B. Service Line Replacement

1. Mandatory Full Service Line Replacement and SDWA Requirements

This proposal marks a fundamental improvement in the lead service line replacement program, which reflects EPA's experience in implementing the lead rule over 30 years, new evidence and data, and is supported by the extraordinary commitment of funds for this program under the BIL. EPA is proposing mandatory full service line replacement of all LSLs and GRR service lines under a water system's control. In the LCRR review, EPA recognized the ''urgency of fully removing all lead service lines'' and the need to consider an LSLR mandate in an improved regulation (*i.e.,* the LCRI) as well as through non-regulatory actions (86 FR 71577, USEPA, 2021b). In the LCRR review, EPA noted that under the LCRR, millions of LSLs would be left in place and would result in ''generations of Americans being at risk of significant lead exposure through their drinking water'' (86 FR 71577 USEPA, 2021b).

The LCRR requires water systems to replace lead and GRR service lines after exceeding the lead action level or the LCRR-established lead trigger level. Systems that exceed the lead action level and serve more than 10,000 people must fully replace three percent of lead, GRR, and unknown service lines per year on a two-year rolling basis for at least two years. The State must require systems to replace LSLs on a shorter schedule if determined to be feasible. A system may cease mandatory LSLR on the date the system's 90th percentile lead level has been calculated to be at or below the lead action level during each of the four consecutive six-month tap sampling monitoring periods. Systems that exceed the lead trigger level, but stay at or below the lead action level, and serve more than 10,000 people must consult with the State on replacement goals and implement a goal-based LSLR program for two consecutive one-year monitoring periods.

Any small CWS (serving 10,000 or fewer people) or NTNCWS that exceeds the lead action level and selects lead service line replacement as its compliance option under the LCRR small system flexibilities must implement a full lead service line replacement program on a schedule approved by the State that does not exceed 15 years. The LCRR also requires systems, regardless of their 90th percentile lead level, to replace the system-owned portion of an LSL when customers choose to replace their portion of the line; full LSLR is required in such cases because of the risks associated with partial LSLR.

EPA projected that, under the LCRR, only 854,000 to 1.3 million LSLs would be replaced over the 35-year period of analysis for the rulemaking (USEPA, 2023b, Exhibit 4–135). Under this projection, millions of LSLs that generally account for 50 to 75 percent of lead contamination at the drinking water tap (Sandvig et al., 2008) would remain in active use in systems both with and without OCCT. Removing this significant source of lead exposure for millions of people is vital to protect

public health. During the proposed LCRI external engagements, many stakeholders voiced strong support for mandatory replacement of all the nation's LSLs through the LCRI, regardless of lead levels or CCT status (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j). Some stakeholders did not support a service line replacement mandate by a deadline, citing competing demands for water systems (USEPA, 2023j).

The proposed LCRI lead service line replacement approach is built on the experience of systems that are working proactively to replace LSLs, the significant funding available for service line replacement (including $15 billion for identifying and replacing LSLs from BIL), and the four States (Illinois, Michigan, New Jersey, and Rhode Island) that currently require systems to replace LSLs by specific deadlines. These proactive measures alone cannot achieve the goal of replacing 100 percent of lead and GRR service lines. A nationwide service line replacement mandate would ensure coverage for customers served by lead and GRR service lines in States that do not require mandatory replacement or where systems are not proactively replacing lead and GRR service lines. Mandatory service line replacement provides additional public health protection beyond the benefits of CCT, source water treatment, and public education alone.

Lead Exposures From Drinking Water

Where LSLs and GRR service lines remain in place, they continue to present risks of lead exposure, especially from particulate lead releases. As discussed in section V.B.2. of this document, EPA determined that mandatory service line replacement is feasible, and a requirement that systems replace all LSLs and GRR service lines over a 10-year period would ensure that the proposed LCRI ''prevents known or anticipated adverse effects on the health of persons to the extent feasible'' (SDWA 1412(b)(7)(A)). The LCR and LCRR relied on replacing LSLs initiated by a series of process steps following periodic tap sampling results. Over the 30 years of implementing the LCR, EPA has found that the sampling and process steps of that rule created implementation uncertainties, difficulties, and errors that, in some cases, resulted in significant lead exposures. Improper implementation of the sampling and corrosion control treatment process has been the cause, or one of the primary causes, of significant lead exposures in multiple water systems. Moreover, disturbances of LSLs can potentially cause lead particulates to be released into drinking water, causing higher lead levels at those sites. Although the proposed LCRI includes risk mitigation requirements for water systems if they disturb the service line, other utilities or heavy traffic may also disturb the line (Del Toral et al., 2013; Roy and Edwards, 2019), events which would be unknown to the water system and not subject to risk mitigation steps. In addition, particulate lead can be released sporadically (*i.e.,* not associated with a disturbance), even in systems that have OCCT and have measured generally low lead levels (Triantafyllidou et al., 2007). Research has also shown that lead exposure is not fully eliminated by CCT due to a variety of factors including individual home and service line characteristics, water quality, water use (including water stagnation following extended periods without water use), treatment, infrastructure, and disturbances to service lines (*e.g.,* meter installation, road repair, and freezing of the ground that can have unintended and unpredictable effects), causing lead releases in the water when LSLs or GRR service lines are present (Del Toral et al., 2013; Masters et al., 2021; Proctor et al., 2020; Roy and Edwards, 2019; Schock et al., 2014; Triantafyllidou et al., 2007). Examples of isolated cases of lead poisoning in children have been documented and attributed to drinking water in communities whose systemwide lead levels remained below the action level of 0.015 mg/L (Triantafyllidou et al., 2007; Triantafyllidou and Edwards, 2012).

New Evidence and Data To Support the Feasibility of Mandatory Service Line Replacement for All Systems

Although the LCR and LCRR required water systems that exceeded the lead action or trigger levels to conduct LSLR, neither rule required all systems in the nation with LSLs and GRR service lines to simultaneously replace these service lines at a rapid rate. By mandating full service line replacement of all lead and GRR service lines in the nation separate from tap sampling and monitoring requirements, the proposed LCRI would better protect public health by removing a significant source of lead in drinking water (where present) and further reducing known or anticipated adverse health effects beyond what is able to be tested due to the sporadic nature of particulate lead spikes that can make their detection challenging. Furthermore, there had been a lack of data regarding the number of LSLs and GRR service lines in systems as well as no direct implementation of a broad service line replacement mandate in a large geographic region, or State laws requiring such, to demonstrate the feasibility of this requirement. New and higher quality evidence and data are available to assess the feasibility of this proposed requirement more accurately. EPA has found this evidence and these data indicate that such a requirement for LSLR is feasible as well as likely technically possible. For example, four States (Illinois, Michigan, New Jersey, and Rhode Island) have now required LSLR through State law, where New Jersey and Rhode Island both require all LSLs and all galvanized service lines (irrespective of whether there is or was an upstream LSL) to be replaced in ten years unless granted an extension by the State (State of New Jersey, 2021; State of Rhode Island, 2023). During the development of the LCRR, EPA was only aware of individual systems that had or were proactively conducting service line replacement. However, the four state service line replacement laws suggest that States expect such a requirement to be technically possible given hundreds of systems required to conduct service line replacement simultaneously within and across these States. EPA notes that these States are estimated to have approximately one-fifth of the LSLs in the country (1.8 out of 9.2 million estimated LSLs) and have among the most LSLs in the country (USEPA, 2023k). Specifically, Illinois and Rhode Island are estimated to have 28 percent and 25 percent of all their service lines requiring replacement, the two highest proportions in the United States. Additionally, New Jersey and Michigan have an estimated 14 percent and 11 percent of their lines requiring replacement, both above the national average of 8 percent (USEPA, 2023k). These laws suggest that these States anticipate that a broad service line replacement mandate is technically possible. Michigan and New Jersey have implemented their service line replacement laws since 2021, providing even more support that the States' expectations that their replacement requirements are in fact technically possible. In addition, BIL and other funding is now available to support service line replacement, a primary driver of the proposed rule costs. Also, as mentioned in section IV.C. of this document, several water systems have had implementation challenges associated with the LCR, including the CCT requirements. NDWAC recommendations noted the opportunity provided by proactive replacement of LSLs to protect public health before

systems experience higher lead levels'' (USEPA, 2016a).

Additionally, new data from the 7th Drinking Water Infrastructure Needs Survey and Assessment (referred to as ''Needs Survey''), which was conducted in 2021 and whose results were published in 2023 (USEPA, 2023k), allowed for more precise estimates of the number of lead, GRR, and unknown service lines in individual systems and nationwide than were previously available during the development of the LCRR. These data allowed EPA to better estimate the impacts of a broad and rapid mandatory service line replacement requirement to ensure such a requirement meets SDWA standards for a treatment technique. It also allowed EPA to estimate with more precision the systems eligible for deferred service line replacement, which EPA is proposing to be available to systems for which a 10-year replacement deadline is infeasible. Finally, BIL and other funding is now available to support service line replacement, which is a primary driver of the rule costs.

For the reasons discussed in this section, mandatory service line replacement programs initiated by 90th percentile lead levels are now known not to be sufficient to prevent known or anticipated adverse health effects from lead exposure in drinking water to the extent feasible. As discussed above, improper implementation of corrosion control treatment can result in significant lead exposures and there is new data and evidence that support EPA's finding in this proposal that a mandatory service line replacement requirement applicable to all community water systems is feasible. For more information about EPA's feasibility assessment of mandatory service line replacement, see section V.B.2. of this document. For more information about available funding, see section IV.G. of this document.

2. Feasibility of Proposed Service Line Replacement Requirement and Deferred Deadlines

The proposed LCRI service line replacement requirements are consistent with the SDWA requirements for the rule to ''prevent known or anticipated adverse effects on the health of persons to the extent feasible'' (SDWA 1412(b)(7)(A)). EPA determined that neither of the statutory exceptions in SDWA section 1412(b)(5)(A) for establishing a treatment technique at a level other than the feasible level apply since the proposed mandatory service line replacement requirement does not (1) increase concentrations of other (non-LCR) contaminants or (2) interfere with the efficacy of drinking water treatment techniques or processes used to comply with other NPDWRs. EPA also determined that the statutory authorization in SDWA section 1412(b)(6) to establish a treatment technique that maximizes benefits at a level justified by the cost does not apply here because the benefits of the proposed LCRI service line replacement requirements justify the costs (refer to section VIII. of this document).

EPA finds that a minimum average annual replacement rate of 10 percent, calculated across a rolling three-year period and corresponding to a 10-year replacement deadline, is feasible as defined in SDWA section 1412(b)(4)(D) because it is technically possible for systems of all sizes and affordable relative to large water systems. EPA estimates that a 10-year replacement deadline is feasible for 96 to 99 percent of CWSs nationwide (USEPA, 2023g). In addition, because EPA is proposing to retain the requirement that States set a faster rate where feasible for systems, the proposed mandatory full service line replacement provision would prevent known or anticipated adverse health effects of lead ''to the extent feasible'' (SDWA 1412(b)(7)(A)).

Examples of Systems Replacing All LSLs in 10 Years or Less

EPA is aware of several systems of various sizes and LSL prevalence that have proactively replaced all LSLs in 10 years or less. Some large systems completed their service line inventory and replacement programs in less than 10 years. For example, both Tucson, Arizona (City of Tucson, 2022), and Spokane, Washington (City of Spokane, 2018), replaced all their LSLs in approximately two years. Although these systems had a relatively low number of LSLs (<1,000), EPA notes that, according to projections from Needs Survey responses, this number is representative of the majority of systems—only approximately 1,700 out of nearly 50,000 CWSs nationwide (3.5 percent) are expected to have more than 1,000 LSLs and GRR service lines (USEPA, 2023g). Some smaller systems were also able to complete their service line inventory and replacement programs on relatively short timelines. Both Stoughton and Mayville, Wisconsin, completed their programs in a single year (City of Stoughton Utilities Committee, 2022).

In the cases of the large systems in Flint, Michigan, and Newark, New Jersey, these systems were able to complete or nearly complete their service line replacement programs well ahead of the proposed LCRI's 10-year deadline. Newark took four years to complete replacement (City of Newark, n.d.a). As of July 2023 (the date EPA evaluated this information), Flint had identified and replaced over 97 percent of LSLs, and the city estimates completing all replacements by 2023, seven years after the start of the program (City of Flint, n.d.). Notably, both Newark and Flint received substantial funding and technical expertise. Newark also passed an ordinance in 2019 that allowed entry to private property to evaluate service line materials and replace LSLs (City of Newark, 2019), which likely contributed to faster replacement rates. Flint, however, was known to have service line material records in a logistically challenging paper format with unreliable accuracy (BlueConduit, 2020), which EPA expects slowed their replacement progress relative to other systems that did not have these recordkeeping challenges. Nevertheless, Flint is expected to complete their service line replacement program in less than the proposed ten years.

Regarding NTNCWSs, Needs Survey responses from 147 NTNCWSs showed LSLs are rarely used in these systems since 132 of them did not report any lead, GRR, or unknown service lines (USEPA, 2023g). Of the NTNCWSs listed in SDWIS, only 12 out of more than 17,000 NTNCWSs have more than 1,000 service connections (USEPA, 2023g); therefore, the overwhelming majority of NTNCWSs that do have LSLs and GRR service lines are expected to have relatively few of these service lines requiring replacement over the proposed 10-year deadline.

While EPA is aware that some systems completed their service line replacement programs in more than 10 years, EPA does not interpret these examples as conclusive or dispositive evidence that a 10-year deadline is infeasible. For example, Madison, Wisconsin, completed its LSLR program in just over 11 years (Madison Water Utility, 2014), while Lansing, Michigan completed removal of over 12,000 LSLs in 12 years (EDF, n.d.a). Additionally, these systems developed their inventories and replaced LSLs simultaneously in a shorter period of time than provided under the LCRR and proposed LCRI combined. The LCRR initial inventory deadline of October 16, 2024, combined with the three-year period between promulgation of the LCRI and the start of the 10-year deadline for full service line replacement gives systems more time to complete the service line inventory and replacement requirements than either

the Madison or Lansing program. In addition, substantial funding from the BIL and other sources have already advanced many systems' efforts to identify and replace LSLs.

Feasibility of Service Line Replacement Conducted by All Systems Simultaneously

Stakeholders cited concerns about limited workforce and shortages of materials and supplies as factors that could impede service line replacement progress, especially when all systems in a geographic region are conducting replacement simultaneously (USEPA, 2023m). As mentioned previously, four States (Illinois, Michigan, New Jersey, and Rhode Island) are already or soon to be requiring systems to conduct mandatory service line replacement, which suggests that States expect that it is feasible for an individual system to replace LSLs, even when a broad service line replacement mandate is in effect across a large geographic region. The prevalence of LSLs in these States strengthens the evidence for the feasibility of widespread service line replacement, with Illinois, New Jersey, and Michigan all having greater than 300,000 estimated lead and GRR service lines statewide and Rhode Island with an estimated 75,700 LSLs (USEPA, 2023k). According to the estimates from the Needs Survey, Illinois is among the States with the most lead and GRR service lines in the nation (2nd), while New Jersey and Michigan are ranked 9th and 11th respectively, and Rhode Island is ranked 24th (USEPA, 2023k). Based on available inventory information, an estimated 187 to 331 out of 567 New Jersey systems have at least one lead or GRR service line and are thus subject to the 10-year deadline (see ''New Jersey LSLR Analysis.xls'' in EPA–HQ–OW–2022–0801). Similarly, 415 to 1,028 out of over 1,700 Illinois systems and 222 to 647 out of 1,300 Michigan systems have at least one LSL or GRR service line, further demonstrating the magnitude of systems that are simultaneously replacing LSLs and GRR service lines across large geographic regions (USEPA, 2023g, ''Illinois LSLR Analysis.xls'' and ''Michigan LSLR Analysis.xls'' in EPA–HQ–OW–2022–0801).

Deferred Deadlines for Mandatory Service Line Replacement

One of the goals of EPA's proposed rule is to replace all the nation's LSLs and GRR service lines as quickly as is feasible. EPA estimates that a 10-year replacement deadline is feasible for 96 to 99 percent of CWSs nationwide (USEPA, 2023g). For the limited number of systems for which EPA estimates this deadline is infeasible, EPA is proposing two eligibility criteria for systems to defer their service line replacement deadline past 10 years in accordance with a schedule that is feasible and prevents known or anticipated adverse health effects of lead to the extent feasible. To be eligible for a deferred replacement deadline, systems must meet either criterion or both criteria as described below. EPA notes that systems eligible for deferred replacement under the proposed rule may not need the additional time to replace all LSLs and GRR service lines; therefore, as discussed below, EPA is proposing to retain the provision in the LCR and LCRR that States must set a faster rate where feasible for a system. This proposed requirement would apply irrespective of whether a system is eligible for a deferred replacement deadline under the proposed rule.

The first eligibility criterion for deferred service line replacement is proposed for systems with a high proportion of LSLs and GRR service lines in their distribution system relative to their total number of households served. EPA does not have evidence to support that, for systems meeting this criterion, replacement of all LSLs and GRR service lines in 10 years would be affordable relative to a large system; therefore, EPA cannot conclude that the 10-year timeframe would be ''feasible'' as defined by section 1412(b)(4)(D) of SDWA. EPA is using the number of LSLs and GRR service lines per household because the household metric can be considered as a proxy for the number of individual ratepaying customers or households that can contribute to the overall replacement program costs through rate revenue.

EPA is proposing that systems would be eligible to defer their replacement deadline if they exceed a threshold identified in the rule. The proposed thresholds were calculated to identify the fastest feasible rate for the estimated one to four percent of systems for which the 10-year replacement deadline is not expected to be feasible. Systems would only be able to defer their service line replacement programs for as many years as necessary to ensure systems are replacing all LSLs and GRR service lines as quickly as feasible.

For this analysis, EPA investigated replacement rates achieved by 30 large systems (serving more than 50,000 people) with service line replacement programs (USEPA, 2023g). EPA assumed that the achieved service line replacement rates were affordable and feasible. EPA normalized the achieved replacement rate data by the estimated number of households served to estimate a per-household replacement rate. EPA considers the 95th percentile normalized rate (0.039 replacements per household per year) as the affordability threshold because it avoids setting the rate at the maximum recorded replacements per year rates, which were achieved by systems known to have received technical and financial assistance to support their replacement program that is unlikely to be broadly available when there is a national requirement to replace LSLs and GRR service lines. A stakeholder during the proposed LCRI external engagements recommended evaluating a typical system and avoiding the outlier cases when setting the pace and scope of a replacement program (USEPA, 2023j). Based on estimates developed from the number and type of service lines reported in the Needs Survey, EPA projects that a total of 663 to 2,134 systems (1.3 to 4.3 percent of all systems) would exceed this threshold (USEPA, 2023g) and be eligible for the proposed deferred replacement deadline. EPA is proposing that systems would be permitted to count only known LSLs and GRR service lines reported in their baseline LCRI inventory (the service line inventory submitted at the LCRI compliance date). The purpose of this limitation is to prevent systems from overestimating LSLs and GRR service lines with the number of unknown service lines and to avoid incentivizing systems to delay identifying unknown service lines to be eligible for the proposed deferred deadline provision. The proposed approach would incentivize systems to prioritize identifying unknown lines before the rule compliance date and prior to the start of their replacement programs (*i.e.,* in the three years before compliance begins), creating public health and transparency benefits. EPA is seeking additional data on service line replacement rates achieved by systems in proactive programs (*i.e.,* while any service line replacement rates achieved by systems is helpful, data provided on replacement programs that go beyond service line replacement in coordination with main replacement or emergency repair are especially useful for evaluating a system's capability to replace service lines at a rate that protects public health ''to the extent feasible'').

The second eligibility criterion for deferred service line replacement is proposed for systems that would be required to replace greater than 10,000 service lines per year under the proposed 10-year replacement

requirement. Similar to the per-household deadline deferral option described above, systems would be permitted to count only known LSLs and GRR service lines reported in their baseline inventory to be eligible for this deferral. EPA selected 10,000 as the proposed upper threshold for what is technically possible because of potential system capacity to replace up to 10,000 LSLs per year. For example, Detroit's water system that announced they intend to replace 10,000 LSLs per year (City of Detroit, 2023), which suggests that Detroit's water system expects that this many annual replacements is technically possible. Another example includes the rates achieved by Newark, New Jersey, between January and March 2020 (CDM Smith, 2022). During this period, Newark replaced as many as 100 LSLs per day and maintained this rate 4 to 5 days per week. Due to the COVID pandemic, replacement rates dropped substantially in after March 2020. If this rate of 100 LSLs per day had been maintained for 20 weeks of the year, it would have resulted in between 8,000 and 12,000 replacements (CDM Smith, 2022). This indicates that 10,000 annual replacements could be technically possible for systems.

Based on the Needs Survey, EPA projects that only three to four systems nationally may be eligible for this deferral option (USEPA, 2023g). EPA expects that these atypical systems may not be able to feasibly replace all LSLs and GRR service lines in 10 years because an average annual 10 percent rate across a rolling three-year period would correspond to an atypically high number of required annual replacements, which EPA does not have evidence to support is ''feasible'' as defined in SDWA because it is not ''technically possible.''

There are many possible factors that influence the number of annual replacements that are technically possible, some of which EPA heard during the LCRI external engagements, including seasonal weather changes that shorten the construction season in cold weather climates and contractor shortages in regions with many LSLs and GRR service lines (USEPA, 2023l; USEPA, 2023m). EPA also expects there to be other practical limitations in communities with atypically high numbers of required annual replacements, such as widespread service line replacements and significant street closures interfering with other water system operations. Service line replacement deferrals for a high number of required annual replacements could also reduce labor shortages by preventing larger urban centers from using all the contractors in the region.

EPA is seeking comment on an alternate annual service line replacement threshold of 8,000 replacements. One example of a system achieving this rate is Newark, New Jersey in phase II of their replacement program. This replacement threshold indicates the number of annual service line replacements nationwide that a system has successfully implemented of which EPA is aware. Additional evidence that indicates 8,000 replacements may be technically possible is that under Illinois's Lead Service Line Replacement and Notification Act, Chicago would be required to replace just under 8,000 LSLs per year (see ''Illinois LSLR Analysis'' in EPA–HQ–OW–2022–0801), considering only LSLs and excluding unknown lines. Based on the Needs Survey, EPA projects that only six to seven systems nationally may be eligible for this alternative deferral option (USEPA, 2023g). EPA is seeking comment on its overall deferred deadlines approach and the two eligibility criteria for offering service line replacement deferrals to systems with a high rate of replacement per households and systems with atypically high numbers of LSLs and GRR service lines. EPA is requesting comment on whether to require the State, as a condition of primacy, to approve the use of the deferred deadline provision where the water system qualifies for it and/or whether to require the primacy agency, as a condition of primacy, to assess whether it would be feasible for a system to meet the 10-year deadline or a shorter deadline even if they system meets the regulatory criteria for the deferred deadline. EPA is requesting additional data that indicate which threshold represents the maximum that is technically possible. EPA also anticipates that after ten years, when most systems have completed their service line replacement programs, there will be less competition for workers as well as supplies to conduct replacements. Additionally, EPA anticipates that following ten years, supply chains will have expanded significantly to meet increased demand and that service line replacement efficiency will increase following a decade of system experience and the potential availability of new technologies or procedures to expedite service line replacement. EPA is also seeking comment on whether data are available that would inform if the identified maximum replacement rate threshold could increase after ten years, such as if the threshold could double from 10,000 annual replacements to 20,000. See section IX. of this document for more information.

EPA is not proposing that systems should be able to defer service line replacement for other reasons. Allowing opportunities for systems to delay service line replacement based on other reasons could create loopholes that would impede the achievement of 100 percent replacement of LSLs and GRR service lines as quickly as feasible. Although stakeholders raised concerns during the proposed LCRI external engagements that unforeseen factors, such as supply chain delays and labor shortages, might create temporary delays in a system's replacement program (USEPA, 2023l), EPA's proposed three-year rolling average would provide flexibility when temporary shortages impede a system's ability to replace service lines in a given year (see section V.B.3.).

EPA also assumes that market forces will largely correct for shortages in labor or supplies, especially because the proposed compliance date for the final rule would allow three years for market corrections to occur before the 10-year service line replacement requirements even begin. In making this assumption for the proposed LCRI, EPA considered other examples of markets that are correcting in the context of drinking water requirements because they could be informative here. For example, with respect to the market availability of filters, EPA notes that some systems are already implementing widespread filter programs (Denver Water, 2023a). EPA is requesting comment on the ability of the market to correct for potential shortages in workers and materials to conduct service line replacement, as well to provide sufficient quantities of filters to comply with the service line replacement and other relevant provisions in the proposal. See section IX. for more information.

EPA also expects that system planning efforts can overcome these shortages. For example, to increase contractor capacity to accelerate their replacement rate, the City of Detroit actively engaged with potential contractors in 15 meetings that represented more than 50 organizations (City of Detroit, 2023). The meetings provided an overview of the procurement process and allowed contractors to ask questions. These contractors are being solicited to augment Detroit Water and Sewer Department's 17 new field service technicians who will also be conducting service line replacement. This City is also hiring and training local Detroit

citizens as field service technicians to replace service lines, which will increase worker capacity for service line replacement (City of Detroit, 2023).

In another instance, Newark created a lead service line replacement apprenticeship program to increase worker capacity in the construction trade. As a result of the apprenticeship program, Newark hired 35 people from the community, most of whom were unemployed prior to the program. The apprenticeship program is cited as producing economic and employment benefits, with many of the participants still working with their company even after certain LSLR contracts have ended. While Newark has completed its LSLR program, these workers can contribute to LSLR in other parts of the State under New Jersey's law to replace LSLs in 10 years (Jersey Water Works, 2020; State of New Jersey, 2021). Furthermore, a local collaborative, Jersey Water Works, thinks this apprenticeship program can be replicated in other cities in New Jersey and other States nationally. With the promulgation of the 2023 Lead Poisoning Prevention Act in Rhode Island, any water suppliers and their associated contractors that receive an award of $1 million dollars or greater for an LSLR program from the State infrastructure bank is required to participate in an approved apprenticeship program for all apprenticeable crafts or trades that will be employed on the project at the time of bid (State of Rhode Island, 2023).

3. Service Line Replacement Rate

Rate Construct

In the 1991 LCR, EPA first noted the difficulty in determining a uniform, national LSLR rate to apply to all PWSs following a lead action level exceedance, considering that the number of LSLs and the population size served can vary substantially between systems (56 FR 26508, USEPA, 1991). The Agency had considered alternate rate constructs, such as a binning system, to assign different replacement rates based on different system characteristics but identified difficulties in designing a practical system (56 FR 26508, USEPA, 1991). EPA promulgated a uniform, national minimum LSLR rate of seven percent, corresponding to a 15-year deadline to replace all LSLs, where States must set a faster rate where feasible for systems that exceed the lead action level. The rule allowed for partial replacement and test-outs to count towards the replacement rate. In the LCRR, EPA also promulgated a uniform, national minimum LSLR rate, set at three percent following a lead action level exceedance and at a goal rate determined by the State following a trigger level exceedance, where systems calculate compliance using a two-year rolling average. The LCRR does not allow partial service line replacements or test-outs to count towards the replacement rate.

For the LCRI, EPA is proposing a national minimum average annual service line replacement rate of at least 10 percent, with compliance assessed in accordance with a three-year rolling average, equating to a 10-year replacement deadline. A single, default replacement deadline that would apply to all systems, except for systems required by the State to replace lines by a shortened deadline or estimated to be eligible for a deferred deadline, helps ensure a less complex rule for both systems and States, which was identified as a key priority for the LCRI in the LCRR review.

EPA recognizes that some systems can replace their service lines on a faster schedule than the default 10-year deadline, so, as noted earlier in this section, the Agency proposes to maintain the LCR and LCRR requirement that States set a shortened deadline for an individual system to complete service line replacement where feasible. EPA maintains the reasoning from the 1991 LCR record that ''States will be in the best position to assess the factual circumstances of each individual system to determine the schedule which the system can feasibly meet'' and should be the authority to decide whether individual systems can replace lead and GRR service lines on faster schedules (56 FR 26508, USEPA, 1991). EPA also maintained this finding in the LCRR (USEPA, 2020b). EPA expects this finding is even more true today, given that the implementation of many proactive and mandatory service line replacement programs nationwide has in recent years provided States with additional experience with systems' replacement programs. The proposed requirement that States must set a faster rate where feasible for individual systems helps ensure that the rule will require the replacement of all LSLs and GRR service lines as quickly as feasible, consistent with the SDWA requirement that a treatment technique rule ''prevent[s] known or anticipated adverse health effects on the health of persons to the extent feasible'' (SDWA 1412(b)(7)(A)).

EPA is proposing that States must set a shortened replacement deadline where feasible at any time throughout a system's replacement program and notify the system of the determination in writing, such as when the State determines a shorter deadline is feasible at the beginning of the replacement program or at some point further along the replacement program. For example, new information obtained during the replacement period through inventory investigations may inform the State's decision to require a shorter deadline. This proposed requirement would ensure systems are replacing service lines as quickly as feasible, such as where the conditions relevant to the feasibility of a system's replacement program change. EPA is taking comment on whether States should be required as a condition of primacy to set initial shortened deadlines by a certain timeframe, such as no later than 60 days after the compliance date (for more information, see section IX. of this document).

EPA is proposing a minimum average annual replacement rate that is calculated across a rolling three-year period (*i.e.,* a three-year rolling average). Systems would first assess their average annual replacement rate at the end of the third year of mandatory service line replacement program by taking the average of the annual replacement rate percentages from years one, two, and three. The average annual replacement rate would be assessed on an annual basis thereafter starting at the end of the fourth year of mandatory service line replacement to calculate the average across a three-year period. The replacement rate construct would ensure that systems are making regular progress to replace these service lines while also allowing for flexibility for temporary disruptions to the system's service line replacement program. Establishing a minimum replacement rate allows States to enforce necessary actions sooner rather than later to ensure systems are making regular progress towards service line replacement, versus requiring only a single deadline that would not allow for such enforcement to take place before the deadline.

EPA is proposing to use a rolling average because the Agency recognizes the potential for annual variability in a system's annual replacement program that can affect the percent of service lines replaced each year. During the proposed LCRI external engagements, EPA heard many stakeholders highlight the potential for temporary disruptions to affect the number of service lines a system can replace annually, such as supply chain disruptions, workforce limitations, natural disaster incidents, and factors related to a system's access to conduct full service line replacements like customer consent (USEPA, 2023l; USEPA, 2023m).

EPA is also proposing to extend the two-year rolling average used in the LCRR to a three-year rolling average. Starting the rolling average at the end of the third year of mandatory service line replacement program would allow systems flexibility during the initial years of their replacement programs to identify unknown service lines, create and manage a replacement program, adjust for market corrections in labor and supplies, and obtain funding for service line replacement. It would also provide the system and community served with more time to advocate for or propose changes to water service agreements, State and local laws, ordinances, or regulations, to facilitate full service line replacement, as well as more time for those changes to take effect. For more information about potential changes to water service agreements, laws, ordinances, and regulations, please see section V.B.8. of this document.

A three-year rolling average also addresses stakeholder recommendations for the end of a replacement program, where stakeholders said additional flexibility is needed if there is declining interest in the replacement program, which may require systems to conduct more outreach for customers to consent to replacement (USEPA, 2023j). For example, the rolling average could provide flexibility, so the system remains in compliance if declining customer interest (such as towards the end of a replacement program) or temporary disruptions prevent the system from meeting the minimum annual rate in a single year, so long as the system had achieved higher replacement rates in the previous two years of its replacement program, such that the average of the rate across three years is at least ten percent. The system could then identify and implement strategies to increase their replacement rate in the future. The rolling average could also better allow systems to conduct replacements at prioritized sites, as this approach may take additional time relative to replacing service lines considering only replacement efficiency (*e.g.,* focusing on areas with high LSL density).

Minimum Replacement Rate

In the LCRR, systems serving more than 10,000 people are required to conduct full service line replacement of LSLs and GRR service lines after exceeding the trigger level under a goal-based program at a rate approved by the State as well as to replace service lines under a mandatory replacement program after exceeding the lead action level at a minimum rate of three percent over a two-year period. To calculate the number of service lines requiring replacement in the LCRR, systems add the number of LSLs and GRR service lines in the initial inventory when the system first exceeds the trigger or action level plus the number of unknown lines in the beginning of each year of a system's annual goal or mandatory LSLR program.

EPA has found that its proposed minimum average annual rate of 10 percent calculated across a three-year rolling period is feasible as defined in section 1412(b)(4)(D) of SDWA. See section V.B.2. for a discussion on feasibility of the proposed service line replacement requirements. During the LCRR review and proposed LCRI external engagements, some stakeholders recommended that all LSLs should be replaced as soon as possible but not in more than 10 years, given the benefits of replacement to lower lead exposure from drinking water (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j). Other stakeholders recommended retaining the three-percent rate because a higher rate is more challenging to meet when partial replacements and test-outs do not count as full service line replacements (USEPA, 2023j). Some stakeholders said that the LCRI should maintain the LCR's minimum seven percent replacement rate because the LCRR's three-percent replacement rate was too slow to protect public health, not counting partial replacement or test-outs (see docket no. EPA–HQ–OW–2021–0255; USEPA, 2023j). Other stakeholders said that replacing all LSLs in less than 10 years may not be feasible for many systems that have a large number of LSLs (USEPA, 2023j), and that any timeline should be balanced with other competing activities the system is required to conduct (USEPA, 2023j). While EPA determined that a 10-year replacement deadline is feasible in accordance with SDWA requirements (see section V.B.2.), EPA is also proposing service line replacement deferral options for systems meeting specific criteria because the 10-year replacement may be infeasible, as described in section V.B.2.

EPA is proposing that a system's ''replacement pool'' be calculated and updated annually in a similar way as the LCRR's number of service lines requiring replacement: the sum of the LSLs and GRR service lines in the baseline inventory (the inventory submitted by the LCRI compliance date), any non-lead service lines discovered as lead or GRR service lines, and the current number of unknown service lines in the inventory. The proposal details how a system calculates the annual number of replacements needed for a given program year by dividing the number of lines in the replacement pool by the number of years of the system's replacement deadline (*e.g.,* 10 years, or an alternative deadline for a State-set shortened deadline or a deferred deadline). EPA is proposing the replacement pool be updated annually to subtract unknown service lines identified as non-lead lines as well as to add any non-lead lines found to be LSLs or GRR service lines. Unknown service lines identified to be LSLs or GRR service lines would be recategorized in the replacement pool; although, this recategorization would not change the number of lines in the replacement pool nor would it affect the replacement rate because they would already have been counted as LSLs or GRRs in determining the replacement pool and rate. EPA is also proposing the replacement pool be updated annually to subtract unknown service lines identified as non-lead lines as well as to add any non-lead lines found to be LSLs or GRR service lines. This approach incentivizes systems to investigate unknown service lines at a faster rate to reduce their replacement pool and, therefore, the annual number of replacements they must conduct. Faster identification of unknown lines, including prior to the rule compliance date, would both improve public health protection and transparency with the community.

EPA is seeking comment on its proposed minimum average annual replacement rate and proposed replacement deadline of ten years. EPA is seeking comment on whether it is feasible or systems across the nation to complete service line replacement in a shorter timeframe than ten years, such as in six, seven, or eight years. EPA also is seeking comment on the rate construct approach, including how to calculate compliance with a given service line replacement deadline and average annual rate calculated across a rolling three-year period. EPA also seeks comment on whether systems should be required to meet a given minimum replacement rate in the first three years to give States an opportunity to enforce replacement rate progress sooner than three years after the compliance date. Lastly, EPA seeks comment on the complexity of the rate construct (see section IX. of this document).

4. Scope of Mandatory Service Line Replacement Requirement

Full Service Line Replacement

EPA is proposing to specify which replacements would count as a full

service line replacement in § 141.84(d)(6)(iii)(B) and (C) and which do not count in § 141.84(d)(6)(iii)(D), as described below. While the LCRR used the definition of ''full lead service line replacement'' in subpart A of part 141 to specify full replacement criteria, these are substantive provisions that are integral to the requirements in § 141.84 (the service line inventory and replacement section). Including these substantive requirements in the service line replacement section of subpart I of part 141 instead of the definitions section of subpart A of part 141 should help water systems and States in implementation of these regulatory requirements.

EPA is proposing to modify the requirement in the LCRR definition of full lead service line replacement, which specified that the line had to meet the SDWA section 1417 definition of lead free that is applicable at the time of the full replacement. As raised by stakeholders in the proposed LCRI external engagements, the previous requirement could have required systems to prove that all solder or fittings meet the latest lead free definition in order to count as a full service line replacement (USEPA, 2023m), which was not EPA's intent. EPA recommends removing all sources of lead from drinking water; however, a requirement for the water system to document the material composition of each fitting and all solder in the service line would not be practicable and would divert resources from replacing LSLs and GRR service lines as quickly as feasible as well as likely result in the unnecessary replacement of lead free fittings and solder where documentation of their material is unable to be obtained. EPA is therefore changing the criteria for full service line replacement to require that the new service line (replacing the old line) must meet the proposed LCRI definition for the ''non-lead'' service line material categorization. To meet the definition of ''non-lead,'' a service line must be determined through an evidence-based record, method, or technique not to be an LSL or GRR service line.

EPA is proposing to allow systems to physically disconnect the service line (such as by cutting the pipe) and count the disconnection as a full service line replacement if the service line is not in active use (such as at abandoned properties) and there is a State or local law in place or a system policy documented in writing that prohibits disconnected LSLs and GRR service lines from being put back into service. This proposed flexibility is in response to input heard during the proposed LCRI consultations, where a stakeholder recommended mandatory service line replacement account for cities that are sometimes home to tens of thousands of vacant housing units, which are not in active use and do not pose a risk of lead exposure in drinking water (USEPA, 2023j). This approach would address these lead sources more quickly and at a lower cost than a full service line replacement, which could likely increase the annual number of replacements a system may conduct, reduce costs by avoiding full replacement of lines that are not expected to be used again or by deferring the cost of replacement until the building is used again or the property is redeveloped. These costs savings could benefit the entire community by lowering the costs of the entire replacement program, potentially stretching external funding to conduct replacement of more lines and provide greater health protection to more individual customers. EPA notes that a potential downside of this approach is that allowing these disconnections to count as full service line replacements, which do not generate public health benefits, may delay public health benefits to consumers if these disconnections are conducted before full service line replacements of occupied residences.

EPA is seeking comment on allowing this practice to count towards a full service line replacement under the mandatory service line replacement program, whether the Agency should prohibit reconnection of these disconnected LSL or GRR service lines, and any alternative approaches to this practice. See section IX. of this document for more information.

EPA is also proposing to count full service line replacements where a non-lead service line is installed for use and the lead or GRR service line is disconnected from the water main or other service line. EPA is also proposing that when the lead or GRR service line is disconnected from the water main or system-owned portion of the service line but not removed, the water system must be subject to a State or local law or have a written policy to preclude the water system from reconnecting the lead or galvanized requiring replacement service line to the water main or other service line. EPA is seeking comment on EPA's approach to counting these lines as full replacements.

The proposed LCRI also would not permit lining or coating technologies to count as full service line replacement. Central to this rule is the goal of permanently removing from service all LSLs and GRR service lines in the nation. Lining and coating technologies do not permanently remove these lead sources from service. In addition, the uncertainty of the performance of these technologies over time would potentially require additional monitoring to ensure lead levels at the tap remain low. The added costs of site-specific evaluation to determine if this technology is appropriate, continued site monitoring to evaluate performance, and eventual re-lining or replacement of the service line when it reaches the end of its useful life, may reduce any potential cost savings associated with lining and coating technologies relative to full service line replacement, especially when compared to less expensive replacement methods (*i.e.,* trenchless replacement technologies).

Partial Service Line Replacement

While the LCRR eliminates any requirement for water systems to conduct partial replacements to comply with the rule's mandatory and goal-based LSLR requirements, the rule does not explicitly restrict or ban partial replacements because partial replacements may be necessary to maintain water service in certain cases (*e.g.,* following an emergency repair where the water system does not have access to conduct full service line replacement). The LCRR requires that, when conducting a partial LSLR, systems must provide advance notification to customers along with an offer to replace the customer-owned portion of the LSL and take risk mitigation measures after a partial replacement to reduce lead exposure that may result from the partial replacement, including providing public education and a pitcher filter or point-of-use device. The proposed LCRI, like the LCRR, would continue to prohibit both partial service line replacements and ''test-outs'' (*i.e.,* where a tap sample from the service line tests at or below the lead action level following a minimum six-hour stagnation and is therefore considered ''replaced'') from counting towards the required average annual replacement rate, permitting only full service line replacements to count towards the replacement rate. Research has found that partial LSLR has not been shown to reliably reduce lead levels in the short term and may temporarily increase lead levels due to disruptions of established scales or galvanic corrosion (USEPA, 2011; see sections V.B.6. and V.B.9.), while service lines that have been sampled and have tested-out may contribute to lead at a later date (Del Toral et al., 2013).

In the LCRI, EPA is proposing to prohibit partial service line replacements unless it is conducted as part of an emergency repair or in coordination with planned infrastructure work, excluding planned infrastructure work solely for the purposes of LSL or GRR service line replacement. The exclusion clause would ensure that the rule itself does not cause additional partial replacements to be conducted solely for the purpose of LSL or GRR service line replacement. Planned infrastructure work would include water infrastructure or capital improvement projects that do not solely replace lead and GRR service lines as part of a service line replacement program. EPA discourages partial service line replacement due to its potential to temporarily increase lead levels in drinking water; however, the Agency anticipates an outright ban on the practice could be infeasible (USEPA, 2020b). For example, water systems conducting emergency main replacement may require the removal of at least a portion of the LSL due to the alignment or spacing requirements to connect the new main with existing service lines (USEPA, 2020b; USEPA, 2023j). Although EPA views planned and emergency infrastructure work as an opportunity for coordination with full service line replacement, barriers to access to the customer-owned service line may occur. EPA seeks any supporting or contrary views, any data or analyses about this exclusion of planned infrastructure work from the prohibition on partial service line replacement, and whether there are any additional limitations that could be added to ensure that partial service line replacements are only performed when necessary to avoid greater harms as a result of the emergency or inability to conduct planned infrastructure work for purposes other than solely to replace LSLs and GRR service lines. EPA strongly encourages water systems to conduct full service line replacement in coordination with planned infrastructure work to realize the efficiencies that can be gained (see section V.B.7. of this notice for additional information on service line replacement plans).

EPA considered requests from stakeholders to ban all partial replacements in all circumstances. However, as stated above, the Agency anticipates an outright ban on the practice could be infeasible (USEPA, 2020b). In the case of some emergency repairs, a partial replacement may be necessary to ensure prompt restoration of water service to the customer. Water service is critical to public health as it provides water for drinking, cooking, and sanitation.

LSLs and GRR service lines are likely to undergo significant disturbance as a result of planned infrastructure work or emergency repairs, increasing the risk from all lead sources that remain following the infrastructure work including partial, customer-side LSLs. To address the increased risk as a result of the disturbance, EPA is proposing that the system implements additional risk mitigation actions (see section V.B.6.). Proposed risk mitigation measures would take place immediately following the partial replacement and extend for up to six months after the partial replacement to protect public health. Coordinating replacements with existing infrastructure work may also result in lower costs of the overall replacement program and lower cost impacts to households where the program is funded through rate revenue. A stakeholder noted that this can also benefit low-income customers, who may be paying a larger percentage of their income towards their water bill (USEPA, 2023j). Proposed risk mitigation measures would take place prior to, during, and immediately following the partial replacement and extend for up to six months after the partial replacement to protect public health.

The proposed requirement to prohibit partial replacements, except during the limited circumstances described above, would improve public health protection by further limiting instances of partial service line replacements that pose risks to public health. EPA anticipates it will also strengthen environmental justice outcomes by eliminating partial replacements for lower-income customers solely for the purpose of service line replacement, given the greater costs of full replacement. In cases where partial replacement is planned to occur in coordination with non-emergency infrastructure work, EPA is proposing that systems must offer to replace the customer-owned portion at least 45 days prior to the replacement. The system would not be required to complete the full service line replacement where it does not have access to the customer-owned portion of the line. For more information about EPA's proposed requirements related to access, see section V.B.5. of this document. In the cases where the system is unable to gain access to complete the full service line replacement, it must take the proposed risk mitigation and notification protocols to reduce lead exposure to the consumer(s). The proposed rule also would require systems to include a dielectric coupling separating the remaining service line and the new service line to prevent galvanic corrosion unless the new service line is made of plastic (see section V.B.6. of this document for more information).

EPA is seeking comment on its approach to prohibit partial service line replacement unless the replacement is conducted in coordination with an emergency repair or planned infrastructure work (excluding planned infrastructure work that solely replaces LSLs and GRR service lines as part of a service line replacement program). See section IX. of this document for more information.

Lead Sources Subject To Replacement

Galvanized service lines that are or ever were downstream of an LSL can adsorb upstream lead particulates and contribute to lead in drinking water even after the original lead source has been removed (Deshommes et al., 2010; McFadden et al., 2011). EPA's proposed rule, like the LCRR, refers to these lines as ''galvanized requiring replacement'' or ''GRR'' service lines. Lead particles released from upstream LSLs can adsorb onto exposed iron scales, resulting in a buildup of lead particles in GRR service lines, which can persist even after the upstream LSL is removed (Wasserstrom, 2017). Lead can release from these scales contributing to lead occurrence in drinking water (Deshommes et al., 2010; Pieper, 2017; Sandvig et al., 2008). The co-occurrence of lead with iron was documented in a study in Washington, DC, that found at least 10 homes with galvanized iron premise plumbing that, after full or partial LSLR, still had tap samples exceeding 0.015 mg/L lead, which was attributed to continued release of lead particles from exposed iron scales (McFadden et al., 2011). This study also conducted laboratory experiments on harvested galvanized iron pipes that had been downstream of LSLs specifically and showed elevated lead release over the entire 21 weeks of experiments. Due to the depth of lead scales in these iron pipes, the authors concluded that lead release could be triggered over the remaining pipe lifetime, acknowledging that changes in flow patterns or other site-specific circumstances could impact whether or not such releases occur (McFadden et al., 2011). While one stakeholder recommended that galvanized lines that were downstream of an LSL should be classified as non-lead after a period of time, stating that these lines eventually stop being a lead source (USEPA, 2023j), EPA disagrees with this stakeholder

because the scientific literature does not support a timeline for these GRR service lines to cease contributing lead into drinking water.

These factors are why the LCRR service line replacement requirements include GRR service lines. It is also why the proposed LCRI retains the inclusion of GRR service lines in the mandatory service line replacement program. Where systems are unable to demonstrate that a galvanized service line never was downstream of an LSL, it must be categorized as a GRR service line and be subject to the proposed rule's service line replacement requirement to ensure that all potential GRR service lines are eliminated from the system. By downstream, EPA means that the galvanized service line was located after the LSL and in the direction of flow. For example, a customer's galvanized line would be downstream of an LSL if the LSL was installed in between the galvanized line and the water main.

The LCRR does not include lead connectors in the mandatory or goal-based LSLR program requirements. Lead connectors are short segments of lead pipe that are used for connections, usually between the service line and the water main. These connectors were excluded from the LCRR inventory requirements, and the LCRR did not require connectors to be replaced to meet the mandatory or goal-based LSLR requirements because in many cases connector material records are not available, and field investigating all connector material in the absence of records ''would not be feasible or practical for most systems'' as material identification would generally require disturbing pavement and repaving (86 FR 4213, USEPA, 2021a). The LCRR requires connectors to be replaced when the connector is encountered by the water system during planned or unplanned infrastructure work, which would include the required service line replacement program if encountered. Therefore, even without an affirmative requirement to locate, inventory, and replace a percentage of lead connectors, the LCRR requires the removal of some of these lead sources over time as they are encountered by the water system.

EPA is proposing to retain the LCRR requirement that systems must replace lead connectors as they are encountered, consistent with some stakeholder feedback EPA received during the proposed LCRI external engagements (USEPA, 2023m). While other stakeholders recommended that EPA go farther and require all lead connectors to be inventoried and included in the mandatory service line replacement requirement (USEPA, 2023j; USEPA, 2023l), the proposed rule does not include those requirements because it would reduce the resources available for service line identification and replacement. The approach of the proposal ensures regular progress towards lead connector replacement is made in coordination with other activities, such as planned infrastructure work, while resources are prioritized for replacement of all LSLs and GRR service lines as quickly as feasible. EPA notes that, where lead connectors are encountered during replacement of an LSL, they would be required to be replaced. Thus, all lead connectors that are attached to a lead or GRR service line would be replaced by the end of the mandatory service line replacement program. EPA also expects that many lead connectors may be connected to aging water mains and likely to undergo replacement with routine main replacement activities in coming years. Given the Federal lead piping ban in 1986, any lead connector is expected to be a minimum of 41 years old by the LCRI compliance date in 2027. The average service life of cast iron, ductile iron, and asbestos-cement pipe is 40 years (Florida Department of State, 2010). A recent survey determined that 82 percent of all cast iron mains and 27 percent of all cement mains are over 50 years old (Folkman, 2018). Correspondingly, overall leak rates have increased almost 30 percent between 2012 and 2018, with even greater increases in iron and cement mains (Folkman, 2018). Thus, many aging mains may likely be replaced in the coming years, either because they are at the end of their useful life or because they are leaking, resulting in the replacement of additional lead connectors attached to those aging mains. Main replacement involves cutting pavement, digging, and reconnecting service lines to the new main; therefore, lead connectors replaced in coordination with main replacement can be more efficient and a better use of time and resources. Additionally, as discussed in section V.D.4., EPA is proposing to require lead connectors to be inventoried where records are available as well as where lead connectors are replaced and for that inventory information to be made available to the public. Including in the inventory where lead connectors have been replaced can provide additional information to the public on potential sources of lead in drinking water, which can be especially informative for customers with galvanized service lines or premise plumbing, since these galvanized pipes previously downstream of a lead connector could be a source of lead as further discussed below. These additional requirements increase transparency about this potential source of lead exposure. EPA is also proposing a definition for lead connectors to not exceed two feet to ensure all LSLs are captured in the mandatory replacement requirement (see section V.L.3.) and not improperly categorized as connectors.

Some stakeholders have recommended that EPA require replacement of galvanized service lines downstream of lead connectors because these lines may adsorb lead by the same mechanism as galvanized service lines downstream of LSLs. EPA supports water system efforts to remove any potential source of lead in drinking water, including galvanized service lines that are or were downstream of lead connectors. EPA notes that these service lines are eligible for funding under the $15 billion BIL DWSRF LSLR appropriation along with service line identification and replacement of LSLs, GRR service lines, and lead connectors as well as planning, design, and other pre-project costs directly connected to LSLR. EPA is proposing that the LCRI service line replacement requirements focus on eliminating the most significant sources of lead in drinking water, which are lead and GRR service lines where present, from the system as quickly as is feasible. This approach would not delay the public health benefits associated with replacing these more significant lead sources for customers served by these service lines. It is hypothesized that galvanized service lines that are or were downstream of an LSL may be a more significant lead source than those that are or were downstream of a lead connector, given that previous research has suggested that the length and diameter of LSLs are likely to be key factors in the amount of lead released (Deshommes, 2016; Sandvig et al., 2008). Given that LSLs are tens of feet long, while EPA's proposed definition of connectors does not exceed two feet, EPA expects that galvanized lines downstream of lead connectors may contribute less lead into drinking water than those that were downstream of much longer LSLs.

Additionally, EPA expects that some systems may voluntarily replace galvanized service lines that are or ever were downstream of a lead connector when encountered during main replacement, given the age and likely poor condition of these service lines. The average service life (*i.e.,* the period of service that can be reasonably

expected) of a galvanized steel pipe is 35 years (Florida Department of State, 2010). By the proposed LCRI compliance date in 2027, most galvanized service lines that are or were attached to a lead connector will be a minimum of 41 years old, as lead piping was banned at the Federal level in 1986. An examination of the galvanized pipe and related products certified by NSF to NSF 61 revealed only one manufacturer of galvanized water pipes (National Sanitation Foundation, 2023), so EPA does not expect that it would be common for new galvanized service lines to be installed. Because both the system-owned and customer-owned portions of a galvanized service line would be beyond their useful life, and because it is more cost efficient to simultaneously replace both portions of the service line, EPA expects that some systems may fully replace these galvanized service lines. It is also possible that due to the significant rusting and likely poor condition of these lines, service lines at or past their physical life may break during construction or burst following re-pressurization following a main replacement or following a partial service line replacement, necessitating their replacement to allow for continued water service. EPA expects that some replacement of these galvanized service lines that are or were downstream of a lead connector may occur in coming years with planned or emergency main replacement as well as when these service lines fail. Focusing the proposed service line replacement requirements on LSLs and galvanized service lines that are or were downstream of an LSL will allow these more significant lead sources to be eliminated as quickly as feasible, and with lower overall replacement program costs.

EPA has found limited information of the existence of lead-lined galvanized service lines and little information about their prevalence (MWRA, 2023; Sedimentary Ores, n.d.). A lead-lined galvanized service line is covered by the definition of an LSL under the LCRR (USEPA, 2022b), and this remains true under the proposed LCRI. Therefore, any lead-lined pipe would be required to be categorized as an LSL in the inventory and would be subject to the same proposed LCRI requirements as other LSLs in the inventory, such as mandatory service line replacement, public education, tap sample tiering, and risk mitigation. As EPA notes in its ''Guidance for Developing and Maintaining a Service Line Inventory'' (or the LCRR Inventory Guidance, USEPA (2022b)), systems that attempt to identify lead-lined pipes by visual observation (such as excavation) may not see an interior lead lining, and the guidance contains recommendations for systems to consider information available that indicates the possible presence of lead-lined service lines when categorizing their service lines and choosing material investigation techniques (USEPA, 2022b).

EPA is requesting comment on all aspects of its proposed scope of the replacement requirements, including what constitutes a full service line replacement and which lead sources are subject to replacement under the mandatory service line replacement program. For more information, see section IX. of this document.

5. Water System Access to Full Service Line

EPA is authorized by SDWA to regulate PWSs to include any ''distribution facilities under control of the operator of such system and used primarily in connection with such system'' (SDWA 1401(4)(A)). In the LCRR, EPA permits only full lead service line replacement to count towards a system's replacement rate, but allows the system to remain in compliance if they were unable to meet the mandatory replacement rate because a customer refuses to participate in the replacement program or does not respond to the system after two good faith efforts to reach the customer.

The proposed LCRI would require water systems to replace all lead and GRR service lines, and any lead connectors encountered, that are ''under control of'' the water system. EPA is proposing to treat a service line as under the system's control wherever a water system has adequate access (*e.g.,* legal access, physical access) to conduct full service line replacement. This means that a water system would be in violation of the rule if the system fails to replace a service line in accordance with the proposed requirements even though it has adequate access to conduct a full service line replacement. EPA is proposing to treat a connector as under the system's control wherever a water system has adequate access (*e.g.,* legal access, physical access) to conduct replacement of the connector. EPA is not proposing to delineate the prerequisites or elements of ''access'' that a system would need to conduct full service line or connector replacement because of the wide variation of relevant State and local laws and water tariff agreements as well as the potential for these to change over time. Instead, EPA emphasizes the many requirements proposed in the LCRI, in addition to funding and non-regulatory actions, that can increase a system's access to full service line replacement. EPA is aware of data and anecdotes from water systems demonstrating the ability to increase access for full service line replacement, such as where customer consent or payment is required for access. EPA included in the proposed LCRI requirements and flexibilities to increase access and expedite full service line replacement and are described in detail in the following sections.

Service Line Replacement Plan

As described in section V.B.8. on the service line replacement plan, EPA is proposing that systems include in their plans identification of any State or local laws or water tariff agreement provisions that govern the water system's access to conduct full service line replacement. States would be required to identify any State laws, including statutes and constitutional provisions, that pertain to a water system's access to conduct full service line replacement and notify water systems in writing whether any such laws exist or not by the LCRI compliance date. States must also notify systems within six months of the enactment of any new or revised State law impacting access to full service line replacement. Based on EPA's evaluation of full service line replacement programs, EPA is aware that there are laws and water tariff agreements relevant to whether a water system has access to conduct full service line replacement (USEPA, 2019a; USEPA, 2023g). These include laws governing the water system's physical access to private property to conduct the replacement and the water system's ability to conduct full service line replacement without the expressed consent of the customer and, in some places, without the customer's agreement to pay for all or a portion of the replacement costs.

These proposed service line replacement plan requirements would support and encourage water systems to comply with the proposed rule to conduct full service line replacement when the service line is under control of the system. This is especially important where the water system's self-identified elements of ''control'' of the service line determine whether the water system must conduct the replacement. In some cases, identification of applicable laws and tariffs may help systems to realize they already have access to the full service line for replacement. The requirement to make these potential access barriers

publicly available in the service line replacement plan would also facilitate public engagement on the effect existing State or local laws or water tariff agreements have on a system's access for full service line replacement. Examples of systems and States that have changed existing State or local laws or water tariff agreements to overcome barriers to full service line replacement are described in section V.B.8.

Public Education and Engagement

As described in Section V.H., the proposed LCRI includes additional requirements, along with public education requirements maintained from LCRR, for water systems to better inform customers of the risks of lead in drinking water and the benefits of full lead and GRR service line replacement, which could increase the number of customers willing to provide any necessary physical access where customer consent is required. For example, customers must be notified annually if they have an LSL, GRR service line, or unknown service line, including information about service line replacement, and must also be given notice whenever these lines are disturbed by the water system. EPA is proposing in the LCRI that systems would make a ''reasonable attempt'' to engage the property owner about service line replacement, which entails at least four outreach attempts using at least two different communication methods. Systems must attempt to gain access for full replacement again upon any change in property ownership, even after the systems' replacement deadline has passed. Systems that fail to meet their service line replacement rate are subject to proposed requirements to conduct at least one of a prescribed list of public education activities to discuss their mandatory service line replacement program and opportunities for replacement. With the proposed requirements for systems to provide customer-requested sampling and as well as the requirement to provide prompt notice of consumers' lead sample results, EPA expects some customers might be more willing to provide access based on sampling results. Where compliance sampling tests above the lead action level and is subject to the proposed distribution system and site assessment requirements, a system could identify the presence of a lead or GRR service line as the probable cause for the higher lead levels, which could increase the likelihood that customers provide access for service line replacement. The community as a whole will be better informed of the service line replacement program through their system's publicly accessible inventory that includes proposed requirements for increased transparency and publicly accessible service line replacement plan, in addition to proposed requirements for information about them to be included in the annual Consumer Confidence Report. Systems that exceed the lead action level, in accordance with the LCRR, are required to provide public notice within 24 hours as well as public education within 60 days, the latter of which must include information about service line replacement. Additional public education requirements are proposed after a system has multiple lead action level exceedances, which could further educate customers about lead in drinking water and the benefits of service line replacement. The increased notification and public education, especially after water systems report higher lead levels could increase customer willingness to provide access for service line replacement. For water systems serving a large proportion of consumers with limited English proficiency, the proposal requires public education materials to include information about where consumers can obtain a translated copy of the materials or translation assistance.

EPA is aware of anecdotes supporting the notion that robust public education can increase customer participation in systems' replacement programs. Many of these customer engagement best practices have been incorporated into this proposed rule to facilitate systems reaching the goal of replacing 100 percent of LSLs and GRR service lines in the nation (see above and section V.H.). These anecdotes are summarized below.

Frequent customer communication and engagement using multiple outreach methods was cited as important to obtaining customer consent for full service line replacement. For example, the Lansing Board of Water and Light in Michigan replaced 100 percent of their LSLs over a 12-year period and noted that the system had not sought easements to conduct replacements, relying instead on ''good customer interaction and follow-through'' (AWWA, 2016). Lansing emphasized their engagement strategies, such as brochures and bill stuffers, open houses at local schools and community centers, customer education in their water quality report, letters sent to homes with LSLs, and in-person follow up with the customer prior to the date of the service line replacement to explain the replacement process. A ''comprehensive community outreach effort'' in Detroit, Michigan, is credited as one of the main factors allowing the City to achieve 100 percent homeowner participation to conduct private side replacements in accordance with main replacements (City of Detroit, 2023). The engagement process, which started approximately 40 days in advance of construction, included ''extensive outreach'' that included community meetings in nearby parks or public areas, information packets hand-delivered to each residence, and provision of pitcher filters (City of Detroit, 2023). Officials from Stoughton, Wisconsin, a small system that replaced all of the city's nearly 700 LSLs in 2021, cited phone calls, social media, local newspapers, and an LSLR program website as key to keeping citizens engaged and informed (City of Stoughton Utilities Committee, 2022). Quincy, Massachusetts, another small system, cited use of multiple communication mediums to inform customers about their LSLR program, such as community meetings, a public-facing website, public displays, letters to targeted homes, translated informational letters, and certified mail (MWRA, 2023). The Halifax, Canada water system recognized the importance of customer engagement and recommended the use of communications consultants prior to launching a replacement program. Halifax also recommended sending customers multiple notifications, including targeted communications for those who are scheduled for imminent replacement (AWWA, 2022). Green Bay, who replaced all their LSLs in 2021 (AWWA, 2020) hired consultants to evaluate their communication needs and ultimately decided to hire a full-time staff to lead that effort. They also noted that many customers did not respond on the first notification attempt and recommended diversifying by using all available channels and communication types (AWWA, 2022). Denver Water similarly emphasized the importance of using multiple communication methods and making multiple attempts to reach customers, requiring a customer be contacted twice by mail and once in-person before being added to the ''non-responsive'' list (Denver Water, 2023b). Even upon being added to this list, additional contact attempts when city contractors are in the area are permitted, and an additional outreach approach was developed for those who initially refused contact. Further, if a property on the ''non-responsive'' or ''refusal'' list changes ownership, the outreach

process was automatically restarted. This organized outreach approach resulted in acceptance of full service line replacement in approximately 90 percent of homes, with partial replacements only conducted in one to two percent of homes between 2020 and 2022 (Denver Water, 2023b). Another strategy employed in both Denver and Chicago was conducting a pilot-program in targeted neighborhoods to receive feedback and learn best practices prior to beginning their full-scale programs (Rockefeller Foundation, n.d.).

Partnerships with organizations outside the water system were also cited as increasing customer participation in several service line replacement programs. Denver Water specifically identified and enacted paid partnerships with community organizations who had connections with marginalized communities to build trust in these areas (Wilking et al., 2022). Denver also worked with local administrators of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) who provided geographic data to better understand where homes with people most sensitive to the adverse health effects of lead (*i.e.,* infants and pregnant women) were located. Green Bay's water system employed similar partnerships with local organizations, working with both the local WIC program and pediatricians in the area to better identify high risk populations (AWWA, 2022). Similarly, Toledo's water system partnered with Freshwater Future, an environmental organization already working in the area, to gather input and host lead educational events about the occurrence and risks of lead in drinking water (Rockefeller Foundation, n.d.). Some systems have used designated ambassadors to ensure their message is reached by specific communities. Newark's water system, who has replaced 100 percent of their LSLs, coordinated closely with existing community partners that became ambassadors for the LSLR program (AWWA, 2022). In Philadelphia, following a survey showing that 42 percent of residents drink bottled water instead of tap water, ambassadors were recruited from populations who reported high bottled water use to educate those communities about the activities of the drinking water system and were tasked with engaging community members at events sponsored by the ambassador organization (Drink Philly Tap, n.d.).

In addition to individual customer communication, some water systems conducted community events to promote their service line replacement programs to the public. The previous examples mention systems hosting open houses at local schools and community centers and community meetings to inform the public about service line replacement. Pittsburgh Water and Sewer Authority also used community events, hosting multiple events around the city to hear customer concerns, answer questions, and describe plans for their service line replacement program (PGH2O, n.d.). These events, along with individual outreach efforts prior to starting any construction, helped secure approval for full service line replacement from approximately 90 percent of residents when an LSL was discovered on their property.

Funding and Non-Regulatory Actions Supporting Service Line Replacement

Significant funding is available for covering the cost to replace the customer's portion of the service line, such as the $15 billion from BIL. Section IV.G. of this document summarizes the many funding sources available for service line replacement.

EPA also supports water systems with service line replacement through its water technical assistance (WaterTA) and ''Lead Service Line Replacement Accelerators'' initiatives (see section IV.G. of this document). EPA's assistance may contribute to increased system access to full service lines given the Agency's experience working with many systems and identifying best practices that can inform other water system's replacement programs. In addition. EPA guidance documents ''Strategies to Achieve Full Lead Service Line Replacement'' (USEPA, 2019a) and ''Guidance for Developing and Maintaining a Service Line Inventory'' (USEPA (2022b) contain information and case study examples which may assist water systems in identifying ways to increase their access to identify service line materials and fully replace service lines.

Additional Incentives To Overcome Customer Access Barriers

The proposal contains several additional requirements and flexibilities for water systems to overcome potential customer access barriers and expedite service line replacements. For example, the proposal allows systems to defer CCT steps, including costly and complex pipe loop optimization/re-optimization studies, if they can replace all lead and GRR service lines in their system within five years at a rate of a minimum of 20 percent of lines per year. To take advantage of this proposed pathway, systems are incentivized to find ways to obtain access to each lead and GRR service line to replace 100% of lead and GRR service lines within five years.

Systems are also incentivized to find ways to access each lead and GRR service line for replacement because replacement of these significant lead sources can reduce the system's 90th percentile lead level, decreasing the likelihood of a lead action level exceedance and the subsequent need to install (and maintain) or re-optimize OCCT (that could involve costly CCT studies), replace lead-bearing plumbing or install point-of-use filters (for small systems that choose not to install or re-optimize CCT), and make filters available if the system meets the definition for multiple lead action level exceedances. In addition, for systems without lead and GRR service lines that exceed the action level due to other sources of lead (*i.e.,* premise plumbing), they would be able to conduct less costly, less complex, and less time-consuming CCT studies, such as coupon studies, should they be required to initiate OCCT steps. Other proposed requirements, such as the more rigorous sampling of the first and fifth liter at LSL sites, could also be avoided where systems accessed and replaced all lead and GRR service lines.

In addition, systems that have replaced all their lead and GRR service lines would have to meet fewer public education requirements. For example, systems without lead, GRR, or unknown service lines would not have to meet the proposed notification and risk mitigation requirements after a service line disturbance, as well as the annual notification of service line material type to these consumers. Additionally, systems would not have to meet the proposed requirements for system outreach to individual customers to attempt to gain access for the full replacement if there is a change in the ownership of the property. With the most significant lead sources replaced, systems would also have a lower likelihood of measuring higher lead levels, which are tied to the 24-hour notification requirements after a lead action level exceedance and distribution system and site assessment requirements.

Proposed Requirements When a System Is Unable To Obtain Access

EPA expects that, in cases where customer consent is required by State or local laws to complete full service line replacement, some customers may not consent to replace the full service line. This concern was raised in the proposed LCRI external engagements (USEPA, 2023m). EPA is proposing that, where

customer consent is required by State or local law or water tariff agreement, the system would be required to make a reasonable effort to obtain property owner consent. EPA is proposing that a reasonable effort includes a minimum of at least four attempts to engage the customer using at least two different methods, which is double the outreach as compared to the LCRR and incorporates the best practice of using multiple communication methods to reach the customer. EPA is proposing to explicitly provide that States may require systems to conduct additional attempts and may require specific outreach methods to be used. If customer consent is required by State or local laws and the water system is unable to obtain consent, the water system would not be required to conduct a full service line replacement because, under those circumstances, the full service line would not be ''under the control'' of the operator of the system. EPA is requesting comment as to whether a reasonable effort to obtain property owner consent should be more than four times (*e.g.,* five, six, or seven times).

This proposed requirement is also responsive to some stakeholders who, during the proposed LCRI external engagements, sought a clearer definition of a ''good faith effort'' to contact the homeowner regarding service line replacement and stated that systems should not be held responsible when customers refuse access for replacement of their portion of the line (USEPA, 2023j). In the proposed LCRI, water systems would be required to continue annual outreach at sites where customer consent is required by law or water tariff agreement, but the customer refused to provide consent for replacement and the LSL or GRR service line remains in place. In addition, whenever there is a change in ownership, even after the mandatory service line replacement deadline has passed, the system would be required to offer to conduct the replacement.

During the LCRR review and proposed LCRI external engagements, EPA heard anecdotes of customers refusing replacement, even if it was offered for free, for reasons including mistrust of the water system or government, not believing the replacement is important, or to avoid the disruption to landscaping that may result from a replacement (USEPA, 2023j). A system's existing authority to access the service line and complete the full service line replacement might provide the system with the legal authority to conduct the service line replacement over the objection of the property owner or resident. However, as some stakeholders noted, requiring service line replacement at properties where customers object to their replacement could create potential safety concerns for utility staff. EPA is seeking comment on whether the proposed LCRI should either allow systems to treat those service lines as not under the control of the system and forego replacement of the lines or require systems to conduct full service line replacement in situations where the system has legal access to conduct the full replacement but property owners or residents deny physical access.

Assessment of Service Line Replacement Cost-Sharing Prohibition

Some stakeholders have argued that EPA ''can require full LSLR through the authority granted by the SDWA to regulate 'distribution facilities under the *control* of the operator' of a public water system'' and that ''PWSs exert control over the entire service line, including the part located under private property, in various ways, as recognized by both EPA and water systems themselves.'' These stakeholders argue that full service line replacement is the ''best available technology'' based on the records for the 1991 LCR and the LCRR, the legislative history on the definition of ''feasibility'' in SDWA (See ''NRDC and Earthjustice 2023 Letter.pdf'' in EPA–HQ–OW–2022–0801), and the City of Newark's service line replacement program (City of Newark, n.d.a).

These stakeholders assert that ''full LSLR as a treatment technique and BAT [best available technologies] necessitates the prohibition of cost-sharing'' (*i.e.,* requiring customers to pay for the replacement of their portion of the line). They reason that ''[w]hen utilities rely upon cost-sharing, low-income communities and communities of color are less likely to benefit from full service line replacement. Thus, cost-sharing fails to carry out the statutory mandate to use the best feasible technology or technique available to reduce lead levels across the distribution system controlled by the public water system.'' Therefore, the stakeholders conclude, ''to reduce lead in drinking water and comply with the SDWA and LCR, EPA must prohibit cost-sharing by water systems. Without such a prohibition, either no replacement or only partial replacement will continue to take place in vulnerable communities, with lead levels either remaining the same or increasing, respectively'' (see ''2023–04–28 Authority Letter Final'' in EPA–HQ–OW–2022–0801).

In developing the proposed rule, EPA considered this perspective, but ultimately chose not to ban cost-sharing. EPA is not aware of a factual basis to support the stakeholders' assertion that PWSs control all portions of all service lines. To the contrary, EPA is aware that in some cases, public water systems do not control all portions of all service lines (LSLR Collaborative, n.d.a). EPA is also aware that water systems have conducted systemwide full service line replacement with cost-sharing (*e.g.,* Madison, Wisconsin) (Madison Water Utility, 2014).

Moreover, EPA is concerned that such a prohibition would result in the further delay of full service line replacement. EPA has not used its section 1412 authority under SDWA to direct how a water system covers the costs of compliance with a national primary drinking water rule, which is, at its core, a matter of State and local law. There is no explicit statutory authority for EPA to do so; State and local governments regulate how water systems provide and charge for services to their customers. EPA expects that any attempt to assert Federal authority over how water systems charge for their services would be met with a protracted legal challenge that would delay implementation of the rule.

At the same time, EPA recognizes that the LCR and LCRR include statements that address the question of who pays to replace the portion of the LSL that is not ''owned'' by a water system, asserting that ''[t]he 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'' (see 40 CFR 141.84(e) and (g)(7) in the LCRR and 141.84(d)(1) in the LCR). Consistent with the lack of authority to determine how water systems charge for services, EPA proposes to remove from the LCRI any statements from the LCR and LCRR that address how a water system should or should not cover the cost of replacing services lines under the control of the system as well as statements on whether a water system is or is not responsible for the cost of full service line replacement. Instead, the proposed LCRI remains neutral on this matter of State and local law.

EPA does, however, strongly encourage customer-side service line replacement to be offered at no direct cost to the customer wherever possible to achieve higher customer participation rates and reduce potential environmental justice impacts that may result where customers cannot afford to replace their portion of the line. EPA anticipates the proposed requirements and flexibilities to incentivize systems

obtaining access, as described above in section V.B.5., would also incentivize water systems to fund customer-side service line replacement. Furthermore, significant Federal funding is available for service line replacement (discussed in section IV.G.), some of which is directed to disadvantaged communities least likely to afford full service line replacement. Additionally, Federal civil rights laws, including Title VI as described in sections IV.H. and V.B.9., incentivize systems to achieve full replacement outcomes that do not discriminate on the basis of race, color, or national origin.

6. Risk Mitigation Activities To Reduce Lead Exposures

The LCRR requires systems to take specific risk mitigation actions after various types of disturbances and replacements because of their potential to temporarily increase lead levels in drinking water. The LCRR requires water systems to provide pitcher filters or point-of-use devices certified by an American National Standards Institute accredited certifier to reduce lead in drinking water (along with public education materials and six months of filter replacement cartridges) following partial and full LSLR, replacement of a lead connector, and some disturbances before the affected service line is returned to service. The LCRR also requires that water systems include information for customers to flush service lines and premise plumbing of particulate lead in their LSLR plan.

EPA is maintaining the LCRR requirement that water systems provide pitcher filters or point-of-use devices certified by an American National Standards Institute accredited certifier to reduce lead in drinking water following full and partial replacement of lead and GRR service lines and after replacement of a lead connector, inline water meter, and water meter setter. Research shows that, while flushing can be effective at reducing lead levels, particulate lead spikes are still possible in the short term while the service line reaches stabilization following service line replacement. A study conducted sequential sampling following LSLR at 14 sites across the United States and Canada, where each site was flushed for 15 minutes, both immediately following LSLR and again the day after replacement (Sandvig et al., 2008). The authors noted that many sites registered high lead concentrations, primarily from particulate lead, and that the flushing protocol ''did not adequately reduce these high lead levels.'' While most detected particulate releases took place in the first several days following LSLR, data from one site suggested the potential for lead accumulated in the system to be released for months afterwards (Sandvig et al., 2008). In a more recent study, Brown and Cornwell (2015) examined three more rigorous high-velocity flushing protocols in three communities following LSLR. In all three communities, lead levels above 0.015 mg/L were still observed in at least one sample after flushing, and no flushing protocol tested was able to entirely prevent such lead releases from occurring. Additionally, in the only community examined with pre-LSLR lead data available, lead levels improved or remained below the detection limit in seven homes after LSLR, while there were short-term increases in the remaining five homes (Brown and Cornwell, 2015). Because of the shortcomings of flushing alone, the proposed LCRI would maintain and strengthen the LCRR requirements to provide pitcher filters or point-of-use devices following full and partial replacement of LSLs and GRR service lines and after replacement of a lead connector, inline water meter, and water meter setter.

To further strengthen these risk mitigation requirements, EPA is proposing to revise the regulatory language regarding filter distribution to clarify that water systems are required to provide filters and replacement cartridges to every occupancy, rather than residence, as required in the LCRR, to ensure that non-residence building occupants, such as businesses, also receive filters following replacement or disturbances. While some stakeholders raised concerns during the proposed LCRI engagements about the availability of sufficient filter quantities in the market to meet new demand created by additional rule requirements (USEPA, 2023j), EPA assumes the market will respond to meet the needs of the final LCRI requirements (see discussion in section V.B.2. of this document).

EPA is proposing to maintain the requirement that filter replacement cartridges be provided for six months. Many stakeholders recommended the use of filters for six months following service line replacement (USEPA, 2023h; USEPA, 2023i). The six-month timeframe would allow consumers to continue drinking filtered water while waiting for the results of their follow up tap sample, which EPA proposes that water systems take between three and six months following replacement. EPA also notes that some filters are certified to reduce lead in drinking water with one cartridge lasting six months, depending on water usage. For water systems using these filters, only one filter cartridge may be needed when assuming typical water use.

In addition, EPA is proposing a new mitigation requirement that, following partial service line replacement, water systems would be required to install a dielectric coupling separating the remaining LSL or GRR service line and the replaced service line unless the replaced service line (*i.e.,* new service line) is made of plastic. This requirement aims to reduce the risks of galvanic corrosion between lead and other metallic pipes because resulting lead release has been documented in previous lab-scale studies (DeSantis et al., 2018; Triantafyllidou and Edwards, 2011; Wang et al., 2012). Multiple laboratory experiments using harvested pipes have shown substantial decreases in lead release when the electric connection is broken or dielectric couplings are inserted (Clark et al., 2013; St. Clair et al., 2016; Wang et al., 2013), lending credence to the value of requiring the insertion of such couplings. Additionally, the Science Advisory Board noted in 2011 that ''[i]nsertion of a lead-free dielectric eliminates galvanic corrosion at the new pipe junction by breaking the electrical circuit between the new and old pipes,'' concluding that ''insertion of a dielectric will likely reduce lead levels in tap water, but it cannot confidently estimate the magnitude of the reductions because the contribution of galvanic corrosion and depositional corrosion to drinking water lead levels has not been quantified'' (USEPA, 2011). EPA is requesting comment on the requirement to include a dielectric coupling and request comment on other risk mitigation steps water systems could take.

The proposed LCRI clarifies the type of tap sample (*e.g.,* first liter, paired first and fifth liter) water systems would be required to offer to customers following full and partial service line replacement to conform with proposed requirements under tap sampling (see section V.C. of this document). Following a full service line replacement, the proposed rule would require a first-liter sample to be taken, as higher lead levels are not expected in the fifth liter, which has stagnated in contact with the new, non-lead service line. Following a partial service line replacement, systems would be required to take a first- and fifth-liter sample to screen for lead in the service line as well as premise plumbing.

EPA is proposing to retain the requirement that water systems conduct risk mitigation steps following disturbance of a lead, GRR, or unknown service line. Following operations that cause the water to be shut off or

bypassed, EPA is proposing that systems must provide customers with flushing instructions before the affected line is returned to service. Following more significant disturbances, such as those that result in the pipe being cut, EPA is proposing to also add the requirement that the customer be provided with a filter. EPA is proposing to require risk mitigation actions following disturbances resulting from physical action or vibration (*e.g.,* mechanical or vacuum excavation during service line material investigations). For more information, see section V.H.2. EPA is proposing that risk mitigation actions after a disturbance apply to lead status unknown service lines, given the possibility they might be LSLs or GRR service lines. For example, in the case of significant disturbances, EPA is proposing that systems must provide filters to their customers with unknown service lines, just as EPA is proposing for LSLs or GRR service lines.

7. Service Line Replacement Plan

The LCRR introduced the requirement for systems to develop an LSLR plan to allow them (1) to quickly commence a systemwide replacement program following a lead trigger level or action level exceedance and (2) to be ready to complete customer-initiated LSLR requests regardless of their 90th percentile lead level. Additional plan elements were included to advance public health protection, efficiencies, and equity in the overall replacement program. The required plan elements included:

- A strategy for determining the composition of lead status unknown service lines in the system's inventory;
- A procedure for conducting full LSLR;
- A strategy for informing customers before a full or partial LSLR;
- For systems that serve more than 10,000 persons, an LSLR goal rate recommended by the system in the event of a lead trigger level exceedance;
- A procedure for customers to flush service lines and premise plumbing of particulate lead;
- An LSLR prioritization strategy based on factors including but not limited to the targeting of known LSLs, LSLR for disadvantaged consumers and populations most sensitive to the effects of lead; and
- A funding strategy for conducting LSLRs that considers ways to accommodate customers that are unable to pay to replace the portion they own.

The proposed LCRI updates and expands on the LCRR's LSLR plan requirements. The service line replacement plan is important because a well-developed plan can facilitate timely compliance with the proposed mandatory service line replacement requirements and, therefore, provide greater public health protection and replacement program efficiency. First, EPA is proposing that systems must identify any State and local laws and water tariff agreements relevant to the water system's ability to gain access to conduct full lead and GRR service line replacement as well as a citation to the source of the requirement (such as any specific State or local law or water tariff agreement provision that requires property owner consent for replacement or cost-sharing). Should these laws or agreements change in the duration of the replacement period, the proposed rule would not require systems to update the plan to reflect those changes. EPA is seeking comment on whether a requirement to update the plan is necessary to fulfill the purpose of the plan or whether a recommendation from EPA for systems to update this component of the service line replacement plan would be adequate. See section IX. of this document.

Second, EPA is proposing that water systems must create a communication strategy to inform customers and consumers (*e.g.,* property owners, renters, and tenants) served by the system about the service line replacement plan and program. This proposed plan element assures that both the consumers and owners of rental properties are aware of the water system's program to replace lead and GRR service lines and ensures that both tenants and their landlords have information about the program. This proposed requirement is responsive to stakeholder feedback about renters not having the authority to approve full service line replacement (USEPA, 2023h; USEPA, 2023i), ensuring that the proposal at least includes a provision to keep renters informed about the system's planned activities.

In addition, the LCRI proposes to remove the requirement that systems recommend a goal replacement rate in their plan because the proposal eliminates the goal-based LSLR program. The proposed LCRI maintains LCRR plan elements that remain relevant to achieving timely compliance with the replacement requirements, such as strategies for inventory development, procedures for full service line replacement, a customer communication strategy to take place before the replacement occurs, flushing instructions to reduce particulates following service line disturbances or replacements, a replacement prioritization strategy (including but not limited to local communities particularly or disproportionately impacted by lead, populations most sensitive to the effects of lead, and high-risk areas identified through lead data), and a funding strategy for conducting replacements. EPA is aware of a system that developed and completed an LSLR prioritization program that identified and replaced LSLs at daycare facilities and sites where lead previously tested high (PGH2O, 2023).

EPA is proposing that water systems must develop, submit to the State, and publish a service line replacement plan by the proposed LCRI compliance date, three years following promulgation of the final rule. Providing three years allows time for meaningful plan development. For example, EPA strongly recommends water systems engage their community in the development of the service line replacement plan. EPA expects that some plans may continue to be refined until full service line replacement requirements begin. EPA is also proposing to require the plan to be made publicly available, which would increase transparency about the service line replacement process and ensure the community is informed about all aspects of the system's replacement program. Increasing the transparency of the process provides an opportunity to get the community more involved in the replacement process and support the success of the program. EPA is proposing that systems serving over 50,000 people make the plan available online, which is the same proposed size threshold for systems that must make their inventory available online. EPA is seeking comment on whether this size threshold for publishing the inventory and replacement plan online should be lowered (See section IX. of this document).

8. Impact of State and Local Laws on Service Line Replacement

There are several possible approaches water systems could use to overcome barriers to full service line replacement, some of which may be unique to the CWS. Specific State and local factors (*e.g.,* State laws, local ordinances, and available funding) can affect how a water system achieves 100 percent replacement of LSLs and GRR service lines as quickly as feasible (LSLR Collaborative, n.d.f). For example, in many communities, a significant barrier to achieving higher rates of customer participation in a service line replacement program is lack of adequate financial resources combined with a requirement that the customer pays to replace all or a portion of the service

line (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j; USEPA, 2023m). A system might not require customer cost-sharing for a replacement where it has external funding that either allows or requires the system to use the funds to replace the customer's portion of the service line: such an approach would mitigate or eliminate any barrier to full service line replacement as a result of customer cost-sharing. Achieving 100 percent customer participation through a single strategy, such as securing funding for customer-side replacements, may obviate the need for using an additional approach. Below EPA has provided examples of a range of strategies that systems, municipalities, and States have used to overcome both financial and non-financial barriers to full service line replacement.

Examples of Systems and Municipalities Overcoming Access Barriers

EPA's guidance document titled, ''Strategies to Achieve Full Lead Service Line Replacement'' (USEPA, 2019a), highlights water systems that have amended water service agreements to facilitate service line replacement. The document highlights the Milford Water Company (Milford, MA), who amended their service agreement to temporarily allow the system to replace customer-owned LSLs at the system's expense. EPA expects that many water systems could similarly consider, depending on the exact language of the agreement and the process to change it, temporarily or permanently revising service agreements to overcome access barriers to facilitate full service line replacement.

Several communities have changed local ordinances to facilitate full service line replacement. For example, in 1986, the City of Woonsocket, Rhode Island, ''adopted a policy that builders must replace LSLs when a building is sold, demolished or replaced'' (LSLR Collaborative, n.d.a). Other local ordinances require customers to replace their portion of the LSL in coordination with other water infrastructure work, such as during main replacement or emergency repair, or in accordance with a system's proactive service line replacement program, such as the ordinances adopted in the Cities of Appleton and Madison in Wisconsin (City of Appleton, 2022; Madison Water Utility, 2014). With its ordinance, Madison was able to replace all LSLs in the distribution system (Madison Water Utility, 2014). In Milwaukee, Wisconsin an ordinance requiring full service line replacement allows customers to find their own contractor or to authorize the city contractor to replace the customer portion of the line. The ordinance applies when the system-owned portion is being removed on a planned or emergency basis and requires the city to notify the customer before the commencement of a planned water system-owned LSLR (City of Milwaukee, 2023). The Wisconsin Department of Natural Resources includes information on their website to facilitate planning for replacement programs, including the decision of whether to mandate customer replacement by ordinance (WI DNR, 2022), and includes several example ordinances that Wisconsin municipalities have passed to require service line replacement to assist communities in drafting their own ordinances (WI DNR, 2020). This action provides examples to communities that choose to use ordinances to overcome access barriers. Other examples of system or local actions to overcome access barriers have been highlighted by the Lead Service Line Replacement Collaborative (LSLR Collaborative, n.d.a).

Examples of States Overcoming Access Barriers

Several States have changed laws or ordinances to facilitate full service line replacement. A 2019 report from Harvard and the Environmental Defense Fund found that six States (Indiana, Michigan, Missouri, New Jersey, Pennsylvania, and Wisconsin) have expressly authorized the use of ratepayer funds for LSLR on private property. Further, customers in those States except Wisconsin are not required to contribute funding toward replacement of their side (Wisconsin allows the utility to provide up to 50 percent of the cost as a grant and the remainder as a loan to alleviate the financial impact) (Goho, Saenz, and Neltner, 2019). The States generally justified using ratepayer revenue for replacements on private property by citing the benefits of full LSLR to public health and the economic efficiency of replacing both portions simultaneously. Specific examples of State actions to facilitate LSLR are summarized below.

Michigan is one of the most notable examples, where in 2018 the State's Lead and Copper Rule was updated to require water systems to replace the entire service line it controls at the expense of the water system, and where the system does not own the entire service line, it must notify the property owner (or their authorized agent) that the system will replace the owner's portion at the system's expense. This change makes full service line replacements available to all customers, regardless of their income (Michigan Administrative Rules, 2020).

Wisconsin also changed the State law to facilitate full LSLR, allowing a utility or municipality to seek approval from the State Public Service Commission to provide customers with financial assistance to replace their portion of the service line (Cowles et al., 2017). Indiana passed a similar law in 2017, where the Indiana Utility Regulatory Commission was granted authority to allow water rates at investor-owned utilities to fund LSLR, provided the system submits a plan and demonstrates it is in the public's interest (Indiana Senate Republicans, 2017). Allowing water rates from all customers to contribute towards customer-owned service line replacements can reduce or eliminate the direct financial impact of replacement on individual customers, making full service line replacement more accessible to lower-income customers.

Pennsylvania passed two laws to allow rate funds to be used in certain conditions to replace LSLs on private property. For municipally owned systems, a 2017 law authorizes municipalities to replace or remediate private water and sewer laterals using public funds and municipal employees to conduct the work, should the system determine the work will benefit public health or the system. The law does not change ownership of the lateral or impose any other duties following system funding or replacement of the service line, unless determined to be necessary by the system (Pennsylvania General Assembly, 2017). For investor-owned utilities, a 2018 law creates a pathway for these systems to recoup the costs of customer-owned LSLR using rates paid by all customers, if approved by the State Public Utility Commission (Pennsylvania General Assembly, 2018). This law followed a Commission decision allowing an investor-owned water system to use rate revenue to fund customer-owned replacements after it was required to conduct LSLR following a lead action level exceedance. The Commission found that it was in the public interest to prevent risky partial replacements from occurring and to avoid relying on property owners to replace their portion (EDF, n.d.b).

New Jersey passed two laws facilitating full service line replacement both financially and with respect to private property access. In January 2020, a law was passed that grants municipalities the authority to adopt an ordinance allowing water systems to enter private property to conduct LSLR (Ruiz, 2019). The law allows private property access without the property

owners permission, provided that the owner was given at least 72 hours prior notice. This law was cited as especially benefitting communities with renters, allowing LSLR to occur ''to protect families and individuals living in homes with unresponsive landlords'' (State of New Jersey, 2020). Newark, whose population of renters comprises 75 percent of city residents, had already passed such an ordinance, which had allowed the city to ''[replace] lead service lines faster, more houses at a time, and at lower cost'' (State of New Jersey, 2020). This law followed 2018 legislation authorizing municipalities to replace LSLs on private property if the work is an environmental infrastructure project and funded either by loans from the New Jersey Infrastructure Bank or by loans issued through the Department of Environmental Protection (Senate and General Assembly of New Jersey, 2018).

In 2023, the State of Rhode Island passed a law requiring all LSLs and service lines with galvanized steel or iron in the State to be replaced within 10 years (contingent upon available funding) (State of Rhode Island, 2023). Rhode Island has an estimated 75,749 LSLs in the State, ranking 24th in the nation with respect to their projected number of LSLs (USEPA, 2023k). This law includes several provisions to facilitate equitable full service line replacement, including requirements that building owners inform their tenants of the presence of lead. Additionally, the law requires the property owner to disclose the presence of an LSL upon transfer of ownership. The law mandates the Rhode Island Infrastructure Bank to prioritize allocation of funding for customer-side service line replacement based on factors including, but not limited to, disadvantaged water suppliers and populations most sensitive to the effects of lead. Systems may also submit requests to the State to reimburse customers for costs incurred during replacement of the customer-owned portion at any time after January 1, 2018 (State of Rhode Island, 2023).

Other States have provided funding to cover the cost of replacing the customer's portion of the service line and set official goals and directives to prioritize identification and replacement of LSLs and GRR service lines. As mentioned in section IV.G. of this document, the State of Minnesota approved $240 million for these efforts and has established a LSLR grant program that must cover 100 percent of the cost of replacing the customer's portion. The funding will be available in 2024 until June 30, 2033, which corresponds to the year the State has set as their official goal for replacing all LSLs (State of Minnesota, 2023). In the State of Washington, the governor issued a directive in 2016 to the State Department of Health and other agencies with a goal of identifying all LSLs and lead components in two years and replacing them within 15 years (State of Washington, 2016). The governor ordered the State Department of Health to prioritize the removal of LSLs and other lead components in water distribution systems when considering funding proposed through the DWSRF. A Washington State Department of Health survey informed the State of ongoing proactive system efforts, helped ''align, compile, and accelerate ongoing efforts,'' allowed them to follow up about survey responses and provide technical assistance, and drew media attention to community efforts to address lead in drinking water (LSLR Collaborative, n.d.b).

Perceived Barriers

EPA has heard that some water systems will not use rate revenue to pay for service line replacement on private property because they think that they lack legal authority to do so. The Harvard and Environmental Defense Fund report mentioned above found no explicit barriers to using water rates to fund LSLR on private property in the State laws and policies of the 13 States with the most LSLs (representing 4.2 million LSLs) (Goho, Saenz, and Neltner, 2019). EPA's ''Strategies to Achieve Lead Service Line Replacement'' guidance document contains examples from two States where public funds are authorized for repair or replacement of water and/or sewer laterals on private property in some cases (USEPA, 2019a). EPA expects the proposed LCRI requirements that systems and States to identify these kinds of barriers to accessing full service line replacement, including the source of the barrier, would help to alleviate misunderstandings about perceived barriers where they may exist.

9. Environmental Justice Concerns

The LCRR included requirements to result in increased beneficial equity impacts relative to the LCR requirements in several ways. To reduce the number of partial replacements and test-outs conducted, only full LSLRs are permitted to count towards the goal and mandatory replacement rates in the LCRR. The LCRR also requires systems to develop a funding strategy to conduct LSLR where the customer may not be able to afford to replace their portion of a line and to create a replacement prioritization strategy in their LSLR plan based on factors ''including but not limited to the targeting of known lead service lines, lead service line replacement for disadvantaged consumers and populations most sensitive to the effects of lead'' (40 CFR 141.84(b)(6); USEPA, 2021a).

In the LCRR review, EPA concluded that a new rulemaking informed by information and data about the impacts of LSLR requirements on communities, should prioritize increased ''public health protection for those who cannot afford to replace the customer-owned portions of their LSLs'' (86 FR 71574, USEPA, 2021b). Many stakeholders during the proposed LCRI external engagements also voiced concern about the environmental justice impacts of the LCRI, especially given disproportionate exposure to lead from other sources in overburdened communities (USEPA, 2023h; USEPA, 2023i; USEPA, 2023l).

EPA conducted an environmental justice analysis to inform the Agency's understanding of how the proposed LCRI could impact communities with environmental justice concerns. As part of the analysis, EPA evaluated potential environmental justice concerns associated with lead in drinking water in the baseline and the proposed LCRI, including consideration of whether potential environmental justice concerns are created or mitigated by the proposed LCRI relative to the baseline (USEPA, 2023f). For the environmental justice analysis, EPA compiled recent peer-reviewed research on the relationship between lead exposure and socioeconomic status and found that Black, Indigenous, People of Color (BIPOC) and/or low-income populations are at higher risk of lead exposure and associated health risks. EPA also conducted an analysis of seven case study cities and found a range of outcomes with respect to the sociodemographic and housing unit variables in areas served by LSLs in the cities investigated. The baseline primarily provides for systems-level observations for the seven cities studied relative to LCRI, given the present lack of nationwide data available on LSL presence. However, as indicated below, EPA may be able to draw likely broader observations due to the literature review and common findings across multiple case study cities. In its case study analysis, EPA found that block groups with LSLs often had higher percentages of low-income residents, renters, and People of Color (specifically, Black, Hispanic, or linguistically isolated individuals) compared to block groups without LSLs, however there was little evidence that the number of LSLs per

capita was positively correlated with block group demographic characteristics for these seven case studies. However, block groups with the highest number of LSLs per capita (top quartile) had a notably larger percent of Black residents than the service area as a whole for five case studies. Measures included to capture the possibility of other sources of lead—traffic density and pre-1960 housing—were also notably higher in block groups with LSLs compared to those without. The percent of housing built prior to 1960 was also positively correlated with the number of LSLs per capita for every case study and was also elevated in the top quartile compared to the service area as a whole. A study presented by USEPA Office of Research and Development researchers shows strong correlations between LSL prevalence and children's elevated blood lead level prevalence (%EBLL) for two cities, both individually and combined, by Census tract (Tornero-Velez et al., 2023). Regression analysis revealed that LSL prevalence was a stronger predictor of elevated blood lead level prevalence compared with two lead indices for paint (U.S.EPA's EJSCREEN 2017 Pb Paint EJ Index or U.S. Department of Housing and Urban Development's (HUD) Deteriorated Paint Index).

The small number of case studies included in the analysis do not permit generalizing the findings beyond these individual systems. The heterogeneity in socioeconomic and housing characteristics within service areas and relative to the prevalence of LSLs across systems highlights the importance of individual system characteristics on potential environmental justice concerns associated with baseline LSL presence. Service line inventory information at the State or national level is generally limited at this time recognizing the initial LSL inventory required under the LCRR is not due until October 16, 2024. As more systems continue to develop and publish inventories under the LCRI, this LSL location data will become more readily available and may allow for broader study of the distributional impacts of LSL presence. EPA also notes that while LSLs are the greatest source of lead in drinking water where present, several factors can affect lead levels, such as the presence of other lead sources in contact with water, localized water chemistry, the presence of systemwide corrosion control treatment, consumer water use behavior, service line disturbances, and sporadic release of lead particulates.

In summary, EPA found in its literature review that there are environmental justice concerns associated with lead exposure in the baseline. With respect to EPA's case study analysis, the data indicate a range of environmental justice concerns associated with baseline LSL presence. It is important to note that results obtained from these case studies only represent the environmental justice issues of seven cities throughout the U.S. and cannot be extrapolated to determine national trends. Nevertheless, considering both the results of the literature and the case studies, other cities that contain LSLs likely face these or other environmental justice concerns related to LSL presence. In addition, systems that do not incorporate equity into their service line replacement planning and program design may inadvertently create or exacerbate disproportionate impacts in communities with environmental justice concerns. The next paragraph summarizes several proposed LCRI requirements that could result in benefits for communities with environmental justice concerns. EPA expects that these provisions included in the proposal, such as service line replacement prioritization, would reduce baseline differential impacts associated with lead exposure from drinking water.

EPA's proposed service line replacement plan contains several elements that could improve the equitable outcomes of replacement, which informed EPA's understanding of the impacts of the proposed LCRI. EPA is proposing to retain the LSLR plan elements under the LCRR requiring water systems to identify a replacement prioritization strategy and a funding strategy for conducting full service line replacement. Where the water system intends to charge customers for the cost to replace all or a portion of the service line because it is authorized or required to do so under State or local law or water tariff agreement, the funding strategy must include a description of whether and how the water system intends to assist customers who are unable to pay to replace the portion of the service line they own. The proposed LCRI also adds several new requirements to the LSLR plan to further facilitate proactive planning as well as to improve accountability in implementation. One would require systems to create a strategy to achieve full LSLR at rental properties to reduce instances where LSLs or GRR service lines are left in place at these locations, which may create disparities where tenants want the full replacement performed but the property owner refuses access. This could also potentially increase participation at non-owner-occupied investment properties, where EPA is aware of customer participation being lower than at owner-occupied properties (MWRA, 2023). EPA is also proposing to require systems to make the service line replacement plan publicly available. This requirement would allow the community to hold the water system accountable for the design and implementation of their plan.

The plan would also include a new proposed element requiring systems to identify potential barriers to access for full replacement in local ordinances and water service agreements. States would also be required to identify potential barriers to full service line replacement in State laws, including statutes and constitutional provisions, in their application for primacy for the LCRI. The proposed LCRI would not change State or local laws, ordinances, or service agreements. However, by identifying these potential barriers and making the information publicly accessible in the replacement plan, these proposed requirements can better support a community discussion about where barriers exist and how best to address them as part of the replacement program. For examples of how system, municipal, and State actions have facilitated full service line replacement, see section V.B.8. of this document.

Proposed increased flexibility relative to the LCRR with the replacement rate construct can also facilitate the system implementing its prioritization strategies while maintaining compliance with the proposed 10-year replacement deadline. EPA is proposing that systems calculate compliance with service line replacement on a three-year rolling average. This can provide systems with additional time that may be needed to replace service lines at prioritized sites, such as schools and child care facilities throughout the service area or areas with higher lead exposure, as opposed to focusing only on areas with a high LSL density, where replacement may be more efficient.

As discussed previously, EPA is also proposing to ban partial replacements unless conducted in response to emergency repairs or planned infrastructure work (excluding service line replacement programs). Partial replacements are often associated with elevated drinking water lead levels in the short-term, from days to months and potentially longer, and have not been shown to reliably reduce lead levels in the long-term (USEPA, 2011; St. Clair et al., 2016; Triantafyllidou and Edwards, 2011; Brown et al., 2011). Where partial replacements will occur, EPA is

proposing that systems must give customers the chance to participate in the full replacement as well as provide notification and risk mitigation prior to infrastructure work and during emergency repair (if before is not possible). These proposed requirements would prevent systems from creating harmful partial replacements, likely disproportionately at low-income households, as a result of the rule's replacement requirements. For more information about this proposed requirement, please see section V.B.4. of this document.

EPA emphasizes that a significant amount of external funding is available for full service line replacement, which may reduce the costs of replacement for individual customers as well as impacts on household water bills to fund the broader replacement program. For example, the $15 billion from the Bipartisan Infrastructure Law directs 49 percent of the funding for LSL identification and replacement to disadvantaged communities as grants or principal forgiveness. Please see section IV.G. of this document for a full discussion of the external resources to support service line replacement.

As recommended by some stakeholders during the LCRI external engagements, EPA considered proposing specific prioritization criteria for service line replacement, such as homes with elevated blood lead levels or other health and environmental stressors (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j), but given the unique characteristics and needs of each community, EPA is concerned that specific criteria included in a national rule could be overly broad or miss populations of concern. It could also create additional implementation challenges for systems to determine relevant and appropriate data required for certain prioritization, such as household level data on finances and family size, as suggested by stakeholders (USEPA, 2023m). These potential detriments of specific prioritization criteria were noted by some stakeholders (USEPA, 2023l). The proposed approach—requiring systems to develop the prioritization strategy in the service line replacement plan and make the plan publicly available—would allow systems to plan in accordance with the data available for their communities and ensure the strategies are more responsive to specific community needs and implemented effectively. EPA encourages water systems to consider locally relevant community indicators, where relevant data is available to the water system, to support the prioritization of lead service line replacement in their service line replacement plans. For example, systems could consider information on other sources of lead exposure, such as homes likely to contain lead paint (*e.g.,* using housing age as a metric) or homes nearby lead emitting facilities. Systems could use blood lead level information collected over time to inform overexposed communities. Systems could also use available tools to support their prioritization process, such as the Climate and Economic Justice Screening Tool (CEJST) (CEQ 2022).

EPA also emphasizes the obligations that systems that are recipients of Federal financial assistance have under Title VI of the Civil Rights Act, which prohibits discrimination based on race, color, or national origin for any program or activity receiving Federal financial assistance. For more information, see section IV.H. of this document.

EPA also highlights proposed improvements to the rule's public education requirements that can address stakeholder concerns about potential inequities for customers with limited English proficiency to be informed about service line replacement as well as general information about lead in drinking water. See section V.H. for more information about these proposed requirements.

C. Tap Sampling for Lead and Copper

Tap sampling for lead and copper is required to evaluate CCT performance and serves ''to identify the need for additional treatment and to ensure that adequate treatment is installed'' (56 FR 26514, USEPA, 1991). Tap sampling is not intended to assess exposure to lead and copper in drinking water, but to identify situations where the water is too corrosive. A system's compliance with the treatment technique rule is determined through requirements to optimize CCT. A system's compliance with the treatment technique rule is not based solely on tap sampling results, but rather if a system complies with the required actions, such as evaluating corrosion and installing or re-optimizing OCCT. Tap sampling results identify situations where the corrosivity of water can be reduced by installing or reoptimizing CCT, and where other actions, such as public notification, can reduce lead risk.

EPA designed tap sampling requirements in the LCR primarily to evaluate the corrosion of lead and copper sources present in the distribution system. Water systems are required to sample at higher risk sites using a sampling protocol to ''assess the degree to which a system has minimized corrosivity for lead and copper'' (56 FR 26520, USEPA, 1991). Tap sampling under the rule is not intended to represent typical consumption; rather, it is intended to determine the effectiveness of CCT and to determine if actions are needed to reduce lead levels (USEPA, 2020b).

In addition to CCT, the LCR and LCRR use tap sampling results to determine if water systems are required to conduct LSLR and public education. Under the proposed LCRI, EPA is maintaining the use of tap sampling for some public education requirements (see section V.H.). EPA is proposing to require mandatory service line replacement regardless of system's lead tap sampling results (see section V.B.) and proposing additional improvements to the tap sampling protocol discussed further in this section.

1. Sample Collection Locations and Methods

The LCRR revised the tap sampling requirements in several ways to better detect sites with higher lead levels. The LCRR maintains the tiering structure established in the LCR for prioritized, targeted monitoring of higher-risk sites, with the highest priority tiers (Tiers 1 and 2) comprised of sites with LSLs representing the sites with the highest risk. Tier 1 sites include single-family structures served by LSLs and Tier 2 sites include multi-family residences served by LSLs. The LCRR requires water systems with LSLs to create sampling pools entirely from sites in Tiers 1 and 2, up from 50 percent in the LCR, until there are an insufficient number of LSL sites to meet the minimum number required.

The LCRR also requires water systems to collect a fifth-liter sample for lead at LSL sites. Fifth-liter samples increase the likelihood that samples capture water that has been sitting in contact with LSLs. This can allow systems to measure higher lead levels when water is in direct contact with this significant lead source. The variability of plumbing configurations does not allow for a single prescribed sample volume to capture the highest lead level at every site; however, EPA selected the fifth liter as a screen that is likely to detect higher lead levels than first-liter sampling alone (Masters et al., 2021; Del Toral et al., 2013; Deshommes et al., 2016). In addition, the LCRR prohibits pre-stagnation flushing and requires the use of wide-mouth bottles to allow samples to be taken at full flow to decrease the likelihood that sampling would miss higher lead levels.

With the addition of the trigger level in the LCRR, EPA revised tap sampling

frequency requirements based on both the lead action level and the trigger level. A key priority identified in the LCRR review is to improve sampling methods to better identify elevated lead levels in drinking water and to compel more systems to take actions to reduce lead levels (86 FR 71579, USEPA, 2021b).

In the LCRI, EPA is proposing that systems must take first- and fifth-liter paired samples for lead at LSL sites and use the higher of the two values to calculate the 90th percentile lead level to improve identification of higher risk sites for lead and better determine when OCCT or re-optimized OCCT is necessary. Michigan's revised LCR requires the same first- and fifth-sample collection approach that EPA is proposing under LCRI. EPA evaluated Michigan's approach in the context of this rulemaking process. Implementation data from Michigan's revised LCR shows that some samples collected at LSL sites measure higher lead levels in the first liter than the fifth. Michigan's requirement to use the higher lead level of the two samples for calculation of the 90th percentile lead level has resulted in more systems exceeding the lead action level of 0.015 mg/L than either the first or fifth liter alone (Betanzo at al., 2021). Therefore, these data suggest that Michigan's requirements are helping systems better identify situations where the water is too corrosive. In addition to data from Michigan, EPA is aware of studies that have evaluated lead sampling data collected from various liters in cities including Washington, DC, Flint, Michigan, and Chicago, Illinois. The data compiled in these studies similarly identifies variability in which liter contains the highest lead level. This data also suggests that using the higher of the first- and the fifth-liter lead values at LSL sites will be more effective than either value alone (Masters et al., 2021; Mishrra et al., 2021).

In addition, EPA is proposing that first and fifth-liter paired samples be collected at LSL sites because the lead released from LSLs is not reliably captured in either the first- or fifth-liter samples alone (Del Toral et al., 2013; Deshommes et al., 2016; Masters et al., 2021). In the final LCRR preamble, EPA acknowledged that the fifth liter may not correspond to the sample volume with the highest lead levels in all cases but selected it as a sample ''more representative of lead concentrations in service lines than the first liter sample'' and ''most likely to contain the water that remained stagnant within a customer-owned portion LSL'' (86 FR 4226, USEPA, 2021a). Due to the types of lead scales that can form in LSLs, as well as the mechanisms of scale formation and release, the first liter can capture higher levels of lead than the fifth liter in some conditions. Specifically, when water chemistry results in the formation of relatively fragile scales, maximum lead values have been documented in the first liter of sampling in Flint, Michigan (Lytle et al., 2019), Washington, DC (Clark et al., 2014), Providence, Rhode Island (Clark et al., 2014), and Chicago, Illinois (Masters et al., 2021). The lead release captured in the first liter is attributed primarily to lead particles which have often become detached, such as from the LSL or from galvanized pipes that are or were downstream of lead pipes, and have accumulated in the premise plumbing. Another situation where scale affects lead levels in the first liter is where scale formation slows lead release from the LSL, and higher lead release can occur in the first liter due to sources in the premise plumbing (Triantafyllidou et al., 2015). EPA's proposal to keep the fifth liter sample at LSL sites while adding the first liter sample for lead would update EPA's decision in LCRR based on evaluating additional studies and available implementation data to further increase the likelihood of detecting elevated lead levels.

EPA is proposing to correct the definition for Tier 1 and Tier 2 sites to include sites with premise plumbing made of lead due to the high risk of lead exposure associated with premise plumbing made of lead. By premise plumbing made of lead, EPA means premise plumbing that consists of pure lead pipes, like the pipes used for LSLs, rather than pipes made from metal alloys which may contain lead content. When sampled, systems would follow the first liter sampling protocol at sites with lead premise plumbing, unless the site is also served by a LSL, which would require first and fifth liter sampling. Lead interior plumbing was considered a Tier 1 site under the LCR and was inadvertently deleted in the LCRR. Although EPA is not aware of the full extent of lead premise plumbing, these would be a substantial lead source similar to LSLs. Their inclusion is appropriate for Tiers 1 and 2 because it aligns with the regulatory intent to prioritize sites likely to have elevated lead levels. This proposal would also correct the inadvertent deletion under the LCRR.

The LCRR categorizes Tier 3 sites as sites that contain galvanized lines that are identified as being downstream of an LSL currently or in the past, or downstream from a known lead connector. EPA described in the LCRR preamble that sites served by galvanized service lines downstream of an LSL or known lead connector are included under Tier 3 (86 FR 4241, USEPA, 2020a). The LCRR requires first-liter samples to be collected at Tier 3 sites.

EPA is proposing in the LCRI to correct that a galvanized site currently downstream of an LSL is a site served by an LSL and would meet the criteria of a Tier 1 or 2 site. The proposal removes the term ''currently'' from the Tier 3 provision to implement this correction. While EPA described in the final LCRR preamble the Agency's intention for galvanized service lines to be included in Tier 3, the LCRR Tier 3 provision includes only sites which ''contain galvanized lines,'' which refers to premise plumbing material and not service lines. As such, EPA is also proposing to clarify that sites served by galvanized service lines that ever were downstream of an LSL or a lead connector are included in Tier 3. EPA is also proposing to maintain sites with galvanized premise plumbing that are downstream from a lead connector in Tier 3. While EPA is not currently aware of the national extent of homes containing galvanized premise plumbing that are downstream of a lead source, this is consistent with the inclusion of galvanized service lines that ever were downstream of an LSL. Like galvanized service lines downstream of an LSL, galvanized premise plumbing that is downstream of a lead source can adsorb and release lead and is potentially a higher risk site than those in Tiers 4 and 5.

EPA is proposing to expand the sites included in Tier 3 to include any sites with galvanized premise plumbing or served by galvanized service lines that were ever served by a lead connector. As noted above, galvanized material can adsorb lead from an upstream source and release lead, even after the original lead source is removed. As such, EPA is proposing to include sites that were ever served by lead connectors in addition to those that currently have lead connectors. EPA is also proposing to include sites of any service line material or premise plumbing that are currently served by a lead connector. Along with EPA's proposed changes to inventory requirements, some systems will have improved knowledge of sites with lead connectors, which like LSLs, are pipes made of lead. Despite the additional information systems may have about lead connectors through the inventory, it is EPA's goal to prioritize sampling sites where the highest concentrations of lead enter drinking water. Due to the limited length of lead connectors, the

amount of lead contributed is expected to be less than typically much longer LSLs, all else being equal. Therefore, EPA is proposing that sites with lead connectors are not Tier 1 or 2, but Tier 3, based on EPA's priorities for the proposed LCRI and the similar contributions of lead in drinking water compared to galvanized service lines. In the proposed LCRI, EPA is including three types of sites in Tier 3: (1) sites served by galvanized service lines that ever were downstream of an LSL or lead connector, (2) sites with galvanized premise plumbing that ever were downstream of an LSL or lead connector, and (3) other sites currently served by a lead connector (*e.g.,* a site served by a copper service line downstream of lead connector. EPA is requesting comment on whether all of these sites should be included in Tier 3 or if some should be included in a different, lower priority tier, such as Tier 4. EPA is also requesting comment on whether sites served by a galvanized service line downstream from a lead connector in the past (*e.g.,* previously replaced) should be included in the same tier as sites currently served by lead connectors.

EPA is proposing that first-liter samples continue to be collected at Tier 3 sites. Galvanized service lines contribute lead from corroded coatings containing lead and through the capture and release of upstream lead sources. Contributions of lead from galvanized service lines are commonly through lead particulate release, which can then be introduced as a particulate into consumed water or captured by aerators where the particulate contributes dissolved lead (McFadden et al., 2011). Because the mobilization of particulate lead can be highly variable, depending upon changes in pressure and flow volume, velocity, and/or direction (Schock, 1990), particulate release is not captured consistently in any individual sample. EPA acknowledges that particulate lead is challenging to predict and could occur in any sample volume. However, the first liter has been documented to capture the highest fraction of particulate lead (Deshommes et. al., 2010) and presents the highest likelihood of a single sample capturing particulate lead. Additionally, first-liter samples would capture the effects of any particulates in the system which have become caught in the aerator at the tap during stagnation. Further, some galvanized service line sites may have undergone prior disturbance, such as from the partial replacement of an upstream LSL. In such cases, higher particulate lead levels would likely be present in the first draw sample as a result of accumulated lead particulates released from the disturbance event (Deshommes et al., 2010).

In addition, EPA believes that the first liter sampling protocol is more appropriate for sites with lead connectors. As lead connectors are short in length and typically installed closer to the water main, it is less likely that a single designated service line sample volume would capture water that has stagnated in the connector. Additionally, water traveling from the lead connector to the faucet will undergo dispersion, resulting in lower concentrations of lead at the tap. Detectable contributions of lead from lead connectors, like particulate contribution from LSLs, are most likely to occur as a result of particulate lead that has dislodged from the pipe and is caught in premise plumbing, such as faucet aerators (Deshommes et al., 2016; Lytle et al., 2019).

EPA is also proposing to clarify the definition for wide-mouth bottles to specify it means bottles that are one liter in volume with a mouth, the outer diameter of which measures at least 55 mm wide (see section L.3.). EPA heard stakeholder feedback that the LCRR definition of ''wide-mouth bottle'' is vague and significantly limits the number of available bottles that fit the rule criteria if the inner diameter is used to determine the diameter for wide-mouth bottles. As such, EPA is seeking comment on the proposed updated definition of ''wide-mouth bottles,'' specifically on the availability of qualifying bottles.

EPA also heard stakeholder feedback about including additional invalidation criteria for lead and copper compliance samples. The LCRR allows the State to invalidate collected samples for a limited number of reasons including that samples were collected from sites that did not meet the tiering criteria. Invalidated samples are not included in the 90th percentile calculation. EPA is proposing specific language for States to invalidate samples which were collected in a manner that did not meet the sample collection criteria under § 141.86(b)(1). For example, the rule specifies collection of samples at a kitchen or bathroom sink tap. If a sample was taken at a hose bib, States could invalidate that sample because it does not meet the sample collection criteria. Some stakeholders supported the inclusion of invalidation criteria based on a maximum stagnation period (*e.g.,* 12-hours) to the invalidation criteria because of concerns that excessive stagnation times may produce high lead or copper sampling results that are reflective of improper sampling techniques. Water systems can alleviate their concerns about excessive stagnation by using chain of custody forms that note the last time the water was used and the time/date of sample collection, withholding samples with excessive stagnation from being sent to the laboratory. The system could then direct the customer to collect another sample to be submitted for analysis, negating the need for sample invalidation criteria in the LCRI. Additionally, stakeholders did not offer data to support any suggested maximum stagnation times provided in their feedback. While EPA is not proposing to establish a maximum stagnation time in the LCRI because the Agency is concerned about samples being invalidated solely because the sample result it high, EPA is seeking comment and data, including modeling and sampling data, on potential maximum stagnation times, and specifically how stagnation times inform corrosion rates. See section IX. of this document.

2. Sample Collection Frequency

In the LCRI, EPA is proposing to update tap sampling frequency requirements to conform with the proposed elimination of the trigger level. EPA intends to maintain six-month monitoring as the standard monitoring frequency. With the proposed elimination of the trigger level, EPA is proposing that small and medium systems monitoring annually would qualify for triennial monitoring if they do not exceed the lead and copper action levels for three consecutive years, instead of meeting the lead trigger level for three consecutive years. Along with EPA's proposal to lower the action level to 0.010 mg/L and improve the tap sampling protocol at LSL sites, this pathway for reduced monitoring would be at least as stringent as that under the LCRR. In addition, EPA intends to maintain a pathway for all systems to qualify for annual monitoring if they do not exceed the lead and copper action levels for two consecutive six-month monitoring periods. Also, all systems can qualify for triennial monitoring if they measure 90th percentile levels at or below the practical quantitation limits of 0.005 mg/L for lead and 0.65 mg/L for copper in two consecutive six-month monitoring periods. Also, EPA intends to maintain the nine-year reduced monitoring waiver.

EPA's proposed approaches for compliance tap sampling are consistent with the goal of identifying sites most at risk of lead in drinking water. Stakeholders expressed support for sampling to find the locations with the

highest possible lead levels, with many in favor of first and fifth liter sampling specifically (USEPA, 2020b; USEPA, 2023j). Some stakeholders raised concerns over the complexity associated with a different protocol for LSL sites, and the difficulty of maintaining customers willing to sample under a more complicated protocol. For the proposed LCRI, EPA is finding that examples from Michigan are illustrative to support this proposed change. Based on the implementation of the first- and fifth-liter protocol in Michigan, EPA believes that customers provided with clear instructions can be willing and are able to conduct tap sampling.

Others raised concerns over the specific volume of water chosen due to the wide range of plumbing configurations, recommending that the improved rule allow for sampling tailored to individual sites. EPA does not support tailoring of the sample volume collected to individual sites. EPA expects that this approach could introduce challenges by not having a standard sampling protocol, leading to a more complex rule with increased implementation and recordkeeping burdens. EPA is seeking feedback on other alternative sampling protocols, such as random daytime sampling (in which sampling sites are not predetermined and there is no minimum stagnation time), that could be used to assess CCT performance (See section IX.).

EPA is also seeking comment on whether State authority to specify sampling locations when a system is conducting reduced monitoring should apply regardless of the number of taps meeting sample site criteria. The proposal limited this State authority to where a water system has fewer than five drinking water taps meeting sample site collection criteria. See section IX. of this document.

3. 90th Percentile Lead Calculation

Under the LCRR, water systems with LSLs are required to collect samples from all LSL sites (Tier 1 and 2) and use all samples collected to calculate the 90th percentile lead calculation, even if more than the minimum number of samples are collected. If a system does not have enough Tier 1 and 2 sites to meet the minimum number of required samples, the system must use all samples collected at Tier 1 and 2 sites and only the highest results from samples collected at Tier 3, 4, and 5 sites (in that order) to meet the minimum number of samples. For example, if a system is required to collect 100 samples and the system collects 80 samples at Tier 1 and 2 sites, and 30 at Tier 3 sites, the system must use the 80 samples from Tier 1 and 2 sites and only the 20 samples with the highest lead concentration from the Tier 3 sites. EPA introduced a limit on which samples could be used in the 90th percentile calculation to prohibit systems from collecting additional samples from sites less likely to contain lead (*i.e.,* Tiers 3, 4, and 5) in order to reduce their 90th percentile lead value. LCRR requires systems without LSLs to collect samples at Tier 3 sites and lower, and use all samples collected in the calculation, even if more than the minimum number are collected. EPA introduced these provisions to prioritize sampling at sites more likely to contain lead in order to determine the effectiveness of CCT and determine if additional actions are warranted (86 FR 4225, USEPA, 2021a).

EPA is proposing to retain this approach in the LCRI. However, a few stakeholders recommended that EPA allow systems that do not have a sufficient number of Tier 1 and 2 sites to meet the minimum number of samples, use the highest sample collected regardless of the tier, and allowing small systems to use more than the minimum number of samples when sampling at a mix of Tier 1 and 2 and lower tier sites (USEPA, 2023j; USEPA, 2023m; see docket no. EPA–HQ–OW–2021–0255). For example, a system would use any samples collected from Tier 3 through 5 sites that were higher than samples from Tiers 1 and 2, instead of using all samples from Tiers 1 and 2. EPA is unaware of situations in which large numbers of samples from non-LSL sites would have higher lead concentrations than LSL sites and is maintaining the LCRR approach to ensure that sites most likely to contain lead are prioritized for tap sampling. EPA is seeking comment about the potential inclusion of samples from lower-priority tiers (*i.e.,* Tiers 3 through 5) that have a higher lead or copper concentration than samples from Tier 1 and 2 sites for calculation of the 90th percentile for systems that do not have a sufficient number of samples from Tier 1 and 2 sites. Additionally, EPA is seeking comment on whether to require systems to use samples with the highest lead and copper concentration regardless of sampling tiers, such as including samples from lower-priority tiers (*i.e.,* Tier 3 through 5) in the 90th percentile calculation for systems that are collecting compliance samples from all Tier 1 and 2 sites. EPA seeks any relevant data on whether including the highest sample results regardless of tier is useful for assessing CCT efficacy at LSL systems. See section IX. of this document.

Under the LCRR, water systems can qualify to reduce monitoring frequency or cease specific actions under the rule based on their 90th percentile lead and copper levels. For example, a small or medium system without CCT may stop the CCT steps once if the system is at or below the lead AL for two consecutive monitoring periods. Water systems have been advised to calculate a 90th percentile lead or copper level even if the system does not collect the minimum required number of samples (USEPA, 2004d). EPA is proposing to clarify in the LCRI that water systems cannot use sampling based on fewer than the required minimum number of samples to reduce monitoring or qualify for other reduced actions under the rule including CCT and public education related requirements. EPA is proposing this clarification to improve implementation and because the Agency is concerned that water systems may utilize provisions intended for systems with demonstrated lower lead or copper levels by failing to comply with monitoring requirements.

EPA is proposing to modify the types of non-compliance samples that may be included in the 90th percentile calculation. The LCRR requires water systems to use results of any additional monitoring (*e.g.,* customer-requested samples) in the 90th percentile calculation if the samples meet the tiering and sample protocol requirements. The LCRR and proposed LCRI also require water systems to conduct follow-up sampling after full or partial service line replacement. EPA is concerned that water systems may include samples in the 90th percentile calculation that may not be known to meet the correct sampling tier and may not be reflective of corrosion control performance. Service line replacement can physically disturb the service line, potentially causing lead particulates to dislodge and lead to short-term elevated lead levels. EPA expects that samples collected as part of required monitoring following full or partial service line replacement may not be representative of corrosion control performance, and the Agency is therefore proposing to exclude these required samples from the 90th percentile calculation.

EPA is also proposing to maintain that samples not collected according to the sample collection criteria must be used to calculate the 90th percentile. In the LCRR, customer-requested samples are not required to be collected according to the compliance sampling protocol in § 141.86. In the LCRI, EPA is proposing to maintain this flexibility to allow

samples collected in response to customer request to utilize alternative sample volumes and stagnation times but is proposing these samples must include sites representative of both premise plumbing and the service line when the customer is served by a lead, GRR, or unknown service line (see section V.H.3.). EPA is proposing that customer-requested samples be included in the 90th percentile calculation only if the sample meets the compliance sampling tiering and protocol.

D. Service Line Inventory

Complete service line inventories protect public health, improve transparency, and allow systems to be better positioned to comply with the proposed LCRI requirements. Publicly accessible inventories can facilitate community engagement and improved transparency because the public can more easily track and better understand and systems' progress on LSL identification and replacement. Inventories can also help water systems and consumers determine the source of high lead levels in drinking water at a home or building and the possible solutions for reducing exposure. Water systems with accurate and up-to-date inventory information can also inform proactive consumer risk mitigation steps if they are served by an LSL, GRR service line, unknown service line, or a lead connector (for example, replacing their LSL, using a filter certified to reduce lead, or flushing their service line).

Under the LCRR, water systems must develop an initial inventory, make it publicly available, and submit it to the State by October 16, 2024. Water systems must update their inventory annually or triennially based on their tap sampling frequency. The initial and updated inventories under the LCRR must categorize each service line connected to the public water system as lead, GRR, non-lead, or lead status unknown (also referred to as ''unknown''). The LCRR did not establish a deadline for requiring water systems to determine the lead status of any unknown lines in the inventory. EPA is not proposing to change the initial inventory compliance date of October 16, 2024, to ensure that systems make continued progress towards inventory development. Depending on the inventoried service line material, water systems must also notify consumers about the potential lead risks that affect them, which can facilitate customer actions to reduce lead in drinking water, such as flushing, using filters that are certified to reduce lead, and customer-initiated service line replacement.

While EPA is not proposing changes to the initial inventories required under the LCRR, EPA is proposing to improve the requirements for systems to update their inventories for the LCRI. EPA is proposing that by the final LCRI compliance date, systems must develop a baseline inventory, which builds upon the LCRR requirements of the initial inventory. The additional requirements in the baseline inventory would improve transparency and position systems to begin mandatory service line replacement. EPA is also proposing that systems must make the number of inventoried lead, galvanized requiring replacement, and unknown service lines, and the number of known and replaced lead connectors, publicly available, and update those counts on an annual basis, to improve transparency and facilitate customer tracking of inventory progress. Similarly, EPA is also proposing that systems provide counts of the number of LSLs and GRR service lines replaced each year so the public can more easily track progress of the mandatory service line replacement program. This proposed requirement is responsive to a stakeholder comment in the LCRI external engagements which recommended continued monitoring of the system's service line replacement program over time (USEPA, 2023h). EPA is also requesting comment on whether it is feasible for systems serving 50,000 persons or fewer to make their inventories, inventory summary, and replacement data available online. See section IX. of this document for more information.

Using reliable service line material investigation records, methods, and techniques is a key step towards developing accurate inventories. EPA is proposing to retain the LCRR approach that requires systems to use only certain specified sources of information unless the State allows or requires the use of other sources of information. EPA maintains its expectation from the LCRR that States can make the best-informed judgments about the appropriateness of using other sources of information (*e.g.,* other records, methods, or techniques for service line material categorization) in addition to those required by the LCRR. Retaining this provision will also avoid conflict with the initial inventories that systems will have created based on additional criteria allowed or required by States and potentially avoid any duplication of effort. Another benefit of retaining the LCRR approach is that it avoids implementation challenges that could be caused by changing the sources of information that can be used for the inventory. For example, the LCRR does not require systems to track the records, methods, and techniques they use to categorize individual service lines. Hence, changing the requirements in the proposed LCRI might create difficulties for systems in updating the initial inventory. Finally, if EPA were to limit the methods that can be used to conduct inventories, water systems would not be able to take advantage of ongoing and future research to develop new methods and technologies to identify service line materials.

1. Timeline To Identify All Unknown Service Lines

EPA is proposing to require that water systems categorize the material of all unknown service lines in the inventory by the system's applicable deadline for completing mandatory full service line replacement. The proposed deadline for most systems to replace all LSLs and GRR service lines is 10 years following the compliance date for the proposed LCRI; however, some systems may have deadlines that are shorter or longer than 10 years (see section V.B.3. for a discussion of the proposed service line replacement deadlines). Establishing a deadline for water systems to prepare a complete and accurate inventory will improve the information systems must develop to comply with requirements for tap sampling sites, public education, and service line replacement. A complete and accurate service line inventory is an important part of a system's asset management plan, which is recognized under SDWA section 1420 as a critical component of a system's technical, managerial, and financial capacity. Additionally, a complete and accurate service line inventory provides transparency of potential sources of lead exposure.

Feasibility of Proposed Inventory Requirements To Support Mandatory Service Line Replacement

EPA has determined that it is feasible (*i.e.,* technically possible and reasonably affordable relative to a large system) for water systems to create a complete and accurate inventory of service line materials by the proposed service line replacement deadline to support the treatment technique for mandatory service line replacement. EPA anticipated in the 1991 LCR that systems that were triggered into an LSLR program should be able to locate their LSLs and provide this information in 8 to 10 years, even with poor records of service line materials (56 FR 26507, USEPA, 1991). EPA evaluated more

recent efforts by systems to replace all their LSLs, and thus complete their inventory, in 10 years or less, and this more recent data confirms this finding from the 1991 LCR (USEPA, 2023g). First, seven States have inventory laws (*i.e.,* California, Illinois, Michigan, New Jersey, Ohio, Rhode Island, and Wisconsin), which together comprise just below a third of the nation's estimated LSLs (32 percent; 2.9 million LSLs out of an estimated 9.2 million LSLs) (*USEPA,* 2023k), meaning that these systems will have made progress on their inventories beyond the LCRR requirements. These State laws indicate that an inventory requirement is feasible, and inventory data from some of these States show relatively low incidence of unknowns in some States as well as rapid progress towards identification of their unknowns' materials (USEPA, 2023g). Low incidence of unknown service lines is also indicated by survey data from the Needs Survey (USEPA, 2023g). Furthermore, four States (Illinois, Michigan, New Jersey, and Rhode Island) passed State laws that require LSLR by a specified deadline. For these systems, inventory completion is required in order to comply with the mandatory LSLR requirements. For example, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) required their applicable water systems to submit a preliminary materials inventory by January 2020 and a complete materials inventory, including verification methodology and results, by January 2025, which is a five-year deadline to identify all unknown service lines (Michigan Administrative Rules, 2023). The Illinois Environmental Protection Agency (IEPA) first required their CWSs to submit an inventory by April 2018 in the repealed Public Act 099–0922 along with annual updates. Under the 2022 Lead Service Line Replacement and Notification Act, IEPA requires systems to submit a complete material inventory by April 2024 (Illinois General Assembly, 2021), which gives their systems six years to identify all unknown lines. Finally, EPA is aware of several water systems who have fully eliminated LSLs from their distribution system at a rapid pace, which would not be possible if unknown service lines remained in the system's inventory (USEPA, 2023g).

Other factors may facilitate a system's inventory development and contribute to the feasibility of completing the inventory before the replacement deadline. Additional opportunities for inventory development include material identification during routine infrastructure work as well as during emergency repairs, when service lines can potentially be visually inspected. EPA estimates that up to 60 to 80 percent of service lines could potentially be encountered by the proposed 10-year replacement deadline through the replacement of water mains and meters (USEPA, 2023g). EPA released the LCRR Inventory Guidance to support systems as they develop their inventories (*USEPA,* 2022b). The LCRR Inventory Guidance describes required and recommended elements to add to the inventory as well as an adaptable inventory template. EPA's guidance contains best practices and case studies that can facilitate systems' inventory development. Research and development of emerging technologies regarding identification of service line materials is ongoing (*USEPA,* 2022b), which EPA expects to accelerate inventory completion.

Deadline To Identify Unknown Service Lines

For the LCRI, EPA is proposing to consolidate the deadlines for identifying all lead status unknown service lines and replacing all LSLs and GRR service lines. This approach has several benefits compared to an inventory deadline that precedes the replacement deadline. This approach reduces rule complexity as well as reporting and tracking burden, a priority identified in EPA's LCRR review notice to assure that States and water systems can effectively implement the LCRI (86 FR 71574, USEPA, 2021b). It also provides systems with flexibility to plan a holistic full service line replacement program that meets local needs. For example, without a separate and earlier deadline to identify unknown service lines, systems can plan to identify service line materials in tandem with other infrastructure work, such as water main or meter replacement, as they are planned to occur in the proceeding years. This could allow water systems to identify service line materials more efficiently as they will already be onsite and, in some cases, may encounter the service line material directly as they perform other planned work. This efficiency could benefit the community by reducing the overall costs and time burden to identify service line materials, lowering the per-household impacts where water rates fund this work, or stretching the value of external funding for service line identification (such as the $15 billion for identifying and replacing LSLs from the BIL). Additionally, the proposed inventory development deadline can better allow systems to strategize and balance inventory development with replacement prioritization goals under the proposed LCRI service line replacement plan requirements.

Finally, aligning the deadlines could improve inventory information quality. For example, water systems could take additional time to develop the inventory with more emphasis on accuracy. Systems could choose to conduct additional potholing over other techniques that can be conducted more quickly but may be less accurate, such as tap sampling. Systems already using potholing to identify service line materials may choose to dig more potholes with additional time (*i.e.,* visually inspecting three points instead of two), which could reduce the incidence of false negative LSL identification because more length of the service line is visually inspected. Systems could also choose to use multiple methods to confirm service line material. For example, the Commonwealth of Pennsylvania requires systems to use a combination of at least two methods to identify non-lead service lines in their inventory, with the exception of ''stand-alone verification options'' (Pennsylvania Department of Environmental Protection, 2023). Denver Water also uses several methods to identify non-lead service lines, relying on potholing in two locations, visually inspecting the service line inside the home, and taking water samples (Denver Water, 2023b). Additionally, as a service line replacement requirement under LCRI creates a market for service line material identification technologies, EPA expects that new such technologies may be developed in the coming years and existing technologies will undergo refinement, leading to lower costs and greater accuracy. Aligning the deadline for service line replacement and complete inventories, rather than requiring all unknown service lines be identified prior to the replacement deadline, would give systems the chance to utilize these new or refined technologies on a greater proportion of their unknown lines.

A deadline for inventory completion that precedes the deadline for mandatory service line replacement could reduce the possibility of non-compliance with the replacement deadline, but it would not have the advantages of a consolidated deadline as described above. EPA seeks comment on its rationale for the consolidated deadline approach as compared to an earlier deadline for identifying unknown service lines. See section IX. of this document.

2. Inventory Validation Requirements

Accurate service line inventories are essential to ensure replacement of all LSLs and GRR service lines. To that end, EPA is proposing to require water systems to validate a subset of the non-lead service lines in their inventory. The validation process would facilitate action to remedy any discrepancies that may be discovered as a result of the validation, and provide systems, States, and consumers with additional confidence in the accuracy of the inventory.

The proposed validation requirement would test the reliability of any alternative sources of information, which may include investigation methods, approved by the State (*e.g.,* tap sampling, modeling methods, etc.), as well as service lines categorized as non-lead where the water system has no record of the identification method or technique used for an individual non-lead categorization. The ''validation pool'' would consist of service lines identified as non-lead using methods other than records review or visual inspection of at least two points on the line. This pool would prioritize validation of these alternative investigation methods. EPA proposes to treat service lines based on visual inspections at two points as sufficient criterion to exclude these service lines from the proposed validation pool. As maintained in the proposed LCRI, the State retains the authority to determine which sources of information are acceptable for purposes of categorizing service line materials. While EPA has heard anecdotally that some records are not reliable, EPA is proposing that this validation requirement prioritize service lines investigated by other sources of information approved by the State. EPA notes that in cases where systems have good recordkeeping practices, records might be more accurate and reduce the need to validate service lines identified by alternative methods.

EPA notes that the proposal requires water systems to submit the results of the inventory validation to the State. The proposal also includes a pathway for systems' inventories to be reviewed by the State to improve their accuracy. The proposed rule would require systems validating the non-lead categorizations of the inventory to list the locations of any non-lead lines identified to be a LSL or GRR service line as well as the method(s) used to categorize the service lines, if available, as a result of the assessment. Although not specifically stated in the proposed rule, a State could require the system to take action to improve inventory accuracy. However, EPA solicits any data or information on whether lines identified as non-lead should be subject to a validation process in all circumstances or in certain circumstances (*e.g.,* records older than a certain number of years).

The proposed validation process would require systems to confirm through visual inspection the service line material of a random sample of service lines from their validation pool and validate, at a minimum, the number of service lines necessary to achieve a 95 percent confidence level. Visual inspection of the pipe exterior could be conducted by excavation (such as potholing), viewing the service line material in the meter pit or stop box, or viewing the service line entering the building. To achieve the 95 percent confidence level, EPA is proposing that systems with more than 1,500 non-lead service lines in their validation pool check the material at a number of sites between 322 and 384 sites, as specified in the rule, that is dependent on the size of the validation pool. This range corresponds to the number of sites that systems would need to validate in order to achieve a 95 percent confidence level USEPA (2023g). EPA is also proposing that systems with 1,500 or fewer non-lead service lines in their validation pools validate at least 20 percent of lines in the pool to provide flexibility for systems with fewer identified non-lead service lines, such as smaller water systems.

EPA is proposing to require that systems complete the validation by year seven of the replacement program. This timeline would allow systems time to develop the inventory using field investigation techniques and alternative sources of information approved by the State and would also allow three years for the water system to address potential issues identified by the validation process and to complete any remaining replacements by their replacement deadline. Where States have required systems to replace service lines on a shortened deadline, the State would also be required to set an earlier deadline for the validation. EPA did not propose a date for a system to begin its validation to provide systems with flexibility to use their experience to adjust their inventory evaluation techniques over time and to allow time for systems to adopt new field investigation techniques, such as those identified in the LCRR Inventory Guidance (USEPA, 2022b), or other new techniques that could be created. Allowing the water system flexibility as to when it begins its validation would allow the system to balance the benefits of delaying the validation to include more non-lead service lines and increasing the validation pool to ensure a more accurate inventory (potentially capturing non-leads identified by more alternative methods that would benefit from the validation process) versus the time the system expects it will need to complete the validation and remaining replacements.

EPA is proposing to require systems notify the State and prepare an updated inventory after they identify a LSL or GRR service line that was previously inventoried as non-lead. Systems would then comply with any additional actions if required by the State to address the inventory inaccuracy, which could include the State requiring non-lead service lines identified by specific records or investigation methods to be recategorized as unknown lines if the State determines those records or methods are not sufficiently accurate. The State could also determine that the categorization error is not reflective of a broader accuracy issue and not require any remedial action. This proposed requirement to notify the State and update the inventory would continue to apply even after a system completes its replacement program because of the potential for inventory discrepancies to be discovered at any time.

EPA is also proposing that systems must offer to inspect a customer's service lines when the customer notifies the system that they suspect the inventory incorrectly categorized their service line material. Systems would be required to offer to inspect the customer service line within 60 days of receiving the notice. This proposed requirement provides yet another opportunity for the water system to assess the accuracy of its inventory to inform potential actions to remedy discrepancies at the individual site as well as throughout the distribution system more broadly.

While EPA is seeking comment on all aspects of the proposed inventory validation approach, EPA is especially interested in the following feedback: the scope of the validation pool (*i.e.,* which lines should be subject to validation); the proposed seven-year deadline to complete the validation; the proposed 95 percent confidence level approach used to develop the size of the validation pool; whether non-lead service lines categorized based on records should be subject to the validation process; and the role of the State in reviewing the inventory including the results of the validation process. See section IX. of this document.

3. Service Line Addresses

The LCRR requires water systems to create and maintain an inventory that includes the exact address associated with each service line connected to the public water system, but the LCRR does not require the publicly accessible inventory to include the specific address of LSL and GRR service line. Instead, systems must use a location identifier (*e.g.,* street address, block, intersection, or landmark) for any LSLs and GRR service lines. For the LCRI, EPA is proposing to require water systems to include the street addresses of service lines and connectors in the publicly accessible inventory. By providing an address for each service line in the inventory, systems can increase transparency with their consumers about the locations and materials of service lines connected to their residences or other buildings they may occupy. EPA emphasizes that including addresses in the publicly accessible inventory is critical to make more people aware of their risk to lead in drinking water. Although the LCRR requires water systems to notify persons served by an LSL, GRR service line, or unknown service line, compliance with the requirements for the notice may not be sufficient to reach all persons at or who use that site (*e.g.,* where the persons served are short-term residents in non-owner occupied buildings, parents and guardians of children at in-home day care facilities, residents of long-term care facilities). Also, this requirement would allow the public to better understand how the water system is prioritizing service line replacement in accordance with the water system's service line replacement plan.

EPA heard feedback during the LCRR review that the publicly accessible inventory should require service line materials to be attributed to specific addresses to increase transparency (see docket no. EPA–HQ–OW–2021–0255). There are many examples of public-facing service line inventories that contain addresses, including: Washington, DC (DC Water, n.d.); Cincinnati, Ohio (Greater Cincinnati Water Works, n.d.); Milwaukee, Wisconsin (Milwaukee Water Works, 2023); Elgin, Illinois (City of Elgin, 2022); Grand Forks, North Dakota (Grand Forks, North Dakota, n.d.); and Memphis, Tennessee (Memphis Light, Gas, and Water, n.d.). Based on the many examples of public-facing service line inventories that include the address for each service line, EPA has determined for purposes of this proposal that it is feasible for water systems to share the location of lead, GRR, non-lead, and unknown service lines with the public.

4. Lead Connectors

EPA is proposing to require water systems to include connector materials in the service line inventory. These proposed requirements would provide customers with information about an additional potential lead source in their drinking water, which could prompt members of the public to take actions to reduce the lead exposure from lead connectors. Inventorying connectors would also provide systems with additional information to consider when conducting the proposed distribution system and site assessments.

EPA is proposing to require water systems to review similar records used to develop the LCRR initial inventories for connector materials and include the locations of connector materials in the proposed LCRI baseline inventory if they have not voluntarily done so based on recommendations in EPA's LCRR Inventory Guidance (USEPA, 2022b). The proposed LCRI would require water systems to conduct a records review and include connectors in their inventory by the LCRI compliance date. In addition to conducting this records review to identify the location of existing lead connectors, the proposal would also require systems to identify the locations of previously replaced lead connectors, if those records exist, and to track where lead connectors are replaced in the future. Tracking the locations of replaced lead connectors can provide additional information relevant to assess potential health risks as these lead connectors are a source of lead which may contribute lead to drinking water and downstream galvanized pipes.

EPA considered a requirement for water systems to investigate connector materials not identified by the records review but determined not to include such a requirement in this proposed rule. EPA does not have data or analyses at this time that would support finding that it is feasible for systems to categorize connectors for which records are not available. To do so would require systems to excavate the connector to visually inspect the material. EPA is also concerned about the effect such a requirement would have on a water system's capacity to comply with the proposed requirement to remove LSLs and GRR service lines. Excavation efforts to search for lead connectors would draw funding and staffing resources from the identification and replacement of LSLs and GRR service lines, likely delaying elimination of these service lines in the system as quickly as feasible. In addition, EPA is also concerned that investigations of connector materials while LSLs and GRR service lines are still in place could be disruptive to these downstream service lines if they are not immediately replaced post-investigation, which might not be possible in all cases. This disturbance could cause particulate lead to be introduced into drinking water, potentially exposing consumers. EPA solicits any supporting or contrary data or analysis on the feasibility of a requirement to affirmatively identify the material of connectors throughout the distribution system.

E. Corrosion Control Treatment

Purpose and Need for CCT

CCT refers to methods (*e.g.,* alkalinity/pH adjustment, addition of corrosion inhibitors) that water systems can take to reduce the leaching of lead and copper into drinking water from drinking water infrastructure, such as service lines and premise plumbing. CCT is one of the four treatment techniques EPA promulgated in the LCR. In the LCRR, Optimal Corrosion Control Treatment (OCCT) is defined as the CCT that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water standards (§ 141.2). Common CCT methods include alkalinity and pH adjustment and the addition of phosphate-based corrosion inhibitors. In the LCR, EPA stated that CCT was an ''important element of the final treatment technique [rule]'' because ''most of the lead and copper found in drinking water is caused by corrosion of materials containing lead and copper in the distribution system and in the plumbing systems of privately owned buildings'' (56 FR 26479, USEPA, 1991). EPA evaluated CCT in terms of its ability to effectively reduce lead and copper levels in drinking water and its technical and economic feasibility. EPA determined that CCT was effective at reducing lead and copper levels at the tap (56 FR 26483, USEPA, 1991). In addition, EPA determined that CCT has been used in water distribution systems for many years demonstrating its efficacy under field conditions and that the treatments were generally available for use by water systems (56 FR 26485–26486, USEPA, 1991). Further, EPA determined that CCT was affordable because the costs of alkalinity adjustment, pH adjustment, and the addition of corrosion inhibitors were reasonable for large water systems (56 FR 26485–26486, USEPA, 1991). Given

these findings, EPA determined that CCT was feasible within the meaning of the current SDWA sections 1412(b)(4)(D) and 1412(b)(7) (56 FR 26485–26486, USEPA, 1991).

Feasibility

Based on many years of implementation of the LCR with thousands of water systems using corrosion control strategies, EPA has determined for the proposed LCRI that these treatments are still technically and economically feasible under the current SDWA sections 1412(b)(4)(D) and 1412(b)(7). EPA has identified research studies that show effective CCT reduces lead and copper from leaching into drinking water (Hayes and Hydes, 2012; Roy and Edwards, 2020; Tam and Elefsiniotis, 2009; Vijayashanthar et al., 2023). Also, CCT continues to be generally available for use by water systems. For example, an estimated 98 percent of water systems serving more than 50,000 people currently have CCT (Chapter 3, Exhibit 36, USEPA, 2023b). Further, the costs of alkalinity adjustment, pH adjustment, and corrosion inhibitors continue to remain reasonable for large water systems with an estimated cost of $9.43 per household. Nevertheless, in section IX. of this document, EPA is requesting comment on CCT, and is especially interested in any data, analyses, and comments on proposed changes to the CCT requirements in the LCRI.

LCRR CCT Requirements

Under the LCRR, medium and large systems are required to install or re-optimize OCCT in response to a lead or copper action level exceedance. Medium and large system with LSLs that exceed the lead action level are required to harvest lead pipes from the distribution system and conduct flow-through pipe rigs to evaluate options for OCCT or re-optimized OCCT. Large systems with CCT that exceed the lead practical quantification level of 0.005 mg/L may be required to re-optimize their OCCT. Large systems without CCT that exceed the lead practical quantification level are required to complete steps to install CCT.

Under the LCRR, in the case of a trigger level exceedance for systems with or without CCT, small and medium systems must recommend CCT (except for small systems that select other compliance alternatives). However, if after two six-month monitoring periods, there is no subsequent action level exceedance, any small and medium water systems without CCT are not required to conduct a subsequent corrosion control study. In LCRR, EPA also clarified that the continued operation and maintenance of OCCT and re-optimized OCCT requirements apply to consecutive systems, including those distributing water that has been treated for corrosion control by another system.

1. LCRI Proposed CCT Changes

During the LCRI external engagements, EPA heard concerns about the complexity of the CCT requirements in LCRR, and the requirement for pipe rig/loop studies, noting that pipe loop studies are resource intensive and that many water systems and States do not have experience implementing them (USEPA, 2023j). Also, EPA heard about the uniqueness of each water system with respect to CCT and that CCT for each water system is different due to the water system's specific mix of plumbing materials and operations.

Under the LCRI, EPA is proposing to eliminate the lead trigger level and to require systems to install or re-optimize OCCT after an exceedance of the new lead action level of 0.010 mg/L. Streamlining the rule to only use an action level reduces the complexity of the proposed LCRI.

Further, the proposed LCRI would have a more rigorous tap sampling protocol for LSL systems. As a result of the elimination of the trigger level, the lower action level, and a more rigorous tap sampling protocol, EPA anticipates more systems could exceed the lead action level even when re-optimized than under the LCRR, especially in the early years of implementing the mandatory service line replacement requirements under the proposed LCRI. Thus, EPA is proposing in § 141.81(a) that systems that have re-optimized once and continuously meet optimal water quality parameters would not be required to re-optimize again if there are subsequent action level exceedances, unless required by the State. While the lead action level is intended to be generally representative of effective OCCT, EPA recognizes that there may be some instances where systems would be unable to meet the proposed lowered lead action level of 0.010 mg/L because tap water lead levels can be influenced by other factors. In section V.A. of this document, EPA noted that single site lead level variability can occur due to water use patterns and physical disturbances of pipes causing particulate release. Elevated lead levels due to these factors would not be reflective of the performance of the corrosion control treatment. For systems that have already evaluated the corrosion control treatment options under the re-optimization process, resources would be better devoted to other mitigation activities rather than repeating the same steps.

States will retain the discretion to modify previous designations of OCCT and re-optimized OCCT based on their own determination or in response to a request by a water system if the State concludes that a change is necessary to ensure the system continues to optimize corrosion control treatment. EPA is also proposing that States can require the system to conduct additional CCT studies. EPA anticipates that removing sources of lead in drinking water, such as with mandatory service line replacement, would reduce the number of systems that exceed the lead action level over time. In the meantime, water systems would be required to continue to operate and maintain their re-optimized OCCT as demonstrated through monitoring for optimal water quality parameters, and comply with other proposed mitigation measures (*e.g.,* make filters available for systems with multiple lead action level exceedances) to reduce exposure to lead in drinking water. EPA is seeking comment on if it would be more appropriate to retain the LCRR requirement for these systems to re-optimize again following an action level exceedance regardless of whether they are meeting their optimal water quality parameters and if so, whether the rule should allow the State with the authority to waive this requirement (see section IX. of this document).

EPA is also proposing to allow a system with a lead action level exceedance to defer installing or re-optimizing OCCT if the system can replace 100 percent of its LSLs and GRR service lines within five years of the date the system first exceeds the lead action level. The purpose of this proposed requirement would be to allow systems to avoid the costly and time-consuming process of conducting a harvested LSL pipe loop CCT study and installing the corresponding OCCT when the identified treatment would not be tailored for the system's long-term distribution system conditions without LSLs. It generally takes approximately five years to complete the CCT evaluation and installation process: 30 months to construct a pipe rig and conduct a treatment study followed by 30 months to install the State-approved OCCT and an additional one year to conduct follow-up monitoring. If a system is on track to replace all its lead and GRR service lines within five years, the optimal treatment identified by a costly and time-consuming pipe loop study may no longer be the optimal treatment after all

LSLs and GRR service lines are replaced. This is because the pipe loop studies are based on lead pipes in the water system and if all of those are replaced, the results of the pipe loop study would likely be no longer relevant. Following 100 percent service line replacement, a study evaluating OCCT on current conditions in the system would be more appropriate. Under this proposed option, eligible systems would only be allowed to defer optimizing or re-optimizing OCCT if water systems meet the following two requirements: 1) annually replaces at least 20 percent of their remaining service lines that require replacement (in accordance with the proposed § 141.84(d)(6)); and 2) has no LSL, GRR, or unknown service lines remaining at the end of the five-year period. Systems would need to ensure they have access to replace all lead and GRR service lines in their inventories, and have identified all unknown service lines in their inventory. During this five-year period, eligible systems would still be required to meet all other rule requirements including public notification, public education, and if applicable, public education following multiple action level exceedances, including making filters available. Systems with CCT that elect this option would be required to continue operating their existing CCT throughout those five years.

EPA anticipates that greater public health benefits could result from replacing all lead and GRR service lines within five years compared to implementing the requirement to install or optimize OCCT with a lower action level because the most significant sources of lead in drinking water, when present, would be removed from the system (Sandvig et al., 2008). Additionally, this proposed requirement would allow water systems to dedicate more staffing and financial resources to replacing lead and GRR service lines within five years rather than focusing on a pipe loop study with results that may no longer be applicable following 100 percent replacement of lead and GRR service lines.

Large and medium systems unable to replace 20 percent of their LSLs or GRRs annually and unable to replace 100 percent of their lead and GRR service lines within five years must proceed with the harvested pipe rig/loop study and install or re-optimize OCCT. The pipe loop requirements would apply to any small system required by the State to conduct a pipe rig/loop study.

Small systems unable to replace 20 percent of their LSL or GRR service lines annually and replace 100 percent within five years would be required recommend OCCT, re-optimized OCCT, or for all NTNCWSs and the subset of CWSs serving 3,300 or fewer people to recommend a small system compliance option and implement the State-approved approach. As proposed, water systems that replace 100 percent of their LSLs and GRR service lines in this five-year period but subsequently exceed the action level (or the practical quantification level for large systems without CCT) would be required to proceed with meeting the proposed CCT requirements for systems with only non-lead service lines.

In addition, EPA is proposing changes to expedite when States can approve CCT re-optimization treatment changes for systems. Under the LCRR, States can approve existing CCT re-optimization modifications without requiring a new CCT study for systems that have 90th percentile lead levels between the trigger level of 0.010 mg/L and the lead action level of 0.015 mg/L. As described in section V.E.2. of this document, EPA is proposing to eliminate the trigger level and to lower the lead action level to 0.010 mg/L. Concurrently, EPA is also proposing that States may approve, without a new CCT study, a CCT re-optimization treatment change for a system that exceeds the proposed action level for lead, but which previously conducted a CCT study. In developing the CCT change, the State must evaluate a water system's past CCT study results. EPA is proposing this update because it would expedite treatment changes, allowing the benefits of treatment modification to be realized sooner and avoiding a redundant CCT study that may not produce different results from previous studies. The treatment recommendation and CCT study process can take multiple years to complete. For water systems with existing CCT the water system may be able to alter the existing treatment (*e.g.,* increase pH and/or orthophosphate dose) without a new CCT study on a much faster timeframe rather than waiting for study results that may indicate that same change. EPA is requesting comment on whether there are situations and/or conditions where existing treatment modifications may achieve similar lead reductions rather than delaying the new treatment for two-and-a-half years while a study is underway. For more information, see section IX. of this document.

EPA is proposing modifications to the CCT studies that may be required in the event of a lead action level exceedance for small systems with LSLs. Under the LCRR, small systems that chose CCT and exceed the action level are required to recommend a CCT treatment to the State. The State may require small systems to conduct corrosion studies using a pipe rig. For the LCRR, EPA recommended that small systems serving 10,000 people or fewer with LSLs that exceed the lead action level choose the LSLR small system flexibility option rather than CCT because the cost of the pipe rig studies would be approximately the cost of replacing 55 LSLs (USEPA, 2020b). However, as discussed in section V.G. of this document, EPA is proposing to remove the LSLR option from the small system flexibility options because LSLR would be mandatory under the proposed LCRI. Therefore, EPA is proposing under the LCRI to exclude small systems with LSLs serving 10,000 or fewer people from having to conduct a pipe rig study because these systems often lack the technical expertise required to design and construct and operate the pipe rig and they could better focus limited resources that would be dedicated to a pipe rig on replacing their LSLs. Under the proposed LCRI, the State may require a pipe rig study for a small system if the State determines that the small system has the technical capabilities to conduct such a study.

In addition, EPA is proposing to require that States designate optimal water quality parameters for medium systems that must install or re-optimize OCCT after exceeding the lead action level. EPA is also proposing that States designate optimal water quality parameters for medium systems with CCT that have not exceeded the action level. While LCRR requires the continued operation and monitoring of OCCT and re-optimized OCCT that can include maintaining optimal water quality parameters, EPA is proposing that States must establish optimal water quality parameters for medium systems with CCT and that these systems must meet their optimal water quality parameters. This proposed requirement would allow States to better assess whether these types of medium systems are maintaining their OCCT or re-optimized OCCT, as well as provide better process control since source water quality can vary both daily and seasonally. EPA is also proposing additional changes to §§ 141.81 and 141.82 to clarify requirements that EPA is not intending to change. EPA anticipates that these clarifications would help States and water systems more easily interpret and implement the corrosion control treatment requirements.

EPA is proposing to streamline some requirements in § 141.80 which resulted in EPA proposing to move an LCRR provision from § 141.81. The provision

remains unchanged from the LCRR, requiring systems to notify the State before a long-term treatment change or the addition of a new source, and that States must review and approve the change or addition before implemented by the system, and allows the State to take additional actions to control corrosion.

2. Lead Action Level and Trigger Level

In the LCR, water systems calculate the 90th percentile of their lead and copper tap samples and compare these values to the lead and copper action level, respectively. EPA introduced lead and copper action levels in the LCR ''as a method to limit the number of public water systems that would need to complete a detailed demonstration that they have installed corrosion control treatment to minimize lead and/or copper levels at taps'' (56 FR 26488, USEPA, 1991). EPA stated that its selection of the values for the action levels ''reflects EPA's assessment of a level that is generally representative of effective corrosion control treatment and [it] is therefore, useful as a tool for simplifying the implementation of the treatment technique'' (56 FR 26490, USEPA, 1991). In the LCR, EPA set the action levels for lead and copper at 0.015 mg/L and 1.3 mg/L, respectively.

Under the LCR, large systems were required to optimize CCT with a detailed demonstration unless they measured 90th percentile lead levels below the practical quantitation limit of 0.005 mg/L. Small and medium systems demonstrated optimized CCT by measuring 90th percentile lead levels at or below the action level, which is a level generally representative of effective corrosion control treatment. EPA found that using the action level as a tool to limit the need for detailed optimization demonstrations reduced the technical complexity of LCR for small and medium systems that may lack the expertise required to conduct such studies and made ''implementation of the rule administratively workable'' with regard to small and medium systems (56 FR 26492, USEPA, 1991). Consistent with this rationale, EPA found that large systems should and were able to conduct a more detailed demonstration to identify OCCT for their system because they have ''the greatest technological capabilities and access to technical support and other resources that would enable them to perform the sophisticated treatment manipulations that might further reduce lead levels'' (56 FR 26492, USEPA, 1991).

In the LCR, EPA also determined that the action level is not subject to the same standard as an MCL under SDWA section 1412(b)(4)(B). First, EPA found that the action level and an MCL have different purposes. Specifically, in the LCR, EPA provided that ''exceedance of the action level(s) is merely a trigger for medium and small systems to implement optimal corrosion control (unless they can demonstrate to the State that they have already optimized corrosion control) and systems of all sizes to implement source water monitoring and possible treatment, public education, and possible lead service line replacement'' (56 FR 26488, USEPA, 1991). Second, EPA found that action levels do not function the same way as MCLs because action level exceedances are not violations under SDWA compared to MCLs (56 FR 26488, USEPA, 1991). In the LCR, EPA further distinguished an MCL from an action level by elaborating that: ''Under the SDWA, if a water system exceeds an MCL, it is in violation of the NPDWR (unless it has obtained a variance or exemption under section 1415 or 1416). . . . Water systems that exceed the action levels, however, are not in violation of the treatment technique. . . . Since the compliance status of a water system depends upon whether it performs the treatment steps established in the rule, and not upon whether it meets the action levels, the action levels are not equivalent to MCLs'' (56 FR 26488, USEPA, 1991).

Under LCRR, the lead and copper action levels continue to determine ''in some cases, whether a water system must install CCT, monitor source water, replace LSLs, and undertake a [public education] program'' (86 FR 4207, USEPA, 2021a). The LCRR maintains the LCR's lead action level of 0.015 mg/L and introduces a lead trigger level. Under the LCRR, the trigger level is set at 0.010 mg/L, a ''reasonable level'' below the lead action level and above the practical quantification limit (86 FR 4208, USEPA, 2021a). If systems exceed the lead and/or copper action level, they must take certain actions including optimizing or re-optimizing OCCT, replacing LSLs, and educating or notifying the public. If systems exceed the lead trigger level, they must take proactive actions including conducting CCT studies, re-optimizing OCCT, conducting goal-based LSLR and related public education activities, and preparing for a more rapid response should they later exceed the lead action level.

For the LCRI, EPA is proposing to eliminate the lead trigger level and lower the lead action level to 0.010 mg/L. These changes address priorities identified in the LCRR review and feedback EPA heard in the proposed LCRI external engagements. The Agency evaluated the trigger level with regards to the complexity, implementation issues, and public communication challenges associated with two lead levels, as well as in the context of other proposed changes in the LCRI, including proposed mandatory full service line replacement and proposed improvements to the tap sampling protocol at LSL sites, that ''address lead contamination at lower levels and improve sampling methods to provide better health protection'' (86 FR 71579, USEPA, 2021b).

EPA anticipates that eliminating the trigger level and establishing a single, lowered action level would help simplify the rule and improve implementation. Many stakeholders recommended eliminating the trigger level because it would simplify both implementation and understanding of the rule (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j). In 2020, the Science Advisory Board noted that the trigger level added ''unnecessary complexity'' (USEPA, 2020f). However, a few stakeholders recommended EPA maintain the trigger level and not lower the action level by noting the benefit of the trigger level to prompt actions that would help a system avoid an action level exceedance, and the requirements associated with an exceedance, such as public notification (USEPA, 2023j; USEPA, 2023m).

Evaluation of a Revised Action Level as a Screen for OCCT Demonstration Based on Recent, Higher-Quality Data

EPA considered several factors when selecting its proposed lower lead action level of 0.010 mg/L. EPA's primary consideration was the finding that an action level at 0.010 mg/L is supported by past CCT performance data as being generally representative of OCCT. As generally representative of OCCT, the action level is a 90th percentile lead level that most systems that have installed OCCT can meet. The action level would still serve as a screen for small and medium systems such that they would not need to conduct a detailed demonstration of OCCT because they would be deemed to have optimized CCT based on the sampling results. More recent and higher quality lead data are available from years of LCR implementation. This allowed EPA to re-assess which action level is generally representative of a level that systems with CCT can achieve. EPA conducted this analysis and found that the ability of systems to limit the corrosivity of water in the distribution system has greatly improved over the

past 30 years and that many systems are able to achieve lower levels of lead (USEPA, 2023g); therefore, a lower lead action level would be a more appropriate screen for determining which small and medium systems are required to conduct a detailed OCCT demonstration. EPA's analysis is summarized below.

EPA examined 90th percentile lead levels reported to EPA's Safe Drinking Water Information System (SDWIS) over the years 2012–2020 for 6,529 community water systems of all sizes with known LSL and CCT status (*i.e.,* whether a system contains LSL sites and whether a system has installed CCT) (USEPA, 2023b, Chapter 3, sections 3.3.3–3.3.4).

Because EPA is identifying a level generally representative of OCCT, EPA is primarily considering data from systems that have CCT installed. Available lead 90th percentile data were collected using the tap sampling protocol and tiering criteria in the LCR. However, changes to the tap sampling protocol and sample site tiering criteria in the LCRR and the proposed LCRI are expected to impact 90th percentile lead levels (see section V.C. of this document). To account for differences in the sampling protocol under the LCR and proposed LCRI, EPA developed adjustment ratios using data from the State of Michigan collected with a similar protocol and site selection criteria to the proposed LCRI (USEPA, 2023b, Chapter 3, section 3.2.5). Reported 90th percentile lead values were multiplied with the adjustment ratios to estimate what the 90th percentile values would be if they were collected according to the proposed LCRI sampling protocol. This multiplier approach, and the associated uncertainties, are further described in the proposed LCRI Economic Analysis (USEPA, 2023b).

The resulting data are relevant to EPA's evaluation of what level is generally representative of OCCT under the proposed LCRI. Based on this information, EPA categorized the systems with known LSL and CCT status using the highest 90th percentile lead level (adjusted for the proposed sampling protocol) reported over the 2012 to 2020 analysis period to estimate the percent of the systems that would have lead levels at or below the potential lower action level thresholds under the proposed LCRI ''Analysis of reported 90th percentile values from 2012–2020.xlsx'' in EPA–HQ–OW–2022–0801). These estimates are presented in Exhibit 4 below by LSL and CCT status.

Exhibit 4. Percent of Systems By LSL and CCT Status With Lead Levels At or Below Potential Lead Action Levels Adjusted for the Proposed LCRI Sampling Protocol (2012 – 2020)

LSL and CCT Status (Number of Systems)[1]	P90[2] ≤ 0.015 mg/L	P90[2] ≤ 0.010 mg/L	P90[2] ≤ 0.005 mg/L
No LSLs/CCT (2,105)	95%	92%	82%
LSLs/CCT (1,224)	73%	59%	37%
No LSLs/No CCT (2,730)	95%	91%	78%
LSLs / No CCT (470)	80%	65%	37%

Notes:

[1] Data from 6,529 community water systems with known CCT and LSL status. See "Analysis of reported 90th percentile values from 2012-2020.xlsx" in EPA-HQ-OW-2022-0801.

[2]Systems categorized based on their highest P90 value reported (SDWIS 2012–2020).

As shown in Exhibit 4, EPA estimates that, when accounting for the proposed LCRI sampling protocol, 95 percent of the evaluated non-LSL systems with CCT and 73 percent of LSL systems with CCT are estimated to be at or below the current lead action level of 0.015 mg/L. At 0.010 mg/L, the percentage of systems at or below that threshold is 92 percent and 59 percent, respectively. These results indicate that almost all non-LSL systems with CCT evaluated can meet the 0.010 mg/L threshold, in addition to a majority of LSL systems with CCT. EPA also estimates that 82 percent of the non-LSL systems would meet an action level of 0.005 mg/L, and only 37 percent of systems with LSLs would meet this level. These results suggest that 0.005 mg/L would not be considered generally representative of optimized conditions for systems with LSLs.

In the LCR, EPA identified only a small percentage of LSL systems with CCT that would be able to meet the selected action level of 0.015 mg/L. However, the data used for that analysis was from a small number of systems. At the time, EPA acknowledged the limitations of the available data noting the challenges of ''extrapolating generalized estimates of treatment performance . . ., which are collected from relatively few, like-sized systems operating under relatively favorable natural water quality conditions'' (56 FR 26491, USEPA, 1991). Further, EPA noted that the systems were not yet attempting to minimize lead levels (56 FR 26491, USEPA, 1991). The updated data EPA is using to re-evaluate the selection of the lead action level for the proposed LCRI comprises both a larger dataset with systems of various sizes and contains 90th percentile lead values collected under the requirements of LCR, including OCCT. Therefore, this recent larger dataset is of higher quality for selection of the action level.

Based on the analysis of this dataset, 0.010 mg/L is generally representative of OCCT and is therefore useful as a screen for the detailed demonstration that a system would otherwise be required to undertake. In addition to evaluating the CCT performance of systems to identify an action level that is generally representative of OCCT to ensure the rule is implementable for small and

medium systems, EPA considered additional factors in selecting 0.010 mg/L as the proposed action level for the LCRI.

Administrative Burden

For the proposed LCRI, EPA considered administrative burden with respect to a lower lead action level. EPA also considered this factor in the LCR, describing the action level as a tool to limit the number of public water systems required to complete a detailed OCCT demonstration. EPA further found that requiring small and medium water systems to install OCCT regardless of their tap levels would impose ''an unworkable administrative burden upon States.'' (56 FR 26492, USEPA, 1991). This is because small and medium systems place the highest burden on States with respect to CCT as they ''generally will require the most extensive input from States in evaluating, selecting, and overseeing implementation of optimal corrosion control treatment'' (56 FR 26492, USEPA, 1991).

For the proposed LCRI, EPA again considered the administrative burden on States and water systems required to install or re-optimize OCCT after a lead action level exceedance, as well as the administrative burden associated with meeting the other requirements in the proposed LCRI. For example, EPA is concerned about the resources States would need to review the detailed demonstrations for CCT, particularly for small and medium systems.

Small and medium systems comprise the vast majority of CWSs: out of 49,529 total CWSs, 48,513 serve populations equal to or less than 50,000 people. Further, the smallest CWSs (*i.e.,* those serving 3,300 or fewer people) account for 40,113 systems (USEPA, 2023b, Chapter 3, Exhibit 3–2). EPA identified 6,529 water systems of all sizes with known CCT and LSL status and reported 90th percentile values in SDWIS from 2012–2020. To estimate how many CWSs are likely to exceed various potential action levels nationally, EPA used the exceedance percentages among the 6,529 identified systems adjusted for the proposed LCRI sampling protocol, to estimate exceedances among all CWSs (USEPA, 2023b, section 4.3.5). Exhibit 5 below shows the percent of systems projected to have 90th percentile lead levels exceeding 0.015 mg/L, 0.010 mg/L, and 0.005 mg/L under the proposed LCRI.

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Exhibit 5. Percent of CWSs in Each Size Category Estimated to Have 90th Percentile Lead Levels Exceeding 0.015 mg/L, 0.010 mg/L, and 0.005 mg/L Under the Proposed LCRI

P90[1]	LSL and CCT Status	< 3,300 (40,113 systems)[2]	3,301–10,000 (5,026 systems)	10,001–50,000 (3,374 systems)	> 50,000 (1,016 systems)	Total (49,529 systems)
0.015 mg/L	No LSL/No CCT	3.1%	0.5%	0.2%	0.0%	1.9%
	No LSL/CCT	2.2%	1.4%	0.2%	0.6%	1.6%
	LSL/No CCT	1.1%	2.5%	2.1%	0.0%	1.4%
	LSL/CCT	1.5%	6.1%	11.4%	15.5%	5.1%
	TOTAL	**8.0%**	**10.5%**	**13.9%**	**16.1%**	**10.0%**
0.010 mg/L	No LSL/No CCT	5.9%	1.7%	0.6%	0.0%	3.8%
	No LSL/CCT	3.3%	2.5%	0.8%	0.9%	2.5%
	LSL/No CCT	1.9%	4.4%	4.2%	0.0%	2.5%
	LSL/CCT	1.9%	9.6%	18.6%	22.3%	7.6%
	TOTAL	**12.9%**	**18.3%**	**24.2%**	**23.3%**	**16.5%**
0.005 mg/L	No LSL/No CCT	13.2%	6.5%	2.6%	0.0%	9.3%
	No LSL/CCT	5.9%	7.0%	4.7%	5.7%	5.9%
	LSL/No CCT	2.9%	8.0%	9.0%	0.0%	4.6%
	LSL/CCT	2.5%	14.9%	28.0%	38.6%	11.7%
	TOTAL	**24.5%**	**36.4%**	**44.2%**	**44.3%**	**31.4%**

Notes:

[1] Systems categorized by highest 90th percentile value reported to SDWIS (2012–2020) and adjusted for proposed LCRI sampling. See USEPA, 2023b, section 4.3.5.

[2] Total number of CWSs in each size category nationally as reported to SDWIS in fourth quarter 2020. See USEPA, 2023b, Chapter 3, Exhibit 3-2.

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Systems that exceed the action level are required to take actions that would likely necessitate increased State oversight. Exhibit 5 shows both the percentage of each system size category and percentage of total CWSs expected to exceed various potential action levels. For example, EPA estimates that at an action level of 0.015 mg/L, 10 percent of all CWSs and eight percent of all systems serving 3,300 people or fewer are expected to have exceedances. EPA estimates that at the potential lower action level of 0.010 mg/L, 16.5 percent of all CWSs are expected have exceedances, which represents approximately 8,200 water systems. At

0.005 mg/L, the number of systems expected to exceed increases to 31.4 percent or approximately 15,500 systems. Therefore, twice as many systems are expected to exceed 0.005 mg/L than 0.010 mg/L. At 0.005 mg/L, between 25 percent and 45 percent of community water systems in each system size category are estimated to have exceedances. For example, 24.5 percent of all community water systems serving fewer than 3,300 people, 36.4 percent of systems serving between 3,300 and 10,000 people, and 44.2 percent of systems serving between 10,000 and 50,000 people are expected to exceed 0.005 mg/L. Additionally, approximately 98 percent of all CWSs are systems that serve 50,000 people or fewer; therefore, a majority of the systems expected to exceed the action level are small and medium systems.

CCT requirements may take systems several years to complete and include multiple interactions with the State. The administrative burden for the State includes activities such as reviewing CCT study results, setting optimal water quality parameters, and reviewing optimal water quality parameter data (USEPA, 2023b, Chapter 4, section 4.4.1). Particularly for LSL systems, CCT studies can require additional time and technical expertise (*e.g.,* conducting pipe rig studies) which in turn can require additional State oversight. As shown in Exhibit 5, EPA estimates a higher percentage of systems with LSLs and CCT in each size category to exceed any given potential action level. Thus, lowering the action level could affect the State's ability to provide meaningful input to individual systems and adequately oversee OCCT implementation statewide.

Additionally, the significant State resources required to oversee OCCT studies and implementation could affect the State's ability to oversee other proposed requirements of the LCRI, including replacing LSLs and GRR service lines as quickly as feasible. EPA is particularly concerned about the potential burden on systems and States if small and medium systems are required to take steps to determine and implement OCCT when they exceed a lead action level of 0.005 mg/L. Competing resources among rule components could impact the ability of these small and medium systems to reduce lead levels through service line replacement, which could result in less public health protection overall. Specifically, if a significant number of small and medium water systems were simultaneously required by the State to conduct CCT studies and take other actions associated with an action level exceedance, it could strain State resources to oversee requirements for full lead and galvanized service line replacements, which are the most significant source of lead in drinking water, where present.

Additionally, States will have an increased level of administrative burden due to the proposed requirements for water systems to conduct mandatory service line replacement (USEPA, 2023b, Chapter 4, section 4.4.4). EPA is concerned that the combination of systems taking these actions and a large percentage of systems required to evaluate CCT at 0.005 mg/L would be administratively unworkable for States. EPA is also concerned that setting the action level lower than 0.010 mg/L could impact State rule implementation and enforcement activities, particularly for mandatory service line replacement. Therefore, to inform the proposed LCRI, EPA has reasoned that the results in Exhibit 5 support a lower action level of 0.010 mg/L. While a higher percentage of community water systems (16.5 percent) are expected to exceed the proposed lead action level of 0.010 mg/L than the current lead action level of 0.015 mg/L (10 percent) and would increase administrative burden for States, EPA believes this is a reasonable increase because it would require more systems to take actions that would reduce lead levels.

National Availability of Technical Experts

EPA is also concerned about the number of CCT experts available nationally to assist water systems in designing an OCCT study and implementing treatment. In particular, small and medium systems are unlikely to have in-house experts who could design corrosion control studies for optimization. Further, many small and medium water systems currently without CCT or OCCT may not have staff with the relevant experience to install or optimize OCCT. Instead, these systems will likely have to work with State personnel to identify a treatment recommendation and seek support for installing and operating corrosion control treatment.

Water systems can hire technical experts to provide the needed direction and historical experience about CCT; however, systems may face challenges in trying to hire from the limited pool of CCT experts nationally. EPA expects CCT expertise to be highly technical given that corrosion chemistry is complex and theoretical predictions are rarely sufficient to fully understand a system. For example, in a study of lead scales (*i.e.,* minerals formed by CCT and accumulated on the inside of lead pipes to reduce lead release) formed in excavated pipes from 22 water systems, only 9 followed model predictions, and all but two had at least one type of scale formed that was not predicted based on classical modeling approaches (Tully et al., 2019). Thus, knowledge of relevant chemistry alone is usually not sufficient to perform comprehensive CCT studies. Instead, experts typically rely on significant practical and learned experience to evaluate each system individually. This knowledge is generally gained through practical, on-the-job experience that cannot otherwise be replicated. EPA anticipates systems and States may encounter challenges acquiring this technical expertise.

Practical Quantitation Limit

Further, EPA notes that the lead action level could not be set below the lead practical quantitation limit of 0.005 mg/L, which represents the technological limitations of reliably measuring lead levels. As defined in LCRR at 40 CFR 141.2, the practical quantification limit is ''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.'' For the proposed LCRI, EPA reconsidered the practical quantitation limit used in the LCR to see if there was evidence to support lowering it. The lead practical quantitation limit is currently set at 0.005 mg/L and is incorporated into the National Environmental Laboratory Accreditation Conference (NELAC) Institute (The NELAC Institute, 2021) accreditation process. EPA also obtained data from a company that conducts proficiency testing and did not find data to support lowering the practical quantitation limit (''Lead Drinking Water Proficiency Testing Data (2016–2022)'' available in the docket)). EPA also notes that while the minimum detection limit of lead can be as low as 0.0006 mg/L under certain EPA-approved methods (Diebler, 2013), the practical quantitation limit is set higher than the method detection limit to account for analytical variability, with EPA's practice being to add an uncertainty factor of 5–10 (53 FR 31550, USEPA, 1988). Thus, EPA finds the current practical quantification limit of 0.005 mg/L is consistent with published detection limits. Further, EPA is not aware of national-scale data evaluating lead detection limits, or on the number or percentage of labs nationwide measuring lower levels. EPA is not aware of any additional evidence to support lowering the current lead

practical quantification level below 0.005 mg/L in the proposed LCRI.

Stakeholder Feedback

During the LCRR review and LCRI engagements, EPA heard stakeholder support for lowering the lead action level (USEPA, 2023h; USEPA, 2023i; see docket no. EPA–HQ–OW–2021–0255). EPA heard stakeholder support for removing the lead trigger level and lowering the action level to 0.010 mg/L (USEPA, 2023j; USEPA, 2023m). EPA heard from some States experienced in implementing the LCR that support lowering the action level to 0.010 mg/L (USEPA, 2023j). These stakeholders noted the consistency with the current lead trigger level and indicated that an action level of 0.010 mg/L would simplify the rule while aligning with LCRR CCT requirements associated with the trigger level. In contrast, other States did not support reducing the lead action level below 0.015 mg/L without more consideration of technical and economic feasibility (USEPA, 2023j). Similarly, a few stakeholders indicated support for a lower action level if supported by data, particularly from small systems (USEPA, 2023m). As described above, EPA has determined that a lower action level is supported by data (USEPA, 2023g).

Others recommended EPA maintain the lead action level at 0.015 mg/L, stating that the proposed changes to the tap sampling protocol would make it more difficult for systems to achieve the current action level. They added that simultaneously changing the sampling protocol and lowering the action level would require an even larger number of water systems to take actions, and expressed concern about rule implementation (USEPA, 2023h; USEPA, 2023i; USEPA, 2023j; USEPA, 2023m).

Some stakeholders recommended that EPA propose a revised lead action level of 0.005 mg/L or a level closer to the lead MCLG of 0 mg/L, with a few indicating the level would be more protective of human health (USEPA, 2023h; USEPA, 2023i; see docket no. EPA–HQ–OW–2021–0255). Further, these stakeholders believe that a lower action level would lead to increased public health benefits by requiring more systems to act. A consideration for using 0.005 mg/L as representative of effective CCT for small and medium systems is that it would be consistent with the screening level used in the LCR and LCRR and maintained under the proposed LCRI for large systems to be deemed to have OCCT based on tap sampling. A level of 0.005 mg/L is used in the LCR and the LCRR for this purpose because it represents the practical quantitation limit for lead. In section IX. of this document, EPA is seeking comment, data, and additional information on the anticipated benefits and tradeoffs, including for public health and administrative burden on systems and States, of requiring more small and medium systems to conduct a detailed OCCT demonstration and take other actions if they exceed the proposed action level of 0.010 mg/L or other lower values.

EPA also heard stakeholder support for replacing the lead action level with an MCL. For the proposed LCRI, EPA re-evaluated the determination made in LCR and LCRR to establish a treatment technique rule in lieu of MCLs for lead and copper. As explained above and in the LCR and LCRR, the lead action level was not developed to be an MCL and it is not an MCL. As described in the LCR, because ''the compliance status of a water system depends upon whether it performs the treatment steps established in the rule, and not upon whether it meets the action levels, the action levels are not equivalent to MCLs'' (56 FR 26488, USEPA, 1991). For the LCRI, EPA is not proposing to revise the purpose of the action levels for lead and copper or make them MCLs. Therefore, consistent with EPA's determinations in LCR and LCRR, the action levels proposed for LCRI cannot be evaluated against the legal standard for an MCL in SDWA section 1412.

Further, it is important to be clear that there is a difference between collecting individual samples for lead and copper at the tap for purposes of evaluating the action level to assess the effectiveness of corrosion control and why it is not feasible to ascertain the levels of lead and copper consistent within the meaning of the SDWA to establish MCLs in the proposed LCRI. Again, the action level is not an MCL. While the levels of lead and copper can be ascertained in individual samples, measurement of customer samples collected at taps to evaluate the 90th percentile lead and copper levels is not an accurate reflection of the levels of lead and copper within a water system, or the effectiveness of the treatment applied by the water system necessary for an MCL. For EPA's explanation of why it is not feasible to establish MCLs for lead and copper within the meaning of the SDWA, see section V.A. of this document.

Given the foregoing factors and considerations, EPA believes that an action level of 0.010 mg/L would ensure the treatment technique of CCT is feasible for small and medium systems and would prevent known or anticipated adverse health effects to the extent feasible. In section IX. of this document, EPA is requesting comment on its proposed lead action level of 0.010 mg/L, as well as comment and supporting data for alternate lead action levels (*e.g.,* 0.005 mg/L).

Even though the action level was primarily developed to support the treatment technique for CCT, EPA is proposing to continue using the action level for certain provisions in treatment techniques other than CCT (*i.e.,* public education and source water monitoring) for administrative ease and to avoid confusion by establishing multiple action levels. This would also reduce the complexity of the rule and is consistent with the rationale for a single action level described in the LCR (56 FR 26507–09, USEPA, 1991). EPA notes that, as proposed, the service line replacement treatment technique is not impacted by the action level because EPA is proposing mandatory service line replacement irrespective of lead levels. In addition, EPA is proposing to require certain public education actions irrespective of the action level. Accordingly, it is still reasonable to establish the action level based on an assessment of the level that is generally representative of effective corrosion control treatment. See section V.H. for information on the use of the action level for public education and public notification requirements.

F. Water Quality Parameter Monitoring

1. Systems Required To Monitor for Water Quality Parameters

Water quality parameters are one component of the treatment technique for CCT because they are monitored to gauge CCT performance to ensure its effectiveness. Water quality parameters can include pH, alkalinity, orthophosphate, and silicate. Optimal water quality parameters refer to the values of the water quality parameters that are associated with optimized or re-optimized OCCT.

The LCRR requires all large systems to conduct water quality parameter monitoring and requires all small and medium water systems that exceed the lead or copper action level to monitor for water quality parameters until they no longer exceed the lead or copper action level. The LCRR also requires small and medium water systems with CCT that exceed the lead trigger level to monitor for water quality parameters. Under the LCRR, small and medium water systems can stop water quality parameter monitoring if they meet the action level for two consecutive six-month monitoring periods and the State

has not required the system to meet optimal water quality parameters. The LCRR also eliminated the triennial reduced monitoring for water quality parameters because EPA determined that a three-year monitoring frequency is too infrequent to provide sufficient information to evaluate continued performance of OCCT (86 FR 4230, USEPA, 2021a).

For LCRI, EPA is proposing to require all medium systems with CCT to monitor for water quality parameters regardless of the lead and copper levels, except those medium systems whose 90th percentile lead level is at or below 0.005 mg/L, in accordance with § 141.81(b)(3). This proposed change would cover another size category of water systems and increase the number of water systems conducting water quality parameter monitoring. By extending this requirement to all medium water systems with CCT, any changes in water quality parameters could be evaluated more quickly to determine if re-optimizing OCCT is needed, therefore reducing the time it will take for medium water systems to evaluate and optimize CCT under the LCRI. During the LCRR and the LCRI external engagements, EPA heard comments addressing water quality parameter monitoring including a request to increase the number of systems and number of samples required for water quality parameter monitoring as this would help establish a better baseline for water chemistry (USEPA, 2023j, see docket no. EPA–HQ–OW–2021–0255). EPA is also proposing to clarify that any system may be required to monitor water quality parameters as determined by the State.

For the LCRI, EPA is proposing that water quality parameters in addition to those specified in the rule can be used by water systems and designated by States to determine the effectiveness of CCT. This pathway has been in the rule prior to LCRR, but the proposed LCRI changes are intended to clarify the implementation of this already available option. Under the LCR, the State could designate values for additional water quality parameters determined by the State to reflect OCCT for a water system in the concluding paragraph to § 141.82(f). Under the LCRR, this concluding paragraph was renumbered as § 141.82(f)(6). This flexibility was highlighted by creating its own distinct section (f)(6). However, matching text was not added in § 141.87. Under the proposed LCRI, the provision to require any additional parameters determined by the State to reflect OCCT have been added to the entry point and distribution system sampling in § 141.87(d). This change would enable the water system to use localized parameters, in addition to those required, that may aid in a more refined evaluation of the water chemistry specific to the water system. Additional parameters include free chlorine residual and/or oxidation/reduction potential as surrogates for lead (IV) formation or other parameters that the systems may consider helpful in determining if a CCT option is effective.

EPA is also proposing changes to the organization of § 141.87 to clarify existing requirements EPA does not intend to revise in LCRI. EPA anticipates that these clarifications would help State and water systems more easily interpret and implement the water quality parameter requirements.

2. Distribution System and Site Assessment

In the LCRR, ''find-and-fix'' was introduced as a provision to potentially identify the cause of localized elevated lead levels in drinking water, which could facilitate actions to address the cause. More specifically, this provision requires water systems to collect follow-up tap samples at sites where lead levels exceed 0.015 mg/L under the LCRR tap sampling. The LCRR requires water systems to collect follow-up samples no more than 30 days after they receive the results of the sample that exceeds 0.015 mg/L. Water systems must also attempt to determine the cause of the exceedance and propose an action or a ''fix'' and the State has six months to approve the recommended action or require an alternative action.

For the LCRI, EPA is proposing to maintain the requirement for systems to collect follow-up tap samples at sites with elevated lead levels. Recognizing that the ''fix'' to address the exceedance may be outside of the control of the water system, EPA is proposing in the LCRI to rename this section to ''distribution system and site assessment'' to reflect the requirements of this section more precisely. Consistent with the proposed change to the lead action level, under the proposed LCRI, systems would conduct the distribution system and site assessment requirements for any sampling site that exceeds 0.010 mg/L. EPA has heard concerns that the term ''find-and-fix'' is an inaccurate title for this section and should be changed as it implies the water system will implement the ''fix'' in all cases (USEPA, 2023j). For example, one stakeholder indicated that identified cause of the lead level could be a premise plumbing issue that the water system may not be authorized to ''fix''.

In addition, EPA is proposing a clarification in the CCT assessment under Step 1 that the distribution system water quality parameter sample location be within a half-mile radius of each site with a result above 0.010 mg/L.

G. Compliance Alternatives for a Lead Action Level Exceedance for Small Community Water Systems and Non-Transient Non-Community Water Systems

LCRR Small System Flexibility Options

The LCRR introduced provisions for small CWSs serving 10,000 people or fewer and all NTNCWSs to provide greater flexibility to comply with the rule requirements. Under the LCRR, systems that exceed the lead trigger level, but not the lead action level, must select one of four options for approval by the State and implement that option if it subsequently exceeds the lead action level. The four options are:

- Install and maintain OCCT,
- Replace all LSLs within 15 years,
- Install and maintain point-of-use treatment devices at each household or building, or
- Replace all lead-bearing plumbing materials on a schedule specified by the State but not to exceed one year.

States seeking primacy for the LCRR are not required to adopt the small system compliance flexibility provision in the LCRR. Instead, they could adopt State regulations that require small systems to continue to comply with the CCT and LSLR requirements of the rule. This is because section 1414(e) of SDWA specifies that nothing in the Act ''shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems'' as long as such law or regulation does not ''relieve any person of any requirement otherwise applicable'' under SDWA. *See also* 40 CFR 142.4.

Stakeholder Feedback

Some stakeholders indicated support for the small system flexibility provisions during the LCRR engagements and LCRI external consultations because they offered possible cost-effective options for managing lead (USEPA, 2023j; USEPA, 2023m). Some stakeholders expressed concern that the provisions may result in lower health protection for small systems because they may choose either LSLR or one of the other three options (*e.g.,* CCT), while medium and large systems must implement both LSLR and CCT. Other stakeholders asserted that

the small system flexibility provision violated the anti-backsliding provision of SDWA by allowing water systems to opt out of LSLR and/or OCCT requirements that were applicable to those systems under the LCR (see docket no. EPA–HQ–OW–2021–0255). Some States indicated they did not support a standalone LSLR option for small systems, and some stated that States should be allowed to not offer specific options (*e.g.,* point-of-use devices) or to limit their use, and some raised concerns over providing point-of-use devices indefinitely (USEPA, 2023j).

Purpose of Flexibility

The Agency recognizes that it is often difficult for small systems to find operators that have the advanced skills to implement and maintain CCT. Additionally, small systems may face challenges retaining those operators once they have acquired those advanced skills. Because CCT is an ongoing process and finding and retaining skilled operators can be especially challenging for very small systems, point-of-use filtration and plumbing replacement options may be better options for some systems. EPA also notes that operator turnover or poor oversight of CCT can reduce the effectiveness of the system's ability to prevent lead corrosion, even resulting in increases of lead in the water (USEPA, 2016c). EPA also notes that, while CCT is an affordable compliance technology, there are several reasons (*e.g.,* practicality, cost, complexity, and availability of trained staff) why an individual system may face challenges in implementing CCT. EPA believes that point-of-use devices and plumbing replacements for small systems are effective compliance technologies in addition to CCT and systems should therefore be able to select the most appropriate compliance technology to reduce the lead risks to their consumers.

LCRI Proposed Small System Flexibility

Remove LSLR as a standalone compliance option as an alternative for OCCT. In the LCRI, EPA is proposing mandatory service line replacement for all systems including small systems (see section V.B.). Thus, EPA is proposing to remove LSLR as a standalone compliance option for small systems that exceed the action level and retain two compliance options as an alternative for OCCT, point-of-use installation and maintenance and lead-bearing plumbing replacement. These alternatives to the OCCT requirements are as effective at preventing known or anticipated adverse health effects as OCCT. Section 1412(B)(E)(iii) of SDWA requires that EPA identify affordable compliance technologies for all categories of small systems and, if none are available, identify variance technologies for compliance in accordance with SDWA section 1412(b)(15). EPA has determined that CCT is an affordable compliance technology for all categories of small systems in accordance with SDWA section 1412(b)(E)(iii) (USEPA, 1998a). Therefore, small system variance technologies remain unavailable for this rule (see section IV.D.). However, EPA added the small system flexibility provision in LCRR because the Agency recognized that ''small systems tend to have more limited technical, financial, and managerial capacity to implement complex treatment techniques'' (86 FR 4219, USEPA, 2021a).

Proposed change in flexibility eligibility. Under the LCRI, EPA is also proposing to change the small system flexibility eligibility threshold to CWSs serving 3,300 people or fewer and all NTNCWSs. The proposal's economic analysis estimates 5,188 active CWSs that serve populations between 3,301 and 10,000 people (USEPA, 2023b). For purposes of this proposal, EPA has determined that the CCT requirements are feasible for all size systems. However, for the smallest systems—CWSs serving 3,300 persons or fewer—and all NTNCWSs, EPA proposes to determine that allowing these systems to install point-of-use devices or conduct lead-bearing plumbing replacements is consistent with the statutory standard for a treatment technique rule (to prevent known or anticipated adverse effects on the health of persons to the extent feasible) (SDWA 1412(b)(7)(A)) because these treatment techniques are as effective at lead risk reduction for this category of systems as OCCT. In contrast, because the point-of-use or plumbing replacement compliance options are not as readily or easily implemented by systems that serve more than 3,300 persons due to the numbers of households that they serve, a systemwide point-of-use filtration or plumbing replacement program that meets the requirements of the proposed compliance options is unlikely to be as effective as OCCT. EPA is proposing to maintain the LCRR requirements for the point-of-use option flexibility, which would require water systems to install and maintain a point-of-use device in every household and at every tap used for cooking and/or drinking. This includes monitoring one-third of all the installed devices per year. For example, a system serving 3,301 people that installs faucet-mount carbon point-of-use units, would have to change filter cartridges in more than 1,000 homes three to four times per year per household. The system would also be required to sample over 300 point-of-use units per year and perform corrective actions for any samples exceeding 0.010 mg/L. For each filter maintenance and sampling event, the system would have to coordinate with the consumer to schedule an appointment to enter the household. For those systems which serve greater than 3,300 persons, the significant number of household visits presents additional logistical challenges that could impede the system's ability to comply with the proposed requirements. EPA is proposing to maintain the LCRR requirements for the replacement of lead bearing plumbing materials flexibility, which would require water systems that have control over all plumbing in its buildings to replace all lead bearing plumbing. It is highly unlikely that systems serving more than 3,300 have access to every residence and building it serves or that the water system has the authority to inspect and require replacement of all lead-bearing plumbing materials in these locations.

EPA views the proposed small system compliance options as impractical for systems serving more than 3,300 persons and is concerned that the option will not be effectively implemented as an alternative to OCCT as system size increases. Therefore, EPA is proposing to remove the point-of-use device and premise plumbing compliance options for CWSs serving greater than 3,300 persons. EPA has determined that, although small systems serving between 3,301 and 10,000 persons have greater technical, managerial, and financial capacity compared to even smaller systems, they may still face challenges in simultaneously implementing multiple treatment technique actions including CCT and the proposed mandatory service line replacement provisions in the LCRI. As described in section V.E.1., EPA is also proposing a provision to allow systems of any size with LSLs to defer action on CCT after a lead action level exceedance or other triggering event if the system conducts full service line replacement within five years. EPA anticipates that this flexibility would be used by smaller systems with technical, managerial, and financial challenges that are triggered into OCCT requirements while conducting service line replacement, thereby reducing the number of systems serving between 3,301 and 10,000 people that would

have to simultaneously install OCCT and conduct service line replacement.

During the LCRR engagements and LCRI external engagements, some stakeholders requested that EPA reduce the eligibility threshold. For example, some States indicated that systems with more than 1,000 connections are unlikely to be able to implement the point-of-use flexibility (USEPA, 2023j). Systems with more than 1,000 connections will have a service population towards the upper end of the 501 to 3,300 size category, which is the proposed threshold for the point-of-use flexibility. Other States indicated that only an even smaller system size, those with 50 to 100 connections, would be likely to implement the point-of-use flexibility (USEPA, 2023j). EPA agrees that smaller water systems are more likely to find that the point-of-use device and plumbing replacement options are more practicable techniques for reducing lead exposure. However, EPA believes that some systems serving between 250 people (approximately 100 connections) and 3,300 people may find these approaches feasible and believes it is appropriate to provide these options for systems to consider and implement with State approval.

While some stakeholders have asked the Agency to retain point-of-use device installation or replacement of all lead-bearing plumbing flexibilities for larger small systems, EPA expects that these systems may not be able to effectively implement these flexibilities. EPA is requesting comment, however, on whether the Agency should maintain the small system flexibility for CWSs serving 10,000 persons or fewer (see section IX. of this document). EPA notes that the Agency is proposing to retain eligibility for all NTNCWSs given that these systems are more likely to have control over premise plumbing and are more likely to be able to implement the point-of-use filtration and plumbing replacement options regardless of population served.

Point-of-use devices, such as reverse osmosis treatment systems, could provide flexibilities to control other contaminants in addition to lead as these technologies are often certified to remove multiple drinking water contaminants. Selecting these technologies could provide small water systems with the flexibility to achieve compliance with other drinking water standards. EPA is requesting comment on the ability and practicality of point-of-use devices to address multiple contaminants.

Consolidate flexibility provisions. EPA is proposing to consolidate the small system flexibility provisions in § 141.93 and remove cross-references to § 141.93 in other rule sections. This approach comports with EPA's goal in the LCRR review notice of simplifying the rule and streamlining rule requirements. It also recognizes that States may choose to adopt standards that are more stringent than Federal standards. If a State elects to not adopt the small system flexibility provision, it will be helpful for the small system flexibility provision in the Federal rule to be separate and therefore severable from the remainder of the LCRI because it would allow those States to incorporate the LCRI by reference without the need for extensive revisions to the remainder of the LCRI. For States that elect not to adopt the small system flexibility provision, small systems would be subject to the CCT requirements in §§ 141.81 and 141.82. The provisions in § 141.93 are distinct and unnecessary for States to adopt in order to maintain primacy.

H. Public Education

LCRR Requirements

Public education has been, and remains, a cornerstone treatment technique to reduce risks from exposure to lead in drinking water. The LCRR includes several public education requirements for water systems to inform consumers about lead in drinking water and steps to reduce their risk of exposure. These requirements include providing:

- Public education with consumers' individual lead tap sampling results;
- Notification and public education for consumers served by a lead, GRR, or lead status unknown service line;
- Public education to persons affected by a disturbance to a lead, GRR, or lead status unknown service line; and
- Public education about the system's goal-based LSLR program when a system exceeds the lead trigger level.

The LCRR also requires water systems to conduct public outreach activities if they exceed the trigger level and fail to meet their LSLR goal rate. Systems must also take several public education actions if they exceed the lead action level, including delivering public education materials to customers, public health agencies, and organizations that serve pregnant people and children, as well as other public education activities. In addition, all CWSs must conduct annual outreach to local and State health agencies about ''find-and-fix'' (referred to as distribution system and site assessment in the proposed activities). Small CWSs and NTNCWSs that select point-of-use devices as their compliance option in response to a lead action level exceedance must provide public education materials to inform users how to properly use point-of-use devices to maximize the units' effectiveness in reducing lead levels in drinking water.

Proposed LCRI Requirements

For the proposed LCRI, EPA is retaining the overall framework of the public education provision in the LCRR, which requires water systems to educate consumers about the risks of lead in drinking water and ways to reduce their risk. EPA is proposing changes to strengthen the public education requirements to (1) increase the likelihood that the public education activities are effective in preventing adverse effects of lead on the health of persons to the extent feasible, and (2) conform to proposed changes to other aspects of the rule such as the removal of the lead trigger level. EPA is also proposing new public education requirements for copper. These changes are described below.

1. Feasibility of Public Education Requirements

Public education is one of the treatment technique requirements EPA promulgated in the LCR, in addition to LSLR, CCT, and source water treatment. Section 1412(b)(7)(A) of SDWA authorizes EPA to promulgate a regulation that requires the use of a treatment technique in lieu of an MCL if it is not economically or technologically feasible to ascertain the level of the contaminant. In such a rule, the statute requires the Administrator to ''identify those treatment techniques 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). Public education provides the community with information on ways to reduce their exposure to lead in their drinking water and thereby can prevent adverse health effects associated with exposure to lead in drinking water.

EPA is proposing revisions in the LCRI to strengthen the public education requirements to increase public health protection. EPA has determined that the public education treatment technique is feasible and prevents known or anticipated adverse health effects ''to the extent feasible'' (USEPA, 2023b). Public education, among other things, empowers people to make informed decisions about taking actions to reduce their exposure to lead in drinking water and thereby reduce their risk of adverse health effects. In the final LCR preamble, EPA found that public education is an effective means of

preventing adverse health effects and determined that public education is feasible under sections 1412(b)(7)(A) and 1412(b)(5) of SDWA (56 FR 26500, USEPA, 1991). Since the LCR in 1991, water systems have demonstrated their ability to provide public education materials and public notification to consumers. Specifically, since the LCR, EPA has required water systems to conduct various lead public education activities, including delivering public education materials to customers and organizations that serve pregnant people, infants, and young children (*e.g.,* public schools, pediatricians, and Women, Infants, and Children programs), within 60 days after the end of the tap sampling period in which a systemwide lead action level exceedance occurs (56 FR 26555, USEPA, 1991). In 2007, EPA updated the LCR to require systems to conduct additional outreach activities after a system-wide lead action level exceedance (72 FR 57792, USEPA, 2007a), as well as to require delivery of lead tap sampling results to consumers whose taps were sampled as part of the system's monitoring program (72 FR 57789, USEPA, 2007a).

In section IX. of this document, EPA is requesting comment on this proposed feasibility determination, and is especially interested in any data, analyses, and comments on proposed changes to the public education requirements in the LCRI. In particular, EPA is requesting data, analyses, and comments on the feasibility of requiring systems to deliver all consumer notices of lead or copper tap sampling results within three days, regardless of whether the results exceed the lead or copper action level (see section V.H.3.). EPA is also seeking data, analyses, and comment on whether the proposed supplemental monitoring and notification requirement for water systems to offer lead sampling to customers with LSLs, GRR service lines, or unknown service lines is effective at reducing adverse health effects and whether it is feasible for water systems to provide the sampling results three days after the system learns of the results (see section V.H.4.). In addition, EPA is seeking any data, analyses, and comments on whether it is feasible for water systems to conduct the public education activities under § 141.85(b)(2) in a shorter time frame than 60 days after the end of the tap sampling period in which a system-wide lead action level exceedance occurs. EPA is proposing several changes that would streamline public education requirements and make it easier for States to track systems' compliance with these requirements, including requiring all consumer notices of lead or copper tap sampling results to be delivered in the same time frame, allowing systems to combine lead and copper notices of tap sampling results, requiring public education to be repeated with the same frequency after every lead action level exceedance, and allowing systems to combine required outreach activities to meet some of the proposed public education requirements. EPA is also requesting comment on additional ways to streamline public education and associated certification requirements (*e.g.,* combine deadlines for systems to conduct public education or submit information to the State) (see section IX. of this document).

2. Service Line Related Outreach

Required Public Education if Not Achieving Mandatory Service Line Replacement Rate

The LCRR requires water systems that have LSLs and exceed the lead trigger level to conduct public education activities including outreach to consumers about goal-based LSLR and when a system fails to meet the LSLR goal rate. Because EPA is proposing to eliminate goal-based LSLR requirements and require all water systems to replace their LSLs and GRR service lines (see section V.B. of this document), EPA is proposing to remove the current public education requirements related to goal-based LSLR outreach, including public education about the system's goal-based LSLR program when systems exceed the lead trigger level (§ 141.85(g) of the LCRR) and public outreach activities if a system exceeding the trigger level fails to meet the LSLR goal rate (§ 141.85(h) of the LCRR) and replace them with new public education requirements.

EPA is proposing in the LCRI to require outreach activities for systems that fail to meet the mandatory service line replacement rate. Systems that fail to meet the proposed LCRI's average annual replacement rate would be required to conduct the same kinds of outreach activities as the LCRR requires for systems that fail to meet their goal LSLR rate. EPA is proposing that under the LCRI, systems would be required to conduct the outreach at least once in the year following the failure to meet the mandatory service line replacement rate and annually thereafter until the water system meets the replacement rate or until there are no LSLs, GRR service lines, or unknown service lines remaining in the inventory, whichever occurs first. Systems serving more than 3,300 persons would be required to conduct at least one of the following activities, at least once in the following year and annually thereafter until the system meets the replacement rate or until there are no LSLs, GRR service lines, or unknown service lines, to discuss their service line replacement program and opportunities for replacement and to distribute public education materials:

- Conduct a townhall meeting;
- Participate in a community event to provide information about the service line replacement program;
- Contact customers by phone, text message, email, or door hanger; or
- Use another method approved by the State to discuss the service line replacement program and opportunities for replacement.

Alternatively, systems serving more than 3,300 persons would be required to conduct at least two of the following activities:

- Send certified mail to customers and persons served by LSLs or GRR service lines;
- Conduct a social media campaign;
- Conduct outreach via the media including newspaper, television or radio;
- Visit targeted customers (*e.g.,* customers in areas with lower service line replacement participation rates) to discuss the service line replacement program and opportunities for replacement.

Systems serving 3,300 persons or fewer would be required to conduct at least one activity from either set of options.

Under the proposed LCRI, water systems with LSLs, GRR service lines, or unknown service lines would be required to provide information about the service line replacement program to consumers through other public education including materials provided after a lead action level exceedance and the notification of service line material; CWSs would also provide this information in the Consumer Confidence Report. EPA is proposing this requirement for additional outreach by systems that fail to meet the mandatory service line replacement rate to further help systems increase customer participation rates. AWWA's 2022 Lead Communications Guide and Toolkit notes the importance of regular outreach and providing multiple notifications to encourage customer participation in LSLR, including using postcards, letters, phone calls, text messages, and door hangers to provide public education materials to consumers (AWWA, 2022). Many of the activities EPA is proposing in the LCRI are consistent with recommendations from

AWWA (AWWA, 2022) and the LSLR Collaborative, a group of national organizations representing various sectors including public health, water utility, environmental, labor, consumer, and housing, which provides recommendations and examples of LSLR outreach as part of its efforts to accelerate voluntary LSLR in communities across the United States (LSLR Collaborative, n.d.c). For example, some of the options EPA is proposing include contacting customers by phone, text message, email, or door hanger. In addition, some of EPA's proposed options for outreach include participating in a community event and visiting customers; both AWWA and the LSLR Collaborative have previously recommended direct customer and/or consumer contact and partnering with community-based organizations as particularly effective methods of communicating about LSLR (AWWA, 2022; LSLR Collaborative, n.d.d). During the National Drinking Water Advisory Council (NDWAC) consultation for the proposed LCRI, stakeholders also described the importance of engaging with community members and community groups to provide public education (USEPA, 2023l). Clean Water Fund's work with the Department of Public Works in Chelsea, MA provides an example of how community partnerships have been an effective way to increase public awareness and trust to support LSLR efforts (LSLR Collaborative, n.d.e). Clean Water Fund partnered with a community-based organization called Chelsea GreenRoots to organize LSLR public information sessions and train community members to conduct door-to-door outreach, including providing translated materials for consumers with limited English proficiency (LSLR Collaborative, n.d.e). Community outreach in Detroit, Michigan has also shown how effective public education and community engagement can be to achieve high levels of customer participation in LSLR. Detroit Water and Sewerage Department achieved 100 percent compliance with homeowners to replace full LSLs which the City of Detroit attributed primarily to a comprehensive community outreach effort, including hand delivery of informational materials about the LSLR program to homes and holding community meetings ahead of LSLR (City of Detroit, 2023).

While some forms of outreach such as written letters and communicating through news media or social media are also important elements of effective public education about drinking water (Bradford et al., 2017), they may not be effective modes of communication on their own (LSLR Collaborative, n.d.d); therefore, EPA is proposing to require water systems serving more than 3,300 persons to conduct at least two of those kinds of activities for more effective public education. During the Small Business Advocacy Review for the proposed LCRI, EPA received feedback that face-to-face contact is particularly effective for engaging smaller communities, especially those with a higher percentage of older adults (USEPA, 2023m). EPA is proposing a variety of activities for systems to choose from so that they can tailor the outreach to the community they serve. EPA is requesting comment on whether the types of activities proposed are feasible and appropriate and whether other activities should be considered (see section IX. of this document).

Notification of Service Line Material

The LCRR requires water systems with LSLs, GRR service lines, or unknown service lines in in their inventory to notify consumers if they are served by one of these service lines. EPA is proposing to clarify these requirements in several ways. First, EPA is proposing requiring the same notification content requirements for both LSLs and GRR service lines since both increase the risk of exposure to lead. In addition, all notices (LSLs, GRR service lines, and unknown service lines) would be required to include steps consumers can take to reduce exposure to lead in drinking water. These notices would be required to meet the requirements of § 141.85(a)(1)(iv) which contains proposed content updates, including information about using a filter certified to reduce lead. During development of the proposed LCRI, EPA heard concerns that it is possible for service line material to be incorrectly identified by the water system as non-lead. Therefore, EPA is proposing to require that the public education materials include instructions for consumers to notify the water system if they think the material categorization is incorrect (*e.g.,* if the service line is categorized as non-lead in the inventory but is actually lead). EPA is proposing that water systems follow up with consumers that notify the water system that they think the material is incorrect, verify the correct service line material, and update the inventory (see section V.D. of this document). In addition, to help ensure that customers are aware of EPA's proposed requirement in § 141.85(c) that water systems must offer to sample the tap of any customer served by an LSL, GRR service line, or unknown service line who requests it (see section V.H.4. of this document), EPA is proposing that the notice include a statement about this requirement. EPA is requesting comment in section IX. of this document on whether the Agency should also require systems to notify consumers if they are served by a lead connector (see section V.D.4. of this document for information on proposed inventory requirements on lead connectors).

Notification of a Service Line Disturbance

The LCRR requires water systems that cause a disturbance to an LSL, GRR service line, or unknown service line to notify persons at the service connection and provide them with information to reduce their exposure to potentially elevated lead levels that could result from the disturbance. This can include disturbances resulting in the water to an individual service line being shut off or bypassed, such as operating a valve on a service line or meter setter. In this situation, water systems are also required to provide persons at the service connection with instructions for a flushing procedure to remove particulate lead. EPA is proposing revising this requirement to also include significant disturbances due to inventorying efforts, such as potholing, to conform with the recommendations in the LCRR inventory guidance (USEPA, 2022b). Disturbances requiring notification under the LCRR can also result from the replacement of an inline water meter, a water meter setter, or gooseneck, pigtail, or connector. In this case, water systems are also required to provide persons at the service connection with pitcher filters or point-of-use devices certified by an ANSI accredited certifier to reduce lead, along with instructions and filter replacement cartridges. EPA is proposing to maintain the requirement for water systems to provide pitcher filters or point-of-use devices and filter replacement cartridges to last six months as a result of these disturbances (see section V.B.6. of this document). During the Federalism consultation, EPA received feedback to reconsider the requirement for water systems to provide pitcher filters and replacement cartridges during some disturbances, such as those caused by water meter replacement, and for disturbances affecting unknown service lines (USEPA, 2023j). While water systems are required to notify consumers of disturbances resulting from water main replacement under these proposed requirements, EPA is also requesting comment on whether to require distribution of filters for this

type of disturbance (see section IX. of this document).

Disturbances caused by partial or full service line replacement would require notification and mitigation; however, these requirements are under the service line inventory and replacement section of the rule (see section V.B.6. of this document).

EPA anticipates the various proposed requirements for service line related outreach and public education will encourage water systems to replace all their LSLs and GRR service lines and identify unknown service lines in ten years or less. Water systems with LSLs, GRR service lines, and unknown service lines are proposed to conduct annual notification of LSL, GRR service line, or Unknown service line; notification of disturbances to LSL, GRR service line, or Unknown service line (including provision of pitcher filters or point-of-use devices for certain disturbances); outreach activities when systems fail to meet the mandatory replacement rate; sampling the tap of any customer served by an LSL, GRR service line, or unknown service line who requests it and notification of results within three days; and including information about LSLs, GRR service lines, and unknown service lines in public education after a lead action level exceedance (see section V.H.4. of this document) and in the annual Consumer Confidence Report (see section V.L.1. of this document). Water systems serving a large proportion of consumers with limited English proficiency would also be required to provide translations of these notices or translation support (see section V.H.5. of this document). Engaging with and informing consumers, property owners, and the community about the risks of LSLs and GRR service lines and opportunities for their replacement is expected to encourage participation in service line replacement programs. In addition, the proposed public education requirements would also serve as an incentive for water systems to remove LSLs and GRR service lines as quickly as possible. This is because systems that remove all their LSLs and GRR service lines and identify unknown service lines would have a reduced implementation burden by not having to conduct these proposed public education and outreach requirements. EPA is requesting comment on to require additional public education requirements to further encourage swift service line replacement faster than the 10-year replacement deadline. For example, should water systems that have LSLs, GRR service lines, or unknown service lines five years after the compliance date for the LCRI be required to increase the frequency of the notification of service line materials from annual to once every six months? (See section IX. of this document).

3. Individual Notification of Tap Sample Results

Lead

Under § 141.85(d) of the LCRR, water systems are required to provide consumer notice of an individual's lead tap sampling results from monitoring under § 141.86. For samples that do not exceed 0.015 mg/L (the LCRR lead action level), water systems must provide the notice to persons served at the tap as soon as practicable but no later than 30 days after the water system learns of the results. The notice must be provided by mail or by another method approved by the State. For samples that exceed 0.015 mg/L, water systems are required to provide consumer notice no later than three days after learning of the results; the notice must be provided electronically or by phone, hand delivery, by mail, or another method approved by the State.

LCRI proposal. EPA is proposing to require all consumer notices of lead tap sampling results to be delivered within the same time frame of three calendar days after the system learns of the results, regardless of whether the results exceed the lead action level. Based on public comments the Agency received on the proposed LCRR and on the fact that water systems have a long history of demonstrated ability to provide consumer notices within an even shorter time frame of 24 hours in other contexts, water systems should be capable of providing these consumer notices no later than three days after the water system learns of the results. This three-day time frame allows water systems time to review results and accommodates circumstances such as staffing shortages or holidays (USEPA, 2020b). EPA heard many stakeholders request more proactive and accessible communication about lead in drinking water during the proposed LCRI external engagements. Stakeholders also expressed concern that the lead action level is inappropriately interpreted to be a health-based level. The proposed action level is not a health-based level, and EPA agrees that households that participate in tap sampling programs should be made aware of any levels of lead found in the samples collected from their taps. EPA's proposed delivery within three days allows all consumers whose taps were sampled for lead to quickly be notified of their results and informed of steps they can take to reduce exposure.

Water systems would be required to deliver the notice either electronically (*e.g.,* email or text message), by phone, hand delivery, by mail (postmarked within three days of the system learning of the results), or by another method approved by the State. EPA is proposing a variety of delivery options so that water systems can choose the most suitable option for the persons they serve and so that they are able to meet the three-day time frame. These are the same delivery options that the LCRR requires for water systems to deliver results that exceed the action level within three days; however, EPA is proposing that water systems that choose to deliver the notice by phone would be required to follow up with a written notice hand delivered or postmarked within 30 days of the water system learning of the results. Written follow-up would allow greater information accessibility and would allow consumers to keep a copy of their results, steps they can take to reduce exposure to lead in drinking water, and the other information provided in the notice. This written follow-up would also enable States to verify the content of the notice, which would be difficult to do if the notice were only delivered by phone. EPA acknowledges that the proposed requirements for water systems to deliver all notices of individual tap sampling results for lead regardless of concentration within three days would increase the number of notices that water systems would be required to provide in a short time frame. EPA is requesting comment on its proposed determination that water systems are capable of providing all consumer notices of individual tap sampling results within three calendar days, or if a longer time frame is appropriate (*e.g.,* three business days, seven calendar days, etc.) (see section IX. of this document).

Copper

Under the LCRR, water systems are not required to provide customers with their copper tap sampling results from monitoring under § 141.86, only lead. EPA is proposing to require water systems to provide consumer notice of an individual's copper tap sampling results. EPA is proposing this new requirement in response to comments during the LCRI consultation and LCRR review engagements where stakeholders requested public education in response to higher copper levels (USEPA, 2023h; USEPA, 2023i; see written comments and summaries of LCRR engagements, Docket ID EPA–HQ–OW–2021–0255).

Similar to the notice of lead tap sampling results, the notice of copper tap sampling results must include the results of copper tap water monitoring for the tap that was tested, an explanation of the health effects of copper as provided in Appendix B to Subpart Q of 141—Standard Health Effects Language for Public Notification, a list of steps consumers can take to reduce exposure to copper in drinking water and contact information for the water utility. The notice must also provide the MCLG and the action level for copper, both of which are 1.3 mg/L, and the definitions for these two terms from § 141.153(c). In cases where copper samples are collected at the same time as lead, EPA is proposing to allow systems to combine the lead and copper results and required information into a single notice. EPA expects that this will simplify implementation by allowing systems to deliver both the lead and copper results and associated required information at the same time. EPA acknowledges that the proposed requirements for water systems to deliver all notices of individual tap sampling results for lead and copper regardless of concentration within three days would increase the number of notices that water systems would be required to provide in a short time frame. EPA is requesting comment on its proposed determination that water systems are capable of providing all consumer notices of individual tap sampling results within three calendar days, or if a longer time frame is appropriate (*e.g.,* three business days, seven calendar days, etc.) (see section IX. of this document).

4. Other Public Education Materials

Supplemental Monitoring and Notification Requirements

Under the LCRR, systems are required to offer to sample the tap water for lead for any customer who requests it when there is a systemwide lead action level exceedance. EPA is proposing to also require systems to offer to sample the tap water for lead for any customer served by an LSL, GRR service line, or unknown service line regardless of lead levels calculated based on compliance monitoring. The LCRR does not specify a sampling protocol for customer-requested sampling. EPA is proposing to maintain flexibility for water systems to determine the sampling protocol for this supplemental monitoring. For sites with an LSL or GRR service line, the sampling would be required to capture the water stagnant in the service line as well as any premise plumbing (*e.g.,* first- and fifth-liter samples, sequential sampling, flush samples). Since LSLs and GRR service lines can increase the risk of exposure to lead in drinking water, EPA believes this proposed requirement would encourage more people who are at greater risk of lead exposure to have their tap sampled to find out if there is lead in their drinking water and what actions they can take to reduce their risk of exposure. EPA is also proposing to require the system to notify consumers of the results of this tap sampling so they are informed and can decide to take any needed steps to reduce their exposure to lead in their drinking water.

EPA is also proposing to require systems to provide consumers supplemental monitoring results within three days of the system learning of the results. Under the LCRR (§ 141.85(c)), systems were only required to notify customers of their results from samples collected under § 141.86 in three days if the sample exceeded the lead action level, while samples below the lead action level could be sent within 30 days. This proposed requirement is consistent with feedback EPA heard throughout the LCRR review and LCRI engagements. EPA heard requests for more proactive public education requirements, given there is no known safe level of lead in drinking water and because the lead action level is not health-based. EPA acknowledges that the proposed requirements for water systems to deliver all notices of individual lead tap sampling results from monitoring under § 141.86 and from supplemental monitoring under § 141.85(c) within three days would increase the number of notices that water systems would be required to provide in a short time frame. EPA is requesting comment on the proposed requirement and the feasibility of providing these results in three calendar days, or if a longer time frame is appropriate (*e.g.,* three business days, seven calendar days, etc.) (see section IX. of this document).

Public Education After a Lead Action Level Exceedance

Under the LCRR, systems that exceed the lead action level must deliver public education materials to their customers, public health agencies, and organizations that serve pregnant people and children. The information about the lead action level exceedance must be included in customers' water bills. Public education materials about the action level exceedance must also be posted online. Systems must submit press releases to media outlets and conduct activities such as public service announcements, host a public meeting, or conduct targeted customer contact. Under the LCRR, water systems that exceed the lead action level must conduct the public education activities under § 141.85(b)(2) no later than 60 days after the tap sampling period in which the exceedance occurred. If the water system exceeds the action level again in the next tap sampling period (*i.e.,* the water system has consecutive lead action level exceedances), then the rule allows systems up to 12 months to conduct the public education requirements.

Time frames for delivering public education. EPA is proposing that systems must always conduct the public education activities under § 141.85(b)(2) within 60 days of the end of the tap sampling period in which the exceedance occurred (*e.g.,* June 30 or December 31 for standard monitoring, or September 30 or the last day of an alternative four-month tap sampling period approved by the State for annual and reduced monitoring), regardless of whether the lead action level exceedance was consecutive. This would ensure that consumers receive information following every lead action level exceedance, instead of waiting 12 months where two lead action level exceedances were consecutive, which assures consumers receive information in a timely manner so that they can take actions to reduce their lead exposure risks. Under the LCRR, water systems may discontinue this public education when they no longer exceed the lead action level. EPA has heard concerns that water systems may discontinue public education after calculating a 90th percentile level at or below the lead action level based on fewer than the minimum number of samples required under § 141.86. Therefore, EPA is proposing a revision to clarify that the calculated 90th percentile level at or below the lead action level must be based on the minimum number of required samples under § 141.86 in order for the system to be able to discontinue public education (see section V.C.3. of this document). EPA is proposing that public education following a lead action level exceedance be sent within 60 days of the end of the tap sampling period for every lead action level exceedance. During the LCRI consultations, many stakeholders expressed concerns that a lower lead action level would result in more action level exceedances and increase public education in response to these lead action level exceedances as a result. Providing public education within 60 days of the end of the tap sampling period should be feasible for most water

systems (72 FR 57794, USEPA, 2007a). In the LCRR review engagements, some commenters requested that EPA shorten this period so that public education is required either 30 or 60 days after the system receives the results, rather than 60 days after the end of the tap sampling period. EPA believes that systems need the 60 days after the end of the tap sampling period to develop public education materials, consult with the State and to identify the organizations that they need to share these materials with. However, EPA is requesting comment on whether systems are capable of conducting the public education activities under § 141.85(b)(2) in a shorter time frame (*e.g.,* 30 days after the system receives the results or 30 days after the end of the tap sampling period in which the exceedance occurs) (see section IX. of this document).

If water systems are unable to meet the public education requirements following a lead action level exceedance, systems can apply to the State for an extension under the LCRR. The LCRR does not specify the length of the extension. When EPA introduced this extension provision, the Agency previously explained that ''systems must start these activities and States must approve in writing any deadline extension within 60 days of the end of the monitoring period in which the exceedance occurred'' and that ''States should still make every effort to get public water systems to complete their public education activities within 60 days after the end of the monitoring period'' (72 FR 57787, USEPA, 2007a). EPA is proposing to allow a State that grants an extension for a water system to conduct the public education activities, to make the deadline no more than 180 days after the end of the tap sampling period in which the lead action level exceedance occurred. In addition, EPA is proposing to restrict the extension such that it only applies to the activities in § 141.85(b)(2)(ii) through (vi), and would not apply to delivery of public education materials to consumers under § 141.85(b)(2)(i) because it is feasible for systems to distribute public education materials to consumers within 60 days. This proposed revision ensures that systems must deliver the public education materials no later than 60 days after the end of the tap sampling period in which the action level exceedance occurs, so that consumers have the information to decide to take steps to reduce their exposure to lead sooner, thereby providing greater public health protection.

Who receives public education materials. Under the LCRR, water systems must deliver these public education materials to bill paying customers. For the LCRI, EPA is proposing to require the public education materials also be delivered to every service connection address served. This proposed requirement is responsive to feedback heard during the public meetings on environmental justice considerations for the proposed LCRI and LCRR review engagements, where stakeholders expressed concerns about public education not reaching renters because they may not be the bill paying customer (USEPA, 2023h; USEPA, 2023d; see written comments and summaries of LCRR engagements, Docket ID EPA–HQ–OW–2021–0255). EPA is proposing this change to better ensure that renters receive this important information so that they can decide to take any needed steps to reduce their exposure to lead in drinking water.

Contents of public education materials. Under the LCRR, the public education materials must include mandatory language on the health effects of lead, information about sources of lead, steps consumers can take to reduce exposure to lead in drinking water, an explanation of why there are elevated levels of lead in the system's drinking water and what the system is doing about it, as well as other information. The LCRR allows water systems to change some of the mandatory language with State approval. EPA is proposing to revise this provision in the LCRI to allow States to approve changes to the content requirements of the public education materials only if the State determines the changes are more protective of human health. EPA is proposing this revision to ensure that information provided in public education materials is most protective of human health and in recognition that some water systems may need to provide more tailored information to their community in order to provide greater public health protection (*e.g.,* systems with many LSLs, GRRs, or lead status unknown service lines). If the system has LSLs, the LCRR requires the materials to also include information about LSLs. EPA is proposing to revise this to require that systems with LSLs, GRR service lines, or unknown service lines, rather than just systems with LSLs, include information about LSLs, GRR service lines, or unknown service lines in the public education materials. In addition to the LSL-related information required in the LCRR, EPA is proposing that systems must include information about replacing GRR service lines and identifying the material of unknowns as well as information on how to access the service line replacement plan. In addition, EPA is proposing to require systems with known lead connectors and unknown connectors to include information about accessing the service line inventory. EPA is also proposing to require that the public education materials include instructions for consumers to notify the water system if they think the material classification is incorrect (*e.g.,* if the service line is classified as non-lead in the inventory but is actually lead). EPA is proposing these revisions to make the public education materials more informative for persons served by LSLs, GRR service lines, unknown service lines, known lead connectors, or unknown connectors and thereby provide greater public health protection.

EPA is also proposing requiring public education materials to explain that using a filter certified by an American National Standards Institute accredited certifier to reduce lead is effective in reducing lead levels in drinking water. Water systems would need to include this information among the other steps the consumer can take to reduce their exposure to lead in drinking water. EPA is proposing this change to ensure that consumers are made aware that filters are an effective option for reducing lead in drinking water. This proposed addition to the public education materials is also responsive to requests from many stakeholders during the LCRI environmental justice meetings (USEPA, 2023h; USEPA, 2023i) and LCRR review (Docket ID EPA–HQ–OW–2021–0255), asking that EPA provide recommendations on the use of filters. Some participants in the LCRI environmental justice meetings asked that EPA recommend that consumers served by LSLs use filters until LSLs are replaced (USEPA, 2023h; USEPA, 2023i), while some commenters during the LCRR review stated that public education materials should encourage consumers more broadly to use filters certified to reduce lead in drinking water (Docket ID EPA–HQ–OW–2021–0255). EPA is not proposing to require public education materials to recommend that all consumers, or consumers served by LSLs, use a filter certified to reduce lead. Such a recommendation would be made regardless of system-wide lead levels or lead levels at an individual site. EPA notes that many factors can influence lead levels in drinking water, such as CCT performance, water use habits, and sources of lead in drinking water.

Because of the various factors that influence lead tap water levels, EPA expects that a recommendation that all or a subset of consumers use a filter would lead to inconsistencies, confusion, and possibly a reduction in confidence in tap water even where lead is not present or remains very low. See section V.B.6. of this document for further discussion of language concerning use of filters certified to reduce lead in drinking water. EPA is proposing that water systems include this information about filters among the list of steps to reduce exposure to lead in drinking water in all the public education materials under § 141.85. EPA is also proposing that systems with multiple lead action level exceedances make filters available (see section V.I. of this document) and include information about how consumers can obtain filters.

In addition to proposing to require information about filters in public education, EPA is proposing to require water systems to include other options in the list of steps to reduce exposure to lead in drinking water. Water systems would be required to encourage regular cleaning of faucet aerators as an additional option in this list. EPA is also proposing to require water systems to emphasize additional measures to reduce exposure to lead in drinking water for pregnant people, infants, and young children since they are at higher risk of adverse health effects from lead exposure. EPA is also proposing to require that water systems provide additional information about flushing the pipes, including noting that consumers served by LSLs and GRR service lines may need to flush for longer periods. EPA is also proposing to require systems to include contact information for the State and/or local health department so that consumers can contact them for more information about lead. EPA is proposing these additions to the public education materials to make consumers aware of more actions they can take to reduce their exposure to lead in drinking water. For information on how EPA is proposing to revise the mandatory lead health effects language, see section V.H.5. below.

Under the LCRR, CWSs are required to include information about how consumers can get their water tested for lead in public education materials, but NTNCWSs are not. Similarly, the LCRR also only requires CWSs, and not NTNCWSs, to include information about lead in plumbing components in public education materials. EPA is proposing to require all water systems to include information in the public education materials about lead in plumbing components and about how consumers can get their water tested, including information about the proposed provision of supplemental monitoring and notification in § 141.85(c) that is described earlier in this section. EPA is proposing these changes to ensure that consumers, including those served by NTNCWSs, are more informed and thereby provide greater public health protection.

Many stakeholders also questioned why the public education requirements are triggered by the lead action level if it is not a health-based level. EPA requires water systems to provide public education materials to consumers after a lead action level exceedance so that people are informed about the ways to reduce their exposure to lead in their drinking water and thereby can prevent adverse health effects. EPA introduced the public education requirements in 1991 stating that while water system actions including CCT and LSLR are expected to reduce lead drinking water levels, ''there are situations where elevated lead levels will persist at consumers' taps during or even after these efforts'' (56 FR 26500, USEPA, 1991). EPA further noted that the public education requirements supplement the other actions water systems take to reduce lead levels after a lead action level exceedance. While EPA has since added additional public education requirements that are not based on a system's 90th percentile lead level, public education after a lead action level exceedance is still warranted. A system-wide lead action level exceedance may be indicative of higher lead levels system-wide and prompts water systems to take actions such as installing or re-optimizing OCCT to reduce lead drinking water levels. In such cases, system-wide public education which includes a statement about the lead action level exceedance, the health risks of lead, and steps individuals can take to reduce their exposure is appropriate.

However, the Agency agrees that consumers should also be aware of the risks from lead exposure regardless of lead levels in the system. The LCRR requires many actions to educate consumers about lead in drinking water irrespective of whether or not a system has an action level exceedance for lead, such as the following: public education provided with consumers' individual lead tap sampling results; public education notifying consumers if they are served by an LSL, GRR service line, or unknown service line; and public education to persons affected by a disturbance to an LSL, GRR service line, or unknown service line. These include a statement of the health effects of lead, steps consumers can take to reduce their exposure to lead, among other information. The Consumer Confidence Report (CCR), which is distributed to all consumers of a community water system, must also include an informational statement about lead regardless of whether there is a lead action level exceedance (see section V.L.1. of this document). For the LCRI, EPA is proposing additional improvements for more proactive public education that make it clear that there is no safe level of lead in drinking water. For example, EPA is proposing requiring that the consumer notice of lead tap sampling results be delivered within three days regardless of whether the results exceed the lead action level or not (see section V.H.3. of this document). EPA is also proposing that the lead health effects language required in public education, public notification, and the Consumer Confidence Report explicitly state that there is no safe level of lead in drinking water (see section V.H.5. of this document). EPA is also proposing that water systems that fail to meet the mandatory service line replacement rate conduct public outreach activities (see section V.H.2. of this document).

Public Education for Small System Compliance Flexibility Point-of-Use Devices

EPA is proposing moving the public education requirements for small water system compliance flexibility point-of-use devices from § 141.85 to § 141.93. EPA is proposing this change so that the small system compliance flexibility provisions are all in the same rule section (see section V.G. of this document).

5. Requirements for Language Updates and Accessibility

Lead Health Effects Language

Under the LCRR, the following lead health effects language is required to be included in public education, public notification, and the Consumer Confidence Report (CCR).

Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart

disease, high blood pressure, kidney or nervous system problems.

EPA is proposing to require the language to begin with a statement that there is no safe level of lead in drinking water. During the LCRI external engagements and LCRR review, stakeholders expressed concerns about water systems with detectable lead levels communicating that drinking water is ''safe'' because lead levels are below the action level. Some stakeholders have also stated that water systems downplay the urgency of lead action level exceedances by providing statements to consumers that the system meets all EPA requirements. EPA's proposed additional language would help address these concerns by communicating clearly that there is no level of lead without health risks. EPA is also proposing revisions to clarify that the language provides some and not all the health effects of lead, and to encourage consumers to consult their health care provider for more information about their risks. Health care providers are an important, trusted source of information about lead for consumers and are influential in encouraging consumers to take actions, particularly for those at highest risk from lead in drinking water (Jennings and Duncan, 2017; Griffin and Dunwoody, 2000). EPA is proposing these changes in response to concerns stakeholders shared during the proposed LCRI external engagements and LCRR review that the language does not disclose all the known health risks of lead exposure. In addition, the current language notes the risk to all age groups and EPA is proposing adding language to highlight the risks to pregnant people, infants (both formula-fed and breastfed), and young children. This revision is being proposed in response to stakeholder recommendations that the language emphasize health risks to all age groups, especially fetuses, formula-fed infants, and young children. EPA included pregnant people to ensure that those through which the exposure is occurring to the developing fetus are highlighted so they can easily identify themselves as an at-risk group. EPA is also proposing revisions to simplify the language so that it is easier for consumers to understand. EPA is also proposing to make the language gender neutral for greater inclusivity. EPA is proposing the following revised mandatory lead health effects language and has underlined the additions to illustrate changes from the LCRR text:

<u>There is no safe level of lead in drinking water.</u> Exposure to lead in drinking water can cause serious health effects in all age groups<u>, especially pregnant people, infants (both formula-fed and breastfed), and young children. Some of the health effects to infants and children include</u> decreases in IQ and attention span. Lead exposure can <u>also result in</u> new <u>or worsened</u> learning and behavior problems. The children of <u>persons</u> who are exposed to lead before or during pregnancy <u>may be at</u> increased risk of these <u>harmful</u> health effects. Adults have increased risks of heart disease, high blood pressure, kidney or nervous system problems. <u>Contact your health care provider for more information about your risks.</u>

The same wording would be used in the health effects portion of the public notification of a lead action level exceedance and of treatment technique violations as well as the CCR.

Translation Requirements

Under the LCRR, water systems serving a large proportion of non-English speaking consumers must include in public education materials a translated statement about the importance of the materials, or they must include contact information for consumers to obtain a translated copy or translation assistance from the water system. The State determines what is considered a large proportion (§ 141.85(b)(1)).

EPA is proposing to update the current requirement in the LCRR for translation of public education materials under 40 CFR 141.85 to ensure greater protection of consumers with limited English proficiency. Individuals with limited English proficiency include those who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. EPA is proposing to require water systems to include in all the public education materials under 40 CFR 141.85 information in the appropriate language regarding the importance of the materials. Systems would also be required to include contact information for persons served by the water system to obtain a translated copy of the materials, request assistance in the appropriate language, or the system must provide materials translated into the appropriate language. Since 1991, EPA has required public education materials under the LCR to be communicated in other languages in communities where a significant proportion of the population speaks a language other than English (56 FR 26555, USEPA, 1991). Some systems provide a translated statement of the importance of the CCR in multiple languages (*e.g.,* Boston, Massachusetts; Dearborn, Michigan) (MWRA, 2020; City of Dearborn, 2019). There are also organizations, such as Clean Water Fund in Chelsea, Massachusetts, that have translated materials and offered

translation services related to lead in drinking water for their community (LSLR Collaborative, n.d.e). EPA is also aware of States providing resources and templates to assist water systems with translation of public education and notification: California, Illinois, and Washington (California Water Boards, 2023; IEPA, n.d.; Washington State Department of Health, n.d.). In addition, EPA intends to provide templates of public education materials that provide greater accessibility to consumers, including in multiple languages to assist water systems. EPA is also seeking further information about how water systems provide translated materials to consumers with limited English proficiency. Specifically, EPA is seeking information and data about when a system provides translated materials, what resources are used to translate materials (*e.g.,* State resources, community organizations), and what barriers water systems may face in providing accurate translated materials (see section IX. of this document). During the public meetings on environmental justice considerations for the proposed LCRI (USEPA, 2023h; USEPA, 2023i), NDWAC consultation for the proposed LCRI (USEPA, 2023l), Small Business Advocacy Review for the proposed LCRI (USEPA, 2023m), and LCRR review (Docket ID EPA–HQ–OW–2021–0255), many stakeholders expressed concerns about the accessibility of public education about lead in drinking water to consumers with limited proficiency in English. Stakeholders have urged EPA to ensure that public education is provided in multiple languages to mitigate potential environmental justice concerns by ensuring that those consumers are informed about the potential health risks of lead in drinking water as well as actions they can take to reduce their exposure. EPA's proposed revisions would help address these concerns by increasing accessibility of public education materials for consumers with limited English proficiency.

EPA recognizes that some water systems may lack the capacity or resources to develop translated public education materials. The proposed CCR Rule Revisions include a provision for primacy agencies to provide translation support for the CCR, as a condition of primacy, when systems are unable to do so (88 FR 20009, USEPA, 2023n) for reasons described in the preamble to that rulemaking (see 88 FR 20099–100 and 20102, USEPA, 2023n).

Similar to this CCR provision, EPA is also requesting comment on whether to require that States, as a condition of primacy for the LCRI, provide translation support if water systems, not independently subject to Title VI, are unable to do so. All recipients of Federal financial assistance are subject to the requirements of Title VI to take reasonable steps to provide meaningful access to limited English proficient (LEP) consumers. To support implementation of Title VI regulations (40 CFR part 7) EPA has specified that ''recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services'' (69 FR 35604, USEPA, 2004b). Currently, all States and territories (except Wyoming and the District of Columbia) have primacy. In Fiscal Year 2021 (FY21) and 2022 (FY22), each of those Primacy Agencies received Public Water System Supervision (PWSS) grant funds (USEPA, 2021g; USEPA, 2022c), and therefore they would be subject to requirements of Title VI. Water systems that are subrecipients of Federal financial assistance to the State primacy agencies are similarly subject to the requirements of Title VI. See *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* for more information (69 FR 35602, USEPA, 2004b).

I. Additional Requirements for Systems With Multiple Lead Action Level Exceedances

Some water systems may exceed the lead action level multiple times across several tap monitoring periods. The LCRR requires water systems that exceed the lead action level to take actions to reduce lead in drinking water, such as CCT, LSLR, and public education. However, the LCRR does not address the situation where a system is taking those required actions but continues to experience higher lead levels during the period that the system completes the longer-term actions that are expected to resolve the underlying problem.

In the LCRI, EPA is proposing new requirements for water systems that have multiple lead action level exceedances. EPA is proposing that a system with ''multiple lead action level exceedances'' would be a system with three lead action level exceedances in a rolling five-year period. Those systems would be required to take additional actions after three lead action level exceedances because those exceedances are indicative of recurring high lead levels that warrant additional measures while OCCT and mandatory service line replacement are being implemented, or if longer-term measures are not effective at reducing lead levels to below the action level (*e.g.,* a system that has re-optimized once and is meeting optimal water quality parameters). EPA is proposing the first five-year rolling period to determine if a system has ''multiple lead action level exceedances'' would start on the LCRI compliance date and end five years after. Then, the start of any potential future five-year rolling periods would be assessed beginning every six months thereafter. EPA is proposing for systems to conduct these actions upon the third action level exceedance even if the first rolling five-year period has not yet elapsed. EPA selected a five-year period because it generally takes five years to study, select, install, and operate OCCT effectively in a system. After this five-year period, OCCT would drive the lead reduction in systems that had been addressed by the shorter-term measures during that five-year period as proposed under the requirements for systems with multiple lead action level exceedances.

EPA is proposing that systems with multiple lead action level exceedances conduct at least one additional system-wide public education outreach activity to raise additional awareness of the health effects of lead in drinking water, identify steps consumers can take to reduce their exposure, and provide information about how the water system is addressing the issue. The water system would be required to repeat the selected activity every six months until the system no longer meets the proposed criteria for multiple lead action level exceedances (*i.e.,* three or more action level exceedances within the last five years), even if the system does not exceed the lead action level in the most recent tap sampling period. For the required public education outreach activity, EPA is proposing that systems be required to perform at least one of the following activities to share public education materials with the public:

- Convening a town hall meeting,
- Participating in a community event (*e.g.,* farmers market, town fair, sporting event),
- Contacting customers by phone, text, email, or door hanger,
- Conducting a social media campaign, or
- Use another method approved by the State.

The proposed rule notes that a State may approve additional activities not listed because there may be other present or future effective methods of meaningful outreach systems could consider using. The selected activity is in addition to the public education

required after a lead action level exceedance under § 141.85(b)(2) (see section V.H.4.). However, EPA is proposing to allow water systems that also fail to meet the mandatory service line replacement rate (see section V.H.2.) to conduct the same outreach activity to fulfill both requirements under § 141.85(h) and (j).

EPA is proposing additional public education activities to ensure that the public is aware of recurring lead action level exceedances, the actions the water system is taking in response to the lead action level exceedances, and information about the health effects of lead and steps they can take to reduce their exposure. During the LCRR review, EPA heard concerns from stakeholders about how the distribution of public education materials by systems that frequently exceed the lead action level required under LCRR may not adequately raise awareness of the issue or inform consumers of the actions that they can take. To help address these concerns, EPA anticipates these proposed activities would better protect public health by providing additional information to consumers about lead risks and to prompt consumers to take voluntary actions. Additionally, EPA anticipates these activities would increase water system transparency and accountability, which is essential for building and maintaining trust between water systems and their consumers.

In addition to the proposed public education activities, EPA is proposing to require water systems with multiple action level exceedances to make filters certified to reduce lead and replacement cartridges, along with instructions for their use, available to all consumers. A system would be required to make them available to all consumers within 60 days of when it meets the criteria of having ''multiple action level exceedances''. Within 30 days of meeting the criteria of multiple action level exceedances for the first time, water systems would be required to submit a plan to the State describing how the system intends to make filters available. The plan would include considerations for making filters and replacement cartridges accessible to all consumers. For example, some water systems have used distribution centers, neighborhood canvassing, and request forms for mail or delivery of filters to ensure that consumers have multiple ways to obtain filters. In the plan, water systems would describe their planned method(s) of distribution and describe how the system plans to overcome any barrier(s) to access. For example, a system may decide to use more than one way to make filters available, such as operating a distribution center or providing at-home delivery as requested, to accommodate consumers with different accessibility needs based on the availability of transportation and other considerations. EPA anticipates that systems would also plan for providing filters and cartridges at no direct cost to low-income consumers, at a minimum. States would be required to review and approve the plan within 15 days of submission and water systems would be required to implement the plan.

As provided in section V.E.1. of the preamble, systems that select the proposed option to remove all their LSLs and GRR service lines in five years can defer OCCT during that five-year period. However, EPA notes that under the proposed LCRI, those systems would remain subject to the public education requirements for multiple lead action level exceedances, including the requirement to make filters available to all consumers.

This proposed requirement is responsive to stakeholder suggestions to require water systems to provide filters to some or all consumers to reduce lead exposure while the system is taking other actions as required by the rule (*e.g.,* LSLR, CCT, public education) (USEPA, 2023l). EPA is aware of systems that have provided filters during periods of elevated lead levels to some or all consumers or as part of service line replacement programs, many of these at no direct cost to the consumer. Examples of communities that have implemented filter programs include Newark, New Jersey (City of Newark, n.d.b); Pittsburgh, Pennsylvania (City of Pittsburgh, n.d.); Kalamazoo, Michigan (City of Kalamazoo, 2023); Benton Harbor, Michigan (Berrien County Health Department, 2023); Elgin, Illinois (City of Elgin, 2023); and Denver, Colorado (City of Denver, 2023). Recent filter effectiveness studies conducted by EPA have shown that when properly installed and operated, filters certified under NSF/ANSI Standard 53 for total lead removal and NSF/ANSI Standard 42 for fine particulates (Class I) are effective at reducing lead in drinking water (Bosscher et al., 2019; Tang et al., 2023; Tully et al., 2023).

EPA is proposing to require systems to make filters available to all consumers instead of a subset of consumers, such as those served by an LSL or GRR service line. While LSLs are a significant contributor to lead in drinking water, other sources of lead may cause elevated drinking water lead levels, and both systems with and without LSLs experience lead action level exceedances (see section V.A.). Therefore, EPA is proposing to require water systems to make filters available to all consumers instead of a subset of consumers.

EPA is requesting comment in section IX. of this document on its proposed criteria for ''multiple lead action level exceedances'' of three action level exceedances in a five-year period, or if EPA should choose a different frequency or approach (*e.g.,* more exceedances in a shorter time-period, consecutive exceedances). EPA is also requesting comment on whether such systems should be required to take additional actions, whether systems should be required to conduct more than one (*e.g.,* two or three) of the public education activities proposed, the appropriateness of the public education activities proposed, and whether other activities should be considered.

EPA is requesting comment on the proposed requirement for systems to make filters certified to reduce lead and replacement cartridges, along with instructions for use, available to all consumers within 60 days of the system meeting the criteria of at least three action level exceedances in a five-year period. EPA is also requesting comment on the proposed requirement for water systems to develop a filter distribution plan and submit it to the State, and if systems should be required to take any additional actions to facilitate consumer access to filters.

EPA is also requesting comment on alternative approaches following multiple lead action level exceedances including requiring water systems to deliver a filter and replacement cartridges to every household served by the system. EPA heard concerns that because not all consumers would elect to use a provided filter, delivering filters and replacement cartridges to every household may result in wasted staff and financial resources, which a water system could direct towards other lead reduction activities, such as LSLR and CCT (USEPA, 2023j). While the proposed provision would mean that a consumer would have to take action to obtain a filter, EPA intends for water systems to make every effort to assure that filters are available to any consumer that wants one and to include such efforts in the plan to make filters available.

EPA also is requesting comment on an alternative requirement for systems to consult with the State upon meeting the criteria for multiple action level exceedances, and for States to determine the appropriate action. In the LCRI external engagements, some

stakeholders stated that the LCRI should not require specific additional actions, such as providing filters for multiple action level exceedances, noting States are currently able to work with individual systems to address these situations (USEPA, 2023j; USEPA, 2023m). While this alternative would provide States with the flexibility to determine which mitigation actions are best suited for a system's situation, EPA notes that this would place additional burden on States to develop a response and could result in inconsistent responses for similar situations across water systems statewide and nationally. EPA is requesting comment if in addition to the proposed requirements, EPA should provide States discretion to determine appropriate action following a multiple action level exceedance that is tailored to meet specific system needs.

EPA is also requesting comment on whether EPA should include a provision for States to allow water systems to discontinue some or all of the proposed public education and filter requirements early if a water system implements actions, such as installing optimized or re-optimized CCT or completes the proposed mandatory service line replacement and is at or below the action level for two consecutive monitoring periods. This provision would provide discretion to States to allow a water system to discontinue some or all of the required actions prior to no longer having three action level exceedances within a five-year period if the system has taken tangible actions to reduce lead levels.

J. Lead Sampling at Schools and Child Care Facilities

The LCRR requires CWSs to conduct public education and sample for lead in the schools and licensed child care facilities they serve. EPA promulgated these requirements in the LCRR as part of the public education treatment technique in order to educate schools and child care facilities about the risk from lead in premise plumbing, the importance of sampling for lead in drinking water, provide them with experience with lead testing, and help them make decisions to mitigate lead risks, including establishing their own testing programs (86 FR 4232, USEPA, 2021a; USEPA, 2020b). This sampling effort is not a replacement for comprehensive testing as detailed in the 3Ts. In the final LCRR preamble, EPA noted that large buildings, such as schools, can have a higher potential for elevated lead levels. This is because, even when large buildings are served by a water system with well-operated OCCT, they may have lead in drinking water due to lead in premise plumbing and inconsistent water use patterns (*e.g.,* summer, holiday, or other breaks) that can result in longer stagnation times (86 FR 4232, USEPA, 2021a). However, exposure can be mitigated through public education and voluntary remediation actions to address lead from premise plumbing within those facilities, and accordingly, EPA promulgated requirements for CWSs to conduct public education and sampling for lead in schools and licensed child care facilities. EPA is authorized under SDWA to establish NPDWRs that are legally enforceable standards that apply to public water systems as defined in SDWA section 1401(4) and 40 CFR 141.2. EPA does not have the authority under SDWA section 1412 to require schools and child care facilities that are not regulated as public water systems to act under an NPDWR.

The LCRR requires CWSs to compile a list of all the schools and licensed child care facilities they serve and to update the list at least once every five years. Annually, CWSs must provide materials on the health effects of lead to all the schools and child care facilities on the list. During each year of the first five-year cycle, CWSs must conduct outreach to at least 20 percent of the total elementary schools and child care facilities served by that system to schedule sampling and provide a copy of EPA's 3Ts for Reducing Lead in Drinking Water Toolkit (USEPA, 2018). If an elementary school or child care facility declines the offer for sampling or does not respond to at least two separate outreach attempts, the CWS may count the elementary school or child care facility as part of the minimum 20 percent of facilities sampled per year for compliance purposes. The CWSs must include the number of facilities that decline or do not respond to the offer to sample in the annual report to the State under § 141.90(i). During the first five-year cycle, CWSs must annually notify all secondary schools that they may request sampling and must sample at any secondary school that requests it. After the first five-year cycle, the CWS must sample any school or child care facility that requests sampling. The CWS is not required to sample an individual school or child care facility more than once in any five-year period.

CWSs are required to collect a minimum of five samples per school and two samples per child care facility. Results must be delivered to the sampled schools and child care facilities as soon as practicable but no later than 30 days after receipt of the results, along with information about remediation options. CWSs must also submit results to the State and to State and local health departments annually. The LCRR also includes a waiver provision for States to waive the requirements of § 141.92 for CWSs to sample in schools and child care facilities if they are sampled under an alternative State or local law or program. EPA did not include any provisions in the LCRR to allow CWSs to count sampling conducted prior to the LCRR compliance date towards the required sampling.

1. Proposed LCRI Requirements

EPA is proposing to maintain most of the LCRR requirements for CWSs to conduct public education and sample in schools and child care facilities. In addition, EPA is proposing significant changes to the organization of § 141.92 to help clarify the requirements. EPA intends for these proposed changes to ease interpretation and implementation of the requirements for both States and water systems. EPA is proposing a new section in § 141.92(a)(2) to clarify that the requirements in § 141.92 do not apply to schools and child care facilities that are regulated as NTNCWSs. The LCRR requires CWSs to fulfill the requirements of § 141.92 in schools and child care facilities that were constructed prior to January 1, 2014 or the date the State adopted standards that meet the definition of lead free in accordance with section 1417 of SDWA, whichever is earlier. EPA is clarifying in § 141.92(a)(1) that CWSs are not required to sample in schools and child care facilities that underwent full plumbing replacement after the applicable date. Section 141.92(b) outlines the proposed revisions to requirements for developing a list of the schools and child care facilities served by CWSs. While the LCRR requires CWSs to develop a list of the schools and child care facilities they serve and either send an updated list to the State or certify that the list has not changed, there is no requirement in the LCRR for the initial list to be submitted to the State. Therefore, EPA is proposing to require that the initial list must also be sent to the State in § 141.92(b)(1). EPA encourages CWSs to work with local school districts, State departments of education, and child care licensing agencies to identify schools and child care facilities in their service areas.

EPA is proposing to maintain different requirements for CWS outreach to elementary schools and child care facilities compared to secondary schools because children under the age of six are at the greatest risk of adverse health effects due to lead exposure (CDC,

2022a). Prioritizing sampling in facilities serving children with the greatest risks associated with lead exposure will reduce the burden on CWSs and enable them to focus on facilities with the most susceptible populations while still maintaining an opportunity for other schools to be sampled if they request it. However, to simplify rule requirements, EPA has separated out the requirements for public education to all schools and child care facilities (§ 141.92(c)), sampling frequency for elementary schools and child care facilities (§ 141.92(d)), and sampling frequency for secondary schools (§ 141.92(e)) to clarify the different requirements, reduce cross-references, and ease implementation. EPA is also proposing in § 141.92(d)(3) for water systems to conduct the outreach required in the first five years after the rule compliance date (*e.g.,* scheduling sampling) in any elementary school or child care facility that is identified and added to the updated list of schools or child care facilities in a subsequent sampling cycle. This would ensure water systems would consistently be held to the same outreach requirements and contact every elementary school or child care facility at least once, regardless of when the facility is identified, rather than only sampling these schools or child care facilities at the request of the school or child care facility. EPA is also proposing to remove the term ''mandatory'' to describe the first five-year sampling cycle that would begin on the compliance date if LCRI is finalized because § 141.92 does not impose any requirements on schools and child care facilities, and EPA has heard this term may add confusion. EPA intends for the proposed revisions to clearly describe the requirements for CWSs in plain language. EPA has also made minor changes to the sampling protocol (§ 141.92(f)) to improve readability.

EPA is maintaining the LCRR requirements for frequency and number of samples. Some stakeholders requested that EPA increase the number of required samples noting that EPA's 3Ts recommends sampling all outlets used for cooking and drinking (USEPA, 2018). Sampling under § 141.92 provides a preliminary screen for lead risks within schools and child care facilities, and as described above, when coupled with public education materials (*e.g.,* EPA's 3Ts), these provisions are intended to encourage schools and child care facilities to take additional actions including sampling. In response to stakeholder feedback, EPA is seeking comment on whether CWSs should be required to collect more samples and/or sample more frequently in schools and child care facilities.

Additionally, EPA is not proposing requirements for schools and child care facilities or CWSs to remediate lead in this rule. As stated previously, EPA is authorized under SDWA to establish NPDWRs that are legally enforceable standards that apply to public water systems as defined in SDWA section 1401(4) and 40 CFR 141.2. Therefore, EPA does not have the authority under SDWA section 1412 to require schools and child care facilities that are not regulated as public water systems to act under an NPDWR including to remediate lead.

Alternatively, some stakeholders stated during the LCRR review that the LCRI should include a school-specific action level and/or remediation requirements for CWSs (see docket no. EPA–HQ–OW–2021–0255). EPA does not anticipate requiring CWSs to take remediation actions because larger buildings, such as schools and child care facilities, can have a higher potential for elevated lead levels due to complex plumbing arrangements, the presence of lead in premise plumbing, and inconsistent water use patterns that can result in long stagnation times (Barn et al., 2014; Deshommes et al., 2016). Even when a school or child care facility is served by a water system with well operated OCCT, there may not be technical improvements that the system can make to OCCT (USEPA, 2020b) to further reduce lead in those settings (*e.g.,* Dore et al., 2018). Additionally, for the aforementioned reasons, water system 90th percentile levels are not necessarily reflective of lead levels in schools (*e.g.,* Triantafyllidou et al., 2014). Therefore, setting additional treatment requirements for corrosion control in these situations is not technically feasible. Further, EPA has determined sampling at schools and child care facilities is a component of this treatment technique rule for public education and not CCT. Accordingly, EPA determined that it is feasible for CWSs to conduct public education and sampling at these facilities to contribute to increased awareness of the potential for elevated levels of lead in premise plumbing, independent of a water system's 90th percentile value.

For these same reasons, EPA is not proposing to include a school-specific remediation action level for CWSs. However, EPA notes that CWSs are required under the LCRR to provide schools and child care facilities with the 3Ts guidance, which EPA is proposing to maintain under the proposed LCRI. The 3Ts provides information and best practices, including recurring sampling at all outlets used for cooking and drinking and remediation steps for schools and child care facilities to reduce lead in drinking water to the lowest levels possible, noting there is no known safe level of lead in drinking water (USEPA, 2018). Further, schools and child care facilities are encouraged to conduct additional sampling and take remediation actions.

EPA is aware that schools and child care facilities may be concerned about available resources to fund additional lead testing and remediation (USEPA, 2020b; USEPA, 2023i; USEPA, 2023j). The BIL authorized an additional $200 million (FY22–FY26) in grant funding for lead testing and remediation in schools and child care facilities under SDWA section 1464(d). EPA awards funding under this program as non-competitive grants to States, territories, and Tribes. In fiscal years 2022 and 2023, Congress appropriated $58 million in additional funding under SDWA section 1464(d). EPA has also issued an implementation document for States and territories which includes information on the use of funds for remediation activities (USEPA, 2023o). As noted in the LCRR review, EPA is committed to working with other Federal agencies to make progress on reducing lead in drinking water in schools and child care facilities, including through non-regulatory efforts. On March 24, 2023, EPA and the U.S. Department of Health and Human Services (HHS) issued a joint letter to governors, encouraging State and local governments to use Federal funding to address lead in schools and child care facilities. Additionally, the letter encourages governments to ''establish or strengthen child care licensing and monitoring requirements to test for and address lead in early childhood settings along with funding to support the associated costs,'' and promote the use of EPA's 3Ts guidance (USEPA and USHHS, 2023).

EPA is also aware that some States have requirements for lead sampling in schools and child care facilities, including several States that have passed new laws since LCRR was promulgated. EPA notes that many of these laws require recurring sampling of all outlets used for cooking and drinking and may require remediation actions. EPA finalized waiver provisions for existing sampling programs in the LCRR to encourage such efforts. However, the Agency is also aware that some schools or child care facilities may not be tested under existing State or local requirements or other voluntary programs (USGAO, 2018; USEPA,

2023b, Chapter 3, section 3.3.10). Nationally, EPA's goal with the proposed requirements in the LCRI is to provide schools and child care facilities with the opportunity to be sampled for lead, to learn about the importance of lead testing in schools and child care facilities, and take additional actions if they choose. The requirements would also provide CWSs, States, and State and local health agencies with information to further support public education for lead in drinking water. In this way, the LCRI would allow for a baseline level of sampling information to be collected nationally, that can be supplemented by State efforts. EPA strongly encourages States to adopt lead testing requirements for schools and child care facilities, using a variety of means, including incorporating requirements in State and local licensing of schools and child care facilities. States are likely better positioned than EPA to administer lead testing and remediation programs because States can establish regulations for schools and child care facilities that would provide for greater consistency of education, testing, remediation activities, and public communication across all schools and child care facilities throughout a State. Additionally, States can directly apply for and have access to funding to support schools and child care facilities that may not be available to CWSs.

2. Proposed Waiver Requirements

The LCRR allows States to offer waivers to CWSs for sampling in the schools and child care facilities if those facilities are sampled under an alternative program, such as a State or local law. However, the LCRR only allows waivers for sampling conducted after the LCRR compliance date. EPA is proposing to allow States to waive the requirements in § 141.92 for the first five-year cycle of sampling in schools and child care facilities beginning with the compliance date of the final LCRI if they have already been tested under an existing program between January 1, 2021 and the LCRI rule compliance date. EPA is proposing to limit the cut-off date to January 1, 2021, recognizing that many facilities were closed in 2020 due to the COVID–19-related shutdowns. The Agency estimates that any data collected during COVID–19-related closures would be unrepresentative due to low water usage and longer than normal stagnation times. EPA is proposing this provision in response to stakeholder feedback. States have requested that EPA allow testing that would be conducted prior to a final LCRI compliance date to ''count'' towards the rule requirements, stating that many schools and child care facilities are currently being tested for lead under existing State or local requirements and through WIIN grant-funded efforts (docket no. EPA–HQ–OW–2021–0255, USEPA, 2023j).

This proposed provision would maintain LCRR requirements for CWSs to follow the requirements of § 141.92 for the schools and child care facilities that have not been sampled by the alternative program. CWSs would be required to sample at the request of any school or child care facility they serve after the first five-year cycle (*i.e.,* starting five years after the rule compliance date) unless the State grants a waiver for an ongoing alternative program. EPA encourages States to use available Federal funding, including WIIN grants, to conduct sampling in school and child care facilities. Federally funded efforts could reduce the burden on CWSs, particularly during the first five-year cycle after the LCRI compliance date. EPA is proposing to maintain the other waiver provisions but has made edits to clarify and streamline the requirements in § 141.92(h). EPA is requesting comment on this proposed provision and whether the Agency should consider a different cut-off date (*e.g.,* earlier or later than January 1, 2021) (see section IX. of this document).

EPA is also proposing to allow States to waive the requirements of § 141.92 for CWSs if a school or child care facility they serve installs and maintains point-of-use devices certified to reduce lead in drinking water on all outlets used to provide water for human consumption. EPA is aware that some State and local governments require schools to ''filter-first,'' meaning that filters certified to reduce lead are required to be installed and maintained on outlets in schools and child care facilities used for drinking and cooking. Specific requirements of these programs vary, and in some cases, filters are only required when sampling results at a tap are above a defined threshold (*e.g.,* 0.005 mg/L). EPA considered feedback on filter-first approaches and is proposing to add a waiver eligibility for CWSs to sample in schools and child care facilities that install and maintain POU devices on all outlets used for cooking and drinking. EPA is seeking comment on whether or not to allow States to waive the requirements of § 141.92 for CWSs in schools and child care facilities that use and maintain filters certified to reduce lead, and if so, whether the waiver should only be allowed where schools and child care facilities are required by State or local law to install POU devices and maintain them. EPA is seeking comment on the minimum requirements for States to provide a waiver (*e.g.,* should the waiver be limited to locations where the filter use is required by State or local law; should the waiver be limited to locations where State or local law requires periodic sampling or testing to ensure proper filter use).

Some stakeholders advocated for the LCRI to include a filter-first requirement while others disagree with such approaches for reasons including because filters may not be properly maintained over the long-term resulting in reduced efficacy, and the cost and burdens on water systems (docket no. EPA–HQ–OW–2022–0255, USEPA, 2023j). EPA is not proposing to require water systems to provide filters to schools and child care facilities for the same reasons EPA is not proposing CWSs to take other types of lead remediation requirements (see section V.J.1. of this document).

3. Public Information About Lead Sampling in Schools and Child Care Facilities

The LCRR requires CWSs to report the results of sampling to the school or child care facility within 30 days of receiving results, and annually to the State and both State and local health agencies. The LCRR does not include requirements for the water system to provide public notice of the results. EPA is proposing to require CWSs to include a statement in the CCR that states that schools and child care facilities are eligible to be sampled for lead and direct interested members of the public to contact their local school or child care facility for more information (see section V.L.1. for more information about the CCR).

EPA is proposing this requirement due to feedback from stakeholders. Some stakeholders raised concerns that schools and child care facilities may not share sampling results with the facility staff, parents, and the public (docket no. EPA–HQ–OW–2021–0255). EPA agrees that it is important for lead sampling results to be shared with the affected population so that parents and guardians of children that attend these facilities can be aware of lead risks in those facilities. However, EPA does not have the authority in an NPDWR under SDWA section 1412 to require schools and child care facilities that are not public water systems to take this action, but strongly encourages them to share results and other relevant information, as outlined in the 3Ts guidance (USEPA, 2018). EPA expects that many school and child care facilities have

experience with sharing such information. For example, as a condition of receiving a WIIN grant for lead sampling SDWA section 1464(d)(6), requires the recipient to ensure that the entity to which funds are disbursed (*e.g.,* school, child care facility, local education agency) make the results available to the public and notify teachers, parents, and employee organizations about the results.

Nonetheless, the Agency recognizes that the public may not be aware of the opportunity for schools and child care facilities to be sampled by CWSs under the rule. Therefore, EPA anticipates that including additional information about lead sampling in schools and child care facilities in the CCR could increase public transparency while directing interested members of the public to the facilities that are sampled. Also, EPA anticipates that this change would further strengthen and support the public education purpose of sampling in schools and child care facilities. EPA is seeking comment on whether the Agency should require CWSs to make school and child care facility sampling results publicly available, and if so, how frequently and in what manner (see section IX. of this document). In LCRI, EPA is not proposing for CWSs to make the sampling results publicly available because it would be an additional requirement on CWSs that would necessitate additional time and resources. However, EPA recognizes that such a requirement would increase public transparency.

EPA is proposing to retain the requirement for CWSs to submit sampling results to the State and both State and local health agencies but is proposing to increase the frequency from annually to 30 days after CWSs receive the results. States may voluntarily choose to disseminate sampling results to the public. EPA has reasoned that an annual reporting frequency may not be timely enough given concerns from stakeholders that a CWS, school, or child care facility may receive results within 30 days of sampling but not share those results. Under the LCRR requirement, the State and the State and local health agencies may not know about the sampling results until up to a year later. EPA is requesting comment on the proposed requirements for an additional statement in the CCR (see section V.L.1. of this document), and the increased frequency of reporting to States and State and local health agencies (see section IX. of this document).

K. Reporting and Recordkeeping

1. System Reporting Requirements

EPA is proposing to require revised system reporting requirements in accordance with other proposed changes to the LCRI. Changes proposed in other parts of the rule would affect reporting of tap sampling results for LSL sites, documentation requirements for customer refusals, reporting requirements for systems with multiple lead action level exceedances, and reporting requirements for systems with schools and child care facilities.

EPA is proposing in the LCRI to modify the compliance tap sampling reporting requirements for systems sampling at LSL sites to report both first liter and fifth liter sample results in accordance with the proposed updated tap sampling protocol. In the LCRR, systems are required to report summary numbers of lead, GRR, and unknown service lines alongside submission of its service line material inventory. EPA proposes in the LCRI to expand the inventory reporting requirements to include lead connectors (known, replaced, and unknown) and non-lead service lines, beginning with the inventory due by the LCRI compliance date. EPA is requesting comment on expanding inventory reporting to include lead connectors and non-lead service lines (see section IX. of this document).

Under LCRR, systems with lead service lines were required to begin conducting standard tap monitoring within one year of the rule compliance date, and therefore, must submit a site sample plan to the State for approval prior to the start of the first tap monitoring period. In LCRI, EPA is proposing that this requirement apply to all systems with LSLs, GRR service lines, and/or unknown service lines. EPA has heard concern over the ability of States to review all required site sample plans and provide approvals in time for the first tap monitoring period and is requesting comment on whether EPA should consider a phased approach or alternate approach to reduce the burden on States following the rule compliance date.

EPA is proposing that all systems conducting service line replacement must report information on their compliance with the proposed service line inventory and replacement requirements to the State. Each year, systems would be required to submit inventory summary information, including the current number of LSLs, GRR service lines, unknown service lines, non-lead service lines, and lead connectors. They would also be required to report information from their replacement program, including the total number and street addresses of full service line replacements, partial service line replacement, replaced GRR service lines, and replaced lead connectors. EPA is also proposing that systems report the number of unknown service lines determined to be non-lead, and the street address of any service line inventoried as non-lead that was later discovered to be an LSL or GRR service line. Systems would also be required to certify to the State the number of service lines not replaced due to customer refusals for access to conduct service line replacement. EPA is also proposing that summary information about the inventory and service line replacement program be made available to the public to facilitate community tracking of system progress. For more information, see section V.D. of this document.

EPA proposes that systems conducting public education and filter requirements following multiple lead action level exceedances, as defined in this proposal, would be required to certify to the State that they conducted at least one required outreach activity in the previous year and certify that they complied with filter distribution requirements in the previous year by providing a copy of the filter distribution plan and the number of filters provided each tap sampling period.

EPA proposes improvements to the reporting requirements for water systems with schools or child care facilities. The LCRR requires systems to submit an updated list of school and child care facilities they serve or certify that there are no changes to the initial list at least once every five years. EPA is proposing to require that systems must also submit the initial list of schools and child care facilities they serve by the rule compliance date. EPA is also proposing that systems provide analytical results to the State within 30 days of receiving them (see section V.J. of this document). The LCRR also requires water systems to submit a summary report to the State containing information about school and child care sampling during the prior calendar year, including the number of schools and child care facilities sampled, and the number of elementary schools and child care facilities that declined or did not respond to attempts for sampling. EPA is proposing in the LCRI that the report also include the names of the schools and child care facilities. EPA anticipates that this would help States identify which schools and child care facilities have not been sampled and why.

2. State Recordkeeping Requirements

EPA is proposing several changes to State recordkeeping requirements to conform with changes proposed elsewhere in the LCRI. Because EPA is proposing to eliminate the trigger level and require mandatory full service line replacement, EPA is also proposing to remove recordkeeping requirements for any State determinations of lead service line replacement goal rates. EPA is also proposing to change instances of LSLR to ''service line replacement'' and ''lead and galvanized requiring replacement service lines'' to reflect the proposed mandatory full service line replacement requirements. EPA is also proposing to clarify that the requirement for States to maintain records of system-specific determinations for some NTNCWSs and CWSs to collect non-first draw samples refer to samples that do not meet the minimum six-hour stagnation time.

EPA is also proposing changes to clarify existing requirements regarding the length of the records retention period. EPA requires each State with primacy enforcement responsibility to retain records listed under § 142.14(d) for not less than 12 years. States must maintain records of all currently applicable or most recent State determinations, including all supporting information and technical basis for each decision, under § 142.14(d)(8). Revisions to the LCR in 2000 added a requirement that if no change is made to the State determinations under § 142.14(d)(8) during the 12-year retention period, that the State must retain the record until a new decision, determination, or designation has been issued. EPA is proposing edits to § 142.14(d)(8) in the LCRI to clarify the existing record retention requirement and improve implementation. EPA is also proposing to change the order of provisions in § 141.14(d)(8) to improve readability.

EPA is also proposing to move requirements for States to maintain records of service line replacement plans, service line inventories, and compliance sampling pools to § 142.14(d)(9) with other reports and information submitted under § 141.90. EPA is proposing this change to improve organization and clarity because these records are not State determinations. Because EPA is proposing to require systems to complete a baseline service line material inventory by the rule compliance date, EPA is also proposing to that States maintain records on these baseline inventories in addition to the initial service line inventory and any required updates to the inventory.

EPA is also seeking comment on whether States should be required to maintain documentation related to the distribution and site assessments conducted by water system. EPA is also seeking comment if States should be required to maintain documentation of determinations of more stringent implementation, including but not limited to conditions or approvals related to reduced compliance monitoring and additional information required to conduct a review or designate OCCT. See section IX. of this document.

3. State Reporting Requirements

EPA is proposing two changes to quarterly State reporting to conform with the changes proposed elsewhere in the LCRI. In the LCRR, States are required to report summary numbers of LSLs, GRR service lines, and unknown service lines, as reported by systems in their mandatory service line inventories. EPA proposes in the LCRI to expand the inventories to include lead connectors and non-lead service lines and proposes that States report totals for these additional categories per system. In the LCRR, goal-based LSLR was introduced in addition to mandatory LSLR upon an action level exceedance and required States to report the date that systems must begin LSLR for all systems required to do so. As the LCRI proposes mandatory service line replacement irrespective of measured lead levels, EPA is proposing that States instead report the calculated replacement deadline for each system under either the proposed mandatory 10-year deadline, shortened deadlines, or under proposed options for deferred deadlines. In addition, EPA proposes to require States to report the number and type of service lines replaced each year, as reported by systems.

EPA is also proposing to consolidate reporting requirements in § 142.15(c)(4)(i) and (iii). Under LCRR, EPA removed dates differentiating reports submitted by States to EPA prior to January 1, 2000, and those submitted after January 1, 2002, resulting in some duplicative requirements. Specifically, EPA is proposing to maintain requirements for States to report the date of CCT and source water treatment related milestones (*e.g.,* the date CCT study results are submitted to the State, date of OCCT installation is complete) and removing duplicative requirements such as reporting the systems with action level exceedances given that States are required under LCRR to report the 90th percentile values of all water systems in addition to the first and last days of the tap monitoring period. EPA views these reporting elements as necessary for EPA enforcement and oversight.

EPA is also proposing a change to State reporting to implement section 1414(c)(2)(D) of SDWA, as amended by the WIIN Act. This provision requires EPA to issue a Tier 1 public notification of a system's lead action level exceedance if a system fails to do so; however, EPA would need to know of the action level exceedance in order to conduct the notice. Therefore, EPA proposes that States submit the 90th percentile lead level for any system with an action level exceedance within 15 days following the end of each applicable tap monitoring period or within 24 hours of receiving notification of a lead action level exceedance from a water system, whichever is earlier.

EPA acknowledges that a broader reporting requirement for compliance monitoring data in 40 CFR part 141 was proposed as part of the CCR Rule Revisions and was subject to public notice and comment (88 FR 20092, USEPA, 2023n). EPA is proposing specific State reporting requirements in the LCRI as described above because final action has not yet been taken on the proposed CCR Rule Revisions. EPA intends to consider if any of the proposed LCRI State reporting requirements are necessary pending final action on the proposed CCR Rule Revisions.

L. Other Proposed Revisions to 40 CFR Part 141

1. Consumer Confidence Report (40 CFR Part 141, Subpart O)

All CWSs are required by SDWA to provide their customers with an annual Consumer Confidence Report (CCR), a drinking water quality report that summarizes the state of their drinking water supply. The CCR must include information about the water system, sources of water, detected contaminants including lead, compliance with drinking water rules including the lead and copper rules, as well as other information. CCR requirements are described in the CCR Rule (40 CFR part 141, subpart O) which is part of the 1996 Right to Know provisions of SDWA. On April 5, 2023, EPA published a Notice of Proposed Rulemaking to strengthen the CCR Rule (88 FR 20092, USEPA, 2023n). The CCR is currently an annual report; however, the Proposed CCR Rule Revisions include a proposed requirement for water systems serving more than 10,000 people to provide the report biannually. The Proposed CCR Rule Revisions include updates to make the CCR more

accessible to consumers, among other improvements to the report. With the LCRI, EPA is proposing to revise the lead and copper related requirements of the CCR to further enhance risk communication and provide additional information about sampling in schools and child care facilities and the service line replacement plan.

Lead Informational Statement

All CWSs are required to include in their CCRs a short informational statement about lead in drinking water. This statement is intended to help ensure that all vulnerable populations or their caregivers receive information at least once a year on how to reduce their risk of exposure to lead in drinking water. The LCRR requires CWSs to include the following informational statement about lead in their CCR:

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 and removing lead pipes, but cannot control the variety of materials used in plumbing components in your home. 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 tap water, 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 by an American National Standards Institute accredited certifier to reduce lead in drinking water. If you are concerned about lead in your water and 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 https://www.epa.gov/safewater/lead.

EPA is proposing to revise the statement to provide information about the risks of lead to all age groups, include additional measures consumers can take to reduce exposure to lead in drinking water, include new language recommending flushing for water used in cooking and formula feeding, emphasize proper use of filters, and simplify language. EPA is proposing the following revised informational statement about lead and has underlined the additions to illustrate changes from the LCRR text:

Lead can cause serious health effects in people of all ages, especially pregnant people, infants (both formula-fed and breastfed), and young children. Lead in drinking water is primarily from materials and parts used in service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water and removing lead pipes, but cannot control the variety of materials used in the plumbing in your home. You can help protect yourself and your family by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Using a filter, certified by an American National Standards Institute accredited certifier to reduce lead, is effective in reducing lead exposures. Follow the instructions provided with the filter to ensure the filter is used properly. Use only cold water for drinking, cooking, and making baby formula. Boiling water does not remove lead from water. Before using tap water for drinking, cooking, or making baby formula, flush your pipes for several minutes. You can do this by running your tap, taking a shower, doing laundry or a load of dishes. If you have a lead service line or galvanized requirement replacement service line you may need to flush your pipes for a longer period. If you are concerned about lead in your water and 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 https://www.epa.gov/safewater/lead.

During the public meetings on environmental justice considerations for the proposed LCRI (USEPA, 2023h; USEPA, 2023i) and in written public comments submitted to the LCRI docket (Docket ID EPA–HQ–OW–2022–0801), EPA heard support for including information about the risks of lead to all age groups, instructions for flushing the tap prior to drinking or cooking to reduce lead levels as a result of stagnation in contact with lead sources, recommendations on the use of filters, and additional measures consumers can take to prevent lead exposure. Additionally, stakeholders have expressed concern that some consumers may lack the financial resources to replace leaded materials. EPA is reframing the language to provide steps that consumers can take to reduce the risk of lead exposure and help protect themselves and their family, rather than implying that they can take responsibility for controlling lead in their drinking water. EPA is also proposing to revise the statement to include additional steps consumers can take to reduce their exposure to lead in drinking water, such as using only cold water for drinking, cooking, and preparing baby formula. In addition, EPA is proposing to recommend that consumers refer to the instructions provided with their filter to ensure it is used properly. EPA has also heard concerns, in written comments submitted on the proposed CCR Rule Revisions (Docket ID EPA–HQ–OW–2022–0260), that homes with lead service lines may need to run the water for a longer period of time. In response, EPA is proposing to add new language noting that consumers served by lead or galvanized requiring replacement service lines may need to flush their pipes for longer periods.

Mandatory Lead Health Effects Language

Under the current CCR Rule, CWSs are required to include in the CCR the mandatory lead or copper health effects language listed in Appendix A to

Subpart O of Part 141 when they fail to take one or more actions prescribed by §§ 141.80(d), 141.81, 141.82, 141.83 or 141.84. EPA is proposing to require CWSs to include the mandatory lead or copper health effects language when they fail to take one or more actions prescribed by §§ 141.80 through 141.93. This would expand the requirement to apply to more situations, such as failing to meet the public education requirements in § 141.85 or requirements for sampling in schools and child care facilities under § 141.93, so that consumers are more informed of the health effects of lead and copper.

Under the LCRR, the mandatory lead health effects language required in the CCR is also required to be included in lead public education and public notification (see section V.H.). The current mandatory lead health effects language is as follows:

Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems.

EPA is proposing to revise the mandatory lead health effects language that is required in public education, public notification, and the CCR, as described in section V.H.5. and as follows. Additions are underlined to illustrate changes from the current text:

<u>There is no safe level of lead in drinking water.</u> Exposure to lead in drinking water can cause serious health effects in all age groups<u>, especially pregnant people, infants (both formula-fed and breastfed), and young children. Some of the health effects to infants and children include</u> decreases in IQ and attention span. Lead exposure can <u>also result in</u> new <u>or worsened</u> learning and behavior problems. The children of persons who are exposed to lead before or during pregnancy <u>may be at</u> increased risk of these <u>harmful</u> health effects. Adults have increased risks of heart disease, high blood pressure, kidney or nervous system problems. <u>Contact your health care provider for more information about your risks.</u>

See section V.H.5. of this document for more information about the proposed revised mandatory lead health effects language.

Other Requirements

Under the LCRR, water systems are not required to include information about sampling for lead in schools and child care facilities in the CCR. EPA is proposing to require that water systems include in the CCR a statement that the water system is required to sample for lead in schools and licensed child care facilities as requested by the facility, in accordance with § 141.92 of the proposed LCRI, to encourage relevant members of the public to contact their school or child care facility for further information about potential sampling results. During the LCRR review, EPA heard concerns about the lack of a reporting requirement to publicly share results from sampling in schools and child care facilities (86 FR 71574, USEPA, 2021b). EPA does not have the authority under SDWA to require schools and child care facilities to share the results as part of an NPDWR, including the proposed LCRI. To address this feedback, the Agency is proposing to require an informational statement in the CCR that would help ensure that consumers are aware of the school and child care sampling requirements and that they can reach out to the school or child care facility about any potential sampling results. EPA is requesting comment from the public on this proposed requirement (see section IX. of this document). See section V.J. of this document for more information about lead sampling at schools and child care facilities.

Under the LCRR, water systems are required to include information about their service line inventory in the CCR; however, they are not required to include information about service line replacement. As stated in section V.B.7. of this document, EPA is proposing for the LCRI to require water systems to make the service line replacement plan publicly available. Furthermore, EPA is proposing to require that water systems with lead, galvanized requiring replacement, or lead status unknown service lines in their inventory include in the CCR information on how to obtain a copy of the service line replacement plan or for systems serving more than 50,000 people, how to view the plan on the internet. Including information about how to access the plan in the CCR would further increase transparency about the service line replacement process, accessibility of the plan, and consumer awareness about service line replacement in their community.

2. Public Notification Rule (40 CFR Part 141, Subpart Q)

EPA promulgated a Public Notification Rule in 40 CFR part 141, subpart Q in 2000 (65 FR 26035, USEPA, 2000b). This Public Notification Rule implements section 1414(c)(1) and

(2) of SDWA. That rule requires water systems to provide public notification of any failure of the water system to comply with a maximum contaminant level, a prescribed treatment technique, or failure to perform required water quality monitoring, or testing procedures; if the system has been granted a variance or exemption, if the system has failed to comply with the requirements of any schedule set under a variance or exemption; and certain specified situations such as the occurrence of waterborne disease outbreak or emergency and the availability of unregulated monitoring data (see § 141.201, Table 1).

In 2016, Congress amended sections 1414(c)(1) and (2) of SDWA, in the WIIN Act to require EPA's implementing regulations to ''specify notification procedures for'' public notice no later than 24 hours after the water system learns of each exceedance of the action level for lead prescribed under § 141.80(c) of 40 CFR part 141, ''or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 1412'' if the exceedance ''has the potential to have serious adverse effects on human health as a result of short term exposure'' (42 U.S.C. 300g–3(c)((1)((D) and (c)(2)((C)). In the LCRR rulemaking, EPA determined that ''such exceedances [of the lead action level] have the potential to have serious adverse health effects on human health as a result of short-term exposure'' and therefore warranted the same treatment as other situations currently categorized as Tier 1 violations subject to the 24-hour notification requirements (86 FR 4239–4240, USEPA, 2021a). Under the LCRR, CWSs and NTNCWSs with a lead action level exceedance must provide public notice to persons served by the system within 24 hours of learning of the action level exceedance; that is, within 24 hours of the system receiving and calculating the 90th percentile value, or after the data is submitted to the State and the State calculates the 90th percentile. The notice must be in a form and manner reasonably calculated to reach all persons served, as described in the Public Notification Rule (§ 141.202(c)). A copy of the notice must also be sent to both the State and the EPA Administrator in accordance with the requirements of § 141.31(d). This notice to the Administrator for a lead action level exceedance is needed because section 1414(c)(2)(iii) of SDWA was amended by the WIIN Act to require that such notifications be provided to the Administrator in addition to the State to allow EPA to identify whether the Agency must provide notice where required in section 1414(c)(2)(D), which was also added to SDWA by the WIIN Act. It provides that if a State with primacy enforcement responsibility or the water system has not issued a notice for an action level exceedance that has the potential to have serious adverse effects as a result of short-term exposure, the Administrator is required to issue the notice. Because EPA does not have any obligation to issue a Tier 1 public notice for violations of other drinking water standards in States with primacy, there is no need for EPA to be notified in those other Tier 1 situations.

In addition to lead action level exceedances, there are violations that also require public notification for both lead and copper (see Appendix A to Subpart Q of Part 141 of the CFR). Tier 2 public notification is required for a treatment technique violation for both lead and copper no later than 30 days after the system learns of the violation. This includes violations to § 141.80 through § 141.84 which describe compliance dates of the rule, the action level, CCT, source water treatment, and service line inventory and replacement requirements; however, § 141.80(c) which describes exceedances of the lead action level is excluded from the Tier 2 public notification requirements since lead action level exceedances require Tier 1 public notification. Tier 2 public notification is also required for violations to § 141.85(a) through (c) and (h) which concern the content of public education materials and inclusion of information for non-English speaking consumers, delivery of public education after a lead action level exceedance, supplemental monitoring for lead when there is a systemwide lead action level exceedance, and outreach activities for community water systems that fail to meet the LSLR goal. In addition, Tier 2 public notification is required for violations to § 141.93 which describes flexibilities for small water systems to comply with the rule.

As described in section V.H.3. of this document, EPA is proposing to require notification of supplemental monitoring for lead under § 141.85(c)(3); EPA is proposing to exclude this from the Tier 2 public notification requirements as this pertains to notification of supplemental sampling conducted at individual tap sampling sites, rather than systemwide. In addition, as discussed in section V.H.2. of this document, EPA is proposing to revise § 141.85(h) to require outreach activities for systems that fail to meet the average annual replacement rate, instead of the goal LSLR rate as required under the LCRR. Violations to this proposed requirement would require Tier 2 public notification under the proposed LCRI. EPA is also proposing to require Tier 2 public notification for violations to the proposed additional public education and filter requirements for water systems with multiple lead action level exceedances under § 141.85(j). See section V.H. of this document for more information about the proposed public education requirements. Tier 3 public notification is required for monitoring and testing procedure violations for both lead and copper no later than one year after the system learns of the violation or begins operating under a variance or exemption. These include violations to § 141.86 through § 141.90 of the LCRR and proposed LCRI. EPA is also proposing to require Tier 3 public notification for violations to § 141.92; as with violations to other monitoring and testing requirements, EPA believes that the public should be notified when water systems fail to conduct required sampling in schools and child care facilities.

In the LCRI, EPA is not proposing to prescribe a level of lead for public education or public notification that is different from the lead action level in § 141.80(c). Nor is EPA proposing to change the conclusion made during the LCRR rulemaking that a lead action level exceedance has the potential to have a serious adverse effect on human health as a result of short-term exposure. Therefore, as required in section 1414(c)(2)(C) of SDWA, a lead action level exceedance will continue to trigger the requirement for Tier 1 public notification of a lead action level exceedance. During the LCRR review (see written comments and summaries of LCRR engagements, Docket ID EPA–HQ–OW–2021–0255) and Federalism consultation for the proposed LCRI (USEPA, 2023j), EPA received feedback on the requirement for 24-hour Tier 1 public notification of a lead action level exceedance expressing both support and opposition for this requirement. Many stakeholders expressed concern about the ability of water systems to distribute public notices within 24 hours of the system learning of the action level exceedance (USEPA, 2023j; Docket ID EPA–HQ–OW–2021–0255; Docket ID EPA–HQ–OW–2017–0300). Many stakeholders questioned whether lead could have serious adverse health effects from short-term exposure (Docket ID EPA–HQ–OW–2021–0255). As stated in the final LCRR notice, EPA has concluded that lead action level exceedances have the potential to have

serious adverse effects on human health as a result of short-term exposure (86 FR 4239–40, USEPA, 2021a). SDWA mandates that notice in such a situation be distributed ''as soon as practicable, but not later than 24 hours after the public water system learns of the violation or exceedance''. The feasibility analysis EPA conducts in establishing a NPDWR is not a prerequisite to implementation of this statutory mandate. Moreover, EPA notes that water systems have been complying with the Tier 1 24-hour notice requirement for other situations besides a lead action level exceedance since the May 6, 2002, compliance date of the Public Notification Rule, and therefore should also be able to do so for lead action level exceedances.

Because EPA is not proposing to prescribe a level of lead for public education or public notification that is different from the lead action level in § 141.80(c), EPA is updating the action level for lead listed in appendix A to subpart Q of part 141 to conform with the Agency's proposed lead action level of 0.010 mg/L (see section V.E.2. of this document for more information about the proposed action level). EPA is retaining the October 16, 2024, compliance date for this provision. Beginning on that date, systems must comply with the Tier 1 PN requirement for a lead action level of 0.015 mg/L, and beginning on the final LCRI compliance date, they would comply with the revised lead action level of 0.010 mg/L (see section VII.A. of this document).

EPA is also proposing to make conforming changes to the Public Notification Rule as a result of changes EPA is proposing to make in the LCRI and the CCR related to the standard health effects language for lead in appendix B to subpart Q of part 141, to be consistent with the proposed revised lead health effects language required in public education and the CCR. See section V.H.5. of this document for more information about the proposed revised mandatory lead health effects language.

3. Definitions

In accordance with EPA's goal identified in the LCRR review notice to simplify the LCRI, EPA is proposing new definitions to conform with new proposed requirements under LCRI, as well as updating the definitions for some existing terms in LCRR to clarify them. EPA's proposed new and updated definitions for LCRI are as follows:

Action level. EPA is proposing to revise this definition so that the lead action level conforms with the proposed new lead action level of 0.010 mg/L.

Child care facility. EPA is proposing to make minor clarifications that specify the definition applies to Subpart I only and that the licenses for child care facilities must come from a State, local, or Tribal licensing agency.

Connector. EPA is proposing to revise this definition in several ways. EPA is proposing to streamline the definition to only include the word ''connector'' and not ''goosenecks, pigtails, and connectors'' because throughout the regulatory text, EPA refers to these pipes as ''connectors.'' The definition notes that connectors are also referred to as ''goosenecks'' and ''pigtails.'' EPA is also clarifying that connectors typically connect the service line to the main. EPA is also proposing that the definition for a connector states the short segment of piping does not exceed two feet.

During the LCRI engagements, some stakeholders recommended that lead connectors be added to the LSL definition, noting that separating the definitions for lead connectors and LSLs could prevent connectors from being replaced under the service line replacement program, and that consumers would not receive the same notification that they are served by a lead connector as if they were served by an LSL. EPA is proposing to keep the lead connector and LSL definitions separate because EPA views the connector and service line as distinct components. Adding connectors to the definition for LSL, such that a connector would be considered a service line under LCRI, could create confusion, which is counter to EPA's goal of simplifying the rule. Instead, EPA is proposing to keep the definitions separate and be clear about which proposed requirements apply to service lines, and which apply to connectors. For what EPA is specifically proposing with respect to connectors, please see section V.D.4. of this document.

Some stakeholders requested additional guidance on the LCRR definition of ''gooseneck, pigtail, or connector,'' which included the phrase ''typically not exceeding two feet'' (USEPA, 2023j). These stakeholders said that that they are aware of lead connectors that are 10 feet in length or longer and recommended that EPA define a maximum connector length and remove the word ''typically'' when referring to their length in the definition (USEPA, 2023j). EPA is proposing to change the definition of ''gooseneck, pigtail, or connector'' to exclude any connector that exceeds two feet because EPA is not aware of anything longer than two-feet that meets the other aspects of the definition—''*short* section of piping which can be bent and *used for connections* between rigid service piping.'' 40 CFR 141.2 (Emphasis added.) Moreover, the primary function of piping longer than two feet is more akin to a service line than ''short'' piping that ''can be bent and used for connections between rigid service piping.'' In addition, the contributions of lead into drinking water from something longer than two feet is expected to be closer to that of an LSL. Additionally, the materials that make up piping longer than two feet could potentially be identified for purposes of the inventory through similar techniques as service lines, such as potholing, given that longer connectors may extend beyond the street pavement. Therefore, EPA is proposing to regulate connectors greater than two feet in length the same way as service lines by narrowing the definition of connector. EPA is requesting comment on EPA's rationale for these changes and whether two feet is the appropriate maximum length for a lead connector (see section IX. of this document).

Distribution system and site assessment. EPA is proposing to rename the LCRR's ''find-and-fix'' requirement to better align with the underlying requirements of the provision. The proposed requirements apply in a narrow set of circumstances, and they do not require water systems to either ''find'' the cause of a lead action level exceedance or ''fix'' all causes found. Since promulgating the LCRR, EPA has noticed that the phrase ''find-and-fix'' has caused significant confusion among States, water systems, other stakeholders, and the public. The new, proposed name, distribution system and site assessment, more clearly explains what the proposed requirement for systems entails: assessing potential reasons at the system- and site-level why a lead sample tested above the lead action level. EPA is also proposing to update the definition to include the proposed revised lead action level of 0.010 mg/L.

Find-and-fix. EPA is proposing to remove the definition of ''find-and-fix'' given the proposed revised name of the requirement. See the proposed definition of ''distribution system and site assessment.''

Full service line replacement. EPA is proposing to remove the definition of ''full lead service line replacement'' from 141.2 and instead, specify what constitutes a full service line replacement under the mandatory replacement program within the regulatory requirements in 141.84(d)(6)(iii). By moving the substantive requirements for service line replacement out of the definition

section in subpart A of part 141 and including them with the other substantive requirements of the LCRI in Subpart I of Part 141, the LCRI would be easier to understand and implement.

Galvanized requiring replacement. The LCRR includes a definition of ''galvanized service line'' in § 141.2 and the LCRR definition of lead service line in § 141.2 provides that ''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'' The definition of LSL also provided that ''if the only lead piping serving the home is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered a lead service line, the service line is not a lead service line.'' Thus, within the definition of ''lead service line'' EPA essentially defined a GRR service line. In contrast, a GRR service line is defined without reference to connectors in the inventory requirements in § 141.84(a). This discrepancy has caused confusion. Accordingly, EPA is proposing to add a definition of GRR service lines in § 141.2, and to reference this same definition within the inventory section. This would streamline the LSL definition by removing information about GRR service lines from the LSL definition. During the proposed LCRI external engagements, EPA heard requests from a range of stakeholders for more clarity regarding the definition of GRR service lines. EPA expects the new revised proposed definition would be clearer, especially in tandem with the proposed definition of connectors that provides that connectors are not part of the service line to make the definition for service line clearer as well.

Gooseneck, pigtail, or connector. EPA is proposing to remove the definition of ''gooseneck, pigtail, or connector'' and replace it with a definition for ''connector,'' which is described above.

Lead service line. EPA is proposing to simplify the definition of a LSL, moving portions of the text to the regulatory requirements under § 141.84 and to the proposed definition of ''service line.'' During the LCRI engagements, EPA heard the definition was confusing and cumbersome. EPA expects this new definition would be clearer.

Lead status unknown service line. EPA is proposing to revise the definition of ''lead status unknown service line'' to specify that the definition applies ''for the purpose of subpart I of this part only'' and to simplify the definition by stating that it is any line not demonstrated to be an LSL, GRR service line, or non-lead pursuant to § 141.84.

Newly regulated public water system. EPA is proposing to add a definition of ''newly regulated public water system'' because of the new proposed revision under § 141.84 which applies to the requirements of these systems to develop baseline inventories.

Partial lead service line replacement. EPA is proposing to eliminate the definition of ''partial lead service line replacement'' and replace it with the proposed definition of ''partial service line replacement.''

Partial service line replacement. EPA is proposing to add a definition of ''partial service line replacement'' which specifies that the definition applies ''for the purpose of subpart I of this part only.'' The definition also expands the LCRR definition of ''partial lead service line replacement'' to include partial replacement of GRR service lines, in addition to LSLs. The definition also removes the text describing where partials are permitted and that they don't count towards the LCRR replacement rates, as the proposed LCRI includes these provisions in § 141.84.

Trigger level. EPA is proposing to remove the definition of ''trigger level'' because of the proposed elimination of the trigger level.

Service line. EPA is proposing to create a definition for ''service line'' to clarify proposed requirements under LCRI, especially the proposed requirement that systems create an inventory ''that identifies the materials and location of each service line connected to the public water distribution system.''

Small water system. EPA is proposing to correct an error from LCRR to define small water systems as those serving 10,000 persons or fewer. EPA is specifying that this definition applies to Subpart I, only.

Tap monitoring period. EPA is proposing to add a definition of ''tap monitoring period'' to specify the period of time during which each water system must conduct lead or copper tap sampling, which can range from six months to nine years.

Tap sample monitoring period. EPA is proposing to remove the definition of ''tap sampling monitoring period'' and replace it with the term ''tap monitoring period.'' The revision removes the regulatory provisions contained within the definition of ''tap sample monitoring period,'' as the proposed provisions are now included in § 141.86.

Tap sampling period. EPA is proposing to revise the definition of ''tap sampling period'' to remove the regulatory provisions that were included in the definition. This revision simplifies the definition, as the proposed provisions are now included in § 141.86.

Wide-mouth bottle. In LCRR, EPA added a definition for wide-mouth bottle that requires bottles to be configured with a mouth that is at least 55 millimeters (mm) wide and one liter in size. EPA is proposing to modify the definition of wide-mouth bottle to explicitly state that 55 mm is the outer diameter measurement of the bottle. Since the promulgation of the LCRR, EPA has received several questions about this requirement and whether the width is based on the interior or exterior/cap size of a bottle, as there are few types of bottles that have a 55 mm inner diameter (USEPA, 2023m). EPA anticipates this revised definition would be clearer and provide systems with more options to accurately implement the relevant LCRI requirements.

EPA is also proposing minor revisions to select definitions. EPA is proposing to a minor revision to the definition of ''elementary school'' for clarity by changing the word ''purposes'' to ''purpose.'' EPA is proposing to revise the definition of ''galvanized service line'' to clarify that the definition is intended to apply ''for the purpose of subpart I of this part'' only. EPA is proposing a grammatical correction to the definition of ''pitcher filter'' to remove an unnecessary comma. EPA is proposing a clarification to the definition of ''secondary school'' to include the grades which typically encompass secondary schools. EPA is proposing to eliminate the definition of ''medium-sized water system'' and replace it with an identical definition under ''medium water system'' for consistency in how the different system size categories are referred to. EPA is proposing a grammatical correction to the definition of ''optimal corrosion control treatment'' to change the word ''insuring'' to ''ensuring.'' EPA is proposing to revise the definition of ''tap sampling protocol'' to refer to the protocol required by the rule itself rather than the instructions provided to residents to conduct sampling, as residents may not conduct sampling. EPA is proposing to revise the definition of a ''system without corrosion control treatment'' to specify that the definition applies ''for the purpose of subpart I of this part.'' EPA is seeking comment on all aspects of the proposed definitions.

VI. Rule Areas for Which EPA Is Not Proposing Revisions

EPA is not proposing revisions to the following sections: 40 CFR 141.83 Source water treatment requirements, § 141.88 Monitoring requirements for lead and copper in source water, and § 141.89 Analytical methods. The provisions in these sections are not affected by any of the changes EPA is proposing to other sections as part of this rule.

VII. Rule Implementation and Enforcement

EPA is proposing requirements that would improve oversight and enforcement of the NPDWR for lead and copper, including eliminating the trigger level, enhanced sampling for detecting corrosion control issues in LSL systems, simplifying small system flexibility, streamlining public education following elevated lead measurements, and increased reporting by both systems and States. EPA also provides applicable guidance and tools on CCT, PE, and other aspects of the rule on the Agency's website at *https://www.epa.gov/dwreginfo/water-system-implementation-resources* to support implementation of the LCR and the LCRR and will continue to use this website to aid implementation of revisions finalized as a result of this proposed rule.

A. What are the rule compliance dates?

Section 1412(b)(10) of SDWA provides that promulgated NPDWRs shall take effect three years after the NPDWR is promulgated ''unless the Administrator determines that an earlier date is practicable.'' EPA is proposing compliance dates for a final LCRI and seeking comment on whether it would be practicable for water systems to implement any of the proposed LCRI requirements earlier than three years from the date of final action on the proposed LCRI (see section IX. of this document). Additionally, the Agency is proposing to replace LCRR requirements with the LCRI and is describing in this section which requirements water systems will be required to follow between the current October 16, 2024 LCRR compliance date and the LCRI compliance dates.

On June 16, 2021, EPA issued a final rule delaying the LCRR compliance date from January 1, 2024 to October 16, 2024 during which time water systems must continue to comply with the provisions of the LCR (40 CFR 141.80 through 141.91, as codified on July 1, 2020) (86 FR 31939, USEPA, 2021e) and work towards compliance with the October 16, 2024 deadline for the service line inventory. While EPA expects to promulgate the final LCRI prior to October 16, 2024, the Agency also acknowledged that the announcement of the proposed LCRI ''creates some uncertainty for water systems and States regarding the deadline and completion'' of required actions under LCRR, including the LSLR and tap sampling plans (86 FR 71580, USEPA, 2021b). In the LCRR review notice published on December 17, 2021, the Agency stated its intention to propose revisions to the LCRR compliance deadlines ''only for components of the rule that the Agency will propose to significantly revise'' (86 FR 71580, USEPA, 2021b). Some stakeholders have requested that EPA further delay the LCRR compliance date for items the Agency is proposing to revise in LCRI. For example, some States believe it will be difficult for them to review all the required plans at the same time and asked that EPA consider staggering various rule deadlines. Another stakeholder indicated that EPA should require compliance with the LCRI requirements beginning no earlier than January 2026. However, other stakeholders have previously cited concerns that delaying implementation of LCRR may delay public health protection (86 FR 31943, USEPA, 2021e; *State of Arizona et al.,* v. *EPA,* 77 4th 1126 (D.C. Cir. 2023) (dismissing petition for review of EPA's rule to delay the LCRR compliance date)). For a discussion on how the proposed compliance dates in this section address public health protection see section IV.E.

Proposed LCRI Compliance Dates

For the LCRI, EPA is proposing a compliance date of three years after promulgation of a final rule and is proposing that systems continue to comply with the LCR until that date, with the exception of the LCRR initial LSL inventory, notification of service line material, associated reporting requirements, and the requirement for Tier 1 public notification for a lead action level exceedance under subpart Q. This would provide the amount of time necessary for States to work with water systems to prepare to comply with the final LCRI requirements, which include revisions to most of the provisions of LCRR. EPA is proposing a direct transition from the LCR to the LCRI for all rule provisions with the above exceptions, so that States and water systems could focus their resources on preparing and updating service line inventories and conducting Tier 1 public notifications following lead action level exceedances, in addition to preparing for LCRI requirements, such as preparing their service line replacement plan. Water systems would not be required to comply with the other requirements of the LCRR between October 16, 2024 and the LCRI compliance date.

EPA is proposing for water systems to continue to comply with the LCR until the LCRI compliance dates, with the above exceptions, because of the significant level of effort required of water systems to plan for compliance with the LCRI, coupled with the complexity of the LCRR. Additionally, EPA is proposing significant changes in the LCRI relative to the LCRR, many of which would render various LCRR requirements obsolete in a few years. Specifically, EPA is proposing to eliminate the trigger level and the many associated rule requirements that are required after a trigger level exceedance, including reporting requirements to the States that could require significant resources. Many of the rule requirements in LCRR are so interrelated that changes in one rule area impacts other areas. For example, the various actions water systems are required to take are based on a system's 90th percentile lead level. In LCRR, provisions for CCT are based on system size; CCT and LSL status; and if the system is above, below, or between different thresholds (*e.g.,* lead PQL, lead trigger level, lead action level). In the proposed LCRI, these compliance pathways would be simplified by the proposed elimination of the lead trigger level, but also required additional proposed changes to the CCT provisions. Likewise, the LCR requires first-liter sampling at all sites while the LCRR requires fifth-liter sampling at LSL sites. The proposed LCRI would require the highest of the first and fifth liter at LSL sites. Changing from 90th percentile values based on a sampling approach with which systems have years of experience (the LCR), to a few years of a different approach (the LCRR), before changing again to the approach proposed in the LCRI, would likely cause confusion for systems and the public, and lead to wasted resources (*e.g.,* developing sampling instructions, sampling plans, outreach materials).

Another challenge is that the LCRR small system flexibility provision in § 141.93 allows systems serving 10,000 people or fewer to choose between the LSLR provisions or CCT provisions, which otherwise are specific to systems serving more than 10,000 people. Without the small system flexibility provision, there would be no requirements for small systems to

conduct LSLR or CCT. Therefore, any changes to those sections must be considered together. Compliance with one component of the rule without compliance with other related components would cause confusion and could produce inconsistencies across different requirements.

Additionally, in one of the key features of the rule, EPA is proposing in the LCRI for all water systems to identify and replace all LSLs and GRR service lines as quickly as feasible, regardless of lead levels. In response to the historic funding provided under the Bipartisan Infrastructure Law, some systems are voluntarily initiating service line replacement programs. However, despite this progress by some systems, many other systems have not or are not conducting service line replacement. Many systems have not been required to replace LSLs due to an action level exceedance under the LCR and may not have experience developing replacement programs. EPA has received feedback from water systems about the potential challenges of implementing replacement programs including availability of equipment and supplies, difficulties in securing funding, and hiring crews to complete replacements. EPA is working with States and water systems to demonstrate best practices for overcoming or mitigating these challenges through the Lead Service Line Replacement Accelerator initiative (USEPA, 2023e) and other technical assistance programs. By focusing States' and systems' efforts on standing up these service line replacement programs rather than implementing LCRR provisions that will be changed or eliminated, the rule will result in systems removing more LSLs and GRR service lines, which, where present, are the most significant source of drinking water lead exposure. While the LCRI would not wholly eliminate the challenges of large scale, nation-wide service line replacement, EPA anticipates that systems would better use the three-year period after promulgation of a final LCRI for program planning, including hiring additional staff, soliciting bids for contractors, securing grants or other types of funding, and continuing to improve inventories to ensure that they are better positioned to conduct mandatory service line replacement. It would also provide time for the market to correct for potential shortages in resources or workers. Because of the significant level of effort required of water systems to plan for compliance with the LCRI, coupled with the complexity of the LCRR, EPA is proposing to require water systems to continue to comply with the LCR prior to the LCRI compliance deadline, with the few exceptions noted above and further discussed below. EPA also anticipates that requiring systems to simultaneously comply with LCRR while preparing for LCRI could result in delays in achieving the public health protections that will result from the proposed LCRI requirements (see section IV.E.).

LCRR Requirements and Compliance Dates That Will Be Retained

EPA is retaining the compliance date of October 16, 2024, for systems to complete their initial service line inventories and to notify customers about their service line material within 30 days of completion of the inventory. Water systems and States are aware of and should be prepared to meet this deadline in light of EPA's August 2022 issuance of *Guidance for Developing and Maintaining a Service Line Inventory* guidance and EPA's December 17, 2021 **Federal Register** document on the conclusion of EPA's review of the LCRR (86 FR 71574, 71579, USEPA, 2021b).

Inventories help systems identify the location of LSLs and GRR service lines. Inventories are critical to support lead reduction efforts because they will allow customers to know if they are served by a LSL or GRR service line, as well as evaluate the extent of these lead sources in their drinking water system as a whole. With the inventory, water systems will be able to notify all persons served by lead, GRR, and unknown service lines and provide them with information on steps they can take to reduce their lead exposure. Additionally, the inventory is integral to help water systems take actions that will facilitate compliance with the LCRI: identify sampling locations, determine the extent of LSLs and GRR service lines within their systems, and begin planning for service line replacement, including applying for grants and loans.

EPA is also retaining the October 16, 2024, compliance date for Tier 1 PN following a lead action level exceedance. This requirement, which is a revision of EPA's Public Notification Rule in 40 CFR part 141, subpart Q was established in the same rulemaking as the revisions to the LCR in 40 CFR part 141, subpart I (*i.e.,* the LCRR), consistent with SDWA section 1414(c) as amended by the WIIN Act, based on EPA's determination that a lead action level exceedance has the potential to have serious human health effects as a result of short-term exposures (86 FR 4240, USEPA, 2021a). EPA is not proposing any changes to this requirement in the Public Notification Rule and the Agency does not anticipate that additional time would be needed for water systems to comply with this requirement given that systems must already conduct Tier 1 PN for other contaminants. EPA notes that, between October 16, 2024, and the LCRI compliance date, systems will be required to conduct this Tier 1 PN following an exceedance of the lead action level of 0.015 mg/L established under the LCR.

Alternative Proposed Compliance Dates

EPA is seeking comment from the public about its proposed compliance dates for various rule requirements, including whether it is practicable for water systems to implement any of the proposed LCRI requirements sooner than three years from the date LCRI would be finalized. In particular, EPA is seeking comment on whether it is practicable for water systems to implement notification and risk mitigation provisions after full and partial service line replacement (§ 141.84(h)), notification of a service line disturbance (§ 141.85(g)), and associated reporting requirements (§ 141.90(e)(6) and (f)(6)) upon the effective date of the LCRI. These provisions were introduced in the LCRR and have been revised in the LCRI to improve clarity (see sections V.B.6. and V.H.2. of this document). EPA introduced risk mitigation requirements to reduce consumer lead exposure because lead levels can temporarily increase after service line replacement and some disturbances. Although the Agency is concerned about systems implementing most provisions of LCRR while preparing to implement LCRI, EPA also anticipates that systems will continue to improve inventories, including identifying unknowns, and may conduct service line replacement either voluntarily or per regulation prior to the LCRI compliance date. EPA expects that earlier implementation of these provisions would reduce lead exposure for the subset of consumers affected by these activities. Therefore, EPA is seeking information, analyses, and comments on whether systems are capable of implementing these risk mitigation provisions sooner than the other LCRI requirements (see section IX. of this document). EPA is also seeking comment on whether earlier alternative compliance dates for LCRI requirements are practicable such that water systems transition directly from LCR to LCRI in less than three years (*i.e.,* one or two years) based on the assumption that water systems would comply with the LCR until the LCRI compliance date (see

section IX. of this document). Exhibit 6 below illustrate these alternative compliance dates.

Exhibit 6. Proposed Alternative Compliance Dates

Proposed Alternative Compliance Dates	Requirement
Effective date of the LCRI	Risk mitigation after full and partial service line replacement and service line disturbance (§§ 141.84(h), 141.85(g), 141.90(e)(6) and (f)(6))
One or two years after rule promulgation (January 2026)	All other LCRI provisions except for § 141.84(d).
Three years after rule promulgation (January 2028)	LCRI service line replacement (§ 141.84(d)).

EPA is also requesting comment on whether there are other LCRR provisions for which the October 16, 2024, compliance date should be retained. Under either of these scenarios, water systems would need to comply with some mix of the LCR and the LCRR while preparing to comply with the LCRI requirements three years (or earlier) after promulgation. EPA expects that piecemeal implementation of the treatment technique requirements for service line replacement, CCT, and public education would create a significant implementation challenge for most, if not all water systems, especially because of the interrelationship between the treatment techniques, and the role of the action and trigger levels in requiring systems to take corrective actions and provide additional public education. As a result, in assessing the impact of this approach, EPA would need to account for the strong possibility that there would be widespread non-compliance as a result of that implementation challenge. EPA seeks comments on these concerns and any ways EPA could address them if the Agency were to finalize one of these alternative approaches for compliance with the LCRR and the LCRI (see section IX. of this document).

B. What are the requirements for primacy?

SDWA authorizes EPA to regulate PWSs and promulgate NPDWRs that limit contaminants that may harm public health (SDWA section 1412). States may also regulate PWSs under SDWA by assuming primacy enforcement (or primacy) for PWSs in their jurisdictions (SDWA section 1413). PWSs in these Primacy States must then comply with both sets of State and Federal regulations. Generally, Primacy States monitor compliance with regulations; however, EPA can also take enforcement actions against water systems for failure to comply with NPDWRs. EPA conducts annual reviews of State programs and can also withdraw primacy (see 40 CFR 142.17).

This section also describes the regulations, procedures and, policies that primacy entities must adopt, or have in place, to implement the LCRI, when it is final. States, Territories, and Tribes must continue to meet all other conditions of primacy in 40 CFR part 142. Section 1413 of SDWA establishes requirements that primacy entities (States or Indian Tribes) must meet to maintain primary enforcement responsibility (primacy) for its PWSs. These include: (1) adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of SDWA; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available on activities that 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 (PWSS), as authorized under SDWA section 1413.

Under 40 CFR 142.12(b), all States/territories/Tribes would be required to submit a revised program to EPA for approval within two years of promulgation of any final LCRI or request an extension of up to two years in certain circumstances. To retain primary enforcement authority for the final LCRI, States must 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).

C. What are the special primacy requirements?

EPA is proposing to revise the existing special primacy requirements for the LCRR by modifying some, and establishing new, special primacy requirements for States as a condition of primacy. First, EPA is proposing to eliminate the special primacy requirement related to systems' goal-based service line replacement programs, given the proposed requirement for mandatory service line replacement in the LCRI. EPA is also proposing that States must identify any State laws, including statutes and constitutional provisions, relevant to a water system's ability to obtain access to conduct a full service line replacement and notify water systems in writing whether any such laws exist or not. Systems must provide this notification by the compliance date and within six months of the enactment of any new or revised State law that pertains to access.

Under the LCRR, States must determine if a greater mandatory lead service line replacement rate is feasible and to notify the system of its

determination in writing. EPA is proposing to modify this requirement for States to determine whether a shortened service line deadline is feasible. The proposed LCRI also includes a new requirement for States to update their feasibility determination to require a shortened deadline anytime throughout the system's replacement program, such as where factors related to feasibility change and make a shortened deadline feasible. Given the proposed new inventory validation requirement, EPA is also proposing for States to establish a deadline to complete inventory validation where shortened deadlines are feasible, as these systems would be replacing LSLs in less than ten years.

EPA is also proposing modifications to special primacy requirements under the LCRR with respect to the requirement for States to set a deadline for systems to prepare an updated inventory where they find discrepancies in their inventory. The LCRR only required States to set this deadline where water systems identify an LSL that was categorized as non-lead in the inventory. In the LCRI, EPA is proposing to include GRRs because these are included in the proposed service line replacement requirements and may also be improperly identified. In addition, because EPA is proposing to include lead connectors in the inventory, and would require systems that have inventories with no lead connectors and no unknown connectors to update their inventory if a lead connector is found. Therefore, EPA is proposing to include a requirement for States to set a deadline for systems to prepare an updated inventory in these cases.

EPA is also proposing for States to describe how the State will determine if an alternative lead sampling program is as ''stringent as the Federal requirements'' including how the State will use the definitions of elementary schools, secondary schools, and child care facilities as defined in § 141.2 to issue waivers. EPA is proposing that States must describe how the State will review the lists of schools and child care facilities submitted by CWSs to ensure the list includes schools and child care facilities that meet the definitions of elementary school, secondary school, and child care facility in § 141.2, and that States must certify that this list of schools and child care facilities is complete. EPA received questions about the LCRR requirement for States to define schools and child care facilities. EPA is aware that which facilities meet the definition of child care facility under § 141.2 may differ among States (*e.g.,* which facilities are licensed by the State). However, it is not the Agency's intention for States to develop new definitions for schools and child care facilities for purposes of complying with the new rule. In LCRI, EPA is proposing to clarify the ''child care facility'' (see section V.L.3. of this document). EPA is proposing to modify the LCRR requirement that States verify that systems have complied with follow-up requirements following a single site sampled above the action level. Under the LCRR, this requirement was part of find-and-fix. In the proposed LCRI, this requirement is relabeled as distribution system and site assessment (see section F.2. of this document).

VIII. Economic Analysis

This section summarizes the Economic Analysis (EA) supporting document (USEPA, 2023b) for the proposed LCRI, which is written in compliance with SDWA section 1412(b)(3)(C). Section 1412(b)(3)(C)(ii) of SDWA states that, when proposing an NPDWR that includes a treatment technique, the Administrator ''shall publish and seek 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 the alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described [under section 1412(b)(3)(C)(i)].'' This analysis is commonly called the Health Risk Reduction Cost Analysis (HRRCA). SDWA section 1412(b)(3)(C)(i) lists the analytical elements of the required HRRCA as follows: (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.

Based on this HRRCA analysis and pursuant to SDWA section 1412(b)(4)(C), the Administrator has determined that the estimated quantified and nonquantifiable benefits of the proposed regulation justify the quantified and nonquantifiable costs.

In this analysis, EPA assumes that the LCRI NPDWR will be promulgated in 2024. The Agency estimated the year or years in which all costs and benefit accrue over a 35-year period of analysis. The 35-year window was selected to capture costs associated with rule implementation as well as water systems conducting service line replacement and installing and operating corrosion control treatment. Note that EPA accounts for the Illinois, New Jersey, Michigan, and Rhode Island State-required service line replacement programs in the regulatory analysis baseline, so that the estimated proposed LCRI cost will not double count the service line replacement costs already required by States.

EPA annualized the estimated future streams of costs and benefits that accrue from compliance activities occurring over this same period of analysis symmetrically. EPA does not capture the effects of compliance with the proposed LCRI after the end of the period of analysis, although it does account for benefits that continue to accrue in the future from compliance activities that occur during the 35-year window. Costs and benefits are presented as annualized values in 2022 dollars. EPA determined the present value of these costs and benefits using social discount rates of three and seven percent as prescribed by the Office of Management and Budget (OMB) Circular A–4 (OMB, 2003).

Estimated benefits, in terms of health risk reduction from the proposed LCRI, result from 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. EPA quantifies and monetizes some of this health risk reduction from lead exposure by estimating the decrease in lead exposures accruing to both children and adults from the installation and re-optimization of CCT, service line replacement, the implementation of point-of-use filter devices, and the provision of pitcher filters in systems with multiple action level exceedances and by quantifying and monetizing the resulting increases in intelligence quotient (IQ) in children zero to seven years old, and reductions in incidents of low birth weight, attention-deficit/hyperactivity disorder (ADHD) in children, and adult cardiovascular disease premature mortality.

A. Affected Entities and Major Data Sources Used To Characterize the Sample Universe

The entities potentially affected by the proposed LCRI are PWSs, that are classified as either CWSs or NTNCWSs, and Primacy Agencies (States). In the economic modeling performed, EPA uses the Safe Drinking Water Information System Fed Data Warehouse (SDWIS/Fed) to derive the number of CWSs and NTNCWSs, 49,529 and 17,418, respectively. The Agency also assumed, for modeling purposes, 56 Primacy Agencies.[9]

EPA used a variety of data sources to develop the drinking water industry characterization for the regulatory analysis. Exhibit 7 (Exhibit 3–1 in Chapter 3 of the proposed LCRI Economic Analysis (USEPA, 2023b)) lists the major data sources, describes the data used from each source, and explains how it was used in the estimation of the regulatory analysis baseline, which corresponds to the LCRR.[10] Additional detailed descriptions of these data sources and how they were used in the characterization of baseline industry conditions can be found in Chapter 3 of the proposed LCRI Economic Analysis (USEPA, 2023b).

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[9] The 56 Primacy Agencies include 49 States (excluding Wyoming), Puerto Rico, Guam, United States Virgin Islands, American Samoa, North Mariana Islands, and Navajo Nation. For cost modeling purposes, EPA also included the District of Columbia (DC) as a Primacy Agency when assigning burden and costs of the rule although some of these costs are incurred by the actual Primacy Agency, EPA Region 3.

[10] Note that EPA provides an alternative regulatory analysis which assumes a pre-2021 LCR baseline during the 35-year period of analysis starting in 2024, in Appendix C of the EA (USEPA, 2023b). Because PWSs and Primacy Agencies will likely not have implemented the parts of the LCRR associated with compliance dates post October 16, 2024, the Agency is providing this alternative baseline analysis that describes LCRI incremental costs and benefits relative to a non-LCRR state of the industry.

Exhibit 7: Data Sources Used to Develop the Baseline for the Proposed LCRI

Data Source	Baseline Data Derived From the Source
SDWIS/Fed fourth quarter 2020 "frozen" dataset[1]	• PWS inventory, including population served, number of service connections, source water type, and water system type. Also used to identify NTNCWSs 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 pre-2021 LCR. • Analysis of lead 90th percentile concentrations to identify water systems below, at, or above the lead and/or copper ALs at the start of rule implementation by LSL status, *i.e.*, presence or absence of LSLs for the pre-2021 LCR, LCRR, and proposed LCRI. Used in concert with data from Michigan described below for the proposed LCRI.[2] • The proportion of water systems that are on various reduced monitoring schedules for lead tap and WQP monitoring. • The frequency of source and treatment changes and those source changes that can result in additional source water monitoring. • Number of distribution system entry points per drinking water system for systems that were not included in the UCMR 3 dataset.
2006 CWSS (USEPA, 2009)	• PWS labor rates.
UCMR 3 (2013-2015)	• Number of distribution system entry points per drinking water system.
7th DWINSA	• Service line material characterization. • Service line replacement costs.
State service line information	• Service line material characterization.
Geometries and Characteristics of Public Water Systems (USEPA, 2000)	• Design and average daily flow per system.
Six-Year Review 3 ICR Occurrence Dataset (2006-2011)	• Baseline distribution of pH for various CCT conditions. • Baseline orthophosphate dose for CCT.
State of Michigan Lead and Copper Compliance Monitoring Data (Michigan EGLE, 2019-2021)	• Analysis of the ratio of fifth- to first-liter lead tap samples to estimate the increase in lead 90th percentile levels for LSL systems based on the use of the higher of the first- or fifth-liter sample result. Ratios are applied to SDWIS/Fed lead 90th percentile data to identify systems below, at, or above the AL under the proposed LCRI by LSL status. • Percent of individual samples exceeding 10 µg/L for the proposed LCRI.

Acronyms: AL = action level; AWWA = American Water Works Association; CCT = corrosion control treatment; CWSS = Community Water System Survey; DWINSA = Drinking Water Infrastructure Needs Assessment; ICR = Information Collection Request; LCR = Lead and Copper Rule; LCRR = Lead and Copper Rule Revisions; LCRI = Lead and Copper Rule Improvements; LSL = lead service line; Michigan EGLE = Michigan Department of Environment, Great Lakes, and Energy; NTNCWS = non-transient non-community water system; public water system; SDWIS/Fed = Safe Drinking Water Information System/Federal version; UCMR 3 = Third Unregulated Contaminant Monitoring Rule; USEPA = United States Environmental Protection Agency; WQP = water quality parameter.

Note:

[1] Contains information reported through December 31, 2020.

[2] A system's lead 90th percentile level is a key factor in determining a system's requirements under the pre-2021 LCR, LCRR, and proposed LCRI.

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B. Overview of the Cost-Benefit Model

EPA updated its SafeWater LCR model that was used to analyze the costs and benefits of the LCRR. For a detailed description of the model, see Chapter 5 of the *Economic Analysis for the Final Lead and Copper Rule Revisions* (USEPA, 2020c). EPA originally

developed SafeWater LCR because of the need to model costs and benefits where significant variability existed in both regulated entity characteristics (*i.e.,* baseline) and regulatory compliance scenarios, a fact that remains true of the analysis for the proposed LCRI. PWSs will face different compliance scenarios depending on the size and type of water system, the presence of lead, GRR, and unknown service lines, water quality, and existing corrosion controls. In addition, PWSs will also face different unit costs based on water system baseline characteristics including size, type, and number of entry points (*e.g.,* labor rates, and CCT capital and operation and maintenance unit costs).

One of the strengths of the SafeWater LCR model is that it incorporates a large degree of variability across water system baseline characteristics that influence compliance and costs. For example, under the proposed LCRI, PWSs will face different compliance scenarios and costs depending on their size, primary source water type, number of entry points to the distribution system, number of lead service lines (LSLs) and galvanized requiring replacement service lines (GRRs) in their distribution system, and existing corrosion controls in place. The SafeWater LCR model also includes variability in compliance characteristics like different labor rates and number of tap and water quality parameter (WQP) samples required by system size.

One limitation of the cost-benefit analysis is that EPA does not have all of the PWS-specific data needed to fully reflect baseline and compliance variability across PWSs, therefore, the SafeWater LCR model applies a ''model PWS'' approach. From a set of system baseline characteristic data including system type, system size, and primary water source, EPA defined 72 PWS categories, or strata, in the SafeWater LCR model. The 72 PWS categories consist of each combination of PWS type (2), PWS population size category (9), PWS primary source water (2), and PWS ownership (2).

The SafeWater LCR model creates model PWSs representing systems in each category by combining the PWS-specific data available in SDWIS/Fed with data on baseline and compliance characteristics available at the PWS category level. When categorical data are point estimates, every model PWS in a category is assigned the same value. When EPA has probabilistic data representing system variability, SafeWater LCR model assigns each model PWS a value sampled from the distribution. Examples of the distributional data inputs that characterize variability in the SafeWater LCR model include the burden for PWS and State staff to conduct tasks like sampling and compliance documentation and review. These distributions are assumed to be independent which is a limitation of the model.

While the model system approach allows for a good characterization of variability across PWSs, it is less exact than if EPA had full information on each PWS. For additional detail on the development of model-PWSs in the SafeWater LCR model, see Appendix B, section B.2.1 of the Economic Analysis (USEPA, 2020c). Because of this model PWS approach, SafeWater LCR does not output any results at the PWS level, but rather, outputs cost (and benefit) estimates at the PWS category, or strata. For additional information on the data sources used in the estimation of costs see Chapter 3 and Chapter 4, sections 4.2.2, 4.3, 4.4, and 4.5 of the Economic Analysis (USEPA, 2020c).

Chapter 3 of the proposed LCRI Economic Analysis (USEPA, 2023b) describes in greater detail the baseline data elements, their derivation, and the inherent sources of uncertainty in the developed data elements. Chapter 4, sections 4.3 and 4.4 of the proposed LCRI Economic Analysis discuss how each data element is used in the estimation of costs and provides examples and references to how these data were developed. Chapter 5 of the proposed LCRI Economic Analysis (USEPA, 2023b) provides detail on the water lead concentrations under baseline conditions (*e.g.,* presence of an LSL and CCT) and the functions used to quantify benefit categories, their derivation, and the inherent sources of uncertainty associated with the use of those functions. All significant uncertainties of this economic analysis are described in the following sections of the proposed LCRI EA (USEPA, 2023c). Section 3.4 and Exhibit 3–81 outline uncertainties associated with the analytical baseline and water system compliance characteristics. SafeWater LCR model and cost uncertainty is discussed in section 4.2.2 and Exhibit 4–3. Also, for a discussion of the uncertainties in the benefits analysis, see section 5.7 and Exhibit 5–43.

SafeWater LCR follows each model PWS, which represents a cohort of systems with the same characteristics, in the sample through each year of the period of analysis and determines 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 and the resultant effects on health outcomes. It also tracks how other events, such as changing a water source or treatment, effect the water system's compliance requirements for the next year. The estimated costs and benefits for each model PWS are weighted so they represent the number of actual PWSs known to have similar characteristics (*e.g.,* population served, entry points to the distribution system, etc.), and then summary statistics are calculated, including total quantified costs of the proposed regulatory requirement, total quantified benefits of the proposed regulatory requirement, the variability in PWS-level costs (*e.g.,* 5th and 95th percentile system costs), and the variability in household-level costs.[11]

This treatment technique rulemaking, and therefore the SafeWater LCR model, is complex, incorporating multiple compliance triggers (*e.g.,* action level exceedance, single sample exceedance, multiple action level exceedances) that require multiple and varying compliance actions (*e.g.,* CCT installation or re-optimization, distribution system and site assessment, public education, temporary filter distribution) requiring a large number of inputs for the estimation of total compliance costs and benefits. Many of these inputs, which are specific to the assessment of the costs and benefits of the proposed LCRI, are uncertain.

EPA determined it does not have enough information to perform a probabilistic uncertainty analysis as part of the SafeWater LCR model analysis for this rule. Instead, to capture uncertainty, EPA estimated compliance costs and benefits using the SafeWater LCR model under low and high bracketing scenarios. For costs, the bracketing scenarios are defined by the following three cost drivers: the number of PWSs that will exceed the action

[11] The exception to the use of model PWSs and the assignment of system characteristic data in the SafeWater LCR model are the 24 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 impact of these systems on estimated national costs and benefits, 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. When facility-specific data were available, EPA used it to estimate compliance costs and benefits for the very large water systems. If data were not available, EPA assigned baseline characteristics using the same process as previously described. See Chapter 4, section 4.2.3 of the proposed LCRI EA for a summary of the data EPA collected on these very large systems (USEPA, 2023b).

level under the revised tap sampling requirements; the cost of service line replacement; and the cost of CCT. The low and high scenarios for benefits are driven by the number of PWSs that will exceed the action level under the revised tap sampling requirements (the same variable which is used to define the low and high cost scenarios) and the concentration-response functions that characterize how reductions in blood lead levels (caused by changes in lead exposure) translate into estimates of avoided IQ reductions, cases of ADHD, and cardiovascular disease premature mortality. These low and high scenarios are defined by the assignment of low and high values for the set of cost and benefit drivers listed above. Detailed descriptions of these variables and the derivation of their values under the low and high scenarios can be found in Chapter 4 and Chapter 5 of the proposed LCRI Economic Analysis (USEPA, 2023b). Due to the data limitations mentioned above, with the exception of the uncertain variables which define the difference between the low and high scenarios, the remaining baseline water system and compliance characteristics are treated as certain and remain constant across the scenarios. While this limits the full description of the uncertainty in the monetized cost and benefit estimates, it does allow EPA to clearly define the uncertainty characterized in the cost-benefit range provided by the low and high scenarios and maintains consistency between the estimation of costs and benefits for the LCRR and proposed LCRI (*e.g.,* number of systems with LSLs and percent of connections that are LSLs).

When evaluating the economic impacts on PWSs and households, 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. EPA used data from the 2006 Community Water System Survey (CWSS) to estimate the PWS cost of capital. 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 Appendix B of the proposed LCRI Economic Analysis (USEPA, 2023b). Since similar cost of capital information is not available for NTNCWSs, EPA used the CWS cost of capital when calculating the annualized cost per NTNCWS. Total capital investment may be greater than costs water systems bear when complying with future regulatory requirements because financing support for lead reduction efforts is available from State and local governments, EPA programs, and other Federal agencies. 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.

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 LCRI, become familiar with its provisions, and develop training materials and train employees on the new rule requirements. States will also incur burden hours associated with adopting the rule into State requirements, updating their LCR program policies and practices, and modifying data management systems. PWSs will incur costs to comply with the service line materials inventory requirements, service line materials notification requirement, and requirement for public notification following an action level of 0.015 mg/L (LCRR action level) in years one through three of the 35-year period of analysis. EPA expects that water systems will begin complying with all other LCRI rule requirements three years after promulgation, or in year four of the analysis.

Some requirements of the proposed LCRI must be implemented by water systems regardless of their water quality and tap sampling results (*e.g.,* service line material inventory updates, service line replacement, and CWS school and child care facilities sampling programs). However, most of the major cost drivers are a function of a water system's 90th percentile lead tap sample value. Because a water system's lead 90th percentile value is important to determining regulatory requirements and costs and benefits under the proposed LCRI, the SafeWater LCR model tracks each model PWS's 90th percentile value over each annual time step in the model. The 90th percentile value, and if it exceeds the action level, dictates actions including, but not limited to, tap sampling and water quality parameter monitoring schedules, the installation or re-optimization of CCT, the installation of point-of-use devices or pitcher filters at water systems selecting this treatment option as part of the small water system flexibilities under the proposed LCRI, and public education requirements.[12] Under the proposed LCRI the SafeWater LCR model assumes a PWS's 90th percentile tap sample values will drop at or below the action level once they: (1) install or reoptimize CCT;[13] (2) install point-of-use devices or (3) remove all service lines with lead content. When the PWS no longer has a 90th percentile tap sample value above the action level, it incurs lower sampling and public education costs.

The SafeWater LCR model allows for future increases in 90th percentile lead values as a result of changes in source water and treatment. The likelihood of these events occurring has been derived from SDWIS/Fed data (see Chapter 3, section 3.3.9 of the proposed LCRI Economic Analysis (USEPA, 2023b)). 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 the total cost of compliance for the baseline (LCRR), the proposed LCRI, and the incremental cost of the proposed LCRI, under both the low and high cost scenarios, discounted at three and seven percent. EPA presents the estimated PWS proposed rule implementation costs; the calculated distributions of incremental annualized costs for CWS households by primary water source and size category; and the estimated costs to States for implementation and administration of the rule.[14] This section also quantifies the potential increase in phosphates that would result from the increased use of corrosion inhibitors under the rule, the resulting cost for treating to remove the additional phosphates at downstream wastewater treatment plants that may be

[12] Distribution system and site assessment adjustments to CCT are required for a single lead tap sample exceedances of the action level of 0.010 mg/L. The provision of temporary pitcher filters is triggered by multiple action level exceedance violations. Both these compliance requirements are also positively associated with system level 90th percentile tap sample values.

[13] The SafeWater LCR model implements a required systemwide distribution system and site assessment activity as a change in pH which is equivalent to pH adjustments associated with CCT installation or preoptimization in the model.

[14] Note that reporting costs are represented in the cost totals provided in the estimates below, but a separate summary of the reporting costs, as required by the Paperwork Reduction Act, can be found in section X.C. of this document.

constrained by nutrient discharge limits, and discusses the ecological impacts that may result from increased phosphorus loads to surface waters.

1. Drinking Water System Costs

EPA provides estimates of the proposed LCRI regulatory requirement costs that accrue to PWSs for the following cost components: rule implementation and administration, sampling, service line inventory and replacement, CCT, point-of-use program (if a small system selects this compliance option), and public education and outreach. For the purpose of developing the PWS costs for each of these rule components EPA further subdivided these groupings into sub-components and activities, to be completed by systems implementing the requirements of the proposed LCRI. For most activities, water systems will incur labor unit costs (*e.g.,* PWS staff participate in training). Systems will also incur unit capital and operation and maintenance costs for a number of activities (*e.g.,* installation of CCT). Exhibit 8 (Exhibit 4–6 in the proposed LCRI Economic Analysis (USEPA, 2023b)) provides an overview of the rule components, subcomponents, and activities for which EPA estimates water system unit costs for the proposed LCRI. Detailed information on the derivation of unit costs associated with each activity can be found in the proposed LCRI Economic Analysis sections identified in Exhibit 8.

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Exhibit 8: PWS Cost Components, Subcomponents, and Activities Organized by Section[1]

Component	Subcomponents	Activities[2]
4.3.1: PWS Implementation and Administrative Costs	4.3.1.1: PWS One-Time Implementation and Administrative Costs	a) Read and understand the rule b) Assign personnel and resources for rule implementation c) Participate in training and technical assistance from the State during rule implementation d) Provide small system flexibility option recommendation to the State
4.3.2: PWS Sampling Costs	4.3.2.1: PWS Lead Tap Sampling	a) Update sampling instruction for lead tap sampling and submit to the State b) Contact homes to establish new 100 percent LSL tap sampling pool c) Report any changes in sampling location to the State d) Confer with the State on initial lead sampling data and status under the LCRI e) Obtain households for each round of lead tap sampling f) Offer incentives to households to encourage participation in lead tap sampling program g) Ship tap sampling material and instructions to participating households h) Collect lead tap samples i) Determine if sample should be rejected and not analyzed j) Analyze lead tap samples in-house or commercially k) Prepare and submit sample invalidation request to the State l) Inform customers of tap sample results m) Certify to the State that results were reported to customers n) Submit request to renew 9-year monitoring waiver to the State o) Submit sampling results and 90th percentile calculation to the State p) Oversee the customer-initiated lead sampling program q) Ship tap sampling material and instructions to participating households for customer-initiated lead sampling program r) Collect lead tap samples for customer-initiated lead sampling program s) Analyze lead tap samples in-house or commercially for customer-initiated lead sampling program t) Inform customers of lead tap sample results for customer-initiated lead sampling program
	4.3.2.2: PWS Lead Water Quality Parameter Monitoring	u) Collect lead WQP samples in the distribution system v) Analyze distribution system lead WQP samples w) Collect lead WQP samples from entry points

Component	Subcomponents	Activities[2]
		x) Analyze entry point lead WQP samples y) Report lead WQP sampling data and compliance with OWQPs to the State
4.3.2: PWS Sampling Costs (Continued)	4.3.2.3: PWS Copper Water Quality Parameter Monitoring	z) Collect copper WQP samples in the distribution system aa) Analyze distribution system copper WQP samples bb) Collect copper WQP samples from entry points cc) Analyze entry point copper WQP samples dd) Report copper WQP sampling data and compliance with OWQPs to the State
	4.3.2.4: PWS Source Water Monitoring	ee) Collect source water sample ff) Analyze source water sample gg) Report source water monitoring results to the State
	4.3.2.5.1: CWS School and Child Care Facility Lead Sampling Costs – First Five-Year Cycle	hh) Create a contact list of schools and child care facilities served by CWS and submit to State ii) Develop lead outreach materials for schools and child care facilities jj) Prepare and distribute initial letter explaining the sampling program and EPA's 3Ts Toolkit kk) Contact elementary school or child care facility to determine and finalize its sampling schedule (one-time) or contact secondary school to offer sampling (annual) ll) Contact school or child care facility to coordinate sample collection logistics mm) Conduct walkthrough at school or child care facility before the start of sampling nn) Travel to collect samples oo) Collect samples pp) Analyze samples qq) Provide sampling results to tested facilities rr) Discuss sampling results with school or child care facility ss) Conduct detailed discussion of high sampling results with school and child care facilities tt) Report school and child care facility sampling results to the State uu) Prepare and provide annual report on school and child care facility sampling program to the State
	4.3.2.5.2: CWS School and Child Care Facility Lead Sampling Costs – Second Five-Year Cycle On	vv) Update the list of schools and child care facilities and submit to the State ww) Contact school and child care facilities to offer sampling xx) Contact school or child care facility to coordinate sample collection logistics

Component	Subcomponents	Activities[2]
		yy) Conduct walkthrough at school or child care facility before the start of sampling zz) Travel to collect samples aaa) Collect samples bbb) Analyze samples ccc) Provide sampling results to tested facilities ddd) Discuss sampling results with school and child care facility eee) Conduct detailed discussion of high sampling results with school and child care facility fff) Report school and child care facility sampling results to the State ggg) Prepare and provide annual report on school and child care facility sampling program to the State
4.3.3: PWS Corrosion Control Costs	4.3.3.1: CCT Installation	a) Conduct a CCT study b) Install CCT Treatment (PO_4, PO_4 with post treatment, pH adjustment, or modify pH)
	4.3.3.2: Re-optimization of Existing Corrosion Control Treatment	c) Revise CCT study d) Reoptimize existing CCT
	4.3.3.3: DSSA Costs	e) Contact customers and collect follow-up tap sample f) Analyze follow-up lead tap sample g) Collect distribution system WQP sample h) Analyze distribution system WQP sample i) Review incidents of system-wide event and other system conditions j) Consult with the State prior to making CCT changes k) Report follow-up sample results and overall "DSSA" responses to the State
	4.3.3.4: System Lead CCT Routine Costs	l) Review CCT guidance m) Provide water quality data to the State and discuss during sanitary survey n) Notify and consult with the State on required actions in response to source water change o) Notify and consult with the State on required actions in response to treatment change
4.3.4: PWS Service Line Inventory and Replacement Costs	4.3.4.1: Service Line Inventory	a) Conduct records review for connector material b) Compile and submit updated inventory information to the State c) Identify service line material for unknowns d) Report annual inventory updates to the State e) Conduct field investigations for inventory validation f) Report validation results to the State
	4.3.4.2: Service Line Replacement Plan	g) Develop service line replacement plan and submit to the State for review

Component	Subcomponents	Activities[2]
		h) Conduct planning and identify financial options for service line replacements and submit to the State
	4.3.4.3: Physical Service Line Replacements	i) System replaces LSLs and GRR service lines
	4.3.4.4: Ancillary Service Line Replacement Activities	j) Contact customers and conduct site visits prior to service line replacement k) Deliver filters and cartridges at time of service line replacement and maintain them for 6 months l) Collect tap sample post-service line replacement m) Analyze post-service line replacement tap sample n) Inform customers of tap sample result o) Submit annual report on service line replacement program to the State
4.3.5: PWS POU-Related Costs (Small System Compliance Option)	4.3.5.1: POU Device Installation and Maintenance	p) Provide, monitor, and maintain POU devices
	4.3.5.2: POU Ancillary Activities	q) Develop POU plan and submit to the State r) Develop public education materials and submit to the State s) Print POU education materials t) Obtain households for POU monitoring u) Deliver POU monitoring materials and instructions to participating households v) Collect tap samples after POU installation w) Determine if sample should be rejected and not analyzed x) Analyze POU tap samples y) Prepare and submit sample invalidation request to the State z) Inform customers of POU tap sample results aa) Certify to the State that POU tap results were reported to customers bb) Prepare and submit annual report on POU program to the State
4.3.6: PWS Lead Public Education, Outreach, and Notification Costs	4.3.6.1: Consumer Notice	a) Provide a copy of the 3 calendar day notice and certification to the State
	4.3.6.2: Activities Regardless of Lead 90th Percentile Level	b) Update CCR language c) Develop new customer outreach plan d) Develop approach for improved public access to lead health-related information and tap sample results e) Establish a process for public access to information on known or potential lead content SL locations and tap sample results f) Maintain a process for public access to lead health information, known or potential lead content SL locations, and tap sample results Respond to customer request for LSL information

Component	Subcomponents	Activities[2]
		g) Respond to customer request for known or potential lead content SL information h) Respond to requests from realtors, home inspectors, and potential home buyers for known or potential SL information i) Develop a list of local and State health agencies j) Develop lead outreach materials for local and State health agencies k) Deliver lead outreach materials for local and State health agencies l) Develop public education materials for SL disturbances and submit to the State m) Deliver public education for SL disturbances n) Deliver filters and cartridges during disturbances of SLs and maintain them for 6 months o) Develop inventory-related outreach materials and submit to the State for review p) Distribute inventory-related outreach materials q) Provide translation services for public education materials r) Certify to the State that lead outreach was completed[3]
	4.3.6.3: Public Education Activities in Response to Lead ALE	s) Update mandatory language for lead ALE public education and submit to the State for review t) Deliver lead ALE public education materials to all customers u) Post notice to website v) Prepare press release w) Contact public health agencies to obtain additional organizations and update recipient list x) Notify public health agencies and other organizations y) Consult with State on other public education activities z) Implement other public education activities
	4.3.6.4: Public Education Activities in Response to Multiple Lead ALEs	aa) Develop outreach materials for systems with multiple lead ALEs and submit to the State for review bb) Conduct enhanced public education for systems with multiple lead ALEs cc) Consult on filter program for systems with multiple lead ALEs dd) Develop plan for making filters available and submit to the State for review ee) Administer filter program for systems with multiple lead ALEs ff) Provide filters due to multiple lead ALEs

Acronyms: 3Ts = "3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities Toolkit: A Training, Testing, and Taking Action Approach (Revised Manual)"; AL = action level; ALE = action level exceedance; CCR = consumer confidence report; CCT = corrosion control treatment; CWS = community water system; DSSA = Distribution System and Site Assessment; LCRR = Lead and Copper Rule revisions; LSL = lead service line; LSLR = lead service line replacement; OWQPs = optimal water quality parameters; PO_4 = orthophosphate; POU = point-of-use; PWS = public water system; SL = service line; WQP = water quality parameter.

Notes:

[1] Systems will also incur burden for recordkeeping activities under the LCRI, such as retaining records of decisions, supporting documentation, technical basis for decisions, and documentation submitted by the system. EPA has included burden for recordkeeping with each activity when applicable and opposed to providing separate burden estimates.

[2] EPA assigned a unique letter identification (ID) for each activity under a given rule component. Activities are generally organized with upfront, one-time activities first followed by ongoing activities.

[3] This certification is inclusive of outreach activities in sections 4.3.6.1 through 4.3.6.3.

EPA uses the derived unit costs associated with each regulatory activity from Exhibit 8 as inputs to the SafeWater LCR model which estimates low and high scenario PWS total costs for the baseline (LCRR) and the proposed LCRI.[15] Baseline total costs are then subtracted from the LCRI total costs to determine the incremental costs of the new regulatory requirements under the proposed LCRI for both the low and high cost scenarios. These incremental costs are presented as annualized values, discounted at both three and seven percent in Exhibit 9 and Exhibit 10, respectively. The estimated total PWS incremental annualized costs of the proposed LCRI range from $2.1 to $2.93 billion at a three percent discount rate, and $2.5 to $3.58 billion at a seven percent discount rate in 2022 dollars. The exhibits also detail the proportion of the annualized costs attributable to each rule component. For estimated total and incremental costs by subcomponent see Chapter 4, section 4.3 of the proposed LCRI Economic Analysis (USEPA, 2023b).

[15] For additional information on how the SafeWater LCR model uses unit cost date to estimate PWS costs see Chapter 4, section 4.3 of the proposed LCRI rule EA (USEPA, 2023b).

Exhibit 9: Estimated National Total Monetized Annualized PWS Rule Costs - 3 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$138.1	$169.6	$31.5	$151.1	$180.1	$29.0
PWS SLR*	$128.5	$1,892.0	$1,763.5	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$543.0	$633.5	$90.5	$626.1	$767.8	$141.7
Point-of Use Installation and Maintenance	$2.6	$7.2	$4.6	$5.9	$14.5	$8.6
Public Education and Outreach	$95.1	$251.2	$156.1	$97.6	$262.0	$164.4
Rule Implementation and Administration	$0.1	$3.9	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$907.4***	***$2,957.4***	***$2,050.0***	***$1,102.6***	***$4,036.1***	***$2,933.5***

Note: *Service line replacement includes full and partial lead service lines and galvanized requiring replacement service lines.

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

EPA in the LCRR economic analysis (USEPA, 2020b) assumed that the cost of customer-side service line replacements made under the goal-based replacement requirement would be paid for by households. The Agency also assumed that system-side service line replacements under the goal-based replacement requirement and all service line replacements (both customer-side and systems-side) would be paid by the PWS under the 3 percent mandatory replacement requirement. EPA made these modeling assumptions based on the different levels of regulatory responsibility systems faced operating under a goal-based replacement requirement versus a mandatory replacement requirement. While systems would not be subject to a potential violation for not meeting the replacement target under the goal-based replacement requirement, under the 3 percent mandatory replacement requirement the possibility of a violation could motivate more systems to meet the replacement target even if they had to adopt customer incentive programs that would shift the cost of replacing customer-side service lines from customers to the system. To be consistent with these LCRR modeling assumptions, under the proposed LCRI, EPA assumed that mandatory replacement costs would fall only on systems. Therefore, the negative incremental values reported for the "Household SLR Costs" category do not represent a net cost savings to households. They represent an assumed shift of the estimated service line replacement costs from households to systems. EPA has insufficient information to estimate the actual service line replacement cost sharing relationship between customers and systems at the national level of analysis.

Acronyms: SLR = service line replacement; PWS = public water system

Exhibit 10: Estimated National Total Monetized Annualized Rule Costs – 7 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$153.6	$170.1	$16.5	$171.1	$182.8	$11.7
PWS SLR*	$172.3	$2,385.6	$2,213.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$566.6	$646.8	$80.2	$660.5	$785.3	$124.8
Point-of Use Installation and Maintenance	$2.6	$6.4	$3.8	$5.9	$12.8	$6.9
Public Education and Outreach	$102.5	$287.2	$184.7	$107.3	$302.4	$195.1
Rule Implementation and Administration	$0.2	$6.4	$6.2	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$997.8***	***$3,502.5***	***$2,504.7***	***$1,237.5***	***$4,821.6***	***$3,584.1***

Note: *Service line replacement includes full and partial lead service lines and galvanized requiring replacement service lines.

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

EPA in the LCRR economic analysis (USEPA, 2020b) assumed that the cost of customer-side service line replacements made under the goal-based replacement requirement would be paid for by households. The Agency also assumed that system-side service line replacements under the goal-based replacement requirement and all service line replacements (both customer-side and systems-side) would be paid by the PWS under the 3 percent mandatory replacement requirement. EPA made these modeling assumptions based on the different levels of regulatory responsibility systems faced operating under a goal-based replacement requirement versus a mandatory replacement requirement. While systems would not be subject to a potential violation for not meeting the replacement target under the goal-based replacement requirement, under the 3 percent mandatory replacement requirement the possibility of a violation could motivate more systems to meet the replacement target even if they had to adopt customer incentive programs that would shift the cost of replacing customer-side service lines from customers to the system. To be consistent with these LCRR modeling assumptions, under the proposed LCRI, EPA assumed that mandatory replacement costs would fall only on systems. Therefore, the negative incremental values reported for the "Household SLR Costs" category do not represent a net cost savings to households. They represent an assumed shift of the estimated service line replacement costs from households to systems. EPA has insufficient information to estimate the actual service line replacement cost sharing relationship between customers and systems at the national level of analysis.

Acronyms: SLR = service line replacement; PWS = public water system

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2. Annualized per Household Costs

The SafeWater LCR 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 LCRI. This is a total implementation cost for the system which includes the rule implementation and administration, including, but not limited to, sampling, service line inventory and replacement, CCT, point-of-use program (if a small system selects this compliance option), and public education and outreach component costs. Because of uncertainty in three important LCRI cost input variables, discussed in section VIII.B. of this document, 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 SafeWater LCR 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. Exhibits 11 and 12 show the distributions of incremental annualized costs for CWS households by primary water source and size category. Note that 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.[16]

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[16] Note that although EPA assumed in the cost analysis that systems would pay for customer-side service line replacement. It is possible that in some systems individual homeowners may bear a much greater annual household burden which includes the customer-side service line replacement. EPA estimates the cost of removing the customer-owned side of a service line range from $1,920 to $5,400, with a central tendency of $3,273. The percentage of customers in each water system paying the higher customer-side service line replacement costs depends on the number of LSLs and GRR service lines in the water system, the rate of replacement, and the details of the water systems service line replacement program.

Exhibit 11: Estimated Annualized Incremental Cost per Household by Community Water System Category - Low Scenario (2022 USD)

Funding	*Source Water*	*Size*	*Mean*	*10th Percentile*	*25th Percentile*	*50th Percentile*	*75th Percentile*	*90th Percentile*
Private	*Ground*	*Less than 100*	$67	$28	$39	$60	$88	$119
Private	*Ground*	*100 to 500*	$23	$7	$12	$19	$28	$45
Private	*Ground*	*500 to 1,000*	$4	$1	$1	$3	$6	$9
Private	*Ground*	*1,000 to 3,300*	$3	$1	$1	$2	$4	$5
Private	*Ground*	*3,300 to 10,000*	$27	$0	$1	$20	$28	$92
Private	*Ground*	*10,000 to 50,000*	$9	$0	$1	$8	$14	$22
Private	*Ground*	*50,000 to 100,000*	$9	$0	$0	$7	$17	$25
Private	*Ground*	*100,000 to 1,000,000*	$4	$0	$0	$3	$6	$9
Private	*Surface*	*Less than 100*	$58	$22	$33	$50	$79	$104
Private	*Surface*	*100 to 500*	$18	$5	$8	$15	$23	$36
Private	*Surface*	*500 to 1,000*	$5	$2	$2	$3	$6	$8
Private	*Surface*	*1,000 to 3,300*	$3	$1	$1	$2	$3	$6
Private	*Surface*	*3,300 to 10,000*	$26	$1	$1	$19	$27	$87
Private	*Surface*	*10,000 to 50,000*	$9	$0	$1	$7	$11	$21
Private	*Surface*	*50,000 to 100,000*	$9	$0	$0	$7	$15	$22
Private	*Surface*	*100,000 to 1,000,000*	$5	$0	$0	$4	$8	$11
Private	*Surface*	*Greater than 1,000,000*	$8	$1	$1	$12	$15	$15
Public	*Ground*	*Less than 100*	$53	$23	$32	$44	$70	$92
Public	*Ground*	*100 to 500*	$15	$5	$7	$12	$19	$30
Public	*Ground*	*500 to 1,000*	$4	$1	$2	$3	$5	$7
Public	*Ground*	*1,000 to 3,300*	$2	$1	$1	$1	$3	$4
Public	*Ground*	*3,300 to 10,000*	$21	$0	$1	$15	$22	$68
Public	*Ground*	*10,000 to 50,000*	$6	$0	$1	$5	$9	$16
Public	*Ground*	*50,000 to 100,000*	$7	$0	$0	$5	$13	$17
Public	*Ground*	*100,000 to 1,000,000*	$4	$0	$0	$5	$7	$8
Public	*Ground*	*Greater than 1,000,000*	$1	$1	$1	$1	$1	$1
Public	*Surface*	*Less than 100*	$54	$21	$29	$53	$68	$89
Public	*Surface*	*100 to 500*	$13	$4	$6	$10	$16	$24
Public	*Surface*	*500 to 1,000*	$4	$1	$2	$2	$4	$7
Public	*Surface*	*1,000 to 3,300*	$2	$1	$1	$1	$2	$4
Public	*Surface*	*3,300 to 10,000*	$22	$1	$1	$15	$24	$73
Public	*Surface*	*10,000 to 50,000*	$7	$0	$1	$6	$10	$18
Public	*Surface*	*50,000 to 100,000*	$8	$0	$0	$6	$14	$20
Public	*Surface*	*100,000 to 1,000,000*	$5	$0	$0	$6	$8	$10
Public	*Surface*	*Greater than 1,000,000*	$8	$0	$0	$5	$15	$22

Notes: System Category rows are not included for system categories that contain zero systems. Detail may not add exactly to total due to independent rounding.

When evaluating the economic impacts on PWSs, EPA uses the estimated PWS cost of capital to discount future costs (not the 3 or 7 percent discount rates used to evaluate social costs and benefit), as this best represents the actual costs of compliance that water systems would incur over time. For more information on cost of capital see The Economic Analysis of the proposed LCRI Chapter 4, section 4.2.3.3

Exhibit 12: Estimated Annualized Incremental Cost per Household by Community Water System Category - High Scenario (2022 USD)

Funding	*Source Water*	*Size*	*Mean*	*10th Percentile*	*25th Percentile*	*50th Percentile*	*75th Percentile*	*90th Percentile*
Private	*Ground*	*Less than 100*	$67	$24	$36	$58	$90	$119
Private	*Ground*	*100 to 500*	$24	$5	$10	$19	$31	$57
Private	*Ground*	*500 to 1,000*	$5	$1	$1	$3	$7	$11
Private	*Ground*	*1,000 to 3,300*	$3	$1	$1	$2	$4	$7
Private	*Ground*	*3,300 to 10,000*	$39	$0	$1	$29	$48	$136
Private	*Ground*	*10,000 to 50,000*	$12	$0	$1	$11	$19	$32
Private	*Ground*	*50,000 to 100,000*	$13	$0	$0	$10	$24	$35
Private	*Ground*	*100,000 to 1,000,000*	$5	$0	$0	$5	$9	$12
Private	*Surface*	*Less than 100*	$59	$22	$31	$51	$82	$109
Private	*Surface*	*100 to 500*	$18	$5	$7	$14	$23	$42
Private	*Surface*	*500 to 1,000*	$5	$1	$2	$3	$7	$11
Private	*Surface*	*1,000 to 3,300*	$4	$1	$1	$2	$4	$7
Private	*Surface*	*3,300 to 10,000*	$38	$1	$1	$28	$43	$133
Private	*Surface*	*10,000 to 50,000*	$12	$0	$1	$10	$18	$30
Private	*Surface*	*50,000 to 100,000*	$13	$0	$0	$10	$22	$35
Private	*Surface*	*100,000 to 1,000,000*	$7	$0	$0	$7	$12	$15
Private	*Surface*	*Greater than 1,000,000*	$12	$2	$2	$18	$23	$24
Public	*Ground*	*Less than 100*	$53	$21	$29	$46	$75	$92
Public	*Ground*	*100 to 500*	$17	$4	$6	$12	$21	$37
Public	*Ground*	*500 to 1,000*	$4	$1	$2	$3	$5	$9
Public	*Ground*	*1,000 to 3,300*	$2	$0	$1	$1	$3	$6
Public	*Ground*	*3,300 to 10,000*	$31	$0	$1	$21	$40	$103
Public	*Ground*	*10,000 to 50,000*	$8	$0	$1	$6	$13	$24
Public	*Ground*	*50,000 to 100,000*	$10	$0	$0	$8	$18	$25
Public	*Ground*	*100,000 to 1,000,000*	$6	$0	$0	$6	$9	$12
Public	*Ground*	*Greater than 1,000,000*	$1	$1	$1	$1	$1	$1
Public	*Surface*	*Less than 100*	$54	$19	$30	$57	$68	$89
Public	*Surface*	*100 to 500*	$14	$4	$6	$10	$18	$31
Public	*Surface*	*500 to 1,000*	$4	$1	$2	$2	$5	$9
Public	*Surface*	*1,000 to 3,300*	$3	$0	$1	$1	$3	$5
Public	*Surface*	*3,300 to 10,000*	$31	$1	$1	$22	$33	$110
Public	*Surface*	*10,000 to 50,000*	$10	$0	$1	$8	$15	$26
Public	*Surface*	*50,000 to 100,000*	$11	$0	$0	$8	$20	$29
Public	*Surface*	*100,000 to 1,000,000*	$8	$0	$0	$8	$12	$15
Public	*Surface*	*Greater than 1,000,000*	$12	$0	$1	$7	$23	$34

Notes: System Category rows are not included for system categories that contain zero systems. Detail may not add exactly to total due to independent rounding.

When evaluating the economic impacts on PWSs, EPA uses the estimated PWS cost of capital to discount future costs (not the 3 or 7 percent discount rates used to evaluate social costs and benefit), as this best represents the actual costs of compliance that water systems would incur over time. For more information on cost of capital see The Economic Analysis of the proposed LCRI Chapter 4, section 4.2.3.3.

3. State Costs

For each of the PWS cost components and subcomponents, previously described in section VIII.C.1., States (*i.e.,* Primacy Agencies) have associated costs. Exhibit 13 (Exhibit 4–142 in the proposed LCRI Economic Analysis (USEPA, 2023b)) provides a list of the State activities, organized by LCRI cost component and subcomponent groups, for which EPA developed unit costs. Detailed information on the derivation of the unit costs associated with each State activity can be found in the proposed LCRI Economic Analysis sections identified in Exhibit 13.

Exhibit 13: State Cost Components, Subcomponents, and Activities Organized by Section[1]

Component	Subcomponents	Activities[2]
4.4.1: State Implementation and Administrative Costs	4.4.1.1: State Start-up Implementation and Administrative Activities	a) Adopt rule and develop program b) Modify data management systems c) Provide system training and technical assistance d) Provide staff training e) Review and approve small system flexibility option
	4.4.1.2: State Annual Implementation and Administrative Activities	f) Coordinate with EPA g) Provide ongoing technical assistance h) Report to SDWIS/Fed i) Train staff for annual administration
4.4.2: State Sampling Related Costs	4.4.2.1: State Lead Tap Sampling Costs	a) Provide templates for revised sampling instructions and conduct review b) Review updated sampling plan for LSL systems c) Review initial lead monitoring data and prepare systems for status under LCRI d) Review change in tap sample locations e) Review 9-year monitoring waiver renewal f) Review sample invalidation requests g) Review customer notification certifications h) Review monitoring results and 90th percentile calculations
	4.4.2.2: State Lead WQP Sampling Costs	i) Review lead WQP sampling data and compliance with OWQPs
	4.4.2.3: State Copper WQP Monitoring Costs	j) Review copper WQP sampling data and compliance with OWQPs
	4.4.2.4: State Source Water Monitoring Costs	k) Review source water monitoring results
	4.4.2.5: State School Sampling Costs	l) Review list of schools and child care facilities m) Provide templates on school and child care facility testing program n) Review school and child care facility testing program materials o) Review school and child care facility sampling results after individual sampling events

Component	Subcomponents	Activities[2]
		p) Review annual reports on school and child care facility lead in drinking water testing program
4.4.3: State CCT Related Costs	4.4.3.1: CCT Installation	a) Review CCT study and determine type of CCT to be installed b) Set OWQPs after CCT installation
	4.4.3.2: Re-optimization	c) Review CCT study and determine needed CCT adjustment d) Reset OWQPs after CCT re-optimization
	4.4.3.3: State DSSA Costs	e) Consult with system prior to any DSSA CCT adjustments f) Review report on DSSA responses
	4.4.3.4: State Lead CCT Routine Costs	g) Review CCT guidance and applicability to individual PWSs h) Review water quality data with PWSs during sanitary survey i) Consult on required actions in response to source water change j) Consult on required actions in response to treatment change
4.4.4: State Service Line Inventory and Replacement Related Costs	4.4.4.1: SL Inventory Costs	a) Review updated service line inventory with lead connector information b) Review service line inventory updates c) Review validation report
	4.4.4.2: SLR Plan and Annual Report	d) Review SLR plan e) Review annual SLR program report
4.4.5: State POU Related Costs	4.4.5.1: One-Time POU Program Costs	a) Review POU plan b) Provide templates for POU outreach materials c) Review POU public education materials
	4.4.5.2: Ongoing POU Program Costs	d) Review sample invalidation request for POU monitoring e) Review customer notification certifications f) Review annual POU program report
4.4.6: State Public Education-Related Costs	4.4.6.1: Consumer Notice	a) Review copy of the 3 calendar day notice and certification
	4.4.6.2: Activities Regardless of the Lead 90th Percentile Level	b) Provide templates for updated CCR language c) Provide templates for local and State health department lead outreach d) Review lead outreach materials for local and State health departments e) Participate in joint communication efforts with local and State health departments f) Review public education materials for service line disturbances g) Provide templates for inventory-related outreach materials h) Review inventory-related outreach materials i) Review public education certifications
	4.4.6.3: Public Education Activities in Response to Lead ALE	j) Provide template and review revised lead language k) Consult with CWS on other public education activities in response to lead ALE

Component	Subcomponents	Activities[2]
	4.4.6.4: Public Education Activities in Response to Multiple Lead ALEs	l) Provide templates for systems with multiple lead ALEs m) Review outreach materials provided by systems with multiple lead ALEs n) Consult on filter program for systems with multiple lead ALEs o) Review plan for making filters available

Acronyms: ALE = action level exceedance; CCR = consumer confidence report; CCT = corrosion control treatment; CWS = community water system; DSSA = distribution system and site assessment; LSL = lead service line; LSLR = lead service line replacement; OWQPs = optimal water quality parameters; POU = point-of-use; PWS = public water system; SDWIS/Fed = Safe Drinking Water Act Information System/federal version; SL = service line; SLR = service line replacement' WQP = water quality parameter.

Notes:

[1] States will also incur burden for recordkeeping activities under the proposed LCRI, such as retaining records of decisions, supporting documentation, technical basis for decisions, and documentation submitted by the system. EPA has included burden for recordkeeping with each activity when applicable as opposed to providing separate burden estimates.

[2] EPA assigned a unique letter ID for each activity under a given rule component. Activities are generally organized with upfront, one-time activities first followed by ongoing activities. Note that these activities are different than the activities identified for PWSs in Exhibit 8.

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In the SafeWater LCR model, the majority of the costs associated with States are determined on a per water system basis. State activities and costs are largely driven by the rule required actions that are triggered for the individual water systems. The exception to this rule is the implementation and administrative costs which are tallied on a per State basis. The per water system State costs and per State costs are summed to obtain aggregate costs for this category. For additional information on how the SafeWater LCR model uses unit cost data to estimate State costs see Chapter 4, section 4.4 of the proposed LCRI economic Analysis (USEPA, 2023b).

The SafeWater LCR cost model estimates that States will incur monetized incremental estimated annualized costs, under the low cost scenario, totaling $16.1 million at a three percent discount rate and $12.6 million at a seven percent discount rate. For the high cost scenario total estimated monetized incremental cost is $15.3 million at a three percent discount rate and $11.3 million at a seven percent discount rate.

4. Costs Impacts Associated With Additional Phosphate Usage

Adding orthophosphate CCT creates a protective inner coating on pipes that can inhibit lead leaching. However, once phosphate is added to the 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. Due to many water systems operating both the wastewater and drinking water systems, EPA is evaluating the costs of additional phosphate usage for informational purposes. These costs are not ''likely to occur solely as a result of compliance'' with the proposed LCRI, and therefore are not costs considered as part of the HRRCA under SDWA, section 1412(b)(3)(C)(i)(III).

To estimate the potential fate of the orthophosphate added at PWSs, EPA developed a conceptual mass balance model. 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 additions 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 (see Chapter 4, section 4.5.1 of the proposed LCRI Economic Analysis, USEPA, 2023b).

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.

The specific actions a WWTP might need to take to maintain compliance with a National Pollution Discharge Elimination System (NPDES) phosphorus permit limit will depend on the type of treatment present at the WWTP and the corresponding phosphorus removal provided. 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 current 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.

EPA derived a unit cost of $5.44 per pound for removing incremental phosphorus (see Chapter 4, section 4.5.1 of the proposed LCRI Economic Analysis 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 treated water concentrations are well below their limit are less likely to incur costs but might, under certain conditions, incur costs (for example, when phosphorus removal achieved by technology in place at a WWTP is sensitive to incremental phosphorus loading increases and must be modified to continue to meet the limit). Furthermore, future phosphorus limits could be more stringent than existing limits.

Therefore, EPA conservatively assumed that any WWTP with a discharge limit for phosphorus parameters could incur costs. Accordingly, in calculating costs, 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. EPA combined this likelihood and the unit cost (previously estimated) with incremental phosphorus loadings to calculate incremental costs to WWTPs for each year of the period of analysis. The incremental annualized cost that WWTPs would incur to remove additional phosphorous associated with the LCRI, under the low cost scenario, ranges from $4.2 million to $4.3 million at a three and seven percent discount rate, respectively. The high cost scenario produced an incremental estimated impact of $5.8 million using a three percent discount rate, and $5.9 million at a seven percent discount rate.

EPA estimates that WWTP treatment reduces phosphorus loads reaching water bodies by 59 percent, but they are not eliminated. The 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 343,000 to 491,000 pounds fifteen years after promulgation to the low/high scenario range of 511,000 to 693,000 pounds at year 35. See Chapter 4, section 4.5.2 of the proposed LCRI Economic Analysis (USEPA, 2023b) 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. 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, 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 U.S. Geological Survey (USGS) Spatially Referenced Regression On Watershed Attributes (SPARROW) model suggest that anthropogenic sources deposit roughly 750 million pounds of total phosphorus per year (USEPA, 2019b). The total phosphorus loadings from the LCRI high cost scenario would contribute about 0.5 percent (3.9 million/750 million) of total phosphorus entering receiving waterbodies in a given year, and the incremental amount of total phosphorus associated with the proposed LCRI relative to the LCRR grows only 0.1 percent (693,000/750 million). At the national level, EPA expects total phosphorus entering waterbodies as a result of the proposed LCRI update 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 influents, 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 or cyanobacteria populations. Algal blooms can seriously 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. In addition, rapid photosynthesis may consume dissolved inorganic carbon and elevate pH (Chislock et al., 2013). Certain types of phosphorous-fueled cyanobacterial blooms, may produce toxins to both humans and aquatic life. These toxins include microcystins (liver toxins) and neurotoxins. This issue is particularly prevalent in lakes or other slow-flowing water bodies. HAB events have directly or indirectly contributed to fish kill events by causing the absorption or ingestion of toxins, or by creating conditions of limited sunlight and oxygen (Glibert et al., 2005).

Total Monetized Costs

The estimated annualized low and high scenario costs, discounted at three percent and seven percent, that PWSs, households,[17] and States will incur in complying with the baseline LCRR, the proposed LCRI, and incrementally are summarized in Exhibits 14 and 15. The estimated total monetized incremental annualized cost of the proposed LCRI range from $2.06 to $2.92 billion at a three percent discount rate, and $2.51 to $3.56 billion at a seven percent discount rate in 2022 dollars. The exhibits also detail the proportion of the annualized costs attributable to each rule component.

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[17] Note that as part of the baseline (LCRR) analysis of service line replacement costs EPA assumed that customer-side service line replacements under the goal-based service line replacement program would be paid by the household. For the estimation of proposed LCRI service line replacement costs EPA assumed that all replacement cost would be borne by the PWS. These differing costing assumptions result in the positive household costs (not accruing to PWSs) reported under the baseline (LCRR) cost estimates while no household service line replacement costs are reported under the proposed LCRI. These assumptions also result in decreased incremental costs for the LCRI under household service line replacement costs, but the cost of replacing the customer-side of service lines is now included, by assumption, in the LCRI incremental costs for PWS service line replacement.

Exhibit 14: Estimated National Monetized Annualized Rule Costs - 3 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$138.1	$169.6	$31.5	$151.1	$180.1	$29.0
PWS SLR*	$128.5	$1,892.0	$1,763.5	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$543.0	$633.5	$90.5	$626.1	$767.8	$141.7
Point-of Use Installation and Maintenance	$2.6	$7.2	$4.6	$5.9	$14.5	$8.6
Public Education and Outreach	$95.1	$251.2	$156.1	$97.6	$262.0	$164.4
Rule Implementation and Administration	$0.1	$3.9	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$907.4***	***$2,957.4***	***$2,050.0***	***$1,102.6***	***$4,036.1***	***$2,933.5***
Household SLR Costs**	$9.0	$0.0	-$9.0	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$37.7	$53.8	$16.1	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs***	$2.5	$6.7	$4.2	$4.3	$10.1	$5.8
Total Annual Rule Costs	**$956.6**	**$3,017.9**	**$2,061.3**	**$1,180.5**	**$4,101.9**	**$2,921.4**

Note: Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

*Service line replacement includes full and partial lead service lines and galvanized requiring replacement service lines.

**EPA in the LCRR economic analysis (USEPA, 2020) assumed that the cost of customer-side service line replacements made under the goal-based replacement requirement would be paid for by households. The Agency also assumed that system-side service line replacements under the goal-based replacement requirement and all service line replacements (both customer-side and systems-side) would be paid by the PWS under the 3 percent mandatory replacement requirement. EPA made these modeling assumptions based on the different levels of regulatory responsibility systems faced operating under a goal-based replacement requirement versus a mandatory replacement requirement. While systems would not be subject to a potential violation for not meeting the replacement target under the goal-based replacement requirement, under the 3 percent mandatory replacement requirement the possibility of a violation could motivate more systems to meet the replacement target even if they had to adopt customer incentive programs that would shift the cost of replacing customer-side service lines from customers to the system. To be consistent with these LCRR modeling assumptions, under the proposed LCRI, EPA assumed that mandatory replacement costs would fall only on systems. Therefore, the negative incremental values reported for the "Household SLR Costs" category do not represent a net cost savings to households. They represent an assumed shift of the estimated service line replacement costs from households to systems. EPA has insufficient information to estimate the actual service line replacement cost sharing relationship between customers and systems at the national level of analysis.

***Due to many water systems operating both the wastewater and drinking water systems, EPA is evaluating the costs of additional phosphate usage for informational purposes. These costs are not "likely to occur solely as a result of compliance" with the proposed LCRI, and therefore are not costs considered as part of the HRRCA under SDWA, section 1412(b)(3)(C)(i)(III).

Acronyms: LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 15: Estimated National Monetized Annualized Rule Costs - 7 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$153.6	$170.1	$16.5	$171.1	$182.8	$11.7
PWS SLR*	$172.3	$2,385.6	$2,213.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$566.6	$646.8	$80.2	$660.5	$785.3	$124.8
Point-of Use Installation and Maintenance	$2.6	$6.4	$3.8	$5.9	$12.8	$6.9
Public Education and Outreach	$102.5	$287.2	$184.7	$107.3	$302.4	$195.1
Rule Implementation and Administration	$0.2	$6.4	$6.2	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$997.8***	***$3,502.5***	***$2,504.7***	***$1,237.5***	***$4,821.6***	***$3,584.1***
Household SLR Costs**	$11.3	$0.0	-$11.3	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$42.0	$54.6	$12.6	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs***	$3.4	$7.7	$4.3	$6.1	$12.0	$5.9
Total Annual Rule Costs	**$1,054.5**	**$3,564.8**	**$2,510.3**	**$1,331.6**	**$4,890.5**	**$3,558.9**

Note: Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

*Service line replacement includes full and partial lead service lines and galvanized requiring replacement service lines.

**EPA in the LCRR economic analysis (USEPA, 2020) assumed that the cost of customer-side service line replacements made under the goal-based replacement requirement would be paid for by households. The Agency also assumed that system-side service line replacements under the goal-based replacement requirement and all service line replacements (both customer-side and systems-side) would be paid by the PWS under the 3 percent mandatory replacement requirement. EPA made these modeling assumptions based on the different levels of regulatory responsibility systems faced operating under a goal-based replacement requirement versus a mandatory replacement requirement. While systems would not be subject to a potential violation for not meeting the replacement target under the goal-based replacement requirement, under the 3 percent mandatory replacement requirement the possibility of a violation could motivate more systems to meet the replacement target even if they had to adopt customer incentive programs that would shift the cost of replacing customer-side service lines from customers to the system. To be consistent with these LCRR modeling assumptions, under the proposed LCRI, EPA assumed that mandatory replacement costs would fall only on systems. Therefore, the negative incremental values reported for the "Household SLR Costs" category do not represent a net cost savings to households. They represent an assumed shift of the estimated service line replacement costs from households to systems. EPA has insufficient information to estimate the actual service line replacement cost sharing relationship between customers and systems at the national level of analysis.

***Due to many water systems operating both the wastewater and drinking water systems, EPA is evaluating the costs of additional phosphate usage for informational purposes. These costs are not "likely to occur solely as a result of compliance" with the proposed LCRI, and therefore are not costs considered as part of the HRRCA under SDWA, section 1412(b)(3)(C)(i)(III).

Acronyms: LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

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D. Benefits Analysis

The proposed LCRI is 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. There is no known safe level of exposure to lead (USEPA, 2013). EPA is particularly concerned about ongoing exposure experienced by children because lead can affect brain development, which impacts lifelong level of function. 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 one year of age who drink more than double older children and adults per kg of body weight. Additionally, children absorb two to four times more lead than adults through the gastrointestinal tract (Mushak, 1991; WHO, 2011; and Ziegler et al., 1978). EPA's health risk reduction and benefits assessment of the LCRI revisions concentrates on quantification and monetization of the estimated impact of reductions in lead exposure on IQ values and cases of ADHD in children, lower birth weights in children of women of childbearing age, and cases of cardiovascular disease premature mortality in adults. As explained in appendix D of the proposed LCRI Economic Analysis (USEPA, 2023b), there are additional non-quantified lead health impacts to both children and adults that will be realized as a result of this rulemaking. Therefore, the quantified benefits of this rule are likely underestimated.

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 rule. See Appendix E in the proposed LCRI Economic Analysis for additional copper health impact information.

1. Modeled Drinking Water Lead Concentrations

In updating EPA's drinking water lead concentrations for the proposed LCRI, the Agency built upon the data and models used in the analysis of the final LCRR. Detailed information on the residential lead concentration data and modeling from the final LCRR can be found in Chapter 6 of the final LCRR Economic Analysis (USEPA, 2020c). In the 2021 LCRR analysis, EPA collected and used data on lead concentrations and information regarding LSL and CCT status, location, and date of sample collection, representing 14 water systems across the United States and Canada. EPA updated this data for the LCRI analysis by initially identifying eight additional sampling datasets.[18] After close assessment, it was determined that seven of the datasets had data availability and study design issues and could not be included.[19] Only the 324 samples collected from the City of Clarksburg, WV in fall to winter of 2021 could be added to the lead concentration dataset, resulting in a total of 18,363 samples collected from 1,657 homes in 16 cities representing 15 city water systems. EPA grouped the samples into LSL status categories (''LSL,'' ''Partial LSL,'' ''No LSL''). The 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. For additional detail see Chapter 5, section 5.2.1 of the proposed LCRI Economic Analysis (USEPA, 2023b).

EPA fit several regression models, following the same methodology from the LCRR final benefits analysis (see Economic Analysis Chapter 6, section 6.2.2 of the final LCRR Economic Analysis (USEPA, 2020c)), of tap water lead concentration as predicted by LSL presence (''LSL'' or ''No LSL''), LSL extent (''Partial LSL''), 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 water lead concentrations exhibited a right-skewed distribution; therefore, the variable was log-transformed to provide a better modeled fit of the data. 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 5–8, in Chapter 5 of the proposed LCRI 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. Although CCT can reduce lead concentrations from LSLs and other sources of lead, such as residential plumbing fixtures, the presence or absence of CCT produces smaller effects on water lead concentration than the presence or absence of LSLs. Because locations with LSLs are more likely to have high lead concentrations than those without, CCT reduces water lead concentrations more in homes served by LSLs than in those not served by LSLs. See the Economic Analysis document for the proposed LCRI, Chapter 5, section 5.2.2, Exhibit 5–9 (USEPA, 2023b) for additional detail and estimated regression coefficients. The regression results indicate that although CCT can significantly reduce water lead concentrations the removal of LSLs in systems with representative CCT will still reduce water lead concentrations. The regression model results for the LCRI analysis are consistent with those conducted for the LCRR, which is not unexpected given the fact that the Agency added approximately two percent of new data to the drinking water lead concentration dataset.

To statistically control for some sources of variability in the input data, EPA, following the LCRR analysis, did not use summary statistics from the original data directly in estimating the effects of LSL and CCT status. Instead, EPA produced simulated mean lead concentrations for 500,000 samples, based on the selected regression model. The simulations were performed on the log-scale to conform to the fitted model (which used a log-transformed water lead concentration variable) and converted to the original scale to produce geometric means and geometric standard deviations. Geometric means are more representative of the central tendency of a right-skewed distribution than are arithmetic means and prevent

[18] EPA identified 8 data sets from Clarksburg WV, Cleveland OH, Chicago IL, Kalamazoo MI, Parchment MI, Flint MI, Galesburg IL and Sebring OH with drinking water lead sampled collected from 2016 to 2021.

[19] For additional detail on the assessment of the lead concentration data see Chapter 5, section 5.2.1 of the proposed LCRI (USEPA, 2023b).

overestimation of the impact of water lead levels on estimated blood lead levels and resulting benefits values. The simulated sample concentrations represent new estimates for the updated lead concentration dataset. These simulations rely on estimates of variability and uncertainty from the regression model described above and given information on LSL and CCT status. For more detail regarding this regression, see Chapter 5, section 5.2.2 of the proposed LCRI Economic Analysis (USEPA, 2023b). Individual estimates are best thought of as the central tendency for a lead tap 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.

EPA estimates that improving CCT will produce significant reductions in lead tap water concentration overall. However, in the case of ''no LSL'', the final model produced predictions of drinking water concentrations that overlapped almost completely for all CCT conditions.[20] In the available profile data there were no statistically significant differences in measured water lead concentrations between the different CCT scenarios when LSLs were not present, likely because apart from LSLs the remaining sources of lead in residential plumbing (old solder and brass) are small, compared to the LSL, and contribute far less lead to a multi-liter sequential sampling profile. Therefore, EPA used the pooled estimate of predicted drinking water concentrations for all residences with no LSL regardless of CCT condition for the main analysis in Chapter 5 of the proposed LCRI Economic Analysis (USEPA, 2023b).[21]

Because small CWSs that serve 3,300 or fewer persons have flexibility in the compliance option they select in response to a lead action level exceedance, some CWSs are modeled as installing point-of-use devices at all residences. See section V.G. of this document for additional information on the compliance alternatives available to small CWSs. For individuals in these systems, EPA assumed in the analysis, that consumers in households with point-of-use devices are exposed to the same lead concentration as residents with ''No LSL'' and ''Representative'' CCT in place. The proposed LCRI also requires the water systems to make available to all customers pitcher filters or point-of-use devices certified to reduce lead in cases where multiple ALEs have occurred. See section V.I. of this document for additional information on the regulatory requirements associated with multiple action level exceedances. EPA assumed that households receiving pitcher filters or point-of-use devices would be exposed to the same lead concentration as residents with ''No LSL'' and ''Representative'' CCT in place. Uncertainties in the water modeling are discussed in section 5.2.5 and in Exhibit 5–43 of the proposed LCRI EA (USEPA, 2023c).

[20] EPA does not believe that there are lead water mains in the country. Water mains are typically six to 16 inches in diameter whereas service lines have a smaller diameter. The common water main materials include ductile iron, PVC, asbestos cement, HDPE, and concrete steel (Folkman, 2018). Lead service lines are two inches or less in diameter (LSLR Collaborative, n.d.g.).

[21] Note that EPA in the economic analysis does not make restrictive assumptions in pairing specific CCT and LSL statuses. It is not improbable to have systems with CCT in place when no LSLs are present. The pre-2021 LCR requires all systems serving 50,000 or more people to install CCT. Systems may also install CCT for other reasons apart from the LCR. Also, a number of systems have had 90th percentile tap sample values above the AL requiring CCT even when LSLs are not present due to initial corrosivity of the water and secondary sources of lead like old brass and solder. Systems that have LSLs but no CCT are possible because the existing water chemistry in a system may be non-corrosive and therefore lead 90th percentile lead tap sample values may be lower than the AL. EPA combine data from two source to estimate the percent of CCT systems with LSLs, SDWIS and DWINSA data. See sections 3.3.3 and 3.3.4 for the Economic Analysis of the proposed LCRI (USEPA, 2023b) for additional detail.

Exhibit 16: 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
LSL	None	2.90	1.31	18.11	3.71
Partial LSL	None	2.13	1.32	8.40	3.73
No LSL	None	**-0.21[b]**	**1.32[b]**	**0.81[b]**	**3.72[b]**
LSL	Partial	2.30	1.32	9.99	3.73
Partial LSL	Partial	1.55	1.32	4.71	3.73
No LSL	Partial	**-0.21[b]**	**1.32[b]**	**0.81[b]**	**3.72[b]**
LSL	Representative	1.68	1.32	5.38	3.74
Partial LSL	Representative	0.96	1.32	2.62	3.73
No LSL	Representative	**-0.21[b]**	**1.32[b]**	**0.81[b]**	**3.72[b]**

[a] Standard deviations reflect "among-sampling event" variability.
[b] Bolded values show how simulated results were pooled to produce a common estimate for homes with no LSL across CCT conditions.

In the estimation of the benefits of the proposed LCRI, each modeled person within a water system is assigned to one of the estimated drinking water lead concentrations in Exhibit 16, depending on CCT, point-of-use, pitcher filter, and LSL/GRR service line status. Note that EPA assumes GRR service lines are equivalent to LSLs in terms of modeled water lead concentrations. EPA estimated benefits under both the low and high scenarios used in the proposed LCRI analysis to characterize uncertainty in the estimates. With regard to benefit, the low and high scenarios differ by the number of PWSs that will exceed the action level under the revised tap sampling requirements and the concentration-response functions that characterize how reductions in blood lead levels (caused by changes in lead exposure) translate into avoided IQ reductions, reductions in lower birth weight, cases of ADHD, and cardiovascular disease premature mortality (see Chapter 4, section 4.2 and Chapter 5, section 5.1 of the proposed LCRI Economic Analysis (USEPA, 2023b). 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 for both the LCRR and proposed LCRI. Depending on the timing of required actions that can change CCT, point-of-use, pitcher filter, and LSL/GRR service line status under both the LCRR and proposed LCRI 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 proposed rule, improvements to CCT and the use of installed point-of-use devices are only predicted for individuals in households with LSLs prior to implementation of the LCRR and proposed LCRI requirements (consistent with discussion above about the limits of the data for predicting the impact of CCT when LSLs/GRR service lines are not present). In the model, LSL/GRR service line removals are predicted by water system, by year, for both the LCRR and LCRI and multiplied by the average number of persons per household (across demographic categories) to determine the number of people shifting from one LSL/GRR service line status to another. To predict the changes in exposure that result from an improvement in CCT, EPA predicts the entire LSL/GRR service line population of a water system will move to the new CCT status at the same time. EPA also assumes that the entire water system moves to the drinking water lead concentration assigned to point-of-use devices when this option is implemented, which implies that everyone in households in a distribution system with LSLs/GRR service lines is properly using the point-of-use devices. As part of the multiple action level exceedances requirements under the proposed LCRI, EPA assumes that only 20 percent of a water system's population with LSL, GRR service line, and service lines of unknown material will request and receive pitcher filters or point-of-use devices and hence will move to the assigned drinking water lead concentration for pitcher filter or point-of-use device use, which implies that everyone who receives a pitcher filter or point-of-use device is using it properly. See Chapter 5, section 5.3 of the proposed LCRI Economic Analysis (USEPA, 2023b) for more detailed information on the number of people switching lead concentration categories under the low and high scenarios.

2. Blood Lead Modeling

EPA has determined that health impact functions exist in the literature so that the Agency can quantify the improvements from the decreases in water lead concentrations that result from implementation of the proposed LCRI. The four health endpoints EPA quantifies are increased IQ values and reduced cases of ADHD in children, reductions in lower birth weights in children of women of childbearing age, and reduced cases of cardiovascular

disease premature mortality in adults. As a prerequisite to estimating the impact to these health endpoints, EPA must first use the drinking water lead concentration data it developed to determine the potential impact to blood lead levels from the regulatory requirements of both the LCRR (baseline) and the proposed LCRI for both children aged zero to seven years, using the coupled Stochastic Human Exposure and Dose Simulation Multimedia (SHEDS-multimedia) model and the Integrated Exposure and Uptake Biokinetic model (SHEDS-Pb, formerly known as SHEDS–IEUBK), and eight years olds through adulthood with the All Ages Lead Model (AALM).

3. Estimating Blood Lead Levels in Children (0–7 Year Olds)

Consistent with the LCRR benefits analysis, EPA estimated the distribution of blood lead levels in children, age zero to seven, using EPA's SHEDS-Multimedia model coupled with its IEUBK model. For further information on SHEDS-Pb model development and evaluation, refer to Zartarian et al. (2017). As a first step in estimating the blood lead levels, 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 EPA's Consolidated Human Activity Database (CHAD) and the Centers for Disease Control and Prevention's (CDC) National Health and Nutrition Examination Survey (NHANES). SHEDS-Multimedia, in this case, uses individual time-activity diaries from CDC's NHANES and EPA's CHAD for children aged zero to seven to simulate longitudinal activity diaries. Information from these diaries is then combined with relevant lead input distributions (*e.g.,* outdoor air lead concentrations) to estimate exposure. Drinking water tap concentrations for each of the modeled LSL/GRR service line 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 5, section 5.4, of the proposed LCRI Economic Analysis (USEPA, 2023b).

In the SHEDS-Pb 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 5–21 in Chapter 5, section 5.4 of the proposed LCRI EA, USEPA, 2023b). 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, 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 17 presents modeled SHEDS-Pb blood lead levels in children by year of life and LSL or GRR service line, CCT status, pitcher filter and point-of-use device. The blood lead levels in this exhibit represent what children's blood lead level would be if they lived under the corresponding LSL or GRR service line, point-of-use, pitcher filter and CCT status combination for their entire lives. Note that when ''No LSL'' is the beginning or post-rule state, 0.81 µg/L (the simulated geometric mean) is the assumed concentration across all levels of CCT status (none, partial, representative). As previously noted, the extent to which changes in CCT status make meaningful differences in lead concentrations for those without LSLs or GRR service lines cannot be determined from the data available to EPA.

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Exhibit 17: Modeled SHEDS-Pb 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	GM Blood Lead Level (μg/dL)[b] for Specified Year of Life							
		0-1[a]	1-2	2-3	3-4	4-5	5-6	6-7	Avg.[c]
LSL	None	3.48	2.43	2.61	2.46	2.44	2.57	2.29	2.61
Partial LSL	None	2.27	1.83	1.90	1.77	1.79	1.86	1.63	1.86
No LSL	None	0.96	1.13	1.16	1.15	1.13	1.19	0.98	1.10
LSL	Partial	2.49	1.89	2.00	1.92	1.92	1.99	1.76	2.00
Partial LSL	Partial	1.72	1.51	1.56	1.50	1.50	1.53	1.35	1.52
No LSL	Partial	0.96	1.13	1.16	1.15	1.13	1.19	0.98	1.10
LSL	Representative	1.80	1.56	1.64	1.57	1.57	1.62	1.41	1.60
Partial LSL	Representative	1.33	1.31	1.34	1.33	1.32	1.36	1.17	1.31
No LSL	Representative	0.96	1.13	1.16	1.15	1.13	1.19	0.98	1.10
POU		0.96	1.13	1.16	1.15	1.13	1.19	0.98	1.10
Pitcher Filter		0.96	1.13	1.16	1.15	1.13	1.19	0.98	1.10

[a] Due to lack of available data, blood lead levels for the first year of life are based on the regression from IEUBK for 0.5- to 1-year-olds only.

[b] These values represent the blood lead for a child living with the LSL/CCT status in the columns to the left.

[c] This column contains calculated average lifetime blood lead levels assuming a child lived in the corresponding LSL/CCT scenario for their entire life. 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 average includes data for age groups 0-1 through 6-7 years since IQ benefits were calculated at age 7.

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4. Estimating Older Child and Adult Blood Lead Levels

In order to estimate the changes in blood lead levels in individuals from eight years old through adulthood (referred to here as adults) associated with the proposed LCRI, EPA selected the AALM. The AALM tool is primarily intended for ''quantitatively relating lead (Pb) exposures from environmental media that occur over the life time to Pb levels and concentrations in blood, other body tissues, and excreta'' (USEPA, c). The tool consists of a lead exposure model and a lead biokinetics model. User inputs for selected environmental media (soil, dust, water, air and food) are used in the exposure model to predict lead intake per day for a simulated individual accounting for sex and age differences. Lead absorption by inhalation or ingestion are simulated in the biokinetics model to calculate the daily total rate of lead transfer to the central compartment. The AALM tool produces an estimate of lead concentration in various tissues and excreta, including estimates of blood lead levels over a lifetime.

The water concentrations calculated for each combination of LSL and CCT status from EPA's regression modelling, Exhibit 16 above, was used to estimate the distribution of blood lead levels in males and females aged eight to 79 years using EPA's AALM. Each distinct LSL/GRR and CCT scenario was modeled and represented by water lead concentrations, and each scenario was run for females and males as the AALM requires that each sex be modeled separately. Model inputs include: water intake rates per age group, which are the same across sexes and were obtained from EPA's 2011 Exposure Factors Handbook (Table 3–1); lead intake from food for each age group, which varies by sex and was calculated using values from the AALM TSD, Appendix C; lead concentrations in soil and dust, which are consistent for all age groups and calculated as a weighted average based on data from the U.S. Department of Housing and Urban Development's (HUD) American Healthy Homes Survey (AHHS) II Lead Findings report (USHUD, 2021); soil and dust intake rates by age group up to age 21 were estimated by Ozkaynak et al. (2022), which used EPA's SHEDS Soil and Dust model; and an air lead concentration of

0.01 μg/m³ was used for all age groups and sexes based on national air monitoring results reporting in Cavender (2013).

The AALM modeling output provides the yearly estimated blood lead level (μg/dL) by age from eight to 79 years for each combination of sex, LSL/GRR service line, CCT, point-of-use and pitcher filter combination. For additional detailed information on the AALM inputs and modeling results see Chapter 5, section 5.4 of the proposed LCRI Economic Analysis (USEPA, 2023b). A summary of the AALM results by sex are presented in Exhibit 18.

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Exhibit 18: Estimates of Geometric Mean Blood Lead Levels in Older Children and Adults (Ages 8-79) for Each Possible Drinking Water Lead Exposure Scenario

Lead Service Line Status	Corrosion Control Treatment Status	Sex	Geometric Mean Blood Lead Level (μg/dL) for Specified Age Group[1] in Years from the AALM							
			8-15	16-19	20-29	30-39	40-49	50-59	60-69	70-79
LSL	None	Male	1.20	1.06	1.40	1.52	1.61	1.67	1.67	1.66
		Female	1.13	1.21	1.66	1.80	1.92	2.01	2.01	2.00
Partial LSL	None	Male	0.88	0.79	1.01	1.06	1.08	1.10	1.09	1.08
		Female	0.83	0.87	1.16	1.20	1.24	1.27	1.26	1.24
No LSL	None	Male	0.63	0.57	0.71	0.70	0.67	0.66	0.64	0.62
		Female	0.59	0.60	0.76	0.74	0.71	0.69	0.67	0.65
LSL	Partial	Male	0.93	0.83	1.08	1.13	1.17	1.20	1.19	1.17
		Female	0.88	0.93	1.24	1.30	1.36	1.39	1.38	1.37
Partial LSL	Partial	Male	0.76	0.68	0.87	0.88	0.88	0.89	0.87	0.85
		Female	0.71	0.74	0.96	0.98	0.98	0.99	0.97	0.96
No LSL	Partial	Male	0.63	0.57	0.71	0.70	0.67	0.66	0.64	0.62
		Female	0.59	0.60	0.76	0.74	0.71	0.69	0.67	0.65
LSL	Representative	Male	0.78	0.70	0.89	0.91	0.92	0.93	0.91	0.89
		Female	0.73	0.77	1.00	1.02	1.03	1.04	1.02	1.01
Partial LSL	Representative	Male	0.69	0.62	0.78	0.78	0.77	0.76	0.75	0.73
		Female	0.65	0.67	0.86	0.85	0.84	0.83	0.81	0.79
No LSL	Representative	Male	0.63	0.57	0.71	0.70	0.67	0.66	0.64	0.62
		Female	0.59	0.60	0.76	0.74	0.71	0.69	0.67	0.65
POU		Male	0.63	0.57	0.71	0.70	0.67	0.66	0.64	0.62
		Female	0.59	0.60	0.76	0.74	0.71	0.69	0.67	0.65
Pitcher Filter		Male	0.63	0.57	0.71	0.70	0.67	0.66	0.64	0.62
		Female	0.59	0.60	0.76	0.74	0.71	0.69	0.67	0.65

[1]The AALM reports daily BLL values. EPA averages the daily data to obtain yearly data which is used in the SafeWater LCR modeling. For presentation purposes the age groups represent in this Exhibit are mean BLL for the ages specified in the range.

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5. Quantifying and Monetizing Health Endpoints

EPA quantified and monetized the change in four health endpoints in the economic analysis of the proposed LCRI. The endpoints are reductions: in IQ values and cases of ADHD in children, lower birth weights in children of women of childbearing age, and cases of cardiovascular disease premature mortality in adults. The subsections below outline the methods EPA used in analysis of each of these endpoints.

6. Estimating IQ Benefits

EPA uses the SHEDS-Pb estimated set of potential geometric mean blood lead levels for children zero to seven years of age, presented in Exhibit 17, as inputs in the modeling of IQ benefits for the proposed LCRI. The benefits analysis uses lifetime average blood lead values to determine estimates of avoided IQ loss that correspond to reductions in water lead concentrations resulting from changes in LSL/GRR, point-of-use, pitcher filter, and CCT status at some point in a representative child's life (between ages zero and seven), and those made prior to the child's birth for those born seven years after the LCRR (baseline) or LCRI are implemented. Therefore, the SafeWater LCR model, in each year of the analysis, calculates IQ benefits based on the cohort, or percent of the modeled population, that turns seven years of age in the year being analyzed. The SafeWater LCR model, for both the LCRR (baseline) and proposed LCRI, tracks PWS implementation over the period of analysis. This data allows the model to determine the number of children that fall within each of the 11 possible LSL/GRR service line, CCT, point-of-use, pitcher filter lead exposure scenarios for each of the seven years prior to the year being modeled. The model then calculates a set of average lifetime blood lead levels for the possible LSL/GRR service line, CCT, point-of-use, pitcher filter exposure scenarios (the set of scenarios includes not only the change in LSL/GRR service line, CCT, point-of-use and pitcher filter status but also the years, zero to seven, in which the status changes occur) and applies these values to the appropriate percentage of the seven year old cohort (the percent of seven year olds that are estimated to experience the scenarios represented by the average lifetime blood lead levels (BLLs)) for that analysis year under both the LCRR (baseline) and LCRI requirements. The change in average lifetime BLLs for the seven year old cohort is then used to determine the incremental benefit of avoided IQ losses for both the LCRR and proposed LCRI.

In order to relate the child's estimated average lifetime BLL to an estimate of avoided IQ loss, EPA selected concentration-response functions based on lifetime blood lead from two studies. For the high estimate function, the Agency used a study by Lanphear et al. (2019), and for the low estimate EPA selected the independent analysis by Crump et al. (2013), which is based on the same data used in Lanphear et al. (2019). Since the regulatory requirements are expected to reduce chronic exposures to lead, 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, EPA assumes that there is no threshold for this endpoint and quantified avoided IQ loss associated with all blood lead levels.

The estimated value of an IQ point decrement is derived from USEPA's (2019d) 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 increase 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. USEPA's (2019d) 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, USEPA (2019d) 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 increase in IQ is subsequently estimated as the gross value of an IQ point based on a lifetime of earnings, less the value of additional education costs and foregone earnings while in school. EPA uses an IQ point value discounted to age seven. Based on EPA's reanalysis of Salkever (1995), the mean value of an IQ point in 2022 dollars, discounted to age seven, is $6,887 using a seven percent discount rate and $27,336 using a three percent discount rate.[22] See Appendix F, of the proposed LCRI Economic Analysis (USEPA, 2023b) for a sensitivity analysis of the value of avoided IQ loss benefits based on Lin et al. (2018).

EPA used the estimated changes in lifetime (age zero to seven) average blood lead levels that result from changes in LSL/GRR, CCT, point-of-use use, and/or pitcher filter status as inputs to the concentration response functions estimated by Lanphear et al. (2019) and Crump et al. (2013). The resultant annual avoided IQ decrements per change in LSL, CCT, point-of-use, and/or pitcher filter status change are then summed and multiplied by the EPA reanalyzed Salkever (1995) value per IQ point, which represents a weighted average for males and females (three or seven 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 three and seven percent, and further discounted to year one of the period of analysis. Note that this analysis quantifies the benefits from water quality changes that occur during the 35-year period of analysis but accounts for the fact that monetized IQ benefits continue to accrue beyond the 35-year period because they are not experienced by modeled children until they reach adulthood. See Exhibit 19 (discounted at three percent) and Exhibit 20 (discounted at seven percent), in section VIII.D.10., for the estimated benefit from avoided IQ losses from lead and GRR service line replacement, CCT installation and re-optimization, point-of-use program operation, and pitcher filter distribution as a result of the LCRR, the proposed LCRI, and the incremental difference between the two sets of regulatory requirements under both the low and high scenarios. For detailed information on the quantification and monetization of the IQ benefits associated with the proposed LCRI see Chapter 5, section 5.5 of the proposed LCRI Economic Analysis (USEPA, 2023b).

[22] It should be noted that these values are slightly different than those used in other recent rulemaking (*e.g.,* the Lead Dust Standard). This is simply due to the differences in the age of the child when the benefits are accrued in the analysis. Benefits for the LCRI are accrued at age seven and therefore the value of an IQ point is discounted back to age 7 in the LCRI analysis. This results in a slightly higher estimate than the values used for the Lead Dust Standard, which are discounted to age zero and age three, respectively. It should also be noted, and is described in Chapter 5, Section 5.4.5 of the proposed LCRI Economic Analysis (USEPA, 2023b), that the benefits in the LCRI are further discounted back to year one of the analysis and annualized within the EPA LCRI cost-benefit model.

7. Estimated ADHD Benefits

This is the first regulation in which EPA has estimated benefits of avoided cases of ADHD associated with reductions in lead exposure; as discussed below the approach for quantifying such benefits will continue to evolve as our understanding of the potential relationship improves. The causes of ADHD are not fully understood, but research suggests a number of potential causes, including genetics, exposure to environmental toxins, prenatal cigarette smoking or alcohol intake, and brain changes, such as areas of the brain that control attention being less active in children with ADHD (Tripp et al., 2009; Pliszka et al., 2007). The EPA lead ISA states that in children, ''attention was associated with biomarkers of Pb exposure representing several different lifestages and time periods. Prospective studies did not examine a detailed Pb biomarker history, and results do not identify an individual critical lifestage, time period, or duration of Pb exposure associated with attention decrements in children. Associations in prospective studies for attention decrements with tooth Pb level, early childhood average and lifetime average blood Pb levels point to an effect of cumulative Pb exposure.'' Therefore, additional research is needed to understand the critical exposure window (thus exposure metric), the mode of action of lead in the development of ADHD and/or related symptoms, and potential interplay with genetic factors and exposures to other substances. Symptoms of ADHD alone, while important for the child and their families, can be difficult to link to monetizable outcomes considered in benefits analysis such as reduced productivity and increased medical and educational expenditures. Therefore, EPA has chosen diagnosed cases of ADHD as an endpoint in this benefits analysis, because literature exists linking ADHD diagnosis to these monetizable outcomes. The larger body of literature on attention, impulsivity, and hyperactivity symptoms in children supports this association. EPA chose a high and low dose-response function for the estimates of avoided cases to partially address the uncertainty in the most appropriate dose-response function to use in estimating avoided cases due to the proposed rule.

The approach used to quantify ADHD here is based on review and analysis that Abt Associates (Abt Associates, 2023) conducted under contract to EPA. Specifically, the benefits analysis uses average blood lead values to determine estimates of avoided diagnosed ADHD cases that correspond to reductions in water lead concentrations resulting from changes in LSL/GRR, point-of-use, pitcher filter, and CCT status. E

PA used the concentration response functions from two studies to bracket the estimated number of ADHD cases avoided. EPA's high estimate is based on a study by Froelich et al. (2009), and the low estimate is based on a study by Ji et al. (2018). EPA utilized the AALM estimated set of potential geometric mean blood lead levels for the 8- to 15-year-old age group, presented in Exhibit 18, as inputs in the modeling of ADHD benefits when using the Froelich et al. (2009) concentration response function to estimate the high scenario. Because Ji et al. (2018) measured early childhood BLLs in their study, EPA used the estimated set of potential geometric mean blood lead levels estimated by the SHEDS-Pb model, shown in Exhibit 17, as the input values for the Ji et al. (2018) concentration response associated with the low ADHD benefits scenario.

As described above in section VIII.D.6. of this document, the SafeWater LCR model, with the strengths and limitations characterized in section VIII.B. and sections 4.2.2 and 5.7 of the Economic Analysis document for the proposed LCRI (USEPA, 2020c), is able to track the population in water systems that are affected by changes in LSL/GRR service line, point-of-use, pitcher filter, and CCT status and the resultant changes in water and blood lead concentration for each population group per year of the 35-year period of analysis. These changes in BLLs for each population group are then used to estimate the number of avoided cases of ADHD using the Froelich et al. (2009) function for the high benefits scenarios and the Ji et al. (2018) function for the low benefit scenario.

EPA uses information on ADHD costs estimated from Doshi et al. (2012) in the monetization step. The Doshi et al. (2012) costs include incremental child and adolescent costs for patient and family health care, family productivity losses, educational expenses, and justice system expenses. The cost estimate also includes incremental adult patient and family health care and justice system costs. The adult costs are adjusted downward to account for the fact that only 65 percent of ADHD cases persist into adulthood. In order to apply these avoided cost values in the benefits analysis EPA produced two net present value estimates for all avoided ADHD costs incurred through age 64, the first discounted back to age seven for use with Ji et al. in the estimation of the low benefit scenario (Ji et al. (2018) used BLLs measured in young children) and back to age 11 for use with Froelich et al. (2009) function in estimating the high benefits scenario (Froelich et al. (2009) used BLLs measured in children 8–15 years of age). The net present values of avoided costs were computed using both the three and seven percent discount rates. The costs were also adjusted to 2022 dollars. The estimated per case ADHD avoided costs under the high benefits scenario and discounted to age 11 range from $228,231 to $203,823 discounted at three and seven percent, respectively. The per case values used in the low benefits scenario and discounted to age 7 range from $202,780, at a three percent discount rate, to $155,496, at a seven percent discount rate.

The estimated number of ADHD cases avoided under the low and high benefits scenarios in each year of the 35-year period of analysis in then multiplied by the corresponding net present value to compute the avoided cost per year. This annual stream of benefits was annualized at three and seven percent over the 35-year period of analysis, and further discounted to year one of the period of analysis. See Exhibit 19 (discounted at three percent) and Exhibit 20 (discounted at seven percent), in section VIII.D.10., for the estimated benefit from avoided ADHD cases from lead and GRR service line replacement, CCT installation and re-optimization, point-of-use program operation, and pitcher filter distribution as a result of the LCRR, the proposed LCRI, and the incremental difference between the two sets of regulatory requirements under both the low and high scenarios. For detailed information on the quantification and monetization of the ADHD benefits associated with the proposed LCRI see Chapter 5, section 5.5.4 of the proposed LCRI Economic Analysis (USEPA, 2023b).

8. Estimated Low Birth Weight Benefits

This is the first regulation in which EPA has estimated benefits of avoided cases of low birth weight associated with reductions in lead exposure; as discussed below the approach for quantifying such benefits will continue to evolve as our understanding of the potential relationship improves. Blood leads from the AALM for women of childbearing age (17–45 years of age) were used in order to estimate reduced lower birth weight in infants. The concentration response function characterizing the relationship between changes in female BLL and reductions in lower birth weight in infants comes from a study by Zhu et al. (2010). The Agency used the Zhu et al. (2010)

function for both the low and high benefits scenarios because EPA did not identify a second concentration response function based on a similarly high quality dataset and analysis, however, several other smaller studies were identified which support the relationship between lead exposures and reduced birth weight. The choice of Zhu et al. (2010) was peer reviewed (Versar, 2015).

The valuation of changes in birth weight is based on a review and analysis that Abt Associates (Abt Associates, 2022) conducted under contract to EPA. Their analysis of U.S. Department of Health and Human Services, Medical Expenditure Panel Survey data found that birth weight in the very low birth weight/low birth weight and normal ranges influences inpatient hospital stays. In EPA's LCRI analysis, annual average inpatient expenditures (avoided costs) by initial birth weight (2–10 pounds) are the product of: (1) the predicted probability of having at least one medical event in the period, and (2) the mean conditional expenditures (*i.e.,* conditional on observing at least one medical event in the period). The mean conditional expenditures have been estimated based on projected initial birth weight and projected increases in weight of 0.04, 0.11, and 0.22 pounds.

Generally, as initial birth weight increases, the size of avoided expenditures deceases. Similarly, as expected increase in weight goes up, the avoided costs increase. For example, at a starting birth weight of 3.3 pounds, an increase in birth weight of 0.22 pounds results in a decrease in inpatient hospital expenditures of $1,839 (2010$), but the cost saving is less than $100 at a starting birth weight of 5.5 pounds. In applying the average inpatient avoided cost values to the LCRI case, EPA adjusted the study's 2010 cost estimates to 2022 dollars. The Agency also assumed that baseline birth weights for the affected infants are equal to the distribution of birth weights in the United States. See Exhibit 19 (discounted at three percent) and Exhibit 20 (discounted at seven percent), in section VIII.D.10., for the estimated benefit from avoided low birth weight impacts from lead and GRR service line replacement, CCT installation and re-optimization, point-of-use use program operation, and pitcher filter distribution as a result of the LCRR, the proposed LCRI, and the incremental difference between the two sets of regulatory requirements under both the low and high scenarios. For detailed information on the quantification and monetization of the low birth weight benefits associated with the proposed LCRI see Chapter 5, section 5.5.6 of the proposed LCRI Economic Analysis (USEPA, 2023b).

9. Estimated Cardiovascular Disease Premature Mortality Benefits

EPA's estimation of benefits from avoided cardiovascular disease (CVD) associated premature mortality follows a new methodology outlined in Brown et al. (2020) and Abt Associates (2023). The latter document benefited from an independent peer review (MDB Incorporated, 2019) that articulated the strengths and limitations of our understanding of the relationship between lead exposure and cardiovascular disease premature mortality, and thus the strengths and limitations of the method presented. These strengths and limitations are discussed in more detail in the proposed LCRI Economic Analysis, Chapter 5 (USEPA, 2023b). In order to bracket the reduction in CVD premature mortality risk avoided, and the calculated monetized benefits, associated with reductions in BLLs resulting from lead and GRR service line replacement, CCT installation and re-optimization, point-of-use program operation, and pitcher filter distribution accruing under the proposed LCRI, EPA selected two concentration response functions. The high scenario function is based on the BLL <5 μg/dL analysis in Lanphear et al. (2018), and the low scenario function is based on Aoki et al. (2016). While additional concentration response functions for this relationship are available as detailed in Brown et al. (2020) and Abt Associates (2023), these two functions represent, respectively, the highest and lowest changes in cardiovascular disease premature mortality associated with a given change in adult BLL available in peer-reviewed studies estimating continuous functions using high quality, nationally representative datasets.

In order to value the reduced CVD premature mortality risk, EPA uses the same approach it uses in estimating the benefits associated in reductions of particulate matter and ozone in the air pollution regulations. Specifically, EPA draws on the published academic surveys about how much people are willing to pay for small reductions in their risks of dying from adverse health conditions that may be caused by environmental pollution. In the scientific literature, these estimates of willingness to pay for small reductions in mortality risks are often referred to as the ''value of a statistical life.'' This is because these values are typically reported in units that match the aggregate dollar amount that a large group of people would be willing to pay for a reduction in their individual risks of dying in a year, such that we would expect one fewer death among the group during that year on average. EPA's value of a statistical life was adjusted to 2022 dollars, and the resulting value of $12.98 million was applied to each avoided case, or reduction in population risk resulting in one fewer CVD death.[23] Avoided cases of cardiovascular disease premature mortality are estimated for each annual time step, over the 35-year period of analysis in the SafeWater LCR model, for all adults ages 40 to 79, using the yearly blood lead levels modeled by the AALM, and shown in Exhibit 18, for both the low and high scenarios (as defined by the estimated range PWSs that will exceed the action level under the proposed LCRI).

Under both scenarios, the SafeWater LCR model is able to track the population in water systems that are affected by changes in LSL, point-of-use, pitcher filter, and CCT status and the resultant changes in water and blood lead concentration for each population group per year of the 35-year period of analysis. These changes in BLLs for each population group are then used to estimate the number of avoided cases of CVD premature mortality using the Lanphear et al. (2018) function in the high scenario and the Aoki et al. (2016) function for the low scenario, assuming baseline cases of cardiovascular disease premature mortality due to lead follow the same distribution of all cardiovascular mortality cases in the U.S. population.

See Exhibit 19 (discounted at three percent) and Exhibit 20 (discounted at seven percent), in section VIII.D.10., for the estimated benefit from avoided cardiovascular disease premature mortality risk from lead and GRR service line replacement, CCT installation and re-optimization, point-of-use use program operation, and pitcher filter distribution as a result of the LCRR, the proposed LCRI, and the incremental difference between the two sets of regulatory requirements under both the low and high scenarios. For detailed information on the quantification and monetization of the CVD premature mortality benefits associated with the proposed LCRI see

[23] EPA uses a value of a statistical life (VSL) of $12.98 million, which is estimated using EPA's (2014) recommended VSL of $4.8 million in 1990 dollars and EPA's (2014) recommended method for adjusting the VSL for income growth and inflation. The $4.8 value in 1990 dollars is updated to the $12.98 million in 2022 dollars by adjusting for inflation using the U.S. Bureau of Labor Statistics' (2019) Consumer Price Index and adjusting it for income growth using real GDP per capita and an income elasticity of 0.4.

Chapter 5, section 5.5.9 of the proposed LCRI Economic Analysis (USEPA, 2023b).

10. Total Monetized Benefits

Exhibits 19 and 20 show the estimated, monetized national annualized total benefits, under the low and high scenarios,[24] associated with the baseline (LCRR), the proposed LCRI, and the increment of change between the two, discounted at three and seven percent, respectively. The benefits from the proposed LCRI result from the activities performed by water systems which are expected to reduce risk to the public from exposure to lead in drinking water at the tap. EPA quantifies and monetizes some of this health risk reduction from lead exposure by estimating the decrease in lead exposures accruing to both children and adults from the installation and re-optimization of CCT, service line replacement, the implementation of point-of-use filter devices, and the provision of pitcher filters in systems with multiple ALEs.[25] The total and incremental benefits reported are subdivided into estimated health endpoint benefits stemming from avoided reductions in IQ and cases of ADHD in children, lower birth weights in children of women of childbearing age, and cases of CVD premature mortality in adults. The estimated monetized benefits associated with avoided premature mortality are much larger than those associated with delays in neurodevelopmental impacts in children. Still the public health impact of this regulation is important for children given the life-long impact of the early life health effects, the potential of health impacts from cumulative exposures, and the fact that there are several other avoided health impacts (See Appendix D of the EA for the proposed LCRI (USEPA. 2023b)) that were not quantified.

Exhibit 19 and 20 provide the total estimated incremental annualized monetized benefits of the proposed LCRI discounted at three and seven percent, respectively. The total annualized monetized benefits range from $17.3 to $34.8 billion at a three percent discount rate, and $9.8 to $20.9 billion at a seven percent discount rate in 2022 dollars. The exhibits also detail the proportion of the annualized benefits attributable to each health endpoint category of monetizable benefit. For additional information on estimated health endpoint benefits subdivided by proposed LCRI regulatory activity see Chapter 5 of the proposed LCRI Economic Analysis (USEPA, 2023b). See section VIII.E.2. of this document for information on non-quantifiable benefits. In addition to the uncertainties in the dose response functions and the quantification of the economic impacts noted above and in Chapter 5 of the Economic Analysis of the proposed rule (USEPA, 2023b), the estimated benefits are contingent on the assumptions in the baseline—principally, whether or not the provisions of the prior LCRR to remove lead service lines have been successfully met. Therefore, EPA provides in Appendix C, of the Economic Analysis for the proposed rule (USEPA, 2023b) estimated national costs and benefits of the LCRI utilizing the pre-2021 LCR as a baseline.

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Exhibit 19: Estimated National Monetized Annual Benefits - 3 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$738.0	$5,335.4	$4,597.4	$2,147.3	$8,804.5	$6,657.2
Annual Low-Birth Weight Benefits	$1.2	$8.2	$7.0	$2.2	$8.6	$6.4
Annual ADHD Benefits	$53.2	$400.3	$347.1	$243.9	$998.5	$754.6
Annual Adult CVD Premature Mortality Benefits	$2,070.9	$14,467.0	$12,396.1	$9,820.1	$37,202.4	$27,382.3
Total Annual Benefits	**$2,863.3**	**$20,210.9**	**$17,347.6**	**$12,213.5**	**$47,014.0**	**$34,800.5**

Acronyms: LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

[24] The low and high benefits scenarios are defined by differences in the estimated number of systems experiencing lead ALEs based on calculated lead tap sampling 90th percentile values and the concentration-response functions that characterize how reductions in blood lead levels (caused be changes in lead exposure) translate into avoided IQ reductions, cases of ADHD, and cardiovascular disease premature mortality.

[25] 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.E.1. of this document), the benefits of small improvements in CCT, like those resulting from the distribution system and site assessment rule requirements, cannot be quantified in the model.

Exhibit 20: Estimated National Monetized Annual Benefits - 7 Percent Discount Rate (millions of 2022 USD)

	Low Estimate			High Estimate		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$141.4	$991.2	$849.8	$412.3	$1,632.6	$1,220.3
Annual Low-Birth Weight Benefits	$1.0	$6.6	$5.6	$1.8	$6.9	$5.1
Annual ADHD Benefits	$30.7	$223.0	$192.3	$156.1	$614.5	$458.4
Annual Adult CVD Premature Mortality Benefits	$1,518.6	$10,246.3	$8,727.7	$7,232.3	$26,449.5	$19,217.2
Total Annual Benefits	**$1,691.7**	**$11,467.1**	**$9,775.4**	**$7,802.5**	**$28,703.5**	**$20,901.0**

Acronyms: LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

E. Cost-Benefit Comparison

This section summarizes and describes the numeric relationship between the monetized incremental costs and benefits of the proposed LCRI regulatory requirements. The section also discusses both the non-monetized costs and benefits of the rulemaking. Exhibits 21 and 22 compare the annualized monetized incremental costs and benefits of the proposed LCRI for the low and high scenarios. Under a three percent discount rate, the net annualized incremental monetized benefits, under the low and high scenarios, range from $15.3 to $31.9 billion. Under the low and high scenarios and a seven percent discount rate, the net annualized incremental monetized benefits range from $7.3 to $17.3 billion.

Exhibit 21: Comparison of Estimated Monetized National Annualized Incremental Costs to Benefits of the LCRI - 3 Percent Discount Rate (millions 2022 USD)

PWS Annual Costs	Low Scenario	High Scenario
Annualized Incremental Costs	$2,061.3	$2,921.4
Annualized Incremental Benefits	$17,347.7	$34,800.5
Annual Net Benefits	**$15,286.4**	**$31,879.1**

Exhibit 22: Comparison of Estimated Monetized National Annualized Incremental Costs to Benefits of the LCRI - 7 Percent Discount Rate (millions 2022 USD)

PWS Annual Costs	Low Scenario	High Scenario
Annualized Incremental Costs	$2,510.3	$3,558.9
Annualized Incremental Benefits	$9,775.5	$20,901.0
Annual Net Benefits	$7,265.2	$17,342.1

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1. Non-Monetized Costs

The proposed LCRI is expected to result in additional phosphate being added to drinking water to reduce the amount of lead leaching into water in the distribution system. EPA's cost model estimated that, nationwide, the proposed LCRI may result in post-WWTP total incremental phosphorus loads to receiving waterbodies increasing over the period of analysis, under the low and high scenarios, by a range of 343,000 to 491,000 pounds fifteen years after promulgation, and increasing under the low and high scenarios by a range of 511,000 to 693,000 pounds at year 35. At the national level, under the high cost scenario, this additional phosphorous loading to waterbodies is relatively small, less than 0.1 percent of the total phosphorous load deposited annually from all other anthropogenic sources. However, national average receiving waterbody 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 4, section 4.5.2 of the proposed LCRI Economic Analysis (USEPA, 2023b) for additional information.

2. Non-Quantified Non-Monetized Benefits

In addition to the benefits monetized in the proposed LCRI 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 LCRI are summarized in Appendix D of the proposed LCRI Economic Analysis (USEPA, 2023b) and are expected to affect both children and adults. EPA focused its non-quantified impacts assessment on the endpoints identified using two comprehensive U.S. Government documents summarizing the literature on lead exposure health impacts. These documents are EPA's Integrated Science Assessment for Lead (ISA) (USEPA, 2013); and the Human Health Services National Toxicology Program (NTP) Monograph on Health Effects of Low-Level Lead (NTP, 2012). Both sources present comprehensive reviews of the literature as of the time of publication on the risk of adverse health effects associated with lead exposure. 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 morbidity effects, renal effects, reproductive and developmental effects (apart from ADHD), immunological effects, neurological effects (apart from children's IQ), and cancer.

There are a number of proposed LCRI requirements that reduce lead exposure to both children and adults that EPA could not quantify. The proposed rule will require additional lead public education requirements that target consumers directly, schools and child care facilities, health agencies, and people living in homes with LSLs and GRR 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 rule also will require the development of service line inventories that include additional information on lead connectors and making the location of the lead content service lines publicly accessible. This will give potentially exposed consumers more information and will provide potential home buyers with this information as well, possibly resulting in additional service line and service line connector 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 LCRI. Because of the lack of granularity in the lead tap water concentration data available to EPA for the regulatory analysis, the benefits of small improvements in CCT to individuals residing in homes with lead content service lines, like those modeled under distribution system and site assessment are not quantified.

EPA also did not quantify the benefits of reduced lead exposure from lead-containing plumbing components (not including from LSL/GRRs) to individuals who reside in both: (1) homes that have LSL/GRRs but also have other lead-containing plumbing components, and (2) those that do not have LSL/GRRs but do have lead-containing plumbing components. EPA has determined that the proposed LCRI requirements may result in reduced lead exposure to the occupants of both these types of buildings as a result of improved monitoring and additional actions to optimize CCT. In the analysis of the LCRI, the number of both LSL/GRR and non-LSL/GRR homes potentially affected by water systems increasing their corrosion control during the 35-year period of analysis is 16.2 million in the low scenario and 23.3 million in the high scenario. Some of these households may have leaded plumbing materials apart from LSL/GRRs, including leaded brass fixtures and lead solder. These households could potentially see reductions in tap water lead concentrations.

Some researchers have pointed to the potential for CCT cobenefits associated with reduced corrosion, or material damage, to plumbing pipes, fittings, and fixture, and appliances that use water owned by both water systems and homeowners (Levin, 2023). The corrosion inhibitors used by systems that are required to install or re-optimize CCT as a result of the proposed LCRI would result in additional benefits associated with the increased useful life of the plumbing components and appliances (*e.g.,* water heaters), reduced maintenance costs, reduced treated water loss from the distribution system due to leaks, and reduced potential liability and damages from broken pipes in buildings that receive treated water from the system. The replacement of GRR service lines may also lead to reduced treated water loss from the distribution system due to leaks (AwwaRF and DVGW-Technologiezentrum Wasser, 1996). EPA did not have sufficient information to estimate these impacts nationally for the proposed rule analysis.

Additionally, the risk of adverse health effects associated with copper that are expected to be reduced by the proposed LCRI are summarized in Appendix E of the proposed LCRI Economic Analysis (USEPA, 2023b). 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. Alternative 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'' (OMB, 2003). Pursuant to this guidance, EPA considered alternative regulatory options when developing the proposed LCRI related to:

- Alternative lead action levels of 0.015 mg/L and 0.005 mg/L rather than the proposed LCRI lead action level of 0.010 mg/L.

- An annual service line replacement rate of 7 percent rather than the 10 percent rate under the LCRI.
- The inclusion of lead connectors and galvanized service lines previously downstream of lead connectors in the proposed rule's definition of lead content requiring replacement.
- Setting the criterion for deferred service line replacement to 8,000 lines per year instead of the 10,000 lines per year in the proposed LCRI.
- Alternative temporary filter provision requirements for systems with multiple lead action level exceedances.
- Providing the small system compliance flexibility to CWSs that serve a population of 10,000 or fewer people rather than just to CWSs that serve 3,300 or fewer people (Note: Under both scenarios NTNCWSs of all sizes are covered by the compliance flexibility).

Exhibit 23 provides a summary of the proposed LCRI requirements and other options considered.

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Exhibit 23: Summary of Alternative Options Considered for the Proposed LCRI

Area	Other Option Considered	Proposed LCRI
Lead Action Level	1. Lead AL of ≤0.015 mg/L 2. Lead AL of ≤0.005 mg/L	Lead AL of ≤0.010 mg/L
Service Line Replacement Rate	Service lines are replaced at an annual rate of 7%	Service lines are replaced at an annual rate of 10%
Definition of Lead Content to be Replaced	In addition to replacing lead service lines and galvanized lines previously downstream of lead lines, systems must replace: 1. Lead connectors 2. Lead connectors and galvanized lines previously downstream of lead connectors	Systems must replace lead service lines and galvanized lines previously downstream of lead lines
SLR Deferral Threshold	Systems who must replace more than 8,000 lines per year in order to replace all lead and GRR service lines within 10 years may be given a deferred deadline for finishing all lead and GRR service line replacements	Systems who must replace more than 10,000 lines per year in order to replace all lead and GRR service lines within 10 years may be given a deferred deadline for finishing all lead and GRR service line replacements
Temporary Filter Programs	Systems with multiple ALEs must: 1. Deliver temporary filters directly to all customers 2. Deliver temporary filters directly to all customers that have service lines with known or potential lead content 3. Confer with the State but are not required to make temporary filters available	Systems with multiple ALEs must make filters available to all customers with service lines of known or potential lead content
Small System Flexibility	CWSs that serve 10,000 or fewer people, and all NTNCWSs, are provided compliance flexibility when they exceed the AL	CWSs that serve 3,300 or fewer people, and all NTNCWSs, are provided compliance flexibility when they exceed the AL

Acronyms: LCRI = Lead and Copper Rule Improvements; AL = action level; SLR = service line replacement; GRR = galvanized requiring replacement; ALE = action level exceedance; CWS = community water system; NTNCWS = non-transient, non-community water system.

1. Alternative Lead Action Levels

Exhibit 24 through Exhibit 27 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits at an action level of 0.015 mg/L holding all other proposed LCRI rule requirements constant. Results in these tables are provided for the high scenario at both a three percent and seven percent discount rates.

Note the following for all cost results in this section VIII.F. Alternative Regulatory Options Considered:

EPA in the LCRR economic analysis (USEPA, 2020b) assumed that the cost of customer-side service line replacements made under the goal-based replacement requirement would be paid for by households. The Agency also assumed that system-side service line replacements under the goal-based replacement requirement and full service line replacements (both customer-side and systems-side) would be paid by the PWS under the 3 percent mandatory replacement requirement. EPA made these modeling assumptions based on the different levels of regulatory responsibility systems faced operating under a goal-based replacement requirement versus a mandatory replacement requirement. While systems would not be subject to

a potential violation for not meeting the replacement target under the goal-based replacement requirement, the possibility of a violation under the 3 percent mandatory replacement requirement could motivate more systems to meet the replacement target even if they decided that it was necessary to adopt customer incentive programs that would shift the cost of replacing customer-side service lines from customers to the system. To be consistent with these LCRR modeling assumptions, under the proposed LCRI, EPA assumed that mandatory replacement costs would fall only on systems. Therefore, the negative incremental values reported for the ''Household SLR Costs'' category do not represent a net cost savings to households. They represent an assumed shift of the estimated service line replacement costs from households to systems. EPA has insufficient information to estimate the actual service line replacement cost sharing relationship between customers and systems at the national level of analysis.

Exhibit 24: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.015 mg/L, SLR Rate = 10%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$172.2	$21.1
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,810.1	$2,588.4
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$671.1	$45.0
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$9.0	$3.1
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$253.9	$156.3
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$3.9	$3.7
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$3,920.2***	***$2,817.6***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$53.8	$13.4
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$6.8	$2.5
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$3,980.8**	**$2,800.3**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 25: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.015 mg/L, SLR Rate = 10%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$172.9	$1.8
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,534.3	$3,241.9
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$687.2	$26.7
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$7.8	$1.9
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$291.0	$183.7
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.4	$6.1
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,699.6***	***$3,462.1***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$54.6	$9.0
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$7.9	$1.8
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,762.1**	**$3,430.5**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 26: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.015 mg/L, SLR Rate = 10%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,651.9	$6,504.6
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$8.3	$6.1
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$984.0	$740.1
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$36,332.7	$26,512.6
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$45,976.9**	**$33,763.4**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 28 through Exhibit 31 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits at an action level of 0.005 mg/L holding all other proposed LCRI rule requirements constant. Results in these tables are provided for the high scenario at both a three percent and seven percent discount rates.

Exhibit 27: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.015 mg/L, SLR Rate = 10%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,603.4	$1,191.1
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$6.7	$4.9
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$605.0	$448.9
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$25,824.2	$18,591.9
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$28,039.3**	**$20,236.8**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 28: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.005 mg/L, SLR Rate = 10%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$202.9	$51.8
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,803.9	$2,582.2
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$904.9	$278.8
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$18.3	$12.4
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$281.9	$184.3
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.1	$3.9
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,216.0***	***$3,113.4***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$60.8	$20.4
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$18.7	$14.4
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,295.5**	**$3,115.0**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 29: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.005 mg/L, SLR Rate = 10%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$210.1	$39.0
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,527.6	$3,235.2
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$936.2	$275.7
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$16.9	$11.0
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$329.4	$222.1
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.8	$6.5
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$5,027.0***	***$3,789.5***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$63.1	$17.5
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$21.5	$15.4
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$5,111.6**	**$3,780.0**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 30: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.005 mg/L, SLR Rate = 10%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$9,035.9	$6,888.6
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$9.2	$7.0
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$1,020.2	$776.3
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$38,541.1	$28,721.0
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$48,606.4**	**$36,392.9**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 31: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.005 mg/L, SLR Rate = 10%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,677.7	$1,265.4
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$7.4	$5.6
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$629.2	$473.1
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$27,425.5	$20,193.2
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$29,739.8**	**$21,937.3**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

2. Alternative Service Line Replacement Rate

Exhibit 32 through Exhibit 35 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits of the rule with an alternative service line replacement rate of seven percent, holding all other rule requirements constant. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 32: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.010 mg/L, SLR Rate = 7%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.1	$29.0
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,604.7	$2,383.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.5	$141.4
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.6	$8.7
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$301.3	$203.7
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$3,872.2***	***$2,769.6***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.9	$6.6
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$3,938.8**	**$2,758.3**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 33: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.010 mg/L, SLR Rate = 7%)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,107.3	$2,814.9
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.1	$124.6
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$13.0	$7.1
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$340.1	$232.8
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,434.9***	***$3,197.4***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.9	$6.8
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,504.7**	**$3,173.1**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 34: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.010 mg/L, SLR Rate = 7%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$7,889.4	$5,742.1
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$7.8	$5.6
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$884.7	$640.8
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$33,362.5	$23,542.4
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$42,144.4**	**$29,930.9**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

3. Alternative Definition of Lead Content Service Lines To Be Replaced

Exhibits 36 through 39 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits of requiring all lead connectors and all galvanized lines downstream from lead connectors be replaced along with lead service lines and galvanized downstream of lead lines at the 10 percents annual replacement rate. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 35: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (AL = 0.010 mg/L, SLR Rate = 7%)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,424.2	$1,011.9
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$6.1	$4.3
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$531.6	$375.5
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$23,135.1	$15,902.8
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$25,097.0**	**$17,294.5**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 36: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Lead Connectors and Galvanized Lines Downstream or Previously Downstream of Lead Connectors Must be Replaced)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.2	$29.1
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$3,005.7	$2,784.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.6	$141.5
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.7	$8.8
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$264.4	$166.8
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,236.6***	***$3,134.0***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.3	$6.0
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,302.6**	**$3,122.1**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 37: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Lead Connectors and Galvanized Lines Downstream or Previously Downstream of Lead Connectors Must be Replaced)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.9	$11.8
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,769.8	$3,477.4
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.2	$124.7
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$13.0	$7.1
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$305.2	$197.9
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$5,062.7***	***$3,825.2***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.0	$5.9
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$5,131.6**	**$3,800.0**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 38: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Lead Connectors and Galvanized Lines Downstream or Previously Downstream of Lead Connectors Must be Replaced)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$9,205.5	$7,058.2
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$8.9	$6.7
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$1,039.7	$795.8
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$38,826.8	$29,006.7
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$49,080.9**	**$36,867.4**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 39: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Lead Connectors and Galvanized Lines Downstream or Previously Downstream of Lead Connectors Must be Replaced)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,706.4	$1,294.1
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$7.1	$5.3
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$639.7	$483.6
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$27,600.9	$20,368.6
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$29,954.1**	**$22,151.6**

Acronyms: AL = action level; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

4. Alternative Service Line Replacement Deferral Threshold

Exhibits 40 through 43 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits under an alternative service line replacement deferral threshold of 8,000 service lines requiring replacement per year, as compared to the proposed LCRI threshold of 10,000 service lines requiring replacement per year, holding all other rule requirements

constant. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 40: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (SL Replacement Deferrals if PWS has > 8,000 SL to be Replace Per Year)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.0	$28.9
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,799.1	$2,577.4
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.9	$141.8
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.5	$8.6
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$262.2	$164.6
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,027.7***	***$2,925.1***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.7	$6.4
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,094.1**	**$2,913.6**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: SL = service line; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 41: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (SL Replacement Deferrals if PWS has > 8,000 to be Replace Per Year)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,521.4	$3,229.0
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.4	$124.9
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$12.9	$7.0
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$302.6	$195.3
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,811.7***	***$3,574.2***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.6	$6.5
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,881.2**	**$3,549.6**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: SL = service line; SLR = lead service line replacement; LCRI = Lead and Copper Rule Improvements; PWS = public water system

Exhibit 42: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (SL Replacement Deferrals if PWS has > 8,000 SL to be Replace Per Year)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,774.2	$6,626.9
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$8.6	$6.4
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$995.1	$751.2
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$37,078.9	$27,258.8
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$46,856.8**	**$34,643.3**

Acronyms: PWS = public water system; SL = lead service line; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 43: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (SL Replacement Deferrals if PWS has > 8,000 SL to be Replace Per Year)		
	Baseline	LCRI	Incremental	Baseline	LCRI	Incremental
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,627.0	$1,214.7
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$6.9	$5.1
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$612.5	$456.4
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$26,362.3	$19,130.0
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$28,608.7**	**$20,806.2**

Acronyms: PWS = public water system; SL = lead service line; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

5. Alternative Temporary Filter Programs for Systems With Multiple Lead Action Level Exceedances

The proposed LCRI includes a requirement that systems with three lead action level exceedances in five years make filters available at a central location to all consumers that have services lines with known or potential lead content. EPA assessed three alternative temporary filter programs, including:

1. Systems with multiple lead action level exceedances must directly deliver filters to all customers.

2. Systems with multiple lead action level exceedances must directly deliver filters to all customers that have services

lines with known or potential lead content.

3. Systems with multiple lead action level exceedances confer with the State but are not required by the rule to make temporary filters available.

Exhibits 44 through 47 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits of requiring systems with multiple lead action level exceedances to deliver filters to all customers. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 44: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Delivered to All Customers if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.1	$29.0
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.8	$141.7
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.5	$8.6
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$332.7	$235.1
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,106.8***	***$3,004.2***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.1	$5.8
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,172.6**	**$2,992.1**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 45: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Delivered to All Customers if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.3	$124.8
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$12.8	$6.9
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$401.5	$294.2
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,920.7***	***$3,683.2***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.0	$5.9
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,989.6**	**$3,658.0**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 46: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Delivered to All Customers if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,798.3	$6,651.0
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$9.9	$7.7
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$999.5	$755.6
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$37,297.5	$27,477.4
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$47,105.2**	**$34,891.7**

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 47: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Delivered to All Customers if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,649.0	$1,236.7
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$8.0	$6.2
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$621.7	$465.6
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$26,791.5	$19,559.2
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$29,070.2**	**$21,267.7**

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibits 48 through 51 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits of requiring systems with multiple ALEs to deliver filters to customers with LSL, GRR service lines, and service lines of unknown material. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 48: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Provided to All Users that have SLs with Potential Lead Content if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.1	$29.0
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.8	$141.7
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.5	$8.6
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$312.3	$214.7
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,086.4***	***$2,983.8***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.1	$5.8
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,152.2**	**$2,971.7**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: SL = service line; ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 49: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Provided to All Users that have SLs with Potential Lead Content if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.3	$124.8
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$12.8	$6.9
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$373.0	$265.7
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,892.2***	***$3,654.7***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.0	$5.9
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,961.1**	**$3,629.5**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: SL = service line; ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 50: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Provided to All Users that have SLs with Potential Lead Content if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,846.0	$6,698.7
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$10.2	$8.0
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$1,004.0	$760.1
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$37,414.0	$27,593.9
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$47,274.2**	**$35,060.7**

Acronyms: SL = service line; ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 51: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Temporary Filters Provided to All Users that have SLs with Potential Lead Content if Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,649.3	$1,237.0
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$8.3	$6.5
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$621.3	$465.2
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$26,741.2	$19,508.9
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$29,020.1**	**$21,217.6**

Acronyms: SL = service line; ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibits 52 through 55 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits when systems with multiple action level exceedances confer with the State but are not required by the rule to make temporary filters available. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 52: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Systems Confer with the State but are Not Required by the Rule to Make Temporary Filters Available after Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.1	$29.0
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.5	$141.4
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.8	$8.9
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$252.5	$154.9
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,026.6***	***$2,924.0***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.7	$15.3
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$11.2	$6.9
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,093.5**	**$2,913.0**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 53: Estimated National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Systems Confer with the State but are Not Required by the Rule to Make Temporary Filters Available after Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$785.1	$124.6
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$13.1	$7.2
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$289.0	$181.7
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,808.3***	***$3,570.8***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$57.0	$11.4
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$13.0	$6.9
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,878.3**	**$3,546.7**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 54: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Systems Confer with the State but are Not Required by the Rule to Make Temporary Filters Available after Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,789.1	$6,641.8
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$8.2	$6.0
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$996.6	$752.7
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$37,134.5	$27,314.4
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$46,928.4**	**$34,714.9**

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 55: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Systems Confer with the State but are Not Required by the Rule to Make Temporary Filters Available after Multiple ALEs)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,627.9	$1,215.6
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$6.5	$4.7
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$612.7	$456.6
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$26,373.1	$19,140.8
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$28,620.2**	**$20,817.7**

Acronyms: ALE = action level exceedance; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

6. Alternative Size Threshold for Small System Compliance Flexibility

Exhibits 56 through 59 compare the quantified costs and benefits of the proposed LCRI to the quantified costs and benefits for an alternative option where the small system compliance flexibility size threshold is equal to systems serving 10,000 or fewer people. The proposed LCRI sets the small system compliance flexibility threshold at systems serving 3,300 or fewer

people. Results are provided for the high scenario at both the three percent and seven percent discount rates.

Exhibit 56: Estimated National Annualized Rule Costs - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Small System Flexibility for CWSs Serving up to 10,000 People)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$151.1	$180.1	$29.0	$151.1	$180.0	$28.9
PWS SLR	$221.7	$2,807.7	$2,586.0	$221.7	$2,807.7	$2,586.0
Corrosion Control Technology	$626.1	$767.8	$141.7	$626.1	$767.2	$141.1
Point-of Use Installation and Maintenance	$5.9	$14.5	$8.6	$5.9	$14.7	$8.8
Public Education and Outreach	$97.6	$262.0	$164.4	$97.6	$262.1	$164.5
Rule Implementation and Administration	$0.2	$4.0	$3.8	$0.2	$4.0	$3.8
Total Annual PWS Costs	***$1,102.6***	***$4,036.1***	***$2,933.5***	***$1,102.6***	***$4,035.7***	***$2,933.1***
Household SLR Costs	$33.2	$0.0	-$33.2	$33.2	$0.0	-$33.2
State Rule Implementation and Administration	$40.4	$55.7	$15.3	$40.4	$55.6	$15.2
Wastewater Treatment Plant Costs	$4.3	$10.1	$5.8	$4.3	$10.1	$5.8
Total Annual Rule Costs	**$1,180.5**	**$4,101.9**	**$2,921.4**	**$1,180.5**	**$4,101.4**	**$2,920.9**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: CWS = community water system; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 57: Estimate National Annualized Rule Costs - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Small System Flexibility for CWSs Serving up to 10,000 People)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
PWS Annual Costs						
Sampling	$171.1	$182.8	$11.7	$171.1	$182.8	$11.7
PWS SLR	$292.4	$3,531.7	$3,239.3	$292.4	$3,531.7	$3,239.3
Corrosion Control Technology	$660.5	$785.3	$124.8	$660.5	$784.7	$124.2
Point-of Use Installation and Maintenance	$5.9	$12.8	$6.9	$5.9	$13.0	$7.1
Public Education and Outreach	$107.3	$302.4	$195.1	$107.3	$302.4	$195.1
Rule Implementation and Administration	$0.3	$6.6	$6.3	$0.3	$6.6	$6.3
Total Annual PWS Costs	***$1,237.5***	***$4,821.6***	***$3,584.1***	***$1,237.5***	***$4,821.2***	***$3,583.7***
Household SLR Costs	$42.4	$0.0	-$42.4	$42.4	$0.0	-$42.4
State Rule Implementation and Administration	$45.6	$56.9	$11.3	$45.6	$56.9	$11.3
Wastewater Treatment Plant Costs	$6.1	$12.0	$5.9	$6.1	$12.0	$5.9
Total Annual Rule Costs	**$1,331.6**	**$4,890.5**	**$3,558.9**	**$1,331.6**	**$4,890.1**	**$3,558.5**

Previous Baseline costs are projected over the 35-year period of analysis and are affected by EPA's assumptions on three uncertain variables which vary between the low and high cost scenarios.

Acronyms: CWS = community water system; LCRI = Lead and Copper Rule Improvements; SLR = lead service line replacement; PWS = public water system

Exhibit 58: Estimated National Annual Benefits - High Scenario - 3 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Small System Flexibility for CWSs Serving up to 10,000 People)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$2,147.3	$8,804.5	$6,657.2	$2,147.3	$8,804.1	$6,656.8
Annual Low-Birth Weight Benefits	$2.2	$8.6	$6.4	$2.2	$8.6	$6.4
Annual ADHD Benefits	$243.9	$998.5	$754.6	$243.9	$998.4	$754.5
Annual Adult CVD Premature Mortality Benefits	$9,820.1	$37,202.4	$27,382.3	$9,820.1	$37,200.5	$27,380.4
Total Annual Benefits	**$12,213.5**	**$47,014.0**	**$34,800.5**	**$12,213.5**	**$47,011.6**	**$34,798.1**

Acronyms: CWS = community water system; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

Exhibit 59: Estimated National Annual Benefits - High Scenario - 7 Percent Discount Rate (millions of 2022 USD)

	Proposed Option			Alternative Option (Small System Flexibility for CWSs Serving up to 10,000 People)		
	Baseline	**LCRI**	**Incremental**	**Baseline**	**LCRI**	**Incremental**
Annual IQ Benefits	$412.3	$1,632.6	$1,220.3	$412.3	$1,632.5	$1,220.2
Annual Low-Birth Weight Benefits	$1.8	$6.9	$5.1	$1.8	$6.9	$5.1
Annual ADHD Benefits	$156.1	$614.5	$458.4	$156.1	$614.5	$458.4
Annual Adult CVD Premature Mortality Benefits	$7,232.3	$26,449.5	$19,217.2	$7,232.3	$26,447.6	$19,215.3
Total Annual Benefits	**$7,802.5**	**$28,703.5**	**$20,901.0**	**$7,802.5**	**$28,701.5**	**$20,899.0**

Acronyms: CWS = community water system; LCRI = Lead and Copper Rule Improvements; IQ = intelligence quotient; ADHD = attention-deficit/hyperactivity disorder

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EPA's analysis of the alternative regulatory options found that the following options had estimated annual positive net benefits greater than the proposed LCRI: (1) setting the action level to 0.005 mg/L; (2) including lead connectors and galvanized service lines previously downstream of lead connectors in the definition of lead content requiring replacement; (3) requiring systems with multiple action level exceedances to deliver temporary filters to all customers; and (4) requiring systems with multiple action level exceedances to deliver temporary filters to all customers that have service lines with known or potential lead content. From a purely economic efficiency

standpoint that would mean these four options are preferable to the proposed LCRI. However, none of these options were selected in place of the proposed rule because of questionable technical feasibility. SDWA section 1412(b)(4)(D) says the term ''feasible'' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available. EPA has discussed the Agency's feasibility concerns with regard to each of the options in preceding sections of this preamble. Regarding setting the action level at a level below 0.010 mg/L EPA has expressed concern associated with feasibility. See section V.E.2. for information on feasibility. When considering the inclusion of lead connectors and galvanized service lines previously downstream of lead connectors in the set of service lines that must be actively replaced. EPA was concerned about how these activities might pull resources away from the removal of LSLs and GRR service lines that pose a greater exposure risk. See section V.B.4. for a detailed discussion. In the case of both options that required the system to deliver temporary filters to customers' homes in system with multiple ALEs, EPA was again concerned about the potential use of system resources that could otherwise be used to achieve greater reductions in lead exposure system wide. The concern is founded on information received by the Agency from systems that have implemented temporary filter programs and found significant rates on nonuse among customers provided with filters. Giving EPA reason to believe that estimated benefits for large scale temporary filter programs should be discounted. For additional information on temporary filter adoption see section V.I.

Two alternative options were found to be more cost effective than the proposed LCRI: (1) setting the action level to 0.015 mg/L; (2) allowing small system compliance flexibility for CWSs serving up to 10,000 people (although the estimated cost efficiency of this option is not significantly different from the proposed LCRI). EPA chose to continue with the proposed option given the fact that the marginal benefit of the proposed rule was greater than the marginal cost thereby increasing total societal welfare above the levels provided by the more cost-efficient options considered.

G. Cost-Benefit Determination

When proposing an NPDWR, SDWA section 1412(b)(4)(C) requires the Administrator shall publish a determination as to whether the benefits of the proposed rule justify, or do not justify, the costs based on the analysis conducted under SDWA section 1412(b)(3)(C). With this proposed rule, the Administrator has determined that the quantified and nonquantifiable benefits of the proposed LCRI NPDWR justify the quantifiable and nonquantifiable costs.

Under section 1412(b)(3)(C)(ii) of SDWA, when 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 VIII.A. through F. of this document summarize the results of this proposed rule analysis.

As indicated in section VIII.C. and D. of this document, EPA discounted the estimated monetized cost and benefit values using both three and seven percent discount rates. In Federal regulatory analyses, EPA follows OMB Circular A–4 (OMB, 2003) guidance which recommends using both three percent and seven percent to account for the different streams of monetized benefits and costs affected by regulation. The seven percent discount rate represents the estimated rate of return on capital in the U.S. economy, to reflect the opportunity cost of capital when ''the main effect of a regulation is to displace or alter the use of capital in the private sector.'' Regulatory effects, however, can fall on both capital and private consumption.[26] In 2003, Circular A–4 estimated the rate appropriate for discounting consumption effects at three percent. There are also a variety of considerations with respect to the capital displacement in this particular proposal. For example, a meaningful number of PWSs may not be managed as profit-maximizing private sector investments, which could impact the degree to which the rate of return on the use of capital in the private sector applies to PWS costs. Federal funding is expected to defray a significant portion of such PWS costs;[27] where that occurs, such costs are transferred to the government. Additionally, to the extent that the benefits extend over a long time period into the future, including to future generations, Circular A–4 advises agencies to consider conducting sensitivity analyses using lower discount rates. Regardless, the impacts of this rulemaking are such that costs are expected to occur in the nearer term, and in particular that larger one-time capital investments are expected to occur in the near term associated with the service line removal and installation and re-optimization of CCT at water systems; and public health benefits are expected to occur over a longer term. Discounting across an appropriate range of rates can help explore how sensitive net benefits are to assumptions about whether effects fall more to capital or more to consumption.

EPA has followed Circular A–4's default recommendations to use three and seven percent rates to represent the range of potential impacts accounting for diversity in stakeholders' time preferences. The Agency views the three to seven percent range of costs and benefits as characterizing a significant portion of the uncertainty in the discount rate and views the quantified endpoint values as demonstrating a range of monetized costs and benefits, which encompass a significant portion of the uncertainty associated with discount rates.

As indicated in section VIII.E. of this document, the monetized costs and benefits result in net annualized incremental benefits that range from $15.3 to $31.9 billion under the low and high scenarios at a three percent discount rate. Under the low and high scenarios at a seven percent discount rate, the net annualized incremental benefits range from $7.3 to $17.3 billion. EPA estimated the monetized net benefits of the proposed LCRI under low and high bracketing scenarios in order to capture the variability in system characteristics and the significant uncertainty associated with a set of lead specific data inputs which drive both the estimated costs and benefits in the SafeWater LCR model. With regard to costs, the uncertain variables which define the measurable difference between the low and high scenarios, are the number of PWSs that will exceed the lead action level under the revised tap sampling requirements, the cost of LSL and GRR service line replacement, and the cost of CCT. The difference

[26] Private consumption is the consumption of goods and services by households for the direct satisfaction of individual needs (rather than for investment).

[27] The Infrastructure Investment and Jobs Act, invests $15 billion in the Drinking Water State Revolving Fund (SRF) specifically for lead content service line identification and removal along with additional sources of Federal and State funds that can be used to comply with the requirements of the proposed LCRI.

between low and high benefits scenarios are driven by the number of PWSs that will exceed the action level under the revised tap sampling requirements and the concentration response functions that estimate the impact lead concentrations have on avoided reductions in IQ, cases of ADHD in children, and cases of cardiovascular disease premature mortality in adults.

There are also a number of potentially significant nonquantifiable and non-monetized benefits that further strengthen the determination of benefits justifying costs. The nonquantifiable harmful impacts of lead exposure include: cardiovascular morbidity effects, renal effects, reproductive and developmental effects (apart from ADHD), immunological effects, neurological effects (apart from children's IQ), and cancer. The EPA analysis has not quantified the positive impacts from increases in consumer averting behavior, such as flushing lines before drinking water is drawn, filter use, or customer-initiated service line replacement due to the proposed LCRI'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 GRR service lines; and the development of service line inventories that include lead connector information 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 lead content service lines but with leaded plumbing inside the home in water systems where the proposed LCRI requires installation or re-optimization of CCT; and all households in systems implementing small improvements in CCT because of the distribution system and site assessment proposed rule requirements. Corrosion inhibitors used by systems that are required to install or re-optimize CCT as a result of the proposed LCRI would experience an additional benefit in terms of the increased useful life of the plumbing components and appliances (*e.g.,* water heaters), reduced maintenance costs, reduced treated water loss from the distribution system due to leaks, and reduced potential liability and damages from broken pipes in buildings that receive treated water from the system.

IX. Request for Comment

EPA is requesting comment on all aspects of this notice of this proposed rulemaking. EPA solicits comments on the proposed revisions of 40 CFR part 141, subparts A, D, I, O, Q and Part 142, including EPA's rationale as described in this preamble. EPA seeks comments on issues specifically identified elsewhere in this document as well as any other issues that are not specifically addressed in this document. In particular, EPA solicits comments, information, and data on the following topics. Comments are most helpful when accompanied by specific examples and supporting data.

General Matters

EPA requests comment on the following items pertaining to the rule as a whole.

1. Whether the proposed revisions to the LCRR treatment technique are effective to prevent known or anticipated adverse health effects to the extent feasible in accordance with the SDWA.

2. Whether there are additional ways EPA could reduce the complexity of the regulatory approach used to address lead in drinking water consistent with the statutory standard for a treatment technique rule in section 1412(b)(7)(A) of SDWA. Specifically, EPA requests comment on ways that the proposed LCRI could be simplified and ways that burden, including paperwork burden, could be reduced without affecting the ability of the rule to prevent known or anticipated adverse health effects.

3. Whether the proposed requirements of the rule are enforceable and promote compliance without the need for State or Federal enforcement action. EPA also solicits comment on ways the rule could be modified to better promote compliance.

4. The revised definition of ''connector,'' including that connectors are defined as ''not exceeding two feet.''

Service Line Replacement

EPA is seeking comment on several aspects of the proposed service line replacement requirements.

1. All aspects of the proposed scope of the replacement requirements, including the criteria used to define a full service line replacement (*e.g.,* cutting the pipe at abandoned properties, replacing the entire service line) and which lead sources are subject to replacement under the mandatory program. EPA is seeking comment on whether to prohibit reconnection of any disconnected LSL or GRR service line. EPA is requesting comment on whether the Agency should include lead connectors or galvanized service lines that are or were downstream of a lead connector as part of mandatory replacement.

2. Whether a reasonable effort to obtain property owner consent should be more than four times (*e.g.,* five, six, or seven times).

3. Whether the proposed LCRI appropriately interprets ''control'' for the purposes of the mandatory replacement provision (*i.e.,* require systems to conduct full service line replacement in situations where the system has access to conduct the full replacement).

4. The proposed minimum replacement rate and replacement deadlines. EPA is seeking comment on whether it is feasible for systems across the nation to complete service line replacement in a shorter timeframe than ten years, such as in six, seven, or eight years. EPA is seeking comment on the rate construct approach, including how to calculate compliance with a given service line replacement deadline and average annual rate calculated across a rolling three-year period. EPA also seeks comment on whether systems should be required to meet a minimum replacement rate in the first three years after the compliance date to give States an opportunity to enforce replacement rate progress sooner than three years after the compliance date. EPA also seeks comment on the complexity of the rate construct.

5. EPA is taking comment on whether States, as a condition of primacy, or EPA when it is directly implementing the program, should be required to set initial shortened deadlines by a certain timeframe, such as no later than 60 days after the compliance date.

6. The overall approach and basis to offer deferred service line replacement to systems with a high proportion of LSLs and GRR service lines in their distribution system relative to their total number of households served. EPA is requesting comment on its proposed threshold of 0.039 average annual number of replacements per household served, which is used to calculate the number of years that systems can defer.

7. Whether to require the State, as a condition of primacy, to approve the use of the deferred deadline provision where the water system qualifies for it and/or whether to require the State, as a condition of primacy, to assess whether it would be feasible for a system to meet the 10-year deadline or a shorter deadline even if the system meets the regulatory criteria for the deferred deadline.

8. Whether there are additional data on service line replacement rates achieved by systems in proactive programs (*i.e.,* excluding programs that only replace service lines in

coordination with main replacement or emergency repair).

9. The proposed use of a maximum threshold of 10,000 annual service line replacements for systems with atypically high numbers of LSLs and GRR service lines as well as seeking comment on the alternate threshold of 8,000 annual service line replacements. EPA is also seeking feedback on other thresholds and supporting data. EPA is also seeking feedback on if there's data available that would inform if the maximum threshold for annual service line replacement could increase after ten years, such as if replacement rates could double.

10. Whether systems conducting deferred service line replacement should be subject to any additional requirements beyond those for systems that are not replacing service lines in accordance with a deferred deadline.

11. The requirement for systems to install a dielectric coupling when conducting a partial replacement of an LSL or GRR to separate the remaining LSL or GRR service line and the replaced service line unless the replaced service line is made of plastic and other recommended risk mitigation activities.

12. The proposed requirement to ban partial lead and GRR service line replacement unless it is conducted in accordance with emergency or planned infrastructure work (excluding planned infrastructure work solely for the purposes of replacing lead and GRR service lines as part of a service line replacement program). Additionally, EPA is seeking comment on whether partial service line replacement should be prohibited during ''planned infrastructure work'' or with certain types of planned infrastructure work.

13. The ability of the market to correct for potential shortages in workers and materials to conduct service line replacement, as well to provide sufficient quantities of filters to comply with the service line replacement and other relevant provisions in the proposal.

14. The extent to which property owner consent, if required by State or local law or water tariff agreement, might complicate full service line replacement and whether there are additional measures EPA can take to facilitate access through the LCRI.

Tap Sampling for Lead and Copper

EPA is seeking comment on several proposed revisions to compliance tap sampling for lead and copper.

1. Comment on the sites included in Tier 3 and whether all of the proposed sites should be included in Tier 3, if additional sites should be included, or if some should be included in a different, lower priority tier, such as Tier 4. Specifically, comment on whether sites served by galvanized service lines or containing galvanized premise plumbing that are identified as ever being downstream of an LSL or lead connector should be included in the same tier as other sites with a current lead connector (*e.g.,* copper service line downstream of a lead connector).

2. Comment and available data, such as modeling or sampling data, that inform lead corrosion rates over time.

3. Comment on the applicability of alternate sampling protocols to assess CCT performance, increase customer participation, and other relevant factors.

4. Comment on the proposed updated definition of wide-mouth bottles that is ''bottles that are one liter in volume with a mouth, whose outer diameter measures at least 55 mm wide,'' and specifically on the availability of qualifying bottles.

5. Comment and any relevant data on the number and tiering of samples used to calculate the 90th percentile lead and/or copper levels for systems with LSLs for purposes of assessing CCT efficacy. Specifically, whether samples from non-LSL sites that have higher lead concentrations than samples from LSL sites should be included and whether these higher values should replace lower values from LSL sites in the 90th percentile calculation.

6. Comment on whether State authority to specify sampling locations when a system is conducting reduced monitoring should apply regardless of the number of taps meeting sample site criteria.

Service Line Inventory and Service Line Replacement Plan

EPA is seeking comment on all aspects of the proposed service line inventory approach, and specifically the following:

1. In the LCRI, EPA is proposing a threshold of systems serving greater than 50,000 persons to host the inventory and plan online, which is the required threshold under the LCRR. EPA is seeking comment on the size threshold at which systems must host their publicly accessible inventory, inventory summary data, replacement summary data, and service line replacement plan online, and whether it should be lowered relative to the LCRR requirements.

2. In the LCRI, EPA is proposing a requirement for systems to validate the accuracy of non-lead service lines in their inventory that were categorized using methods other than records review or visual inspection of at least two points along the line. EPA is requesting comment on the number of validations required, the proposed 95 percent confidence level approach used to develop the number of validations required, the criteria for which methods used to categorize non-lead service lines should be included in the validation pool (including whether non-lead lines categorized based on records should be subject to validation), and the seven-year timeline for systems on a 10-year replacement deadline to complete the validation requirements.

3. Comment on establishing a deadline for systems to identify all unknown service lines prior to their service line replacement deadlines.

4. Comment on a requirement for systems to update their service line replacement plans if there are any changes, such as changes to laws and policies applicable to full service line replacement.

Lead Action and Trigger Levels

1. EPA is seeking comment on the proposed lead action level of 0.010 mg/L, as well as comment and supporting data on alternative action levels, such as 0.005 mg/L, with regards to generally effective corrosion control treatment and identifying systems most at risk of elevated levels of lead in drinking water.

2. EPA is also seeking comment on the use of the action level to determine when additional public education is required, and the use of the same action level for public education as for the CCT provisions.

3. EPA is seeking public comment, data, and information on the anticipated benefits and tradeoffs, including for public health and administrative burden on systems and States, if more small and medium systems are required to conduct a detailed OCCT demonstration and take other actions if they exceed the proposed action level of 0.010 mg/L or other lower values, while water systems are simultaneously required to mandatory conduct full service line replacement.

Corrosion Control Treatment

EPA is seeking comment on all aspects of the proposed CCT approach, and specifically the following:

1. The proposed determination that the CTT treatment technique is feasible and prevents known or anticipated adverse health effects to the extent feasible.

2. Comment on whether it would be more appropriate to require water systems to re-optimize again following an action level exceedance regardless of

meeting their optimal water quality parameters and to provide the State with the authority to waive this requirement.

3. The proposed option for a water system to delay OCCT until after the system has replaced all of its LSLs and GRR service lines, while the system achieves at least 20 percent removal per year and must have no LSLs, GRR service lines, or lead status unknown service lines remaining at the end of the five-year period.

4. The treatment recommendation and CCT study process can take multiple years to complete. For systems with existing corrosion control, the system may be able to alter the existing treatment (*e.g.,* increase pH and/or orthophosphate dose) without a new CCT study on a much faster timeframe rather than waiting for study results that may recommend that same change. EPA is requesting comment on whether there are situations and/or conditions where existing treatment modifications may achieve similar lead reductions rather than delaying new treatment for two-and-a-half years while a study is underway.

Compliance Alternatives for a Lead Action Level Exceedance for Small Community Water Systems and Non-Transient, Non-Community Water Systems

1. EPA is proposing that small system flexibilities be limited to CWSs serving 3,300 persons and fewer and all NTNCWSs for the remaining compliance alternatives of point-of-use devices and plumbing replacement. EPA is seeking comment on whether the Agency should allow systems serving up to 10,000 persons (or another threshold) to be eligible to use the small system compliance flexibility provision. EPA is also seeking information, data, and analysis on whether point-of-use devices and plumbing replacement are as effective as OCCT at systems serving up to 10,000 persons (or another threshold).

2. EPA is requesting comment on the ability and practicality of point-of-use devices to address multiple contaminants.

Public Education

EPA is seeking comment on all aspects of the proposed public education, and specifically the following:

1. The proposed determination that the public education treatment technique is feasible and prevents known or anticipated adverse health effects to the extent feasible.

2. Comment and supporting data on the capacity of water systems to conduct some or all of the required public education activities in 30 days, or another period of time that is less than 30 or 60 days, after the end of the tap sampling period in which a systemwide lead action level exceedance occurs.

3. Data, analyses, and comments on the proposed determination that water systems are capable of providing consumer notices of individual tap sampling results within three calendar days of obtaining those results, regardless of whether the results exceed the lead or copper action level, or if a longer time frame is needed (*e.g.,* three business days, seven calendar days, 14 calendar days).

4. Whether the proposed requirement for water systems to offer lead sampling to consumers with LSLs, GRR service lines, or unknown service lines in the notice of service line material is effective at reducing adverse health effects. EPA is also requesting comment on the requirement for water systems to deliver consumer-initiated test results within three days of obtaining those results.

5. Whether the types and timing of outreach activities proposed for systems failing to meet the mandatory service line replacement rate are appropriate and whether other activities should be considered.

6. Whether EPA should require systems to annually notify consumers if they are served by a lead connector, in addition to notifications for sites with lead, GRR, or lead status unknown service lines.

7. Whether EPA should require water systems to provide filters to consumers when there is a disturbance resulting from replacement of a water main.

8. Whether EPA should require additional public education requirements to further encourage swift service line replacement faster than the 10-year replacement deadline. For example, should water systems that have LSLs, GRR service lines, or unknown service lines five years after the compliance date for the LCRI be required to increase the frequency of the notification of service line materials from annual to once every six months?

9. EPA is seeking information and data on when a system provides translated materials to consumers with limited English proficiency, what resources are used to translate materials (*e.g.,* State resources, community organizations), and what barriers water systems may face in providing accurate translated materials.

10. Whether the Agency should require States, as a condition of primacy, to provide translation support to water systems that are unable to do so for public education materials to consumers with limited English proficiency.

11. EPA is also requesting comment on additional ways to streamline public education and associated certification requirements (*e.g.,* combine deadlines for systems to conduct public education or submit information to the State).

Additional Requirements for Systems With Multiple Lead Action Level Exceedances

EPA is proposing new actions to be required of systems that exceed the lead action level multiple times, based on the proposed criteria of three action level exceedances in a five-year period. EPA is requesting comments on all aspects of this proposed requirement, and specifically the following:

1. Whether water systems should be required to take additional actions when the system exceeds the lead action level multiple times and if so, what actions are appropriate and feasible, and when these additional actions should be required under the LCRI.

2. Whether EPA should use three action level exceedances in a five-year period for identifying systems with multiple action level exceedances where additional action is warranted and, whether additional actions should be required sooner, or later, than the five-year period, or whether EPA should use a modified metric (number of consecutive action level exceedances in a set time period) or a different metric entirely (*i.e.,* based on one or more factors other than the number of action level exceedances in a set time period).

3. The proposed public education activities after a system exceeds the lead action level multiple times. EPA is specifically seeking any information, data, or analysis on whether the proposed public education activities support preventing adverse health effects in this situation. EPA is also requesting comment on whether systems should be required to conduct more than one (*e.g.,* two or three) of the public education activities proposed.

4. Whether EPA should require water systems to make filters certified to reduce lead and replacement cartridges, along with instructions for use, available to all consumers within 60 days of a system having multiple action level exceedances and whether there are any supporting or contrary data on whether the proposed filter requirement would be protective of public health.

5. The proposed requirements for systems to develop a filter plan and submit to the State after the system has

multiple action level exceedances for the first time, and whether EPA should require systems to take additional actions to facilitate filter distribution.

6. Alternative requirements for systems with multiple action level exceedances to provide filters to their consumers, such as requiring water systems to provide filters and replacement cartridges to consumers served by an LSL, GRR service line, or unknown service line or to all consumers, or to require systems to consult with the State upon meeting the criteria for multiple action level exceedances, after which the State determines the appropriate action to reduce lead exposure.

7. An additional provision providing discretion to States to allow systems with multiple action level exceedances to discontinue the proposed required actions sooner if the system takes actions (*e.g.,* installs optimized or re-optimized CCT, completes mandatory service line replacement) and is at or below the lead action level for two consecutive monitoring periods.

8. Whether, in addition to the proposed requirements, EPA should provide States discretion to determine appropriate action following a multiple action level exceedance that is tailored to meet specific system needs.

Lead Sampling in Schools and Child Care Facilities

EPA is seeking comment on all aspects of the proposed lead sampling in schools and child care facilities requirements, and specifically:

1. Whether CWSs should be required to collect more samples and/or to sample more frequently in schools and child care facilities.

2. The proposed provision to allow States to issue waivers to community water systems from the requirement for lead sampling in schools and child care facilities during the five-year period after the LCRI compliance date if the facility was sampled for lead after January 1, 2021 but prior to the LCRI compliance date and the sampling otherwise meets the waiver requirements of § 141.92(h).

3. Whether or not to allow States to waive the requirements of § 141.92 for CWSs in schools and child care facilities that use and maintain filters certified to reduce lead, and if so, whether the waiver should only be allowed where schools and child care facilities are required by State or local law to install POU devices and maintain them.

4. The minimum requirements for States to provide a waiver (*e.g.,* should the waiver be limited to locations where the filter use is required by State or local law; should the waiver be limited to locations where State or local law requires periodic sampling or testing to ensure proper filter use).

5. Whether EPA should require CWSs to make school and child care facility sampling results publicly available, and if so, how frequently and in what manner.

Reporting and Recordkeeping

EPA is seeking comment on all aspects of the proposed reporting and recordkeeping, and specifically the following:

1. EPA is requesting comment on the expansion of the inventory reporting to include lead connectors and non-lead service lines.

2. EPA has heard concern over the ability of States to review all required site sample plans and provide approvals in time for the first tap monitoring period, and is requesting comment on whether EPA should consider a phased approach or alternate approach to reduce the burden on States following the rule compliance date.

3. EPA is requesting comment on whether States should be required to maintain records related to distribution system and site assessments conducted by water systems.

4. EPA is requesting comment on whether States should be required to maintain documentation of determinations of more stringent implementation, including but not limited to conditions or approvals related to reduced compliance monitoring and additional information required to conduct a review or designate OCCT.

Compliance Dates

The proposed LCRI includes a three year implementation period following the publication of the final rule until the compliance date to allow States time to obtain primacy and work with systems to prepare to comply. It also allows systems time to plan and obtain funding for LSLR as appropriate. EPA is seeking comment on all aspects of the proposed LCRI compliance dates and whether it would be practicable for water systems to implement any of the proposed LCRI requirements earlier than three years from the date of final action on the proposed LCRI. Specifically:

1. Whether it is practicable for water systems to implement notification and risk mitigation provisions after full and partial service line replacement (§ 141.84(h)), notification of a service line disturbance (§ 141.85(g)), and associated reporting requirements (§ 141.90(e)(6) and (f)(6)) upon the effective date of the LCRI.

2. Whether earlier alternative compliance dates for LCRI are practicable such that water systems transition directly from LCR to LCRI in less than three years (*i.e.,* one or two years) based on the assumption that water systems would comply with the LCR until the LCRI compliance date.

3. Whether there are other LCRR provisions besides the initial inventory and notifications of service line material for which the October 16, 2024 compliance date should be retained.

Other Proposed Revisions to 40 CFR Part 141

1. Consumer Confidence Report

a. EPA is requesting comment on the proposed requirement for systems to provide an informational statement in the CCR about the school sampling requirements with the information that consumers can contact the school or child care facility about any potential sampling results.

2. Definitions

a. EPA is seeking comment on all aspects of the proposed definitions, and specifically the following:

b. EPA is proposing to define a two-foot maximum length of connectors. EPA proposes that ''connectors'' that exceed two feet in length be treated as a service line. EPA is requesting comment on the defined length of a connector.

X. 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 14094 (Modernizing Regulatory Review)

This action is a ''significant regulatory action'', as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA, submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. 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 Improvements (USEPA, 2023b), is also available in the docket and is summarized in section VIII. of this document.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2788.01 and OMB control number 2040–NEW. You can find a copy of the ICR in the docket for this rule and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. The burden includes the time needed to conduct State and water system activities during the first three years after promulgation, as described in Chapter 7, section 7.3 of the proposed LCRI Economic Analysis (USEPA, 2023b).

Burden (as defined at 5 CFR 1320.3(b)) means the total time, effort, and financial resources required 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 LCRI 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 attend training sessions and receive technical assistance from their State during implementation of the LCRI. Furthermore, public water systems will have to develop a baseline inventory with lead connector information to the State. For the public water systems that have lead, GRR, or unknown service lines, a service replacement plan will need to be developed.

Likewise, the paperwork burden for States include reading and understanding the LCRI. The State will have to adopt the rule and develop programs to implement the LCRI. This may result in the State modifying their data system while implementing the LCRI. Also, the State will have to provide staff with training and technical assistance as well as provide water systems with training and technical assistance for implementation of the LCRI. The State is also responsible for reviewing demonstrations and written statements of only non-lead service lines from systems in lieu of a publicly accessible inventory as well as reviewing service line 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 LCRI. These authorized entities are responsible for overseeing the LCRI implementation by certain public water systems within their jurisdiction. States 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. States would also be required to report a subset of these data to EPA. EPA would utilize the information to protect public health by ensuring compliance with the LCRI, measuring progress toward meeting the LCRI'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 State(s).

Respondent's obligation to respond: If the proposed LCRI is finalized, then the respondent's obligation to respond would be mandatory. Section 1401(1)(D) of 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 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 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 67,003. The total includes 56 Primacy Agencies and 66,947 public water systems.

Frequency of response: For the first three years after the final rule is published, public water systems are expected to implement several proposed rule requirements that have associated ICR burden. The public water system activities include reading and understanding the revised rule, personnel time for attending trainings, clarifying regulatory requirements with the State during rule implementation, updating and submitting initial service line inventories, develop educational materials for customers with lead, GRR, and unknown material service lines, and developing a service line replacement plan are all one time tasks during the period covered by the ICR. Systems also conduct field investigations to annually update and submit changes to their service line inventory. PWS will distribute public education materials to customers with lead, GRR and unknown material service lines annually. Like the water systems, States are expected to engage in the following one time proposed LCRI required activities during the period covered by this ICR: 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 technical assistance and training; reviewing public water system initial inventory data; provide education templates and review education materials for LSL, GRR, and unknown material service line customers; and conferring with water systems with lead, GRR, or unknown service lines on initial planning for service line replacement program activities. States will annually review

systems' updated service line inventories.

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. 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 State during rule implementation. Public water systems would also be required to update service line inventories and develop a service line replacement plan. The total burden hours for public water systems is estimated at 7,579,376 hours. The total estimated cost for public water systems is $1,064,246,704 in 2022 dollars. For additional information on the public water systems activity burden see section VIII. of this document.

The State 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 EPA; reporting data to SDWIS/Fed; reviewing public water system inventory data; and conferring with water systems with lead, GRR, or unknown service lines on initial planning for service line replacement program activities. The total burden hours for States is 850,097 hours. The total cost for primacy agencies is $50,994,078 in 2022 dollars. See section VIII. of this document for additional discussion on burden and cost to the State.

The net change in burden associated with moving from the information requirements of the LCRR to those in the proposed LCRI over the three years covered by the ICR is −4.5 million hours, for an average of −1.5 million hours per year. The numbers reflect the estimates of the number of systems that need to develop service line inventories. The total net change in costs from the most recent ICR approved for the LCRR over the three-year compliance period covered by this ICR are $201.4 million for an average of $67.1 million per year (simple average over three years). Note that the proposed LCRI ICR analysis assumes that systems will not implement the new requirements of the LCRR during the implementation period for the LCRI. Therefore, the burden for the proposed LCRI are substantially lower than the anticipated burden of the LCRR over the same period, resulting in a negative net burden for the proposed LCRI. The costs for the activities occurring under the LCRI, however, are greater than those that would occur for the same three year period under the LCRR.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

Submit your comments on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to EPA using the Docket ID (EPA–HQ–OW–2022–0801). EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collected by selected ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than January 5, 2024.

C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to section 603 of the Regulatory Flexibility Act (RFA), 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 the impact. The complete IRFA is available in Chapter 7, section 7.4 of the proposed LCRI Economic Analysis (USEPA, 2023b).

For purposes of assessing the impacts of this proposed rule on small entities, 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 SDWA for small water system flexibility provisions. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (FR) (63 FR 7620, USEPA, 1998b), sought public comment, consulted with the Small Business Administration (SBA), and finalized the small water system threshold in the Agency's Consumer Confidence Report regulation (63 FR 44524, USEPA, 1998c). As stated in the final Consumer Confidence Report rule (USEPA, 1998c), the alternative definition would apply to this proposed regulation.

EPA used Safe Drinking Water Information System (SDWIS)/Federal data from the fourth quarter 2020 to identify about 63,000 small public water systems that may be impacted by the proposed LCRI. A small public water system serves between 25 and 10,000 people. These water systems include over 45,000 CWSs that serve year-round residents and more than 17,000 NTNCWSs that serve the same persons at least six months per year (*e.g.,* a water system that is an office park or church). Of the total number of small systems serving 10,000 or fewer people, 22,529 CWSs and 435 NTNCWSs are estimated to have service lines with lead content or unknown/potential lead content service lines. The percent of small systems that are estimated to exceed the proposed lead action level (0.010 mg/L) ranges from 4.3 to 39.1 percent depending on the variation between projected low and high scenario lead tap sample 90th percentile values and the presence of LSL in systems.

In the LCRI, EPA is proposing regulatory revisions to strengthen public health protection and improve implementation in the following areas: service line replacement, tap sampling, service line inventories, corrosion control treatment, water quality parameter monitoring, public education, and consumer awareness.

The proposed LCRI includes requirements that can be categorized as follows: conducting a service line inventory that is updated annually; mandatory full service line replacement; enhanced lead tap and water quality parameter monitoring; installing or re-optimizing corrosion control treatment and redefining and updating the ''find-and-fix'' provision as ''distribution system and site assessment'' to evaluate and remediate elevated lead at a site where the tap sample exceeds the lead action level; utilizing pitcher filters and POU devices; improved customer outreach; and revisions to reporting and recordkeeping requirements. The regulatory requirement categories can also be thought of as the main cost categories affecting small systems. States are required to implement operator certification (and recertification) programs per SDWA section 1419 to ensure operators of CWSs and NTNCWSs, including small water system operators, have the appropriate level of certification.

Under the proposed rule requirements, small CWSs, serving 3,300 or fewer people, and all NTNCWSs with a 90th percentile lead value above the lead action level of 0.010 mg/L may choose alternative compliance options to CCT including point-of-use device installation and maintenance or removal of all lead bearing plumbing material from the system, but lead-bearing plumbing was not analyzed in EPA's cost-benefit model. EPA is estimating low and high cost scenarios to characterize uncertainty in the cost model results. These scenarios are functions of assigning different input values (low and high) to a number of variables that affect the relative cost of the small system compliance options. The number of systems serving 3,300 or fewer people that choose to install and maintain point-of-use devices under the proposed LCRI range from 3,757 to 6,639, serving between 420,715 and 845,023 people. The total monetized annualized cost for small systems under the low scenario ranges from $490 to $554 million discounted at three and seven percent, respectively. The low scenario also produces between $3.1 and $1.8 billion in small system total monetized benefits discounted at three and seven percent, respectively. Under the high scenario small system total monetized annualized costs are $666 million using a three percent discount rate and $757 million with a seven percent discount rate. High scenario small system total monetized annualized benefits discounted at three and seven percent range from $6.2 to $3.7 billion. See Chapter 7, section 7.4.5 for a breakdown of cost and benefit estimates by small system size sub-categories. Under the proposed LCRI, the number of small CWSs that will experience incremental annual costs of more than one percent of revenues ranges from 36,720 to 37,350 (81.4 percent to 82.8 percent of all small CWSs) and the number of small CWSs that will have annual incremental costs exceeding 3 percent of revenues ranges from 28,416 to 28,598 (63.0 percent to 63.4 percent of small CWSs). See Chapter 7, section 7.4 of the proposed LCRI Economic Analysis for more information on the characterization of the impacts under the proposed rule.

EPA has considered an alternative approach to provide regulatory flexibility to small water systems. The alternative would make small system flexibility available to all NTNCWSs and CWSs serving up to 10,000 people when a system has an action level exceedance. Systems that meet the criteria may choose from among the following compliance options: (1) optimizing existing CCT or installing new CCT; (2) installing and maintaining POU devices at all locations being served; or (3) removal of all lead bearing plumbing material from the system. Note that EPA's cost-benefit model does not include an analysis of the removal of lead-bearing plumbing. The total monetized annualized cost savings under the alternative small system compliance option when compared to the proposed LCRI ranges from $500,000 at a three percent discount rate to $400,000 using a seven percent discount rate. The alternative small system compliance option also results in a decrease in monetized annualized benefits ranging from $2.4 million at a three percent discount rate to $2 million at a seven percent discount rate. Note that SafeWater LCR model cost minimization calculations producing these results likely do not capture the impact of the feasibility concerns associated with implementing POU at systems serving over 3,300 people. See Exhibits 56 through 59 in section VIII.F.6. of this **Federal Register** document for a more detailed comparison of the costs and benefits of the proposed LCRI and this alternative small system flexibility compliance requirement. Also see Chapter 7, section 7.4 and Chapter 8, section 8.7 of the proposed LCRI economic analysis for additional information on the analysis of the alternative option.

As required by section 609(b) of the RFA, EPA also convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives (SERs) that potentially would be subject to the rule's requirements. On November 15, 2022, EPA's Small Business Advocacy Chairperson convened this Panel, which consisted of the Chairperson, the Director of the Standards and Risk Management Division within EPA's Office of Ground Water and Drinking Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration. Prior to convening the Panel, EPA conducted outreach with SERs that will potentially be affected by this regulation and solicited comments from them. Additionally, after the Panel was convened, the Panel provided information to the SERs and requested their input.

In light of the SERs' comments, the Panel considered the regulatory flexibility issues and elements of the IRFA specified by RFA/Small Business Regulatory Enforcement Fairness Act (SBREFA) and developed the findings and discussion summarized in the SBAR report. For example, SERs provided comment on barriers to the goal of achieving 100 percent replacement of LSLs and GRR service lines in the nation. Many comments centered around the need for Federal funding and national-level technical assistance for small systems. SERs noted the cost of LSLR as well as the challenges small systems may face with limited staff, small budgets with competing priorities, and limited resources and capacity. The Panel recognized the steps EPA has taken, and will continue to take, to ensure Federal funds are available to drinking water systems. However, the Panel also recognized that funding streams are not guaranteed to be available to all small systems, that some small systems may not pursue available funding opportunities, and that, in the absence of funding, these systems may have difficultly financing LSLR. The Panel recommended that, when developing the service line replacement requirements, EPA consider the barriers to achieving 100 percent LSL and GRR service line replacement that SERs identified that make this goal challenging. In addition, the Panel recommended that EPA clarify provisions around customer engagement and refusal for mandatory service line replacement, consider removing the lead trigger level, and evaluate available recent data and LSLR cost information to inform the economic analysis. The report includes a number of other observations and recommendations to meet the statutory obligations for achieving small-system compliance through flexible regulatory compliance options. The report was finalized on May 31, 2023, and transmitted to the EPA Administrator for consideration. A copy of the full SBAR Panel report is available in the rulemaking docket (USEPA, 2023m).

D. The Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate under the Unfunded Mandates Reform Act (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, EPA prepared a written statement required under section 202 of UMRA that is included in the docket for this action (see Chapter 7. section 7.5 of the proposed LCRI Economic Analysis (USEPA, 2023b))

and is briefly summarized here. EPA notes that the Federal Government is providing potential sources of funds to offset some of those direct compliance costs of the LCRI, including $15 billion as part of the Bipartisan Infrastructure Law. However, the proposed rule's costs still exceed $174 million for a given year even when considering currently available Federal funds.

Consistent with the intergovernmental consultation provisions of UMRA section 204, EPA consulted with governmental entities affected by this rule. EPA describes the government-to-government dialogue and comments from State, local, and Tribal governments in section X.E. Executive Order 13132: Federalism and section X.F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments of this document.

Consistent with UMRA section 205, EPA identified and analyzed a reasonable number of regulatory alternatives to determine the treatment technique requirements in the proposed LCRI. Sections III. and V. of this document describe the proposed options. See section VIII.F. of this document and Chapter 8 of the proposed LCRI Economic Analysis (USEPA, 2023b)) for alternative options that were considered.

This action may significantly or uniquely affect small governments. EPA consulted with small governments concerning regulatory requirements that might significantly or uniquely affect them. EPA describes this consultation in the Regulatory Flexibility Act (RFA), section X.C. of this document.

E. Executive Order 13132 (Federalism)

EPA concluded that this action has Federalism implications because it imposes substantial direct compliance costs on State or local governments, and the Federal Government will not provide the funds necessary to pay those costs. However, EPA notes that the Federal Government is providing a potential source of funds to offset some of those direct compliance costs through the Bipartisan Infrastructure Law. EPA estimates that the net change in Primacy Agency related costs for State, local, and Tribal governments in the aggregate is between $16.1 and $15.3 million (three percent discount rate) or $12.6 and $11.3 million (seven percent discount rate) (USEPA, 2023b).

EPA provides the following federalism summary impact statement. The EPA consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. In the process of developing the proposed LCRI, EPA consulted with State and local governments early to provide opportunities for meaningful and timely input. On October 13, 2022, EPA held a federalism consultation through a virtual meeting. EPA invited the following national organizations representing State and local officials to that meeting: the National Governor's 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 Council of State Governments, County Executives of America, and the Environmental Council of the States. EPA also 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 Association of State and Territorial Health Officials, the National Association of County and City Health Officials, the American Public Works Association, the Association of Clean Water Administrators, the Western States Water Council, the African American Mayors Association, the National Association of State Attorneys General, the Western Governors' Association, the National School Board Association, the American Association of School Administrators, and the Council of the Great City Schools to participate in the meeting. Representatives from 15 organizations participated in the meeting.

EPA also provided the members of the various associations an opportunity to provide input during follow-up meetings. EPA did not receive any requests for additional meetings.

In addition to input received during the meeting on October 13, 2022, EPA provided an opportunity to receive written input within 60 days after the date of that meeting. A summary report of the views expressed during the Federalism consultation meeting and written submissions is available in the Docket (EPA–HQ–OW–2022–0813).

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action has Tribal implications, it imposes substantial direct compliance costs on Tribal governments, and the Federal Government will not provide funds necessary to pay all of those direct compliance costs. There are 996 PWSs serving Tribal communities, where 87 of them are federally-owned (USEPA, 2023b). The Economic Analysis for the proposed LCRI estimated that the total annualized incremental costs placed on all systems serving Tribal communities ranges from $9.4 to $18.8 million (USEPA, 2023b). EPA notes that these estimated impacts will not fall evenly across all Tribal systems. The proposed LCRI small system flexibility provisions does offer regulatory relief by providing flexibilities for CWSs serving 3,300 or fewer people and all NTNCWSs that choose CCT, installation and maintenance of point-of-use devices, and replacement of lead-bearing materials to address lead in drinking water. This flexibility may result in LCRI implementation cost savings for many Tribal systems since 98 percent of Tribal CWSs serve 10,000 or fewer people and 17 percent of all Tribal systems are NTNCWSs (USEPA, 2023b). Lastly, EPA notes that the Federal Government is providing a potential source of funds to offset some of those direct compliance costs through the Bipartisan Infrastructure Law.

The EPA consulted with federally recognized Tribal officials early in the process of developing this action to permit them to have meaningful and timely input into its development. Between October 6, 2022 and December 9, 2022, EPA consulted with federally recognized Indian Tribes. The consultation included two national webinars with interested Tribes on October 27, 2022 and November 9, 2022, during which EPA provided an overview of proposed rulemaking information and requested input. A total of 11 Tribal representatives participated in the two webinars. A summary report of the views expressed during Tribal consultations is available in the Docket (EPA–HQ–OW–2022–0801).

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is subject to Executive Order 13045 (because it is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and the EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, EPA 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 treatment to reduce lead in drinking water including the adoption and optimization of CCT technologies and the replacement of LSLs and GRR service lines. The results of these evaluations are included in Chapter 7, section 7.8 of the proposed LCRI Economic Analysis (USEPA, 2023b) and described in section VIII. of this document. Copies of the Economic Analysis of the Proposed Lead and Copper Rule Improvements and supporting information are available in the Docket (EPA–HQ–OW–2022–0801).

H. 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 water systems affected by this action do not generally generate power. In addition, this action does not propose to regulate any aspect of energy distribution because the water systems that would be regulated by the proposed LCRI already use electrical service providers. Finally, EPA determined that the incremental energy used to implement CCT at drinking water systems and replace LSLs and GRR service lines in response to the proposed regulatory requirements is minimal. As such, EPA does not anticipate that this proposed rule would have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

This action involves technical standards. The proposed revisions under the LCRI may involve existing voluntary consensus standards because the proposed LCRI would require additional monitoring for lead and copper. EPA's monitoring and sampling methodologies generally include voluntary consensus standards developed by agencies, such as the American National Standards Institute (ANSI) and other similar types of entities wherever EPA deems these methodologies appropriate for compliance monitoring. The proposal includes requirements to use filters that are certified by an ANSI-accredited certifier. Additional information is available in section V.B.6 and V.I. of this preamble. The proposed LCRI does not, however, change any methodological requirements for monitoring or sample analysis. Additional information is available in section VI. of this preamble. EPA notes that in some cases, the proposed LCRI would revise the required frequency and number of lead tap samples.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations) and Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All)

EPA anticipates the proposed LCRI will not create disproportionate and adverse human health or environmental effects on communities with environmental justice concerns under Executive Order 14096 (88 FR 25251, April 21, 2023); see also Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this finding, including additional details on the methodology, results, and conclusions, are included in EPA's Environmental Justice Analysis for the Proposed Lead and Copper Rule Improvements Report and is available in the public docket for this action (EPA–HQ–OW–2022–0801).

Executive Order 12898 first established Federal executive policy on environmental justice. The main provision of Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make achieving environmental justice part of their mission. Executive Order 12898 states ''each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions''.

Executive Order 14096 directs the Federal Government to build upon and strengthen its commitment to deliver environmental justice to all communities across America through an approach that is informed by scientific research, high-quality data, and meaningful Federal engagement with communities with environmental justice concerns.

Consistent with the Agency's Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (USEPA, 2016d), EPA conducted an environmental justice analysis for the proposed LCRI to assess impacts anticipated to result from the proposed LCRI (USEPA, 2023f). The analysis builds on and advances the analysis conducted under the LCRR, which evaluated baseline exposure to lead in drinking water. The proposed LCRI's environmental justice analysis evaluated potential environmental justice concerns associated with lead in drinking water in the baseline and the proposed LCRI, including consideration of whether potential environmental justice concerns are created or mitigated by the proposed LCRI relative to the baseline. EPA compiled recent peer-reviewed research on the relationship between lead exposure and socioeconomic status and found that Black, Indigenous, and People of Color (BIPOC) and/or low-income populations are at higher risk of lead exposure and associated health risks. EPA also conducted an analysis of seven case study cities and found a range of outcomes with respect to the sociodemographic and housing unit variables in areas served by LSLs in the cities investigated. Because updated service line inventories were not available for the environmental justice analysis for LCRR, EPA used housing age as a proxy indicator for LSL presence in the environmental justice analysis for the proposed LCRI. In the environmental justice analysis, EPA identified some trends indicating disproportionate and adverse human health risk for exposure to lead in drinking water based on LSL presence in minority populations and low-income populations, and also that populations of children in minority households and/or low-income households are disproportionately at risk of exposure to lead in drinking water because they are more likely to live in housing built when LSLs were more commonly used.

For the proposed LCRI, updated inventories are similarly not widely available yet; however, some systems have published updated inventories online. In the environmental justice analysis for the proposed LCRI, EPA evaluated service line inventories from seven water systems to estimate baseline exposure to lead in drinking water using LSL presence as a proxy for lead exposure (USEPA, 2023k). EPA found a range of outcomes with respect to the sociodemographic and housing unit variables in areas served by LSLs in the cities investigated. While EPA found that block groups with LSLs often had higher percentages of low-income residents, renters, and People of Color (specifically, Black, Hispanic, or linguistically isolated individuals) compared to block groups without LSLs, there was little evidence that the number of LSLs per capita was positively correlated with block group demographic characteristics for these seven case studies. However, block

groups with the highest number of LSLs per capita (top quartile) had a notably larger percentage of Black residents than the service area as a whole for five case studies. Measures included to capture the possibility of other sources of lead—traffic density and pre-1960 housing—were also notably higher in block groups with LSLs compared to those without. The percent of housing built prior to 1960 was also positively correlated with the number of LSLs per capita for every case study and was also elevated in the top quartile compared to the service area as a whole. One of the analyses revealed that LSL prevalence was a stronger predictor of the prevalence of elevated blood lead levels compared with EPA's EJScreen 2017 Lead Paint EJ Index or the U.S. Department of Housing and Urban Development's Deteriorated Paint Index (Tornero-Velez et al., 2023).

Taken together, these findings support the concern that adverse health effects associated with lead exposure from LSLs may be inequitably distributed with respect to LSL presence. While the limited number of water systems included in the analysis do not permit conclusions to be made about environmental justice and LSL presence outside of the context of these individual systems, the analysis does point to several findings. The analysis demonstrated significant differences in socioeconomic and housing characteristics and the prevalence of LSLs across these systems. It also demonstrated the importance of considering the specific characteristics within the individual system context. Taken together, these findings support the concern that adverse health effects associated with lead exposure from LSLs may be inequitably distributed with respect to LSL presence.

Statistical analysis did not identify strong associations between LSLR and the characteristics of the Census block group in which they occurred (*e.g.,* socioeconomic and housing characteristics) in any of the case studies. This is because, in general, either no LSLs or relatively few LSLs have been removed in these cities, which affects EPA's ability to quantify a relationship. Conversely, in the case study of the water system in Newark, New Jersey, almost all LSLs were removed in a short period of time, similarly obscuring the relationship between removals and the socioeconomic and housing unit variables. Nevertheless, EPA recognizes the potential that even in a water system where there are no environmental justice concerns with respect to LSL presence, the sequence and timing in which LSLs and GRR service lines are replaced by a system's service line replacement program can potentially create a concern. Section V. of the preamble highlights the proposed LCRI provisions intended to facilitate water system planning to prevent or minimize environmental justice concerns from being created within the replacement program, as well as other requirements that can make full replacements and information more accessible to all customers. EPA expects that the equity provisions included in the proposal, such as service line replacement prioritization, would reduce baseline differential impacts associated with lead exposure from drinking water. In sections IV.G. and IV.H. of this document, EPA also highlights external funding available to support full service line replacement, as well as water systems' obligations under Federal Civil Rights law.

Additionally, on October 25, 2022, and November 1, 2022, EPA held public meetings related to environmental justice and the development of the proposed LCRI. The meetings provided an opportunity for EPA to share information and for individuals to offer input on environmental justice considerations related to the development of the proposed LCRI and how to more equitably address lead in drinking water issues in their communities.

During the meetings and in subsequent written comments, EPA received public comment on topics including disproportionate exposure to lead and its health effects among BIPOC and low-income communities; LSLR funding; methods to prioritize LSLR; access to LSLR for renters; filter distribution and use during LSLR; lowering the lead action level; establishing an MCL for lead; updating the lead health effects language required for public education, public notification, and the Consumer Confidence Report; ensuring that public education and public notification reaches communities that are most at risk; first and fifth liter lead tap sampling; remediating lead identified through sampling in schools and child care facilities; environmental justice concerns with corrosion control studies; community engagement; and regulatory enforcement and oversight. For more information on the public meetings, please refer to the *Public Meeting on Environmental Justice Considerations for the Development of the Proposed Lead and Copper Rule Improvements (LCRI) Meeting Summary* for each of the meeting dates in the public docket at *https://www.regulations.gov/docket/EPA-HQ-OW-2022-0801*. Written public comments can also be found in the docket.

K. Consultations With the Science Advisory Board (SAB) and the National Drinking Water Advisory Council (NDWAC)

In accordance With SDWA sections 1412(d) and 1412(e), EPA consulted with the National Drinking Water Advisory Council (NDWAC) (or the Council) and the EPA Science Advisory Board (SAB). The following summarizes these requirements and consultations.

1. SAB

SDWA section 1412(e) requires EPA request comments from the SAB prior to the proposal of any NPDWR. As required by SDWA section 1412(e), in 2022, EPA initiated consultation with the SAB to seek comments in advance of the publication of this document for the proposed LCRI. During this consultation, EPA sought from the SAB, an evaluation of service line inventory data at select case study locations to inform the most appropriate tools, indicators and measures, EPA could consider to best evaluate environmental justice with respect to the presence and replacement of LSLs. EPA also asked the SAB to evaluate the potential environmental justice impacts of the proposed LCRI in accordance with Executive Order 12898, which directs agencies to ''identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations'' (Exec. Order No. 12898, 1994).

On November 3, 2022, EPA held a consultation with the SAB regarding the Agency's draft case studies for the proposed LCRI environmental justice analysis. SAB members were asked to address the following questions:

(1.a.) Please comment on the tools/indicators/metrics, such as the recently released Environmental Justice Index (EJI) and Climate and Economic Justice Screening Tool (CEJST), that EPA should consider using when developing lead service line replacement case studies to support the development of the Lead and Copper Rule Improvements environmental justice analysis.

(1.b.) Given the identified tools and indices (*i.e.,* EJScreen, SVI, ADI) please comment on whether there is a sub-set of variables within the indices which should be given higher weights in the Lead and Copper Rule Improvements environmental justice assessment.

(2) Please comment on the indicator/measure that is most suitable for

studying the environmental justice impacts associated with lead service lines and their replacement.

(3) Please comment on whether any of the tools or indicators under consideration for use in the Lead and Copper Rule Improvements assessment of the drinking water environmental justice impacts can help to better assess lead impacts from other co-located exposure pathways (*e.g.,* lead paint, soil, and dust) to inform EPA's understanding of lead exposures from non-drinking water sources. Materials shared with the SAB are available in the docket EPA–HQ–OW–2022–0801.

In response, EPA received a range of recommendations from SAB members. The recommendations primarily focused on the tools and indicators EPA should use in its EJ study to support LCRI. SAB members recommended using indicators from multiple tools (*e.g.,* EJScreen, CDC's Environmental Justice Index (EJI), CDC/ATSDR Social Vulnerability Index, Area Deprivation Index (ADI) to more effectively identify communities that are disproportionately burdened by lead exposure and evaluate environmental justice impacts of LSLs and LSLR. One member suggested not using tools that use an index that is based on different indicators or composite tools (evaluating multiple indicators together) (*e.g.,* EJScreen, CDC's Environmental Justice Index, CDC/ATSDR Social Vulnerability Index, ADI). Instead, some members advised extracting and evaluating demographic and socioeconomic factors from these tools individually. SAB members recommended using individual socioeconomic variables from the 2020 U.S. Census in conjunction with the American Community Survey (ACS), CDC's Minority Health-Social Vulnerability Index (SVI), and the University of South Carolina's Social Vulnerability Index (SoVI). One member recommended relying more heavily on tools that have finer resolution and use geographic units at the Census block group level, such as EJScreen and ADI. In addition, SAB members recommended indicators for studying LSL and LSLR environmental justice impacts including minority populations, low-income population, population under age five, pre-1960 housing, pre-1980 housing, people with disabilities, single-parent households, occupied housing units without complete plumbing, proximity to lead mines, hazardous waste proximity, superfund proximity, and particulate matter (PM) 2.5. A few members recommended including indicators that address drinking water or infrastructure vulnerabilities.

Some members suggested that EPA focus on indicators most relevant to children, such as children under age five, maternal education, birth weight, and quality of home environment, because children are most sensitive to the effects of lead. One member suggested including a subset of indicators that are children-specific and comprise relevant subgroups of persons under five years and/or 18 years, such as children belonging to non-white racial/ethnic groups, children not born in the U.S., children with disabilities, and children at or below the poverty level. Some members pointed out that race/ethnicity indicators should be disaggregated to focus on only one race/ethnicity instead of an aggregate ''people of color'' indicator.

Some members suggested giving higher weights to indicators that address populations disproportionately vulnerable to lead exposure and its adverse health effects, such as population under 5 years old and low-income communities, because they are more likely to consume tap water. Additional indicators suggested for weighting were location based, including residential areas near legacy pollution sites.

Some SAB members suggested individual indicators from the following tools be used to consider lead from other pathways: EJScreen, SVI, ADI, and EJI. Some SAB members recommended using proximity to traffic and pre-1960s housing, as these could indicate compound lead exposure from pathways other than drinking water. For example, proximity to traffic could correspond to elevated lead in soil due to past emissions of leaded gasoline, while pre-1960s housing is more likely to have lead paint, contributing to lead in dust and soil).

As a result of the consultation, EPA incorporated the suggestions from the SAB in a study of the Environmental Justice implications of the LCRI (USEPA, 2023f). EPA evaluated correlations between per capita LSLs (in a Census block group) and different ethnic groups including American Indian or Alaska Native, Asian or Pacific Islander, other or two races, Hispanic, Non-Hispanic Black, and Non-Hispanic white. EPA also evaluated the relationship between the presence of LSL and indicators representing the populations most at risk of lead exposure such as low income and children under age five. Indicators addressing characteristics that are associated with exposure to other lead sources were also incorporated in the study including structures built prior to 1960 and proximity to traffic.

Additional information on SAB recommendations is included in the SAB report available in the docket EPA–HQ–OW–2022–0801.

2. NDWAC

SDWA section 1412(d) requires EPA to consult with NDWAC in proposing and promulgating any NPDWR. EPA met this requirement for the proposed LCRI. On November 30, 2022, EPA consulted with the NDWAC. At the November 30 consultation meeting, EPA provided background on lead in drinking water and the LCR, an overview of the LCRR published in January 2021, and a summary of the outcome of EPA's review of the LCRR published in the December 2021 **Federal Register**. EPA also discussed topics for the potential revisions in the proposed LCRI, including service line replacement, tap sampling and compliance, ways to reduce rule complexity, and small system flexibilities, to collect input and generate discussion among NDWAC members. A summary of the NDWAC consultation is available in the National Drinking Water Advisory Council, Fall 2022 Meeting Summary Report (NDWAC, 2022) and the docket for this proposed rule. EPA carefully considered NDWAC recommendations during the development of the proposed LCRI.

L. Consultation With the Department of Health and Human Services Under SDWA Section 1412(d)

On August 18, 2023, EPA consulted with the Department of Health and Human Services (HHS). EPA provided information to HHS officials on the draft proposed LCRI and considered HHS input as part of the interagency review process. (See section X.A. of this document for a discussion of Executive Order 12866: Regulatory Planning and Review).

XI. References

Abt Associates. (2023). *Selection of Concentration-Response Functions between Lead Exposure and Adverse Health Outcomes for Use in Benefits Analysis: Cardiovascular-Disease Related Mortality*. Prepared for National Center for Environmental Economics. Office of Policy. USEPA.

Abt Associates. (2022). *Development of Medical Cost Estimates for Adverse Birth Outcomes*. Prepared for: National Center for Environmental Economics. Office of Policy. USEPA.

Agency for Toxic Substances and Disease Registry (ATSDR). (2020). Toxicological Profile for Lead. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. August 2020. *https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf*.

Ala, A., Walker, A.P, Ashkan, K., Dooley, J.S., Schilsky, M.L., (2007). Wilson's disease. *The Lancet.* 369 (9559), 397–408. Doi: *https://doi.org/10.1016/S0140-6736(07)60196-2*.

American Water Works Association (AWWA). (2016, May 18). *Lead Service Line Replacement: Vital Tips from Leading Utility Managers* [Video]. YouTube. *https://www.youtube.com/watch?v=fwq4_yPjHMs*.

Aoki, Y., Brody, D.J., Flegal, K.M., Fakhouri, T.H., Axelrad, D.A., & Parker, J.D. (2016). Blood Lead and Other Metal Biomarkers as Risk Factors for Cardiovascular Disease Mortality. Medicine (Baltimore), 95(1), e2223. doi:10.1097/md.0000000000002223.

AWWA. (2020, November 18). *Green Bay celebrates last lead service line removal*. Retrieved July 24, 2023, from *https://www.awwa.org/AWWA-Articles/green-bay-celebrates-last-lead-service-line-removal*.

AWWA. (2022). Lead Communications Guide and Toolkit. *https://www.awwa.org/Portals/0/AWWA/Communications/2022LeadPageAssets/2022AWWA-LeadCommunications GuideAndToolkit.pdf*.

AwwaRF and DVGW-Technologiezentrum Wasser. 1996. Internal Corrosion of Water Distribution Systems. 2nd edition. AwwaRF Order 90508. Project #725. AWWA Research Foundation (now Water Research Foundation) and AWWA. Denver, CO.

Andrew, A., Zhou, J., Gui, J., Harrison, A., Shi, X., Li, M., Guetti, B., Nathan, R., Tischbein, M., Pioro, E., Stommel, E., and Bradley, W. (2022). Airborne lead and polychlorinated biphenyls (PCBs) are associated with amyotrophic lateral sclerosis (ALS) risk in the U.S. *Sci Total Environ,* 819: 153096. *https://dx.doi.org/10.1016/j.scitotenv.2022.153096*.

Barn, P., Nicol, A., Struck, S., Dosanjh, S., Li, R., and Kosatsky, T. (2014). Investigating elevated copper and lead levels in school drinking water. *Environmental Health Review,* 56(04): 96–102. *https://doi.org/10.5864/d2014-006*.

Berrien County Health Department (2023). *Water Lead Response in Benton Harbor*. Retrieved July 18, 2023, from *https://www.berriencounty.org/1599/City-of-Benton-Harbor*.

Betanzo, E., Rhyan, C., and Hanna-Attisha, M. (2021). Lessons from the first year of compliance sampling under Michigan's revised Lead and Copper Rule and national Lead and Copper Rule Implications. *AWWA Water Science,* 3(6): e1261. *https://doi.org/10.1002/aws2.1261t*.

BlueConduit. (2020). *Principles of Data Science for Lead Service Line Inventories and Replacement Programs. https://www.asdwa.org/wp-content/uploads/2020/09/ASDWA-BlueConduit-White-Paper-on-Data-and-LSL.pdf*.

Bosscher, V., Lytle, D.A., Schock, M., Porter, A., and Del Toral, M. (2019). POU water filters effectively reduce lead in drinking water: a demonstration field study in Flint, Michigan. *Journal of Environmental Science and Health, Part A,* 54(5): 484–493. *https://pubmed.ncbi.nlm.nih.gov/31074704/*.

Bradford, L.E.A., Idowu, B., Zagozewski, R., and Bharadwaj, L.A. (2017). There is no publicity like word of mouth . . . Lessons for communicating drinking water risks in the urban setting. *Sustainable Cities and Society,* 29: 23–40. *https://doi.org/10.1016/j.scs.2016.11.008*.

Brown, L., M. Lynch, A. Belova, R. Klein, and A. Chiger. 2020. Developing a Health Impact Model for Adult Lead Exposure and Cardiovascular Disease Mortality. *Environmental Health Perspectives,* 128(9):097005–1; *https://doi.org/10.1289/EHP6552*.

Brown, M., J., Raymond, J., Homa, D., Kennedy, C., and Sinks, T. (2011). Association between children's blood lead levels, lead service lines, and water disinfection, Washington, DC, 1998–2006. *Environmental Research,* 111(1): 67–74. *https://pubmed.ncbi.nlm.nih.gov/21112052/*.

Brown, R.A., and Cornwell, D.A. (2015). High-Velocity Household and Service Line Flushing Following LSL Replacement. *Journal AWWA,* 107(3): E140–E151. *https://doi.org/10.5942/jawwa.2015.107.0012*.

Budtz-Jørgensen, E., D. Bellinger, B. Lanphear, and P. Grandjean. 2013. An international pooled analysis for obtaining a benchmark dose for environmental lead exposure in children. Risk Analysis 33(3):450–461. doi:10.1111/j.1539–6924.2012.01882.x.

California Water Boards. (2023). Templates for Public Notification. Page last updated February 13, 2023. *https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Notices.html*.

Camara, E., Montreuil, K.R., Knowles, A.K, and Gagnon, G.A. (2013). Role of the water main in lead service line replacement: A utility case study. *Journal AWWA,* 105(8): E423–E431. *https://doi.org/10.5942/jawwa.2013.105.0102*.

Cardew, P.T. (2009). Measuring the benefit of orthophosphate treatment on lead in drinking water. *Journal of Water and Health,* 7(1): 123–131. *https://doi.org/10.2166/wh.2009.015*.

Cavender, K.A. (2013). Memorandum from Kevin A. Cavender to Ambient Monitoring Rule Docket (EPA–HQ–OAR–2013–0619)-Supporting information for reconsideration of existing requirements to monitor lead at Urban NCore Sites. *https://www.regulations.gov/document/EPA-HQ-OAR-2013-0619-0002*.

CDM Smith. (2022). Rolling Out a Successful Lead Service Line Replacement Program: Lessons Learned and Future Regulations. On-demand webinar. Recorded May 2022. Retrieved from *https://www.cdmsmith.com/en/Webinar/Rolling-Out-a-Successful-LSLR-Program-Lessons-Learned-and-Future-Regulations*.

Centers for Disease Control (CDC). (2022a). Health Effects of Lead Exposure. Retrieved July 19, 2023 from *https://www.cdc.gov/nceh/lead/prevention/health-effects.htm*.

CDC. (2022b). Breastfeeding and Special Circumstances: Environmental and Chemical Exposures: Lead. Last reviewed May 18, 2022. Retrieved from *https://www.cdc.gov/breastfeeding/breastfeeding-special-circumstances/environmental-exposures/lead.html*.

CDC. (2022c). CDC updates blood lead reference value to 3.5 μg/dL. Last reviewed December 16, 2022. Retrieved from *https://www.cdc.gov/nceh/lead/news/cdc-updates-blood-lead-reference-value.html*.

CDC. (2023). Lead in Drinking Water. Last reviewed February 28, 2023. Retrieved from *https://www.cdc.gov/nceh/lead/prevention/sources/water.htm*.

Chislock, M.F., E. Doster, R.A. Zitomer, and A.E. Wilson. 2013. Eutrophication: Causes, consequences, and controls in aquatic ecosystems. *Nature Education Knowledge* 4(4):10.

City of Appleton. (2022). An Ordinance Creating section 20–44 of Chapter 20 of the Municipal Code of the City of Appleton, Relating to Lead and Galvanized Water Service Line Replacement, Municipal Code section 20–44 of Chapter 20 CFR Wisconsin. Retrieved from *https://www.appleton.org/home/showpublisheddocument/24584/637873462362500000*.

City of Dearborn. (2019). Consumer Annual Report on Water Quality. *https://cityofdearborn.org/documents/city-departments/public-works/water-and-sewerage/118-consumer-confidence-report/file*.

City of Denver. (2023). Using Filters. Retrieved July 18, 2023 from *https://www.denverwater.org/your-water/water-quality/lead/filter-program*.

City of Detroit (2023, May 12). *Detroit to replace 5,000 lead service lines this year, ramping up to 10,000 per year starting in 2024*. Water and Sewerage Department. Retrieved July 17, 2023, from *https://detroitmi.gov/news/detroit-replace-5000-lead-service-lines-year-ramping-10000-year-starting-2024*.

City of Elgin. (2022). Lead Service Line Inventory Map. Retrieved July 31, 2023, from *https://www.cityofelgin.org/CivicAlerts.aspx?AID=2482*.

City of Elgin. (2023). Lead Testing and Filter Distribution. Retrieved July 18, 2023, from *https://www.cityofelgin.org/2347/Lead-Testing*.

City of Flint. (n.d.). *Progress Report on Flint Water*. Michigan. Retrieved July 25, 2023, from *https://www.cityofflint.com/progress-report-on-flint-water/*.

City of Kalamazoo. (2023). Request Free Water Filters. Retrieved July 18, 2023 from *https://www.kalamazoocity.org/Residents/Water-Sewer-Service/Request-Free-Water-Filters*.

City of Milwaukee. (2023). *Chapter 225-Plumbing and Drainage*. Milwaukee Code of Ordinances. Retrieved July 25, 2023, from *https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-2/CH225.pdf*.

City of Newark. (n.d.a). *Lead Service Line Replacement Program*. New Jersey. NewarkLeadServiceLine.com Retrieved July 25, 2023, from *https://www.newarkleadserviceline.com/replacement*.

City of Newark. (n.d.b) Water Filter and Replacement Cartridge Distribution Program. New Jersey. Retrieved July 18, 2023 from *https://www.newarkleadserviceline.com/filters*.

City of Newark. (2019). Mandatory Replacement of Lead Service Line. Title XVI Health, Sanitation and Air Pollution. Chapter 16:23. Ordinance 6PSF–M, 9–18–2019. New Jersey. Retrieved from *https://ecode360.com/36709572*.

City of Pittsburgh. (n.d.) The Pittsburgh Safe Water Program. Retrieved July 18, 2023 from *https://pittsburghpa.gov/safepgh2o/*.

City of Spokane. (2018, July 27). *City Eliminates Remaining Lead Service Lines*. News Release. Retrieved July 25, 2023 from: *https://my.spokanecity.org/news/releases/2018/07/27/city-eliminates-remaining-lead-service-lines/*.

City of Stoughton Utilities Committee. (2022, Aug. 15). *Official Notice and Agenda*. Meeting Agendas. Retrieved July 25, 2023, from *https://www.stoughtonutilities.com/documents/ucpackets/2022-08-15-uc-packet_r.pdf*.

City of Tucson. (2022, Aug. 9). Lead and Copper. Water Department. Retrieved July 25, 2023, from *https://www.tucsonaz.gov/Departments/Water/About-Your-Water-Quality/Water-Quality-Monitoring/Lead-and-Copper*.

Clark, B., Cartier, C., St. Clair, J., Triantafyllidou, S., Prevost, M., and Edwards, M. (2013). Effect of connection type on galvanic corrosion between lead and copper pipes. *Journal AWWA,* 105(10): E576–E586. *https://doi.org/10.5942/jawwa.2013.105.0113*.

Clark, B., Masters, S.V., and Edwards, M. (2014). Profile Sampling To Characterize Particulate Lead Risks in Potable Water. *Environmental Science & Technology, 48*(12): 6836–6843. *https://pubs.acs.org/doi/10.1021/es501342j*.

Council on Environmental Quality (CEQ). (2022). Climate and Economic Justice Screening Tool. Available online *https://screeningtool.geoplatform.gov/*.

Cowles et al. (2017). *2017 Senate Bill 48*. Wisconsin State Legislature. Retrieved July 25, 2023, from *https://docs.legis.wisconsin.gov/2017/proposals/sb48*.

Crump, K.S., C. Van Landingham, T.S. Bowers, D. Cahoy, and J.K. Chandalia. 2013. A statistical reevaluation of the data used in the Lanphear et al. (2005) pooled-analysis that related low levels of blood lead to intellectual deficits in children. Critical Reviews in Toxicology 43(9):785–799. Doi:10.3109/10408444.2013.832726.

DC Water (n.d.). DC Water Service Information. Retrieved July 31, 2023, from *https://geo.dcwater.com/Lead/*.

Del Toral, M.A., Porter, A., and Schock, M. R. (2013). Detection and Evaluation of Elevated Lead Release from Service Lines: A Field Study. *Environmental Science & Technology,* 47(16): 9300–9307. *https://doi.org/10.1021/es4003636*.

Denver Water (2023a). *Using Filters*. Lead Reduction Program. Retrieved July 18, 2023, from *https://www.denverwater.org/your-water/water-quality/lead/filter-program*.

Denver Water (2023b). *Annual Report-2022*. Denver Water Lead Reduction Program. Version 1.0: February 10, 2023. Retrieved July 25, 2023, from: *https://www.denverwater.org/sites/default/files/lead-reduction-program-annual-report-2022.pdf*.

Department of the Treasury (n.d.). American Rescue Plan: State and Local Fiscal Recovery Funds: Project Highlights. *https://home.treasury.gov/system/files/136/American-Rescue-Plan-Anniversary-SLFRF-Examples.pdf*.

DeSantis, M., Triantafyllidou, S., Schock, M., and Lytle, D. (2018). Mineralogical Evidence of Galvanic Corrosion in Drinking Water Lead Pipe Joints. *Environmental Science & Technology,* 52(6): 3365–3374. *https://doi.org/10.1021/acs.est.7b06010*.

Deshommes, E., Laroche, L., Nour, S., Cartier, C., and Prevost, M (2010). Source of occurrence of particulate lead in tap water. *Water Research,* 44(12): 3734–3744. *https://doi.org/10.1016/j.watres.2010.04.019*.

Deshommes, E., Bannier, A., Laroche, L., Nour, S., and Prevost, M. (2016). Monitoring-Based Framework to Detect and Manage Lead Water Service Lines. *Journal AWWA,* 108(11): E555–E570. *https://doi.org/10.5942/jawwa.2016.108.0167*.

Deshommes, E., Trueman, B., Douglas, I., Laroche, L., Swertfeger, J., Spielmacher, A., Gagnon, G.A., Prevost, M. (2018). Lead Levels at the Tap and Consumer Exposure form Legacy and Recent Lead Service Line Replacements in Six Utilities. *Environmental Science and Technology*. 52, 16, 9451–9459. Retrieved from: *https://pubs.acs.org/doi/10.1021/acs.est.8b02388*.

Diebler, K., and Basu, P. (2013). Continuing issues with *Lead: Recent Advances in Detection. European Journal of Inorganic Chemistry,* 2013(7): 1086–1096. DOI: 10.1002/ejic.201200997.

Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. freshwaters: Analysis of potential economic damages. *Environmental Science Technology* 43(1):12–19.

Doré, E., Deshommes, E., Andrews, R.C. Nour, S., and Prévost, M. (2018) Sampling in schools and large institutional buildings: Implications for regulations, exposure and management of lead and copper, *Water Research,* 140: 110–122. DOI: 10.1016/j.watres.2018.04.045.

Dorsey, A., and Ingerman, L. (2004). Toxicological Profile for Copper. Agency for Toxic Substances and Disease Registry. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. *https://stacks.cdc.gov/view/cdc/7006/cdc_7006_DS1.pdf*.

Doshi, J.A., Hodgkins, P., Kahle, J., Sikirica, V., Cangelosi, M. J., Setyawan, J., & Neumann, P. J. (2012). Economic impact of childhood and adult attention-deficit/hyperactivity disorder in the United States. Journal of the American Academy of Child & Adolescent Psychiatry, 51(10), 990–1002.

Drink Philly Tap (n.d.) *Ambassador Program Guidebook*. Retrieved July 25, 2023, from *https://drinkphillytap.org/wp-content/uploads/DrinkPhillyTap-Guidebook.pdf*.

Environmental Defense Fund (EDF). (n.d.a). *State efforts to support LSL replacement*. Retrieved July 17, 2023, from *https://www.edf.org/health/state-efforts-support-lsl-replacement*.

EDF. (n.d.b). *Recognizing efforts to replace lead service lines*. Retrieved July 24, 2023, from *https://www.edf.org/health/recognizing-efforts-replace-lead-service-lines*.

Elfland, C., Scardina, P., and Edwards, M. (2010). Lead-contaminated water from brass plumbing devices in new buildings. *Journal AWWA,* 102(11): 66–76. *https://doi.org/10.1002/j.1551-8833.2010.tb11340.x*.

Executive Order 12866. 1993. Regulatory Planning and Review. **Federal Register** 58(190):51735, October 4, 1993. Available at *https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf*.

Executive Order 12898. 1994. Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. **Federal Register** 59(32): 7629, February 16, 1994. Available at *https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf*.

Executive Order 13045. 1997. Protection of Children From Environmental Health Risks and Safety Risks. **Federal Register** 62(78):19885, April 23, 1997. Available at *https://www.govinfo.gov/content/pkg/FR-1997-04-23/pdf/97-10695.pdf*.

Executive Order 13132. 1999. Federalism. **Federal Register** 64(153):43255, August 10, 1999. Available at *https://www.gpo.gov/fdsys/pkg/FR-1999-08-10/pdf/99-20729.pdf*.

Executive Order 13175. 2000. Consultation and Coordination with Indian Tribal Governments. **Federal Register** 65(218):67249, November 9, 2000. Available at *https://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf*.

Executive Order 13211. 2001. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. **Federal Register** 66(99):28355, May 22, 2001. Available at *https://www.govinfo.gov/content/pkg/FR-2001-05-22/pdf/01-13116.pdf*.

Executive Order 13563. 2011. Improving Regulation and Regulatory Review. **Federal Register** 76(14):3821, January 21, 2011. Available at *https://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf*.

Executive Order 13990. Executive Order on Protecting Public Health and the

Environment and Restoring Science to Tackle the Climate Crisis. January 20, 2021. *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/*.

Executive Order 14096. 2023. Revitalizing Our Nation's Commitment to Environmental Justice for All. **Federal Register** 88(80): 25251, April 26, 2023. Available at *https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all*.

Florida Department of State. (2010). *Rule: 25–30.140*. Florida Administrative Code & Administrative Register. Retrieved July 24, 2023, from *https://www.flrules.org/gateway/ruleNo.asp?id=25-30.140*.

Folkman, S. (2018). *Water Main Break Rates in the USA and Canada: A Comprehensive Study*. Utah State University-Buried Structures Laboratory. Retrieved July 25, 2023, from: *https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1173&context=mae_facpub&source=post_page*.

Froehlich, T.E., Lanphear, B.P., Auinger, P., Hornungh, R., Eppstein, J.N., Braun, J., Kahn, R.S. (2009). Association of Tobacco and Lead Exposures with Attention Deficit/Hyperactivity Disorder. *Pediatrics*. 124(6):e1054–1063. Doi: *https://doi.org/10.1542/peds.2009-0738*.

Glibert, P.M., D.M. Anderson, P. Gentien, E. Graneli, and K.G. Sellner. 2005. The global, complex phenomena of harmful algal blooms. *Oceanography* 18(2):136–147.

Goho, S.A., Saenz, M., and Neltner, T. (2019). *Rates could fund lead pipe replacement in critical states: Laws in states with the most lead service lines support the practice*. Retrieved from *http://clinics.law.harvard.edu/environment/files/2019/04/Rates-Fund-LSL-Replacement-States_Harvard_EDF_2019.pdf*.

Grand Forks, North Dakota (n.d.). Lead Service Line Public Viewer. Retrieved July 31, 2023 from *https://gfgis.maps.arcgis.com/apps/webappviewer/index.html?id=d4ba2372dd6340c099c2898380bcbb45*.

Greater Cincinnati Water Works (n.d.). Service Line Information. Retrieved July 31, 2023 from *https://gcww.maps.arcgis.com/apps/webappviewer/index.html?id=0a170c268c694e46a8a4e394630df0bd*.

Griffin, S. & Dunwoody, R.J. (2000). The Relation of Communication to Risk Judgment and Preventive Behavior Related to Lead in Tap Water. *Health Communication,* 12(1): 81–107. DOI:10.1207/S15327027HC1201_05.

Harari, F., Sallsten, G., Christensson, A., Petkovic, M., Hedblad, B., Forsgard, N., Melander, O., Nilsson, P.M., Borné, Y., Engström, G., and Barregard, L. (2018). Blood Lead Levels and Decreased Kidney Function in a Population-Based Cohort. *Am J Kidney Dis,* 72: 381–389. *http://dx.doi.org/10.1053/j.ajkd.2018.02.358*.

Hayes, C.R., Incledion, S., and Balch, M. (2008). Experience in Wales (UK) of the optimisation of ortho-phosphate dosing for controlling lead in drinking water. *Journal of Water and Health,* 6(2): 177–185. DOI: 10.2166/wh.2008.044.

Hayes, C.R. and Hydes, O.D. (2012). UK experience in the monitoring and control of lead in drinking water. *Journal of Water and Health,* 10(3): 337–348. DOI: 10.2166/wh.2012.210.

Illinois Environmental Protection Agency (IEPA). (n.d.). Lead Informational Notice. Accessed July 17, 2023, from *https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/drinking-water/public-water-users/documents/lead-service-line-replacement-advisory-board/lead-informational-notice.pdf*.

IEPA. Illinois EPA Announces Nearly $4 Million in Loan Forgiveness to the City of Batavia to Replace Lead Service Lines. *Illinois.gov* Press Releases. *https://www.illinois.gov/news/press-release.26057.html*.

Illinois General Assembly. (2021). HB3739 Lead Service Line Replacement. 102nd General Assembly. Retrieved July 31, 2023, from *https://ilga.gov/legislation/BillStatus.asp?DocNum=3739&GAID=16&DocTypeID=HB&LegID=132788&SessionID=110&SpecSess=&Session=&GA=102*.

Indiana Senate Republicans (2017, July 12). *Charbonneau: Gov Holcomb Signs Water Infrastructure Legislation.* News Releases. Retrieved July 28, 2023, from *https://www.indianasenate republicans.com/charbonneau-gov-holcomb-signs-water-infrastructure-legislation*.

Jennings, B. and Duncan, L.L. (2017). Water Safety and Lead Regulation: Physicians' Community Health Responsibilities. *AMA J Ethics,* 19(10): 1027–1035. DOI: 10.1001/journalofethics.2017.19.10.pfor1–1710.

Jersey Water Works. (2020). *Wells of Opportunity: Training Residents and Prioritizing Local Hiring for Water Infrastructure Projects in Newark.* Retrieved July 25, 2023, from *https://www.jerseywaterworks.org/resources/wells-of-opportunity-training-residents-and-prioritizing-local-hiring-for-water-infrastructure-projects-in-newark/*.

Ji, Y., Hong, X., Wang, G., Chatterjee, N., Riley, A.W., Lee, L.C., Surkan, P.J., Bartell, T.R., Zuckerman, B., and Wang, X. (2018). A prospective birth cohort study on early childhood lead levels and attention deficit hyperactivity disorder: New insight on sex differences. *J Pediatr,* 199: 124–131.e128. *http://dx.doi.org/10.1016/j.jpeds.2018.03.076*.

Kahn, H.D. and K. Stralka. 2009. Estimated daily average per capita water ingestion by child and adult age categories based on USDA's 1994–1996 and 1998 continuing survey of food intakes by individuals. Journal of Exposure Science & Environmental Epidemiology 19(4):396–404.

Kimbrough, D.E. (2007). Brass corrosion as a source of lead and copper in traditional and all-plastic distribution systems. *Journal AWWA,* 99(8): 70–76. *https://doi.org/10.1002/j.1551-8833.2007.tb08008.x*.

Krueger, W.S. and Wade, T.J. (2016). Elevated blood lead and cadmium levels associated with chronic infections among non-smokers in a cross-sectional analysis of NHANES data. *Environ Health,* 15: 16. *http://dx.doi.org/10.1186/s12940-016-0113-4*.

Lanphear, B.P., Rauch, S., Auinger, P., Allen, R.W., & Hornung, R.W. (2018). Low-level lead exposure and mortality in US adults: a population-based cohort study. Lancet Public Health, 3(4), e177–e184. doi:10.1016/s2468–2667(18)30025–2.

Lanphear, B.P., Hornung, R., Khoury, J., Yolton, K., Baghurst, P., Bellinger, DC, Canfield, R.L., Dietrich, K.N., Bornschein, R., Greene, T., Rothenberg, S.J., Needleman, H.L., Schnaas, L., Wasserman, G., Graziano, J., and Roberts, R. (2019). Erratum: ''Low-level environmental lead exposure and children's intellectual function: An international pooled analysis'' [Erratum]. *Environ Health Perspect,* 127(9): 099001. *http://dx.doi.org/10.1289/EHP5685*.

Lee, S., Min, J.Y., and Min, K.B. (2020). Female infertility associated with blood lead and cadmium levels. *Int J Environ Res Public Health,* 17(5): 1794. *https://dx.doi.org/10.3390/ijerph17051794*.

Levin, R., and J. Schwartz. 2023. A better cost:benefit analysis yields better and fairer results: EPA's lead and copper rule revision. *Environmental Research*. 229:115738; *https://doi.org/10.1016/j.envres.2023.115738*.

Lin, D., R. Lutter, and C.J. Ruhm. 2018. Cognitive performance and labour market outcomes. Labour Economics 51:121–135.

LSLR Collaborative. (n.d.a). *Requiring LSL Replacement When Opportunities Arise.* Retrieved July 17, 2023, from *https://www.lslr-collaborative.org/requiring-lsl-replacement.html*.

LSLR Collaborative (n.d.b). *Case Example from Washington State Department of Health's Office of Drinking Water.* How State Agencies Can Support LSL Replacement. Retrieved July 17, 2023, from *https://www.lslr-collaborative.org/uploads/9/2/0/2/92028126/how_state_agencies_can_support_lsl_replacement_case_example_washington_state—approved_formatted.pdf*.

LSLR Collaborative. (n.d.c). *About the Lead Service Line Replacement Collaborative.* Retrieved July 26, 2023 from *https://www.lslr-collaborative.org/about-us.html*.

LSLR Collaborative. (n.d.d). *Roadmap. Effectiveness of Anticipated Communication Options.* Retrieved July 17, 2023 from *https://www.lslr-collaborative.org/effectiveness-of-anticipated-communications-options.html*.

LSLR Collaborative. (n.d.e). *Roles for Community Groups in LSL Replacement Efforts: Case Example from Clean Water*

Fund in Chelsea, Massachusetts. Retrieved July 26, 2023, from *https://www.lslr-collaborative.org/uploads/9/2/0/2/92028126/community_groups_role_in_supporting_lsl_replacement_v2_-_formatted.pdf.*

LSLR Collaborative. (n.d.f). *Legal Factors.* Retrieved July 24, 2023, from *https://www.lslr-collaborative.org/legal-factors.html.*

LSLR Collaborative. (n.d.g.) Getting Started on an LSL Inventory. Retrieved November 11, 2023, from *https://www.lslr-collaborative.org/preparing-an-inventory.html.*

Lytle, D.A., Schock, M.R., Wait, K., Cahalan, K., Bosscher, V., Porter, A., and Del Toral, M. (2019). Sequential Drinking Water Sampling as a Tool for Evaluating Lead in Flint, Michigan. *Water Research,* 15(157): 40–54. DOI: 10.1016/j.watres.2019.03.042.

Madison Water Utility. (2014, November 7). *EPA seeks details of Madison's Lead Service Replacement Program. https://www.cityofmadison.com/water/blog/2014-11-07/epa-seeks-details-of-madisons-lead-service-replacement-program.*

Massachusetts Water Resources Authority (MWRA). (2020). Drinking Water Test Results. *https://www.bwsc.org/sites/default/files/2021-06/Water%20Quality%20Report%202020.pdf.*

MWRA. (2023, June 16). *Lead Service Line Replacement Loan Program or Lead Loan Program (LLP), an Enhancement to the Local Water System Assistance Program (LWSAP) for Member Communities.* MWRA Online. Retrieved July 17, 2023, from *https://www.mwra.com/comsupport/llp/llpprogram.html.*

Masters, S.V., Parks, J., Atassi, A., and Edwards, M.A. (2016). Inherent variability in lead and copper collected during standardized sampling. *Environmental Monitoring and Assessment,* 188(3): 177. DOI: 10.1007/s10661–016–5182–x.

Masters, S.V., Bradley, T.C., Burlingame, G.A., Seidel, C.J., Schmelling, M., and Bartrand, T.A. (2021). What Can Utilities Expect from New Lead Fifth-Liter Sampling Based on Historic First-Draw Data? *Environmental Science & Technology, 55*(17): 11491–11500. DOI: 10.1021/acs.est.1c00421.

McFadden, M., Giani, R., Kwan, P., and Reiber, S.H. (2011). Contributions to drinking water lead from galvanized iron corrosion scales. *Journal AWWA,* 103(4): 76–89. *https://doi.org/10.1002/j.1551-8833.2011.tb11437.x.*

MDB Incorporated. 2019. ''Selection of Concentration-Response Functions between Lead Exposure and Adverse Health Outcomes for Use in Benefits Analysis: Cardiovascular-Disease Related Mortality'' Peer Review Combined Documents. *https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NCEE&dirEntryId=342855.*

Memphis Light, Gas, and Water (n.d.). MLGW Water Services. Retrieved July 31, 2023 from *https://www.mlgw.com/leadservicedatabase.*

Michigan Administrative Rules. (2020). *R 325.10101 Supplying Water to the Public.* Michigan Administrative Code for Environment, Great Lakes and Energy-Drinking Water and Environmental Health Division. Retrieved July 25, 2023 from: *https://ars.apps.lara.state.mi.us/AdminCode/DeptBureauAdminCode?Department=Environment%2C%20Great%20Lakes%20and%20Energy&Bureau=Drinking%20Water%20and%20Environmental%20Health%20Division.*

Michigan Administrative Rules. (2023). *R 325.11604*—Contents of general plans for all applicable systems. Michigan Administrative Code for Environment, Great Lakes and Energy-Drinking Water and Environmental Health Division. Retrieved July 31, 2023 from *https://casetext.com/regulation/michigan-administrative-code/department-environmental-quality/drinking-water-and-municipal-assistance-division/supplying-water-to-the-public/part-16-general-plans/section-r-32511604-contents-of-general-plans-for-all-applicable-systems.*

Milwaukee Water Works (2023). Lead Service Line Records. Retrieved July 31, 2023 from *https://city.milwaukee.gov/water/WaterQuality/LeadandWater/Lead-Service-Line-Records.*

Mishrra, A., Johnson, E., and Giammar, D.E. (2021). Estimating Lead Concentrations in Drinking Water after Stagnation in Lead Service Lines Using Water Quality Data from across the United States. *Environmental Science & Technology Letters,* 8(10): 878–883. *https://doi.org/10.1021/acs.estlett.1c00580.*

Mushak, P. 1991. Gastro-intestinal absorption of lead in children and adults: Overview of biological and biophysico-chemical aspects. Chemical Speciation and Bioavailability 3(3–4):87–104.

National Drinking Water Advisory Council (NDWAC) Lead and Copper Working Group. (2015). Report of the Lead and Copper Working Group to the National Drinking Water Advisory Council—Final. Retrieved from: *https://www.epa.gov/sites/default/files/2016-01/documents/ndwaclcrwgfinalreportaug2015.pdf.*

NDWAC. (2022). National Drinking Water Advisory Council Meeting Summary, November 30, 2022. Retrieved from: *https://www.epa.gov/ndwac/national-drinking-water-advisory-council-meeting-summary-november-30-2022-0.*

The National Environmental Laboratory Accreditation Conference (NELAC) Institute. (2021, October 1). *Fields of Proficiency Testing.* Retrieved July 25, 2023, from *https://www.nelac-institute.org/content/NEPTP/fopt.php.*

National Research Council (NRC). 2000. Copper in Drinking Water. Washington, DC: The National Academies Press.

National Sanitation Foundation (2023, August 21). NSF/ANSI/CAN 61 Drinking Water System Components—Health Effects. NSF Product and Service Listings. Retrieved August 21, 2023, from *https://info.nsf.org/Certified/PwsComponents/Listings.asp?TradeName=&StandardExt=&MaterialType=GALV&ProductType=&PlantState=&PlantCountry=&PlantRegion=&Standard=061.*

National Toxicology Program (NTP). (2012). NTP Monograph on Health Effects of Low-Level Lead. U.S. Department of Health and Human Services. Office of Health Assessment and Translation. Division of the National Toxicology Program. Durham, NC. *https://ntp.niehs.nih.gov/sites/default/files/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf.*

New York State Department of Health (NYDOH). (2019). Governor Cuomo Announces $10 Million Awarded to Communities for Second Round of Replacement of Residential Drinking Water Lead Service Lines. *https://www.health.ny.gov/press/releases/2019/2019-07-26_millions_awarded_to_communities_for_round_two_replacement_residential_water.htm.*

Office of Management and Budget (OMB). (2003). Circular A–4. Obama White House Archives. *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

Ozkaynak, H., G. Glen, J. Cohen, H. Hubbard, K. Thomas, L. Phillips, and N. Tulve. 2022. Model based prediction of age-specific soil and dust ingestion rates for children. *Journal of Exposure Science & Environmental Epidemiology* 32:472–480; *https://doi.org/10.1038/s41370-021-00406-5.*

Park, Y., and Han, J. (2021). Blood lead levels and cardiovascular disease risk: Results from the Korean National Health and Nutrition Examination Survey. *Int J Environ Res Public Health,* 18: 10315. DOI: 10.3390/ijerph181910315.

Pennsylvania Department of Environmental Protection (2023). Sufficient Evidence for Non-Lead Designation Training Job Aid. Retrieved July 31, 2023, from *https://files.dep.state.pa.us/Water/BSDW/DrinkingWaterManagement/Regulations/Sufficient-Evidence-Job.pdf.*

Pennsylvania General Assembly (2017, Oct. 30). *2017 Act 44-Fiscal Code-Omnibus Amendments.* Unconsolidated Statutes. Retrieved July 28, 2023, from *https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2017&sessInd=0&act=44.*

Pennsylvania General Assembly (2018, Oct. 24). *2018 Act 120-Public Utilities-Valuation and Return on the Property of Public Utility.* Unconsolidated Statutes. Retrieved July 28, 2023, from *https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=120.*

Pieper, K.J., Tang, M., Edwards, M.A. (2017). Flint Water Crisis Caused by Interrupted Corrosion Control: Investigating ''Ground Zero'' Home. *Environmental Science and Technology.* 51, 4, 2007–2014. *https://doi.org/10.1021/acs.est.6b04034.*

Pittsburgh Water and Sewer Authority (PGH2O). (n.d.). *Understanding Lead*

and Water. Community Lead Response. Retrieved July 26, 2023, from *https://lead.pgh2o.com/understanding-lead-and-water/#1531755857859-59f8664c-b91f.*

PGH2O, (2023). *Priority Lead Line Replacement.* Retrieved July 26, 2023, from *https://www.pgh2o.com/projects-maintenance/search-all-projects/priority-lead-line-replacement.*

Pliszka, S. AACAP Work Group on Quality Issues. Practice parameter for the assessment and treatment of children and adolescents with attention-deficit/hyperactivity disorder. *J Am Acad Child Adolesc Psychiatry.* 2007 Jul;46(7):894–921.

Proctor, C.R., Rhoads, W.J., Keane, T., Salehi, M., Hamilton, K., Pieper, K.J., Cwiertny, D.M., Prevost, M., and Whelton, A.J. (2020). Considerations for large building water quality after extended stagnation. *Journal AWWA,* 2(4): 1186. *https://doi.org/10.1002/aws2.1186.*

Rockey, N.C., Shen, Y., Haig, S.J., Wax, M., Yonts, J., Wigginton, K.R., Raskin, L., and Olson, T.M. (2021). Impact of service line replacement on lead, cadmium, and other drinking water quality parameters in Flint, Michigan. *Environmental Science: Water Research & Technology, 7*(4): 797–808. *https://doi.org/10.1039/D0EW00975J.*

The Rockefeller Foundation. (n.d.). *Lead-free water for all: Making the case for rapid lead pipe removal across the U.S.* Six steps to scaling up equitable lead pipe replacement. Retrieved July 25, 2023, from *https://www.rockefellerfoundation.org/wp-content/uploads/2021/10/Lead-Free-Water-for-All-Making-the-Case-for-Rapid-Lead-Pipe-Removal-Across-the-U.S..pdf.*

Roy, S., and Edwards, M.A. (2019). Preventing another lead (Pb) in drinking water crisis: Lessons from the Washington, DC and Flint MI contamination events. *Current Opinion in Environmental Science & Health,* 7: 34–44. *https://doi.org/10.1016/j.coesh.2018.10.002.*

Roy, S. and Edwards, M.A. (2020). Efficacy of corrosion control and pipe replacement in reducing citywide lead exposure during the Flint, MI water system recovery. *Environmental Science: Water Research & Technology,* 2020(6): 3024–3031. DOI: 10.1039/d0ew00583e.

Ruiz, M.T. (2019, Sept. 10). *Senate Bill 4110—Allows municipalities to adopt ordinance to enter properties to perform lead service line replacements.* New Jersey 218th Legislature. Retrieved July 28, 2023, from *https://legiscan.com/NJ/text/S4110/2018.*

Salkever, D.S. 1995. Updated estimates of earnings benefits from reduced exposure of children to environmental lead. Environmental Research 70:1–6. doi:0013–9351/95.

Sandvig, A., Kwan, P., Kirmeyer, G., Maynard, B., Mast, D., Trussell, R.R., Trussel, S., Cantor, A., and Prescott, A. (2008). Contribution of service line and plumbing fixtures to lead and copper rule compliance issue. *AWWA Research Foundation,* 523.

Schock, M. (1990). Causes of temporal variability of lead in domestic plumbing systems. *Environmental Monitoring and Assessment,* 15: 59–82. *https://link.springer.com/article/10.1007/BF00454749.*

Schock, M.R., Cantor, A.F., Triantafyllidou, S., Desantis, M.K., and Scheckel, K.G. (2014). Importance of pipe deposits to Lead and Copper Rule compliance. *Journal AWWA,* 106(7): E336–E349. *https://doi.org/10.5942/jawwa.2014.106.0064.*

Sedimentary Ores. (n.d.). *Lead-lined Galvanized Pipe—A Lurking Danger for Homeowners and Utilities.* Retrieved July 24, 2023, from *http://sedimentaryores.net/Pipe%20Scales/Fe%20scales/Galvanized_lead-lined.html.*

Senate and General Assembly of the State of New Jersey (2018, Aug. 24). *Chapter 14—An Act concerning the replacement of lead-contaminated water service line connections and amending various parts of the statutory law.* Retrieved July 28, 2023, from *https://pub.njleg.gov/bills/2018/PL18/114_.HTM.*

Shi, X., Chan, C.P.S., Man, G.K.Y., Chan, D.Y.L., Wong, M.H., and Li, T.C. (2021). Associations between blood metal/metalloid concentration and human semen quality and sperm function: A cross-sectional study in Hong Kong. *J Trace Elem Med Biol,* 65: 126735. *http://dx.doi.org/10.1016/j.jtemb.2021.126735.*

Stanek, L.W., Xue, J., Lay, C.R., Helm, E.C., Schock, M., Lytle, D.A., Speth, T.F., Zartarian, V.G. (2020). Modeled Impacts of Drinking Water Pb Reduction Scenarios on Children's Exposures and Blood Lead Levels. *Environmental Science and Technology,* 54, 9474–9482. doi:10.1021/acs.est.0c00479.

St. Clair, J., Cartier, C., Triantafyllidou, T., Clark, B., and Edwards, M. (2016). Long-Term Behavior of Simulated Partial Lead Service Line Replacements. *Environmental Engineering Science,* 33(1): 53–64. *https://doi.org/10.1089/ees.2015.0337.*

State of Minnesota (2023). *Chapter 39–H.F. No 24.* Minnesota Session Laws—2023, 93rd Legislature, Regular Session. Office of the Revisor of Statutes. Retrieved from *https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/39/.*

State of New Jersey. (2020, January 9). *Governor Murphy Signs Legislation Allowing Municipalities to Enter Properties to Perform Lead Service Line Replacements.* Retrieved July 17, 2023, from *https://www.nj.gov/governor/news/news/562020/approved/20200109d.shtml.*

State of New Jersey. (2021). New Jersey Legislature. Assembly Bill 5343. Regular Session 2020–2021. Public Law 2021 Chapter 183. Retrieved from *https://legiscan.com/NJ/bill/A5343/2020.* Accessed January 4, 2022.

State of Rhode Island. (2023). *Lead Poisoning Prevention Act.* General Assembly. H5007. Retrieved July 17, 2023, from *https://legiscan.com/RI/bill/H5007/2023.*

State of Washington. (2016, May 2). *Directive of the Governor 16–06.* Retrieved July 17, 2023, from *https://doh.wa.gov/sites/default/files/legacy/Documents/4200/GovernorsDirectiveLead.pdf?uid=64b688df5c0cf.*

Schwartz, J. and D. Otto. 1991. Lead and minor hearing impairment. Archives of Environmental and Occupational Health 46(5):300–305. doi:10.1080/00039896.1991.9934391.

Tam, Y.S., and Elefsiniotis, P. (2009). Corrosion control in water supply systems: Effect of pH, alkalinity, and orthophosphate on lead and copper leaching from brass plumbing. *Journal of Environmental Science and Health Part A,* 44(12): 1251–1260. DOI: 10.1080/10934520903140009.

Tang, M., Lytle, D., Achtemeier, R., and Tully, J. (2023). Reviewing performance of NSF/ANSI 53 certified water filters for lead removal. *Water Research,* 244: 120425. *https://doi.org/10.1016/j.watres.2023.120425.*

Tornero-Velez, R., Christian, M., Zartarian, V., and Simoneau, K.R. (2023). *Blood Lead Mapping: Methods and Tools for Lead Prioritization, Prevention, and Mitigation.* Presented at the National Environmental Health Association Annual Education Conference & Exhibition, July 31–August 3, New Orleans.

Triantafyllidou, S., and Edwards, M. (2011). Galvanic corrosion after simulated small-scale partial lead service line replacements. *Journal AWWA,* 103(9): 85–99. *https://doi.org/10.1002/j.1551-8833.2011.tb11535.x.*

Triantafyllidou, S., and Edwards, M. (2012). Lead (Pb) in Tap Water and in Blood: Implications for Lead Exposure in the United States. *Critical Reviews in Environmental Science and Technology,* 42(13): 1297–1352. DOI: 10.1080/10643389.2011.556556.

Triantafyllidou, S., Parks, J., and Edwards, M. (2007). Lead Particles in Potable Water. *Journal AWWA,* 99(6): 107–117. *https://doi.org/10.1002/j.1551-8833.2007.tb07959.x.*

Triantafyllidou, S., Le, T., Gallagher, D., and Edwards, M. (2014). Reduced risk estimations after remediation of lead (Pb) in drinking water at two U.S. school districts. *Science of the Total Environment,* 466–467: 1011–1021. *http://dx.doi.org/10.1016/j.scitotenv.2013.07.111.*

Triantafyllidou, S., Schock, M., DeSantis, M., and White, C. (2015). Low Contribution of PbO2-Coated Lead Service Lines to Water Lead Contamination at the Tap. *Environmental Science & Technology,* 49(6): 3746–3754). *https://doi.org/10.1021/es505886h.*

Triantafyllidou, S., Burkhardt, J., Tully, J., Cahalan, K., DeSantis, M., Lytle, D., and Schock, M. (2021). Variability and Sampling of Lead (Pb) in Drinking water: Assessing Potential Human Exposure Depends on the Sampling Protocol. *Environment International,* 146: 106259. *https://doi.org/10.1016/j.envint.2020.106259.*

Tripp, G., Wickens, J.R. Neurobiology of ADHD. *Neuropharmacology.* 2009 Dec;57(7–8):579–89.

Trueman, B.F., Camara, E., and Gagnon, G.A. (2016). Evaluating the Effects of Full and Partial Lead Service Line Replacement on Lead Levels in Drinking Water. *Environmental Science & Technology,* 50(14): 7389–7396. *https://doi.org/10.1021/acs.est.6b01912.*

Tully, J., DeSantis, M.K., and Schock, M.R. (2019). Water quality–pipe deposit relationships in Midwestern lead pipes. *AWWA Water Science,* 1(2): e1127. DOI: 10.1002/aws2.1127.

Tully, J., Schilling, S., Bosscher, V., Schock, M., and Lytle, D. (2023). Benton Harbor Drinking Water Study. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–22/269. April 2023.

U.S. Environmental Protection Agency (USEPA). (1988). Proposed National Primary Drinking Water Regulations for Lead and Copper; Proposed Rule. **Federal Register**. 53 FR 31516. August 18, 1988.

USEPA. (1991). Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule. **Federal Register**. 56 FR 26460. June 7, 1991.

USEPA. (1998a). Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996. EPA 815–R–98–002. September 1998. Retrieved from *https://nepis.epa.gov/Exe/ZyPDF.cgi/20002173.PDF?Dockey=20002173.PDF.*

USEPA. (1998b). National Primary Drinking Water Regulations: Consumer Confidence Report. Proposed Rule. **Federal Register**. 63 FR 7606. February 13, 1998.

USEPA. (1998c). National Primary Drinking Water Regulations: Consumer Confidence Report. Final Rule. **Federal Register**. 63 FR 44512. August 19, 1998.

USEPA. (2000a). National Primary Drinking Water Regulations for Lead and Copper; Final Rule. **Federal Register**. 65 FR 1950. January 12, 2000.

USEPA. (2000b). National Primary Drinking Water Regulations: Public Notification Rule. **Federal Register**. 65 FR 25982. May 4, 2000.

USEPA. (2000c). Geometries and Characteristics of Public Water Systems. EPA 815–R–00–024. December 2000. National Service for Environmental Publications. Retrieved from *https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=200137NM.txt.*

USEPA. (2004a). Integrated Risk Information System (IRIS) Chemical Assessment Summary for Lead and compounds (inorganic); CASRN 7439–92–1. Retrieved from *https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0277_summary.pdf.*

USEPA. (2004b). Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. **Federal Register**. 69 FR 35602. June 25, 2004.

USEPA. (2004c). National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations; National Primary Drinking Water Regulations for Lead and Copper. **Federal Register**. 69 FR 38850. June 29, 2004.

USEPA. (2004d). WSG 174. U.S. Environmental Protection Agency. Memorandum to Water Division Directors, Regions I–X, from Benjamin H. Grumbles, Acting Assistant Administrator. Lead and Copper Rule—Clarification of Requirements for Collecting Samples and Calculating Compliance (November 23, 2004).

USEPA. (2005). *Drinking Water Lead Reduction Plan.* EPA 810–F–05–001. Washington, DC March 2005. *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10051WL.txt.*

USEPA. (2006). National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule. **Federal Register**. 71 FR 388. January 4, 2006.

USEPA. (2007a). National Primary Drinking Water Regulations for Lead and Copper: Short-term Regulatory Revisions and Clarifications; Final Rule. **Federal Register**. 72 FR 57782. October 10, 2007.

USEPA. (2007b). *Elevated Lead in DC Drinking Water—A Study of Potential Causative Events, Final Summary Report.* EPA–815–R–07–021. Washington, DC August 2007.

USEPA. (2009). 2006 Community Water System Survey—Volume 1: Overview. National Service Center for Environmental Publications. *https://nepis.epa.gov/Exe/ZyNET.exe/P1009JJI.txt?ZyActionD=ZyDocument&Client=EPA&Index=2006%20Thru%202010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C06THRU10%5CTXT%5C00000023%5CP1009JJI.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3.*

USEPA. (2011). *Science Advisory Board Drinking Water Committee Augmented for the Review of the Effectiveness of Partial Lead Service Line Replacements.* EPA–SAB–11–015. Retrieved from *https://www.epa.gov/sites/default/files/2015-09/documents/sab_evaluation_partial_lead_service_lines_epa-sab-11-015.pdf.*

USEPA. (2013). *Integrated Science Assessment for Lead.* EPA/600/R–10/075F. Office of Research and Development. Research Triangle Park, NC.

USEPA. (2016a). Lead and Copper Rule Revisions White Paper. October 2016. Retrieved from *https://www.epa.gov/sites/default/files/2016-10/documents/508_lcr_revisions_white_paper_final_10.26.16.pdf.*

USEPA. (2016b). *The Analysis of Regulated Contaminant Occurrence Data from Public Water Systems in Support of the Third Six-Year Review of National Primary Drinking Water Regulations: Chemical Phase and Radionuclides Rules.* EPA–810–R–16–014. Retrieved from *https://www.epa.gov/sites/default/files/2016-12/documents/810r16014.pdf.*

USEPA. (2016c). *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems.* EPA 816–B–16–003. Updated 2019. Retrieved from *https://www.epa.gov/dwreginfo/optimal-corrosion-control-treatment-evaluation-technical-recommendations.*

USEPA. (2016d). Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. June 2016. Retrieved from *https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

USEPA. (2018). 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities: A Training, Testing, and Taking Action Approach (Revised Manual). October 2018. Office of Water. EPA 815–B–18–007. *https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water-toolkit.*

USEPA. (2019a). *Strategies to Achieve Full Lead Service Line Replacement.* EPA 810–R–19–003. October 2019. Retrieved from *https://www.epa.gov/sites/default/files/2019-10/documents/strategies_to_achieve_full_lead_service_line_replacement_10_09_19.pdf.*

USEPA. (2019b). Estimated Total Nitrogen and Total Phosphorus Loads and Yields Generated within States. Retrieved from: *https://www.epa.gov/nutrient-policy-data/estimated-total-nitrogen-and-total-phosphorus-loads-and-yields-generated-within.*

USEPA. (2019c). All-Ages Model (AALM), Version 2.0 (External Review Draft, 2019). *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=343670.*

USEPA. (2019d) Office of Pollution Prevention and Toxics. Economic Analysis of the Final Rule to Revise the TSCA Dust-Lead Hazard Standards. June 2019.

USEPA. (2020a). Funding and Technical Resources for Lead Service Line Replacement in Small and Disadvantaged Communities. EPA Headquarters. Office of Ground Water and Drinking Water. Washington, DC. Retrieved from *https://www.epa.gov/ground-water-and-drinking-water/funding-lead-service-line-replacement.*

USEPA. (2020b). *Public Comment and Response Document for the Final Lead and Copper Rule Revisions.* December 2020. *https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-1622.*

USEPA. (2020c). *Economic Analysis for the Final Lead and Copper Rule Revisions.*

EPA 816–R–20–008. December 2020. Retrieved from *https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-1769.*

USEPA. (2020d). Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water; Final Rule. **Federal Register**. 85 FR 54235. September 1, 2020.

USEPA. (2020e). *Economic Analysis Appendices for the Final Lead and Copper Rule Revisions.* EPA 816–R–20–008a. December 2020. Retrieved from *https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-1768.*

USEPA. (2020f). *Science Advisory Board (SAB) Consideration of the Scientific and Technical Basis of EPA's Proposed Rule Titled National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions.* EPA–SAB–20–007. June 12, 2020.

USEPA. (2021a). National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Final Rule. **Federal Register**. 86 FR 4198. January 15, 2021.

USEPA. (2021b). Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR). **Federal Register**. 86 FR 71574. December 17, 2021.

USEPA. (2021c). National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective Date; Final Rule. **Federal Register**. 86 FR 14003. March 12, 2021.

USEPA. (2021d). National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates; Proposed Rule. **Federal Register**. 86 FR 14063. March 12, 2021.

USEPA. (2021e). National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates; Final Rule. **Federal Register**. 86 FR 31939. Wed. June 16, 2021.

USEPA. (2021f). Small, Underserved, and Disadvantaged Communities (SUDC) Grant Program Grant Implementation Document. U.S. Environmental Protection Agency, Washington, DC. Retrieved from *https://www.epa.gov/system/files/documents/2021-08/updated_sudc_implementation_document_508-compliant.pdf.*

USEPA. (2021g). Final Allotments for the FY2021 Public Water System Supervision (PWSS) State and Tribal Support Program Grants, from Catherine Davis, Office of Ground Water & Drinking Water. March 2, 2021.

USEPA. (2022a). *Strategy to Reduce Lead Exposures and Disparities in U.S. Communities.* EPA 540–R–22–006. October 2022. Retrieved from *https://www.epa.gov/lead/final-strategy-reduce-lead-exposures-and-disparities-us-communities.*

USEPA. (2022b). *Guidance for Developing and Maintaining a Service Line Inventory.* EPA 816–B–22–001. August 2022. Retrieved from *https://www.epa.gov/system/files/documents/2022-08/Inventory%20Guidance_August%202022_508%20compliant.pdf.*

USEPA. (2022c). Final Allotments for the FY2022 Public Water System Supervision (PWSS) State and Tribal Support Program Grants, from Anita Thompkins, Office of Ground Water & Drinking Water. April 21, 2022.

USEPA. (2023a). Integrated Science Assessment (ISA) for Lead (Pb) (External Review Draft). EPA/600/R 23/061, 2023. *https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=357282.*

USEPA. (2023b). *Economic Analysis for the Proposed Lead and Copper Rule Improvements.*

USEPA. (2023c). WIIN Grant: Reducing Lead in Drinking Water. Press Release. EPA Headquarters. Office of Water. Washington, DC. Retrieved from *https://www.epa.gov/dwcapacity/wiin-grant-reducing-lead-drinking-water.*

USEPA. (2023d). Water Infrastructure Finance and Innovation Act (WIFIA)—2022 Annual Report. Publication number 830R23001. Retrieved from *https://www.epa.gov/wifia/wifia-annual-report.*

USEPA. (2023e). EPA Launches New Initiative to Accelerate Lead Pipe Replacement to Protect Underserved Communities. Press Release. EPA Headquarters. Office of Water. Washington, DC. Retrieved from *https://www.epa.gov/newsreleases/epa-launches-new-initiative-accelerate-lead-pipe-replacement-protect-underserved.*

USEPA. (2023f). Environmental Justice Analysis for the Proposed Lead and Copper Rule Improvements.

USEPA. (2023g). *Technical Support Document for the Proposed Lead and Copper Rule Improvements.*

USEPA. (2023h). Public Meeting on Environmental Justice (EJ) Considerations for the Development of the Proposed Lead and Copper Rule Improvements (LCRI), October 25, 2022 Meeting Summary.

USEPA. (2023i). Public Meeting on Environmental Justice (EJ) Considerations for the Development of the Proposed Lead and Copper Rule Improvements (LCRI), November 1, 2022 Meeting Summary.

USEPA. (2023j). Summary Report on Federalism and Unfunded Mandates Reform Act (UMRA) Consultation for the Development of the Proposed LCRI National Primary Drinking Water Regulation.

USEPA. (2023k). *7th Drinking Water Infrastructure Needs Survey and Assessment.* Fact Sheet. Retrieved July 24, 2023, from *https://www.epa.gov/system/files/documents/2023-04/Final_DWINSA%20Public%20Factsheet%204.4.23.pdf.*

USEPA. (2023l). Lead and Copper Rule Improvements NDWAC Consultation Meeting.

USEPA. (2023m). Panel Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Lead and Copper Rule Improvements (LCRI) National Primary Drinking Water Regulation. May 2023.

USEPA. (2023n). National Primary Drinking Water Regulations: Consumer Confidence Report Rule Revisions; Proposed Rule. **Federal Register**. 88 FR 20092. April. 5, 2023.

USEPA. (2023o). *Voluntary School and Child Care Lead Testing & Reduction Grant Program Implementation Document for States and Territories.* EPA 815–B–23–009. July 2023. Retrieved from *https://www.epa.gov/system/files/documents/2023-07/Final_FY23_ImplementationDoc_VoluntarySchoolandChildCare LeadTestingReductionGrantProgram_508.pdf.*

USEPA. (2023p). *LSLR Financing Case Study: North Providence, RI.* Retrieved from *https://www.epa.gov/dwreginfo/lslr-financing-case-study-north-providence-ri.*

USEPA and USHHS. (2023). EPA and HHS Joint Statement to Governors on Federal Resources for Lead Testing and Remediation in Early Child Care and Education Settings. March 23, 2023. Retrieved from *https://www.epa.gov/system/files/documents/2023-03/EPA%20ADM%20Regan%2BHHS%20Sec.%20Becerra%20-%20Lead.pdf.*

United States Government Accountability Office (USGAO). (2018). K–12 Education: Lead Testing of School Drinking Water Would Benefit from Improved Federal Guidance. Document No GAO–18–328. Released July 17, 2018. Retrieved from *https://www.gao.gov/products/gao-18-382.*

United States Housing and Urban Development (USHUD) Office of Policy Development and Research. (2014). *Vacant and Abandoned Properties: Turning Liabilities Into Assets.* Evidence Matters. Retrieved July 24, 2023, from *https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html.*

USHUD. (2020). Community Development. *https://www.hud.gov/program_offices/comm_planning/communitydevelopment.*

USHUD. (2021). American Health Homes Survey II Lead Findings. Office of Lead Hazard Control and Health Homes. *https://www.hud.gov/sites/dfiles/HH/documents/AHHS_II_Lead_Findings_Report_Final_29oct21.pdf.*

USHUD. (2023). Fact Sheet: HUD's Work to Address Lead-based Paint and Additional Housing-Related Hazards. *hud.gov/sites/dfiles/PA/documents/Lead_Hazards_Fact_Sheet.pdf.*

Versar. 2015. External Peer Review of EPA's Approach for Estimating Exposures and Incremental Health Effects from Lead Due to Renovation, Repair, and Painting Activities in Public and Commercial Buildings. Prepared for EPA under contract EP–C–12–045 Task Order 39.

Vijayashanthar, V., Small, M.J., and Van Briesen, J.M. (2023). Assessment of Lead in Drinking Water from Multiple Drinking Water Sampling Programs for a Midsize City. *Environmental Science & Technology,* 57: 842–851. *https://doi.org/10.1021/acs.est.2c06614.*

Wang, Y., Jing, H., Mehta, V., Welter, G.J., and Giammar, D.E. (2012). Impact of

galvanic corrosion on lead release from aged lead service lines. *Water Research,* 46(16): 5049–5060. *https://doi.org/10.1016/j.watres.2012.06.046.*

Wang, Y., Mehta, V., Welter, G., and Giammar, D. (2013). Effect of connection methods on lead release from galvanic corrosion. *Journal AWWA,* 105(7): E337–E351. *https://doi.org/10.5942/jawwa.2013.105.0088.*

Washington State Department of Health. (n.d.). Translations for Public Notification. Accessed July 17, 2023. *https://doh.wa.gov/community-and-environment/drinking-water/drinking-water-emergencies/public-notification/translations-public-notification.*

Wasserstrom, L.W., Miller, S.A., Triantafyllidou, S., Desantis, M.K. (2017). Scale Formation Under Blended Phosphate Treatment for a Utility With Lead Pipes. *Journal AWWA.* 109(11), E464–E478. *https://doi.org/10.5942/jawwa.2017.109.0121.*

Wei, Y.D. and Zhu, J. M. (2020). Blood levels of endocrine-disrupting metals and prevalent breast cancer among US women. *Med Oncol,* 37: 1. *https://dx.doi.org/10.1007/s12032-019-1328-3.*

The White House. (2021). Fact Sheet: The Biden-Harris Lead Pipe and Paint Action Plan. December 16, 2021. *https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/.*

The White House. (2023). Fact Sheet: Biden-Harris Administration Announces New Actions and Progress to Protect Communities From Lead Pipes and Paint. January 27, 2023. *https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-announces-new-actions-and-progress-to-protect-communities-from-lead-pipes-and-paint/.*

WHO. (2011). Lead in Drinking Water: Background Document for Development of WHO Guidelines for Drinking-Water Quality. World Health Organization Press.

Wilking, C., Nink, E., and Cradock, A.L. (2022). *Case Study Brief: Denver Water Filter Program.* Boston, MA: Prevention Research Center on Nutrition and Physical Activity at the Harvard T.H. Chan School of Public Health. Retrieved July 25, 2023, from: *https://www.hsph.harvard.edu/prc/wp-content/uploads/sites/84/2022/06/SHW_Denver_Brief_June2022.pdf.*

Wisconsin Department of Natural Resources (WI DNR). (2020, September 10). *Sample Mandatory Lead Service Line Replacement Ordinances.* Retrieved July 18, 2023, from WI DNR. Sample Mandatory Lead Service Line Replacement Ordinances. *https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/lead/LSLmandatoryOrdinances.pdf.*

WI DNR. (2022). *Considerations for Setting Up a Private Lead Service Line Replacement Program.* Retrieved July 17, 2023, from *https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/pubs/CF0054.pdf.*

Xie, Y., Giammar, D.E. (2011). Effects of flow and water chemistry on lead release rates from pipe scales. *Water Research.* 45(19), 6525–6534. *https://doi.org/10.1016/j.watres.2011.09.050.*

Xue, J., Zartarian, V., Tornero-Velez, R., Stanek, L.W., Poulakos, A., Walts, A., Triantafillou, K., Suero, M., Grokhowsky, N. (2022). A Generalizable Evaluated Approach, Applying Advanced Geospatial Statistical Methods, To Identify High Lead Exposure Locations at Census Tract Scale: Michigan Case Study. *Environmental Health Perspectives.* 130(7). Doi: *https://doi.org/10.1289/EHP9705.*

Zartarian, V., J. Xue, R. Tornero-Velez, J. Brown. 2017. Children's Lead Exposure: A multimedia Modeling Analysis to Guide Public Health Decision-Making. Environmental Health Perspectives. 125(9). CID 097009. Available: *https://doi.org/10.1289/EHP1605.*

Zhu, M., Fitzgerald, E.F., Gelberg, K.H., Lin, S., & Druschel, C.M. (2010). Maternal low-level lead exposure and fetal growth. Environmental Health Perspectives, 118(10), 1471–1475. doi:10.1289/ehp.0901561.

Ziegler, E.E., B.B. Edwards, R.L. Jensen, K.R. Mahaffey, and S.J. Fomon. (1978). Absorption and retention of lead by infants. Pediatric Research 12(1):29–34.

Lytle, D.A., Formal, C., Cahalan, K., Muhlen, C., Triantafyllidou, S. (2021). The impact of sampling approach and daily water usage on lead levels at the tap. *Water Research.* Vol. 197. *https://doi.org/10.1016/j.watres.2021.117071.*

List of Subjects

40 CFR Part 141

Environmental protection, Copper, Indians—lands, Intergovernmental relations, Lead, Lead service line, National primary drinking water regulation, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Copper, Indians—lands, Intergovernmental relations, Lead, Lead service line, National primary drinking water regulation, Reporting and recordkeeping requirements, Water supply.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141 and 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 definitions of ''Action level'' and ''Child care facility'';
■ b. Adding in alphabetical order definitions for ''Connector'' and ''Distribution system and site assessment'';
■ c. Revising the definition of ''Elementary school'';
■ d. Removing the definitions of ''Find-and-fix'' and ''Full lead service line replacement'';
■ e. Adding in alphabetical order a definition for ''Galvanized requiring replacement service line'';
■ f. Revising the definition ''Galvanized service line'';
■ g. Removing the definition of ''Gooseneck, pigtail, or connector'';
■ h. Revising the definitions of ''Lead service line'' and ''Lead status unknown service line'';
■ i. Removing the definitions of ''Lead trigger level'' and ''Medium-size water system'';
■ j. Adding in alphabetical order definitions for ''Medium water system'', ''Newly regulated public water system'', ''Optimal corrosion control treatment (OCCT)'', and ''Partial service line replacement'';
■ k. Removing the definitions of ''Optimal corrosion control treatment'' and ''Partial lead service line replacement'';
■ l. Adding in alphabetical order definitions for ''Optimal corrosion control treatment (OCCT)'', and ''Partial service line replacement'';
■ m. Revising the definitions of ''Pitcher filter'' and ''Secondary school'';
■ n. Adding in alphabetical order a definition for ''Service line'';
■ o. Revising the definitions of ''Small water system'' and ''System without corrosion control treatment'';
■ p. Adding in alphabetical order a definition for ''Tap monitoring period'';
■ q. Removing the definition of ''Tap sampling monitoring period''; and
■ r. Revising the definitions of ''Tap sampling period'', ''Tap sampling protocol'', and ''Wide-mouth bottles''.

The revisions and additions read as follows:

§ 141.2 Definitions.

* * * * *

Action level for the purpose of subpart I of this part only means the concentrations of lead or copper in water as specified in § 141.80(c) which determines requirements under subpart I of this part. The lead action level is 0.010 mg/L and the copper action level is 1.3 mg/L.

* * * * *

Child care facility, for the purpose of subpart I of this part only, means a location that houses a provider of child care, day care, or early learning services to children, as licensed by the State, local, or Tribal licensing agency.

* * * * *

Connector, also referred to as a gooseneck or pigtail, means a short segment of piping not exceeding two feet that can be bent and is used for connections between rigid service piping, typically connecting the *service line* to the main. For purposes of subpart I, lead connectors are not considered to be part of the service line.

* * * * *

Distribution system and site assessment means the requirements under subpart I, pursuant to § 141.82(j), that water systems must perform at every tap sampling site that yields a lead result above the lead action level of 0.010 mg/L.

* * * * *

Elementary school, for the purpose of subpart I of this part only, means a *school* classified as elementary by State and local practice and composed of any span of grades (including pre-school) not above grade 8.

* * * * *

Galvanized requiring replacement service line, for the purpose of subpart I of this part only, means a *galvanized service line* that currently is or ever was downstream of a *lead service line* or is currently downstream in the direction of flow of a *lead status unknown service line.* If the water system is unable to demonstrate that the *galvanized service line* was never downstream of a *lead service line,* it is a *galvanized requiring replacement service line* for purposes of the service line inventory and replacement requirements pursuant to § 141.84.

Galvanized service line, for the purpose of subpart I of this part only, means iron or steel piping that has been dipped in zinc to prevent corrosion and rusting.

* * * * *

Lead service line, for the purpose of subpart I of this part only, means a *service line* that is made of lead or where a portion of the *service line* is made of lead.

* * * * *

Lead status unknown service line, for the purpose of subpart I of this part only, means a *service line* whose pipe material has not been demonstrated to be a *lead service line, galvanized requiring replacement service line,* or a non-lead service line pursuant to § 141.84(a).

* * * * *

Medium water system, for the purpose of subpart I of this part only, means a water system that serves greater than 10,000 persons and less than or equal to 50,000 persons.

* * * * *

Newly regulated public water system, for the purpose of subpart I only, refers to either (1) an existing *public water system* that was not subject to national primary drinking water regulations on October 16, 2024, because the system met the requirements of section 1411 of the Safe Drinking Water Act and 40 CFR 141.3 or (2) an existing water system that did not meet the definition of a *public water system* in § 141.2 on October 16, 2024. This term does not include existing water systems under new or restructured ownership or management.

* * * * *

Optimal corrosion control treatment (OCCT), for the purpose of subpart I of this part only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

Partial service line replacement, for the purpose of subpart I of this part only, means replacement of any portion of a *lead service line* or *galvanized requiring replacement service line,* as defined in this section, that leaves in service any length of lead or galvanized requiring replacement service line upon completion of the work.

* * * * *

Pitcher filter means a non-plumbed water filtration device, which consists of a gravity fed water filtration cartridge and a filtered drinking water reservoir, that is certified by an American National Standards Institute accredited certifier to reduce lead in drinking water.

* * * * *

Secondary school, for the purpose of subpart I of this part only, means a school comprising any span of grades beginning with the next grade following an elementary school (usually 7, 8, or 9) and ending with grade 12. Secondary schools include both junior high schools and senior high schools and typically span grades 7 through 12.

* * * * *

Service line, for the purpose of subpart I of this part only, means a portion of pipe which connects the water main to the building inlet. Where a building is not present, the service line connects the water main to the outlet.

* * * * *

Small water system, for the purpose of subpart I of this part, means a water system that serves 10,000 persons or fewer.

* * * * *

System without corrosion control treatment, for the purpose of subpart I of this part, means a water system that does not have or purchases all of its water from a system that does not have:

(1) An optimal corrosion control treatment approved by the State; or

(2) Any pH adjustment, alkalinity adjustment, and/or corrosion inhibitor addition resulting from other water quality adjustments as part of its treatment train infrastructure.

Tap monitoring period, for the purpose of subpart I of this part, means the period of time during which each water system must conduct tap sampling for lead and copper analysis. The applicable tap monitoring period is determined by lead and copper concentrations in tap samples. The length of the tap monitoring period can range from six months to nine years.

Tap sampling period, for the purpose of subpart I of this part, means the time period, within a tap monitoring period, during which the water system is required to collect samples for lead and copper analysis.

Tap sampling protocol means the method for collecting tap samples under subpart I of this part.

* * * * *

Wide-mouth bottles, for the purpose of subpart I of this part only, means bottles one liter in volume that have a mouth with an outer diameter that measures at least 55 mm wide.

■ 3. Amend § 141.80 by revising the section heading and paragraphs (a)(2) and (3), (a)(4)(i), (b), and (c) and removing paragraphs (d) through (l).

The revisions read as follows:

§ 141.80 General requirements and action level.

(a) * * *

(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 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], except where otherwise specified in §§ 141.81, 141.84, 141.85, 141.86, and 141.90, or where an exemption in accordance with 40 CFR part 142, subpart C or F, has been issued by the Administrator.

(4)(i) Between [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and [DATE 3 YEARS AFTER DATE OF 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 141.91, as codified on July 1, 2020, except systems must also comply with 40 CFR 141.84(a)(1) through 141.84(a)(10) (excluding §§ 141.84(a)(7)); 141.85(e); 141.90(e)(1) and 141.90(e)(13); 141.201(c)(3); 141.202(a)(10); and 141.31(d), as codified on July 1, 2023.

* * * * *

(b) *Scope.* The regulations in this subpart constitute a treatment technique rule that includes treatment techniques to control corrosion, treat source water, replace service lines, and provide public education. The regulations include requirements to support those treatment techniques including a service line inventory, tap sampling, and monitoring for lead in schools and child care facilities. Some of the requirements in this subpart only apply if there is an exceedance of the lead or copper action levels, specified in paragraph (c) of this section, as measured in samples collected at consumers' taps.

(c) *Lead and copper action levels and method for determining whether there is an exceedance of the action level.* Action levels must be determined based on tap water samples collected in accordance with the tap sampling monitoring requirements of § 141.86 for the purpose of calculating the 90th percentile and tested using the analytical methods specified in § 141.89. The action levels described in this paragraph (c) are applicable to all sections of subpart I of this part. Action levels for lead and copper are as follows:

(1) The lead action level is exceeded if the 90th percentile concentration of lead as specified in paragraph (c)(3) of this section is greater than 0.010 mg/L.

(2) The copper action level is exceeded if the 90th percentile concentration of copper as specified in paragraph (c)(3) of this section is greater than 1.3 mg/L.

(3) For purposes of this subpart, the 90th percentile concentration must be derived as follows:

(i) For water systems that do not have lead service line sites and only have sites identified as Tier 3, 4, or 5 under § 141.86(a):

(A) The results of all lead or copper samples taken during a tap sampling period must be placed in ascending order from the sample with the lowest concentration of lead or copper to the sample with the highest concentration of lead or copper. Each sampling result must be assigned a number, in ascending order beginning with the number 1 for the sample with the lowest concentration of lead or copper. The number assigned to the sample with the highest concentration level must be equal to the total number of samples taken.

(B) The number of samples taken during the tap sampling period must be multiplied by 0.9.

(C) The 90th percentile concentration is the concentration of lead or copper in the numbered sample yielded after multiplying the number of samples by 0.9 in paragraph (c)(3)(i)(B) of this section.

(D) For water systems that collect five samples per tap sampling period, the 90th percentile concentration is the average of the highest and second highest concentration from the results in paragraph (c)(3)(i)(A) of this section.

(E) For a water system that is allowed by the State to collect fewer than five samples in accordance with § 141.86(a)(2) or has failed or is unable to collect five samples, the sample result with the highest concentration from the results in paragraph (c)(3)(i)(A) of this section is considered the 90th percentile value.

(ii) For 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) or (d) as applicable:

(A) For lead, the system must use the higher value of the first liter and fifth liter lead sample results for each Tier 1 or 2 site during a tap sampling period in the 90th percentile concentration calculation in paragraph (c)(3)(ii)(B) through (c)(3)(ii)(D) of this section. For copper, the system must use all first liter copper samples collected at Tier 1 and 2 sites in the 90th percentile calculation. Lead or copper sample results from Tier 3, 4, or 5 sites cannot be included in this calculation.

(B) The results of the lead or copper samples identified in paragraph (c)(3)(ii)(A) of this section must be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result must be assigned a number, in ascending order beginning with the number 1 for the sample with the lowest concentration level. The number assigned to the sample with the highest concentration level must be equal to the total number of samples.

(C) The number of samples identified in paragraph (c)(3)(ii)(B) shall be multiplied by 0.9.

(D) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(3)(ii)(C) of this section is the 90th percentile concentration.

(E) For water systems that collect samples from five sites per tap sampling period, the 90th percentile concentration is the average of the highest and second highest concentration from the results in paragraph (c)(3)(ii)(B) of this section.

(F) For a water system that is allowed by the State to collect fewer than five copper samples or five paired first liter and fifth liter lead samples in accordance with § 141.86(a)(2), or has failed to collect five copper samples or five paired first liter and fifth liter lead samples, the sample result with the highest concentration from the results in paragraph (c)(3)(ii)(B) is considered the 90th percentile value.

(iii) For water systems with lead service lines with sites identified as Tier 1 or 2 under § 141.86(a) with an insufficient number of Tier 1 or 2 sites to meet the minimum number of sites listed in § 141.86(c) or (d) as applicable:

(A) For lead, the system must use the higher value of the first liter and fifth liter lead sample for each Tier 1 or 2 site and the highest lead concentration results from the next Tier (*e.g.,* Tier 3, 4, or 5) sufficient to meet the minimum number of sites listed in § 141.86(c) or (d) sampled during a tap sampling period in the 90th percentile concentration calculation paragraphs (c)(3)(iii)(B) through (D) of this section. For copper, the system must use all first liter copper samples from Tier 1 and 2 sites and the highest first liter copper concentration results from Tier 3, 4, or 5 sites sufficient to meet the minimum number of sites in this calculation. Lead or copper sample results from any remaining Tier 3, 4, and 5 sites cannot be included in this calculation.

(B) The results of lead or copper samples identified in paragraph (c)(3)(iii)(A) of this section must be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result must be assigned a number, in ascending order beginning with the number 1 for the sample with the lowest concentration of lead or copper. The number assigned to the sample with the highest concentration level must be equal to the total minimum number of sites listed in § 141.86(c) or (d) as applicable.

(C) The number of samples identified in paragraph (c)(3)(iii)(B) must be multiplied by 0.9.

(D) The 90th percentile calculation is the concentration of lead or copper in the numbered sample yielded by the calculation in paragraph (c)(3)(iii)(C).

(E) For water systems that collect samples from five sites per tap sampling period, the 90th percentile concentration is the average of the highest and second highest concentration of lead or copper from the results in paragraph (c)(3)(iii)(B) of this section.

(F) For a water system that is allowed by the State to collect fewer than five lead or copper samples (paired first liter and fifth liter lead samples at Tier 1 and Tier 2 sites) in accordance with § 141.86(a)(2), or has failed to collect five lead or copper samples (paired first liter and fifth liter lead samples at Tier 1 and Tier 2 sites), the sample result with the highest concentration from the results in paragraph (c)(3)(iii)(B) is considered the 90th percentile value.

■ 4. 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.* All water systems are required to install, optimize, or re-optimize corrosion control treatment in accordance with this section. This section sets forth when a system must complete the corrosion control treatment steps under paragraph (d) or (e) of this section based on size, whether the system has corrosion control treatment, and whether it has exceeded the lead action level and/or the copper action level.

(1) *Large water system (serving >50,000 people).* (i) Large water systems with corrosion control treatment that exceed either the lead action level or copper action level must complete the re-optimized OCCT steps specified in paragraph (d) of this section unless the system:

(A) Has re-optimized OCCT once under paragraph (d) of this section after the compliance date in § 141.80(a)(3);

(B) Is meeting optimal water quality parameters designated by the State; and

(C) Is continuing to operate and maintain corrosion control treatment as required in § 141.82(g).

(ii) Large water systems with corrosion control treatment with 90th percentile results as calculated in accordance with § 141.80(c)(3) that exceed the lead practical quantitation limit of 0.005 mg/L but do not exceed the lead action level or the copper action level may be required by the State to complete the re-optimized OCCT steps in paragraph (d) of this section.

(iii) Large water systems without corrosion control treatment with 90th percentile results as calculated in accordance with § 141.80(c)(3) that exceed either the lead practical quantitation limit of 0.005 mg/L or the copper action level must complete steps to study and install OCCT, as specified in paragraph (e) of this section.

(2) *Medium water systems (serving >10,000 and ≤50,000 people).* (i) Medium water systems with corrosion control treatment that exceed either the lead action level or copper action level must complete the re-optimized OCCT steps specified in paragraph (d) of this section unless the system:

(A) Has re-optimized OCCT once under paragraph (d) of this section after the compliance date in § 141.80(a)(3);

(B) Is meeting optimal water quality parameters designated by the State; and

(C) Is continuing to operate and maintain corrosion control treatment as required in § 141.82(g).

(ii) Medium water systems with corrosion control treatment that do not exceed either the lead or copper action level and do not have optimal water quality parameters designated by the State must complete the steps specified in paragraph (d) of this section starting with Step 6 under paragraph (d)(6) of this section unless the system is deemed optimized under paragraph (b)(3) of this section.

(iii) Medium water systems without corrosion control treatment that exceed either the lead or copper action level must complete the OCCT steps specified in paragraph (e) of this section.

(3) *Small water systems (serving ≤10,000 people) and non-transient non-community water systems.* (i) Small and non-transient non-community water systems with corrosion control treatment that exceed either the lead action level or the copper action level, must complete the re-optimized OCCT steps specified in paragraph (d) of this section unless the system:

(A) Has re-optimized OCCT once under paragraph (d) of this section after the compliance date in § 141.80(a)(3);

(B) Is meeting optimal water quality parameters designated by the State; and

(C) Is continuing to operate and maintain corrosion control treatment as required in § 141.82(g).

(ii) Small and non-transient non-community water systems without corrosion control treatment that exceed either the lead action level or copper action level must complete the corrosion control treatment steps specified in paragraph (e) of this section.

(b) *Systems deemed to have optimized corrosion control.* A system without corrosion control treatment is deemed to have OCCT as defined in § 141.2 if the system meets the requirement of either (b)(1) or (3). A system with corrosion control treatment is deemed to have OCCT as defined in § 141.2 or re-optimized OCCT if the system meets the requirements of either paragraphs (b)(1) and (4) or (b)(3) and (4) of this section. Systems must submit documentation of meeting the applicable requirements in accordance with § 141.90(c)(1) by the applicable deadline for submitting tap sample results under § 141.90(a)(2).

(1) A medium water system without corrosion control treatment or a small water system is deemed to have OCCT if the water system does not exceed the lead action level and copper action level during two consecutive six-month tap monitoring periods and then remains at or below the lead action level and copper action level in all tap sampling periods conducted in accordance with § 141.86.

(i) A small water system with corrosion control treatment is not eligible to be deemed to have OCCT pursuant to this paragraph (b)(1) where the State has set optimal water quality parameters (OWQPs) under paragraph (d) or (e) of this section.

(ii) If a medium water system without corrosion control treatment or a small water system deemed to have OCCT under this paragraph (b)(1) exceeds the lead action level or copper action level, the system must follow the requirements in paragraph (a) of this section.

(2) [Reserved]

(3) A water system is deemed to have optimized or re-optimized corrosion control treatment if it submits tap water sampling results in accordance with § 141.86 demonstrating that the 90th percentile tap water lead level is less than or equal to the lead practical quantitation limit of 0.005 mg/L and does not exceed the copper action level for two consecutive six-month tap monitoring periods, and does not have OWQPs set by the State under paragraph (d) or (e) of this section.

(i) A system with 90th percentile tap sampling results that later exceed the lead practical quantitation limit of 0.005 mg/L or copper action level during any tap sampling period is not eligible to be deemed to have optimized OCCT in accordance with this paragraph (b)(3) until the system has completed the treatment steps specified in paragraph (d) or (e) of this section.

(ii) A system deemed to have OCCT in accordance with this paragraph (b)(3) must 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(d) and collecting samples at times and locations specified in § 141.86(d)(2)(iii).

(4) A system with corrosion control treatment deemed to have OCCT under this paragraph (b) must continue to operate and maintain the corrosion control treatment and also meet any additional requirements that the State determines are appropriate to ensure OCCT is maintained.

(c) [Reserved]

(d) *Treatment steps and deadlines for water systems re-optimizing optimal corrosion control treatment.* Water systems with corrosion control treatment that are required to re-optimize corrosion control treatment under paragraph (a) of this section must complete the following steps (described in the referenced portions of §§ 141.82, 141.86, and 141.87) by the indicated time periods. Water systems must conduct tap sampling for lead and copper in accordance with the requirements of § 141.86 while the system completes the corrosion control steps in this section.

(1) *Step 1. Initiation of mandatory pipe rig or CCT study or treatment recommendation.* (i) A large or medium water system with lead service lines that exceeds the lead action level must harvest lead pipes from the distribution system and construct flowthrough pipe rigs and operate the rigs with finished water within one year after the end of the tap sampling period during which it exceeds the lead action level. These water systems must proceed to Step 3 in paragraph (d)(3) of this section and conduct the corrosion control studies for re-optimization under paragraph (d)(3)(i) of this section using the pipe rigs.

(ii) Large water systems without lead service lines that exceed the lead action level or copper action level must conduct the corrosion control studies for re-optimization under paragraph (d)(3)(ii) of this section (Step 3).

(iii) A water system other than those covered in paragraph (d)(1)(i) or (ii) of this section must recommend re-optimized optimal corrosion control treatment (§ 141.82(a)) within six months after the end of the tap sampling period during which it exceeds either the lead action level or copper action level.

(iv) Systems may make an existing corrosion control treatment modification recommendation to the State within six months after the end of the tap sampling period in which it exceeds the lead action level. The State must evaluate a system's past corrosion control treatment study results prior to approving an existing treatment modification. When a State approves existing treatment modifications, the State must specify re-optimized OCCT within 12 months after the end of the tap sampling period during which it exceeded the lead action level. The system must complete modifications to corrosion control treatment to have re-optimized OCCT installed within six months of the State specifying re-optimized OCCT. These systems must proceed to Step 6 in paragraph (d)(6) and conduct follow-up monitoring.

(2) *Step 2. State requires CCT study or State designates re-optimized OCCT.* Within one year after the end of the tap sampling period during which a medium water system without lead service lines or a small system exceeds the lead action level or copper action level, the State may require the water system to perform corrosion control studies for re-optimization (§ 141.82(c)(2)). If the State does not require the system to perform such studies, the State must specify re-optimized corrosion control treatment (§ 141.82(d)) within the timeframes specified in paragraphs (d)(2)(i) and (ii) of this section. The State must provide its determination to the system in writing:

(i) For medium water systems, within one year after the end of the tap sampling period during which such water system exceeds the lead action level or copper action level.

(ii) For small water systems, within 18 months after the end of the tap sampling period during which such water system exceeds the lead action level or copper action level.

(3) *Step 3. Study duration.* (i) Any water system with lead service lines that exceeds the lead action level, in accordance with (d)(1) of this section, must complete the pipe rig corrosion control treatment studies and recommend re-optimized OCCT within 30 months after the end of the tap sampling period during which it exceeds the lead action level.

(ii) If the water system is required to perform corrosion control studies under paragraph (d)(1)(ii) or (d)(2) of this section, the water system must complete the studies (§ 141.82(c)) and recommend re-optimized OCCT within 18 months after the end of the tap sampling period during which it exceeds the lead or copper action level or after the State requires that such studies be conducted.

(4) *Step 4. State designation of re-optimized OCCT based on CCT study results.* The State must designate re-optimized OCCT (§ 141.82(d)) within six months after completion of paragraph (d)(3)(i) or (ii) of this section (Step 3).

(5) *Step 5. Re-optimized OCCT deadlines.* Water systems must install re-optimized OCCT (§ 141.82(e)) within one year after completion of paragraph (d)(4) of this section (Step 4) or paragraph (d)(2)(i) or (ii) of this section (Step 2).

(6) *Step 6. Follow-up monitoring.* Water systems must complete follow-up sampling (§§ 141.86(c)(2)(iii)(D) and 141.87(b)(3)) within one year after completion of paragraph (d)(5) of this section (Step 5).

(7) *Step 7. State sets Optimal Water Quality Parameters (OWQPs).* The State must review the water system's re-optimized OCCT and designate OWQPs (§ 141.82(f)) within six months after completion of paragraph (d)(6) of this section (Step 6).

(8) *Step 8. Systems meet OWQPs to demonstrate compliance.* The water system must comply with the State designated OWQP (§ 141.82(g)) and conduct tap sampling (§ 141.86(c)(2)(iii)(E)) and water quality parameter monitoring under § 141.87(b)(4).

(e) *Treatment steps and deadlines for systems without corrosion control treatment.* Except as provided in paragraph (b) of this section, water systems without corrosion control treatment must 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. Water systems must conduct tap sampling for lead and copper in accordance with the requirements of § 141.86 while the system completes the corrosion control steps in this section.

(1) *Step 1. Initiation of mandatory pipe rig or CCT study or treatment recommendation.* (i) A medium or large water system with lead service lines that exceeds the lead action level must harvest lead pipes from the distribution system and construct flowthrough pipe rigs and operate the rigs with finished water within one year after the end of the tap sampling period during which it exceeds the lead action level. These water systems must proceed to Step 3 in paragraph (e)(3) of this section and conduct the corrosion control studies for optimization under paragraph (e)(3)(i) of this section using the pipe rigs.

(ii) Large water systems under paragraph (a)(1)(iii) of this section must conduct the corrosion control studies for optimization under paragraph (e)(3) of this section (Step 3).

(iii) A water system other than those covered in paragraph (e)(1)(i) or

paragraph (e)(1)(ii) of this section must recommend optimal corrosion control treatment (OCCT) (§ 141.82(a)) within six months after the end of the tap sampling period during which it exceeds either the lead or copper action level.

(2) *Step 2. State requires CCT study or State designates OCCT.* Within one year after the end of the tap sampling period during which a water system exceeds the lead or copper action level, the State may require the water system to perform corrosion control studies (§ 141.82(b)(1)) if those studies are not otherwise required by this rule. The State must notify the system in writing of this requirement. If the State does not require the system to perform such studies, the State must specify OCCT (§ 141.82(d)) within the timeframes established in paragraphs (e)(2)(i) and (ii) of this section. The State must provide its determination to the system in writing:

(i) For medium water systems, within 18 months after the end of the tap sampling period during which such water system exceeds the lead action level or copper action level.

(ii) For small water systems, within 24 months after the end of the tap sampling period during which such water system exceeds the lead action level or copper action level.

(3) *Step 3. Study duration.* (i) Large and medium systems with lead service lines that exceed the lead action level must complete the corrosion control treatment studies and recommend OCCT within 30 months after the end of the tap sampling period during which it exceeds the lead action level.

(ii) If the water system is required to perform corrosion control studies under paragraph (e)(1)(ii) or (e)(2) of this section, the water system must complete the studies (§ 141.82(c)) and recommend OCCT within 18 months after the end of the tap sampling period during which it exceeds the lead or copper action level or the State notifies the system in writing that such studies must be conducted.

(4) *Step 4. State designation of OCCT based on CCT study results.* The State must designate OCCT (§ 141.82(d)) within six months after completion of paragraph (e)(3)(i) or (ii) of this section (Step 3).

(5) *Step 5. OCCT installation deadlines.* The water system must install OCCT (§ 141.82(e)) within 24 months after the State designates OCCT under paragraph (e)(2) or (4) of this section (Step 2 or Step 4).

(6) *Step 6. Follow-up monitoring.* The water system must complete follow-up sampling (§§ 141.86(c)(2)(iii)(D) and 141.87(b)(3)) within 12 months after completion of paragraph (e)(5) of this section (Step 5).

(7) *Step 7. State sets Optimal Water Quality Parameters (OWQPs).* The State must review the water system's installation of treatment and designate OWQPs (§ 141.82(f)) within six months after completion of paragraph (e)(6) of this section (Step 6).

(8) *Step 8. Systems meet OWQPs to demonstrate compliance.* The water system must comply with the State designated OWQP (§ 141.82(g)) and conduct tap sampling (§ 141.86(c)(2)(iii)(E)) and water quality parameter monitoring under § 141.87(b)(4).

(f) *Systems with lead or galvanized requiring replacement service lines that can complete the service line replacement program within five years.* (1) A water system with one or more lead or galvanized requiring replacement service lines is not required to complete the steps under paragraph (d) or (e) of this section if the system meets the following requirements:

(i)(A) A water system completes the service line replacement requirements under § 141.84(d) within five years of the end of the tap sampling period in which the system first exceeds the lead action level and the applicable deadline for service line replacement is at least five years after the end of the tap sampling period in which the system first exceeds the lead action level; or

(B) A large water system without corrosion control treatment completes the service line replacement requirements under § 141.84(d) within five years of the end of the tap sampling period in which the system's 90th percentile results first exceeds the PQL for lead and the applicable deadline for service line replacement is at least five years after the end of the tap sampling period in which the system first exceeds the lead PQL; and

(ii) A system replaces a minimum of 20 percent of lead or galvanized requiring replacement service lines each year, removing all lead and galvanized requiring replacement service lines and identifying the material of all service lines of unknown material by the end of the five-year period in paragraph (f)(1)(i) of this section.

(2) Systems with corrosion control treatment must continue to operate and maintain corrosion control treatment in addition to completing the mandatory service line replacement requirements under § 141.84(d).

(3) A water system that does not replace a minimum of 20 percent of lead or galvanized requiring replacement service lines calculated in accordance with § 141.84(d)(5) each year in any one year of the five-year period in paragraph (f)(1)(i) of this section or complete the service line replacement requirements under § 141.84(d) within five years of the end of the tap sampling period that either the system first exceeds the lead action level or the 90th percentile results first exceed the lead PQL for large systems without corrosion control treatment must meet the requirements under paragraph (d) or (e) of this section, as applicable.

(4) Water systems whose inventory contains only non-lead service lines after the five-year replacement period established in (f)(1)(i) of this section must meet the requirements under paragraph (d) or (e) of this section, as applicable, if at the end of a subsequent tap sampling period, either the system exceeds the lead action level or the 90th percentile results first exceed the lead PQL for large systems without corrosion control treatment.

(g) *Completing corrosion control steps for small and medium water systems without corrosion control treatment.* (1) Any small or medium system without corrosion control treatment required to complete the steps in paragraph (e) of this section that does not exceed the lead and copper action levels during two consecutive six-month tap monitoring periods pursuant to § 141.86 prior to the start of Step 3 in paragraph (e)(3) of this section or Step 5 in paragraph (e)(5) of this section may stop completing the steps and is not required to complete Step 3 or Step 5, respectively, except that medium systems with lead service lines must complete a corrosion control treatment study under paragraph (e)(3)(i) of this section. A calculated 90th percentile level at or below the lead or copper action level based on fewer than the minimum number of required samples under § 141.86 cannot be used to meet the requirements of this provision.

(2) Any system that starts Step 5 in accordance with paragraph (e)(5) of this section must complete all remaining steps (*i.e.,* Steps 6 through 8) in paragraphs (e)(6) through (8) of this section and is not permitted to stop the steps.

(3) Any small or medium system under paragraph (g)(1) of this section that stopped the steps in paragraph (e) of this section and subsequently exceeds either the lead or copper action level must complete the corrosion control treatment steps in paragraph (e) beginning with the first treatment step that was not completed. Eligible systems can only use the exception in paragraph (g)(1) once.

(4) 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 must notify the system in writing of such a determination and explain the basis for its decision.

(h) *Notification requirements for upcoming long-term change in treatment or source.* Any water system shall notify the State in writing pursuant to § 141.90(a)(4) of any upcoming long-term change in treatment or addition of a new source as described in § 141.90(a)(4). 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.

■ 5. Revise § 141.82 to read as follows:

§ 141.82 Description of corrosion control treatment requirements.

This section provides the requirements for systems and States designating optimal corrosion control treatment (OCCT) for a system that is optimizing or re-optimizing corrosion control treatment. All systems must complete the corrosion control treatment requirements in this section as applicable under § 141.81.

(a) *System recommendation regarding corrosion control treatment for systems that do not have lead service lines and small systems with lead service lines that are not required by the State to conduct a harvested pipe rig study.* (1) Any system without corrosion control treatment that is required to recommend a treatment option in accordance with § 141.81(e) must, based on the results of lead and copper tap sampling and water quality parameter monitoring, recommend designating one or more of the corrosion control treatments listed in paragraph (c)(1) of this section. The State may require the system to conduct additional water quality parameter monitoring to assist the State in reviewing the system's recommendation.

(2) Any system with corrosion control treatment that exceeds the lead action level that is required to recommend a treatment option in accordance with § 141.81(d)(1)(iii) must recommend designating 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.

(3) States may waive the requirement for a system to recommend OCCT if the State requires the system, in writing, to complete a corrosion control study within three months after the end of the tap sampling period during which the lead or copper action level exceedance occurred. These systems must proceed directly to paragraph (c) of this section and complete a corrosion control study.

(b) *State decision to require studies to identify initial OCCT under § 141.81(e)(2) and re-optimized OCCT under § 141.81(d)(2).* (1) The State may require any small or medium system without corrosion control treatment that exceeds either the lead action level or copper action level to perform corrosion control treatment studies under paragraph (c)(1) of this section to identify OCCT for the system.

(2) The State may require any small or medium water system with corrosion control treatment exceeding either the lead action level or copper action level to perform corrosion control treatment studies under paragraph (c)(2) of this section to identify re-optimized OCCT for the system (*i.e.,* OCCT after a re-optimization evaluation).

(c) *Performance of corrosion control studies.* (1) Systems without corrosion control treatment required to conduct corrosion control studies under § 141.81(e) must evaluate the effectiveness of each of the following treatments, and if appropriate, combinations of the following treatments, to identify OCCT for the system:

(i) Alkalinity and pH adjustment;

(ii) The addition of an orthophosphate- or a silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective corrosion inhibitor residual concentration in all test samples;

(iii) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 1 mg/L (as PO_4) in all test samples; and

(iv) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 3 mg/L (as PO_4) in all test samples.

(2) Systems with corrosion control treatment required to conduct corrosion control studies under § 141.81(d) must evaluate the effectiveness of the following treatments, and if appropriate, combinations of the following treatments, to identify re-optimized OCCT for the system:

(i) Alkalinity and/or pH adjustment or re-adjustment;

(ii) The addition of an orthophosphate- or a silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective corrosion inhibitor residual concentration in all test samples if no such inhibitor is utilized;

(iii) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 1 mg/L (as PO_4) in all test samples unless the current inhibitor process already meets this residual; and

(iv) The addition of an orthophosphate-based corrosion inhibitor at a concentration sufficient to maintain an orthophosphate residual concentration of 3 mg/L (as PO_4) in all test samples unless the current inhibitor process already meets this residual.

(3) Systems must evaluate each of the corrosion control treatments specified in paragraph (c)(1) or (2) of this section individually or, if appropriate, in combinations, using pipe rig/loop tests, metal coupon tests, partial-system tests, and/or analyses based on documented analogous treatments with similar size systems that have a similar water chemistry and similar distribution system configurations. Large and medium systems with lead service lines and other systems as required by the State, that exceed the lead action level must conduct pipe rig/loop studies using harvested lead service lines from their distribution systems to assess the effectiveness of corrosion control treatment options on the existing pipe scale. Metal coupon tests can be used as a screen to reduce the number of options evaluated in the pipe rig studies to the current water quality and at least two treatment options.

(4) Systems must measure the following water quality parameters in any tests conducted under paragraph (c)(3) of this section both before and after evaluating the corrosion control treatments listed in paragraph (c)(1) or (2) of this section:

(i) Lead;

(ii) Copper;

(iii) pH;

(iv) Alkalinity;

(v) Orthophosphate as PO_4 (when an orthophosphate-based inhibitor is used);

(vi) Silicate (when a silicate-based inhibitor is used); and

(vii) Any additional parameters needed to evaluate the effectiveness of a corrosion control treatment as determined by the State.

(5) Systems must identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion

control treatment and document those constraints by providing either of the following:

(i) Data and documentation showing a particular corrosion control treatment has adversely affected other drinking water treatment processes when used by another water system with comparable water quality characteristics. Systems using coupon studies to screen and/or pipe rig/loop studies to evaluate treatment options cannot exclude treatment strategies from the studies based on the constraints identified in this paragraph.

(ii) Data and documentation demonstrating the water system previously attempted to evaluate a particular corrosion control treatment and found the treatment was ineffective or adversely affects other drinking water quality treatment processes. Systems using coupon studies to screen and/or pipe rig/loop studies to evaluate treatment options cannot exclude treatment strategies from the studies based on the constraints identified in this paragraph, unless the treatment was found to be ineffective in a previous pipe rig/loop study.

(6) Systems must evaluate the effect of the chemicals used for corrosion control treatment on other drinking water quality treatment processes. Systems using coupon studies to screen and/or pipe rig/loop studies to evaluate treatment options cannot exclude any of the required treatment strategies specified in paragraph (c)(1) or (2) of this section from the studies based on the effects identified in this section.

(7) Based on the data and analysis for each treatment option evaluated under paragraph (c) of this section, systems must recommend to the State, in writing, the treatment option that the corrosion control studies indicate constitutes OCCT for that system as defined in § 141.2. Systems must provide the State with a rationale for the OCCT recommendation and all supporting documentation specified in paragraphs (c)(1) or (2) and (c)(3) through (7) of this section.

(d) *State designation of OCCT and re-optimized OCCT*—(1) *Designation of OCCT or re-optimized OCCT.* Based on available information including, where applicable, studies conducted under paragraph (c)(1) or (2) of this section and/or a system's recommended corrosion control treatment option, the State must either approve the corrosion control treatment option recommended by the system or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1) or (2) of this section. The State must notify the water system, in writing, of its designation of OCCT or re-optimized OCCT and explain the basis for this determination.

(i) When designating OCCT, the State must consider the effects that additional corrosion control treatment will have on water quality parameters and other drinking water quality treatment processes.

(ii) If the State requests additional information to aid its review, the water system must provide that information.

(2) [Reserved]

(e) *Installation of OCCT and re-optimized OCCT.* Each system must install and operate throughout its distribution system the OCCT or re-optimized OCCT designated by the State under paragraph (d) of this section.

(f) *State review of treatment and specification of optimal water quality parameters for OCCT and re-optimized OCCT.* The State must evaluate the results of all lead and copper tap and water quality parameter sampling submitted by the water system and determine whether the water system has installed and operated the OCCT designated by the State in paragraph (d) of this section. Upon reviewing the system's tap and water quality parameter sampling results, both before and after the water system installs OCCT, or re-optimizes OCCT, the State must designate each of the following:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system.

(2) A minimum pH value measured in all tap samples. This value must 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.

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for orthophosphate (as PO_4) or silicate measured at each entry point to the distribution system.

(4) If a corrosion inhibitor is used, a minimum orthophosphate (as PO_4) 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, for OCCT designations for systems without corrosion control treatment, the orthophosphate concentration must be equal to or greater than 0.5 mg/L (as PO_4) and for OCCT designations for systems with corrosion control treatment, the orthophosphate concentration must be equal to or greater than 1.0 mg/L, unless the State determines that meeting the applicable minimum orthophosphate residual is not technologically feasible or is not necessary for OCCT.

(5) If alkalinity is adjusted as part of OCCT, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples.

(6) The values for the applicable water quality control parameters in paragraphs (f)(1) through (5) of this section, must be the values the State determines reflect OCCT or re-optimized OCCT for the water system. The State may designate values for additional water quality control parameters the State determines reflect OCCT or re-optimized OCCT for the water system. The State must notify the system, in writing, of these determinations and explain the basis for its decisions.

(g) *Continued operation and monitoring for OCCT and re-optimized OCCT.* All systems optimizing or re-optimizing OCCT must continue to operate and maintain OCCT, including maintaining water quality parameters at or above the minimum values or within the ranges designated by the State under paragraph (f) of this section, in accordance with this paragraph (g) for all water quality parameter samples collected under § 141.87(b)(4) through (d). 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, and any water system with corrosion control treatment, OCCT, or re-optimized OCCT that is not required to monitor water quality parameters under § 141.87.

(1) Compliance with the requirements of this paragraph (g) must be determined every six months, as specified under § 141.87(b)(4). A water system is out of compliance with the requirements of this paragraph (g) for a six-month period if it has excursions for any State-specified parameter on more than nine days, cumulatively, 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 set out in paragraph (g)(2) of this section. States have discretion to not include results of obvious sampling errors from this calculation. Sampling errors must still be recorded even when not included in calculations.

(2)(i) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value must 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 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 must be used to aggregate multiple measurements taken at a sampling point for the water quality parameters in lieu of the formula in this paragraph (g)(2).

(ii) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value must 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 must 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 OCCT and re-optimized OCCT.* 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 OCCT under paragraph (d) of this section, or optimal water quality parameters under paragraph (f) of this section. A request for modification by a system or other interested party must be in writing, explaining why the modification is appropriate, and providing supporting documentation. The State may require a system to conduct a CCT study to support modification of the determination of OCCT or re-optimized OCCT. 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. A revised determination must be made in writing, set forth the new treatment requirements and/or optimal 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 EPA in lieu of the State on OCCT and re-optimized OCCT.* Pursuant to the procedures in § 142.19 of this chapter, the EPA Regional Administrator may review OCCT determinations made by a State under paragraph (d), (f), or (h) of this section and issue Federal corrosion control treatment determinations consistent with the requirements of paragraph (d), (f), or (h) of this section where the EPA Regional Administrator finds that:

(1) A State failed to issue a treatment determination by the applicable deadlines contained in § 141.81;

(2) A State abused its discretion; or

(3) The technical aspects of a State's determination would be indefensible in a Federal enforcement action taken against a water system.

(j) *Distribution system and site assessment for tap sample sites with lead results that exceed 0.010 mg/L.* The water system must conduct the following steps when the lead results from an individual tap sample site sampled under § 141.86 and the site is included in the site sample plan under § 141.86(a)(1) exceed 0.010 mg/L:

(1) *Step 1. Corrosion control treatment assessment.* Within five days of receiving the sampling results, the water system must sample at a water quality parameter site that is on the same size water main in the same pressure zone and located within a half mile radius of the site with the lead result exceeding 0.010 mg/L. Small water systems without corrosion control treatment may have up to 14 days to collect the new samples.

(i) The water system must measure the following parameters:

(A) pH;

(B) Alkalinity;

(C) Orthophosphate (as PO_4), when an inhibitor containing an orthophosphate compound is used; and

(D) Silica, when an inhibitor containing a silicate compound is used.

(ii) The water system must measure at the following locations:

(A) Water systems with an existing water quality parameter site that is on the same size water main in the same pressure zone and located within a half mile radius of the site with lead results exceeding 0.010 mg/L can conduct this sampling at that site.

(B) All water systems required to meet optimal water quality parameters but do not have an existing water quality parameter site that meets the requirements in paragraph (j)(1) of this section must add new sites to the minimum number of sites as described in § 141.87(b)(1)(i). Sites must be added until a system has twice the minimum number of sites listed in Table 1 to § 141.87(b)(1)(i). When a system exceeds twice the number of sites, the State has discretion to determine if these additional newer sites can better assess the effectiveness of the corrosion control treatment and whether to remove existing sites during sanitary survey evaluation of OCCT.

(2) *Step 2. Site assessment.* Within 30 days of receiving the sampling results, water systems must collect and analyze a follow-up sample for lead at any tap sample site that exceeds 0.010 mg/L. 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 must be submitted to the State but cannot 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 must provide documentation to the State, as specified in § 141.90(g)(2), explaining why it was unable to collect a follow-up sample.

(3) *Step 3. Evaluate results and system treatment recommendation.* Water systems must evaluate the results of the sampling conducted under paragraphs (j)(1) and (2) of this section to determine if either localized or centralized adjustment of the OCCT or other distribution system actions are necessary and submit the recommendation to the State within six months after the end of the tap sampling period in which the site(s) exceeded 0.010 mg/L. Corrosion control treatment modification may not be necessary to address every exceedance of the lead action level. Other distribution system actions may include flushing to reduce water age. Water systems must note the cause of the elevated lead level, if known from the site assessment, in their recommendation to the State as site-specific issues can be an important factor in why the system is not recommending any adjustment of corrosion control treatment or other distribution system actions. Systems in the process of optimizing or re-optimizing OCCT under paragraphs (a) through (f) of this section do not need to submit a treatment recommendation for distribution system and site assessment.

(4) *Step 4. State approval of treatment recommendation.* The State must approve the treatment recommendation or specify a different approach within six months of completion of Step 3 as described in paragraph (j)(3) of this section and notify the water system in writing.

(5) *Step 5. Modifications to OCCT.* If the State-approved treatment recommendation requires the water system to adjust the OCCT process, the water system must complete modifications to its corrosion control treatment within 12 months of receiving notification from the State as described in paragraph (j)(4) of this section. Systems without corrosion control treatment required to install OCCT must follow the schedule in § 141.81(e).

(6) *Step 6. Follow up sampling.* Water systems adjusting OCCT must complete follow-up sampling in accordance with §§ 141.86(c)(2)(iii)(D) and 141.87(c)(2)(iii)(D) within 12 months after completion of Step 5 as described in paragraph (j)(5) of this section and submit sampling results to the State in accordance with §§ 141.86 and 141.87.

(7) *Step 7. State OWQP designation.* For water systems adjusting OCCT, the State must review the water system's modification of corrosion control treatment and designate optimal water quality parameters in accordance with § 141.82(f) within six months of receiving sampling result in paragraph (j)(6) of this section.

(8) *Step 8. Operate in compliance.* For a water system adjusting OCCT, the water system must operate in compliance with the State-designated optimal water quality parameters in accordance with § 141.82(g) and continue to conduct tap sampling in accordance with §§ 141.86(c)(2)(iii)(E) and 141.87(c)(2).

■ 6. Revise § 141.84 to read as follows:

§ 141.84 Service line inventory and replacement requirements.

(a) *Service line and connector inventory development.* All water systems must develop a service line inventory that identifies the material and location of each service line connected to the public water distribution system. The 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 includes both the portion of the service line owned by the water system and the portion of the service line owned by the customer). The inventory must meet the following requirements:

(1) All water systems are required to develop an initial inventory and submit it to the State by October 16, 2024, in accordance with § 141.90(e)(1).

(2) All water systems must develop an updated initial inventory, known as the ''baseline inventory''. Systems must submit the baseline inventory to the State by the compliance date in § 141.80(a)(3). Newly regulated public water systems, as defined in § 141.2, must develop a baseline inventory on a schedule established by the State that does not exceed three years from the date the system becomes subject to national primary drinking water regulations. The baseline inventory must include each service line and connector that is connected to the public water distribution system regardless of ownership status (*e.g.,* where service line ownership is shared, the inventory includes both the portion of the service line owned by the water system and the portion of the service line owned by the customer).

(i) For the baseline inventory, water systems must conduct a review of any information listed in paragraphs (b)(2)(i) through (iii) of this section that describes connector materials and locations. Water systems must also conduct a review of any information on lead and galvanized iron or steel that they have identified pursuant to § 141.42(d) to identify connector materials and locations. The water system may use other sources of information not listed in paragraphs (b)(2)(i) through (iii) of this section if approved or required by the State.

(ii) Water systems must include each connector identified in paragraph (a)(2)(i) of this section in their baseline inventory. Connector materials must be categorized in the following manner:

(A) ''Lead'' where the connector is made of lead.

(B) ''Replaced lead'' where the connector was previously made of lead but has been removed or replaced.

(C) ''Never lead'' where the connector is determined through an evidence-based record, method, or technique not to be made of lead, and there was never a lead connector present.

(D) ''Unknown'' where connector material is not known.

(E) ''No connector present'' where there is no connector in use.

(iii) All water systems must include any new information on service line materials from all applicable sources described in paragraph (b)(2) of this section in the baseline inventory.

(3) Each service line, or portion of the service line where ownership is shared, must be categorized in the following manner:

(i) ''Lead'' where the service line is a lead service line as defined in § 141.2.

(ii) ''Galvanized Requiring Replacement'' where the service line is a galvanized requiring replacement service line as defined in § 141.2.

(iii) ''Non-Lead'' where the service line is determined through an evidence-based record, method, or technique not to be a lead or galvanized requiring replacement service line. Water systems are not required to identify the specific material of a non-lead service line; however, they may use the material (*e.g.,* plastic or copper) as an alternative to categorizing it as ''Non-Lead''.

(iv) ''Lead Status Unknown'' or ''Unknown'' where the service line material is not known to be lead, galvanized requiring replacement, or non-lead, such as where there is no documented evidence or evidence reliably supporting material categorization. Water systems may elect to provide more information regarding their unknown service lines as long as the inventory clearly distinguishes unknown service lines from those where the categorization of the material is based on the categorization methods approved under paragraph (b)(2) of this section.

(4) The inventory must include a street address associated with each service line and connector. Where a street address is not available for an individual service line or connector, a unique locational identifier (*e.g.,* a block, intersection, or landmark) may be used.

(5) The inventory must be publicly accessible.

(i) The publicly accessible inventory must include the information described in paragraphs (a)(2) through (4) of this section and be updated in accordance with paragraph (b) of this section.

(ii) Water systems serving greater than 50,000 persons must make the publicly accessible inventory available online.

(6) When a water system has no lead, galvanized requiring replacement, or lead status unknown service lines, no known lead connectors or unknown connectors, it may comply with the requirements in paragraph (a)(5) of this section using a written statement in lieu of the publicly accessible inventory, declaring that the distribution system has no lead, galvanized requiring replacement, or lead status unknown service lines, no known lead connectors or no unknown connectors. The statement must include a general description of all applicable sources used in the inventory as described in paragraphs (a)(1) and (2) and (b)(2) of this section to make this determination.

(7) Instructions to access the publicly accessible inventory (including inventories consisting only of a statement in accordance with paragraph (a)(6) of this section) must be included in the Consumer Confidence Report in accordance with § 141.153(d)(4)(xi).

(b) *Additional requirements for service line and connector inventory maintenance.* (1) All water systems must update the baseline inventory of service lines and connectors developed in paragraph (a)(2) of this section and submit the updates to the State on an annual basis in accordance with § 141.90(e). These updates begin one year after the compliance date in § 141.80(a)(3). The publicly accessible inventory must reflect any updates no later than the deadline to submit the updated inventory to the State.

(i) All water systems must identify the material of all lead status unknown service lines by the applicable mandatory service line replacement deadline in paragraph (d)(4) of this section.

(ii) Water systems whose inventories contain only non-lead service lines and never lead connectors, replaced lead connectors, or no connectors present are not required to provide updated inventories to the State or updates to the publicly accessible inventory. If, in the future, such a water system discovers a lead service line, galvanized requiring replacement service line, or lead connector within its system, the system must notify the State no later than 60 days after the discovery and prepare an updated inventory in accordance with this section on a schedule established by the State.

(2) Water systems must update the inventory annually with any new information acquired from all applicable sources described in paragraphs (b)(2) through (4) of this section and follow all applicable requirements for the inventory in paragraphs (a) and (b) of this section. The water system may update the inventory using other sources of information not listed in paragraphs (b)(2)(i) through (iii) of this section if the use of those sources is or previously has been approved or required by the State.

(i) All construction and plumbing codes, permits, and records or other documentation that indicate the service line and connector materials used to connect structures to the distribution system.

(ii) All water system records on service lines and connectors, including distribution system maps and drawings, recent or historical records on each service connection and connector, meter installation records, historical capital improvement or master plans, and standard operating procedures.

(iii) All records of inspections in the distribution system that indicate the material composition of the service connections and connectors that connect a structure to the distribution system.

(iv) Water systems must update their inventory annually based on any lead or galvanized requiring replacement service line replacements, service line material inspections, or lead connector replacements that may have been conducted. Each updated inventory and subsequent update to the publicly accessible inventory must include the following information regarding service line replacements:

(A) The number of full lead service line replacements and full galvanized requiring replacement service line replacements that have been conducted in each preceding program year; and

(B) The total number of lead, galvanized requiring replacement, and unknown service lines and the number of lead connectors in the inventory.

(v) Water systems must identify service line and connector materials and addresses as they are encountered in the course of normal operations (*e.g.,* checking service line materials when reading water meters or performing maintenance activities). Water systems must update the inventory annually based on the identified service line and connector materials and addresses.

(3) Water systems that discover a lead or galvanized requiring replacement service line that was previously inventoried as non-lead must update their inventory in accordance with paragraph (b)(2) of this section and complete the following requirements:

(i) If the service line is discovered during the mandatory service line replacement program as described in paragraph (d) of this section, the system must update the total number of service line replacements calculated under paragraph (d)(6) of this section.

(ii) If the service line is discovered when the system's inventory is comprised of only non-lead service lines, such as after the completion of the system's mandatory service line replacement program, the system must conduct a full service line replacement of the line within six months in accordance with paragraph (d) of this section.

(iii) Water systems must notify the State in accordance with § 141.90(e) and comply with any additional actions required by the State to address the inventory inaccuracy.

(4) If a consumer notifies the water system of a suspected incorrect categorization of their service line material in the inventory, the system must respond to the consumer with an offer to inspect the service line within 60 days of receiving the notification.

(5) All water systems must validate the accuracy of the non-lead service line category in the inventory as follows:

(i) The water system must identify a validation pool, consisting of all service lines categorized as ''non-lead'' excluding non-lead service lines identified by records described in paragraphs (b)(2)(i) through (iii) of this section, visual inspection of the pipe exterior at a minimum of two points (*e.g.,* excavation, visual inspection in the meter pit or stop box, or visual inspection inside the home), or previously replaced lead or galvanized requiring replacement service lines from the validation pool. If a water system has no existing record or documentation of a two-point visual inspection that indicates how an individual non-lead service line was categorized, that service line must be included in the validation pool.

(ii) The water system must confirm the service line material of a random sample (*e.g.,* a sample selected by use of a random number generator or lottery method) of non-lead service lines from the validation pool. Confirmation of service line material must be done by visual inspection of the pipe exterior at a minimum of two points. Where ownership is shared, the water system must visually inspect both portions of the service line. Water systems must validate at least as many service lines as are required in the table in this paragraph. The table is as follows:

TABLE 1 TO PARAGRAPH (b)(5)(ii)

Size of validation pool	Number of validations required
<1,500	20 percent of validation pool.
1,500 to 2,000	322.
2,001 to 3,000	341.
3,001 to 4,000	351.
4,001 to 6,000	361.
6,001 to 10,000	371.
10,001 to 50,000	381.
>50,000	384.

(iii) If physical access to private property is necessary to complete the validation and the water system is unable to gain access, the system is not required to conduct a validation at that site. The system must replace the site by randomly selecting a new service line that meets the requirements of paragraph (b)(5)(i) of this section to conduct the validation.

(iv) *Deadline for inventory validation.* The deadlines for inventory validation are:

(A) No later than seven years after the compliance date in § 141.80(a)(3) for water systems subject to the mandatory service line replacement deadline in paragraph (d)(4) of this section or who have reported only non-lead service lines in their baseline inventory,

(B) A deadline established by the State for water systems completing mandatory service line replacement on a shortened deadline for service line replacement as established by the State in accordance with paragraph (d)(5)(iv) of this section, or

(C) A deadline established by the State to be no later than three years prior to the deadline for completing mandatory service line replacement if the water system is subject to a deferred deadline under paragraph (d)(5)(v) of

this section, an exemption, or a variance.

(v) Water systems that conduct inventory validation pursuant to this paragraph (b)(5) must submit the results of the validation by the applicable deadline described in paragraph (b)(5)(iv) of this section in accordance with § 141.90(e)(9).

(c) *Service line replacement plan.* All water systems with one or more lead, galvanized requiring replacement, or lead status unknown service line in their distribution system must create a service line replacement plan by the compliance date in § 141.80(a)(3) and submit a service line replacement plan to the State in accordance with § 141.90(e). The service line replacement plan must be sufficiently detailed to ensure a system is able to comply with the service line inventory and replacement requirements in this section.

(1) The service line replacement plan must include a description of:

(i) A strategy for determining the material composition of lead status unknown service lines in the service line inventory under paragraph (a) of this section;

(ii) A standard operating procedure for conducting full service line replacement (*e.g.,* techniques to replace service lines, plans for procurement of materials, or plans for utilizing contractors);

(iii) A communication strategy to inform consumers and customers before a full or partial lead or galvanized requiring replacement service line replacement consistent with the requirements for notification and mitigation in paragraph (h) of this section;

(iv) A procedure for consumers and customers to flush service lines and premise plumbing of particulate lead following disturbance of a lead, galvanized requiring replacement, or lead status unknown service line in accordance with § 141.85(g) and following full or partial replacement of a lead or galvanized requiring replacement service line consistent with the requirements for notification and mitigation in paragraph (h) of this section;

(v) A strategy to prioritize service line replacement based on factors including but not limited to known lead and galvanized requiring replacement service lines as well as service line replacements for local communities, such as those disproportionately impacted by lead, and populations most sensitive to the effects of lead;

(vi) A funding strategy for conducting service line replacement. Where the water system intends to charge customers for the cost to replace all or a portion of the service line because it is authorized or required to do so under State or local law or water tariff agreement, the funding strategy must include a description of whether and how the water system intends to assist customers who are unable to pay to replace the portion of the service line they own;

(vii) A communication strategy to inform residential and non-residential customers and consumers (*e.g.,* property owners, renters, and tenants) served by the water system about the service line replacement plan and program; and

(viii) Identification of any laws, regulations, and/or water tariff agreements that affect the water system's ability to gain access to conduct full lead and galvanized requiring replacement service line replacement, including the citation to the specific laws, regulations, or water tariff agreement provisions. This includes identification of any laws, regulations, and/or water tariff agreements that require customer consent and/or require or authorize customer cost-sharing.

(2) The service line replacement plan must be made available to the public. Water systems serving greater than 50,000 persons must make the plan available to the public online.

(d) *Mandatory full service line replacement.* (1) All water systems must replace all lead and galvanized requiring replacement service lines under the control of the water system unless the replacement would leave in place a partial lead service line.

(2) Where a water system has access (*e.g.,* legal access, physical access) to conduct full service line replacement, the service line is under its control, and the water system must replace the service line. Where a water system does not have access to conduct full service line replacement, the water system is not required by this rule to replace the line, but the water system must document the reasons that the water system does not have access and include any specific laws, regulations, and/or water tariff agreements that affect the water system's ability to gain access to conduct full lead and galvanized requiring replacement service line replacement identified pursuant to paragraph (c)(1)(viii) of this section. The water system must provide this documentation to the State pursuant to § 141.90(e)(10).

(i) This rule does not establish the criteria for determining whether a system has access to conduct full service line replacement. Any State or local laws or water tariff agreement requirements to gain access to conduct full service line replacement must be identified in the service line replacement plan as described in paragraph (c) of this section and in the notification provided to persons served by lead, galvanized requiring replacement, and unknown service lines as described in § 141.85(e).

(ii) [Reserved]

(3) Where a water system has legal access to conduct full service line replacement only if property owner consent is obtained, the water system must make a ''reasonable effort'' to obtain property owner consent. If such a water system does not obtain consent after making a ''reasonable effort'' to obtain it from any property owner, then the water system is not required by this rule to replace any portion of the service line at that address.

(i) A ''reasonable effort'' must include at least four attempts to engage the property owner using at least two different methods of communication (*e.g.,* in-person conversation, phone call, text message, email, written letter, postcard, or information left at the door such as a door hanger) before the applicable deadline of mandatory service line replacement as described in paragraph (d)(4) of this section. The State may require systems to conduct additional attempts and may require specific outreach methods to be used.

(ii) Within six months of any change in ownership of the property, the water system must offer full service line replacement to any new property owner and make a ''reasonable effort'' to obtain the property owner's consent as described in paragraph (d)(3)(i) of this section within one year of any change in property ownership. If the water system is unable to obtain consent from the current property owner after making a ''reasonable effort'' to obtain it, the water system is not required under this rule to replace the line. This paragraph continues to apply after a system completes its mandatory service line replacement program.

(4) *Deadline for completing mandatory service line replacement.* The deadline for water systems to replace all lead and galvanized requiring replacement service lines under the control of the water system is no later than ten years after the compliance date specified in § 141.80(a)(3) unless the system is subject to a different deadline under paragraphs (d)(5)(iv) and (v) of this section.

(5) Water systems must meet a minimum average annual replacement rate for completing mandatory service

line replacement in accordance with this paragraph (d)(5):

(i) A water system must replace lead and galvanized requiring replacement service lines as described in paragraph (d)(6) of this section at an average annual replacement rate of at least 10 percent calculated across a rolling three-year period unless the system is eligible for a shortened replacement rate or deferred replacement rate in accordance with paragraphs (d)(5)(iv) and (v) of this section.

(ii) To calculate the annual percent of service lines replaced, at the end of each mandatory service line replacement program year, water systems must divide the number of service lines replaced during that program year in accordance with paragraph (d)(6)(iii) of this section by the number of service lines within the replacement pool in accordance with paragraph (d)(6)(i) of this section.

(iii) *Three-year rolling average.* Compliance with the average annual replacement rate in paragraph (d)(5)(i) of this section is assessed annually in accordance with a three-year rolling average. The average annual replacement rate of the first rolling three-year period is assessed at the end of the third year of the mandatory service line replacement program (*i.e.,* three years after the compliance date specified in § 141.80(a)(3)) and is calculated by taking the sum of the annual percentages of service lines replaced from year one, year two, and year three, then dividing that sum by three. Annually thereafter, at the end of each replacement program year, systems must assess the average annual replacement rate across a rolling three-year period by averaging the three most recent years of the replacement program, which is calculated by taking the sum of the three most recent annual percentages of service lines replaced and dividing that sum by three. The average annual replacement rate of every rolling three-year period must be 10 percent or greater. The water system must make up any deficient percentages of the replacement rate for any rolling three-year period by the applicable deadline for completing mandatory service line replacement in accordance with paragraph (d)(4) of this section.

(iv) *Shortened deadline and associated replacement rate.* Where the State determines that a shortened replacement deadline is feasible for a water system (*e.g.,* by considering the number of lead and galvanized requiring replacement service lines in a system's inventory), the State must require the system to replace service lines by an earlier deadline than required in paragraph (d)(4) of this section and establish a different minimum replacement rate in accordance with paragraph (d)(5)(iv)(A). The State must make this determination in writing and notify the system of its finding. The State must set a shortened deadline at any time throughout a system's replacement program if a State determines a shorter deadline is feasible. This paragraph also applies to systems eligible for a deferred deadline as specified in paragraph (d)(5)(v) of this section.

(A) Systems must replace lead and galvanized requiring replacement service lines at an average annual replacement rate calculated by dividing 100 by the number of years needed to meet the shortened deadline in paragraph (d)(5)(iv) of this section, expressed as a percentage. Systems must comply with the three-year rolling average in accordance with paragraph (d)(5)(iii) of this section unless the shortened replacement deadline is less than three years.

(B) [Reserved]

(v) *Deferred deadlines and associated replacement rates.* Subject to the State determination in paragraph (d)(5)(iv) of this section, a water system may defer service line replacement past the deadline in paragraph (d)(4) of this section if the system meets one or both of the following conditions:

(A) If 10 percent of the total number of known lead and galvanized requiring replacement service lines in a water system's replacement pool as described in paragraph (d)(6)(i) of this section is greater than 10,000 service lines, the system may complete replacement of all lead and galvanized requiring replacement service lines by a deadline that corresponds to the system replacing 10,000 lead and galvanized requiring replacement service lines annually.

(B) If a water system replacing 10 percent of the total number of known lead and galvanized requiring replacement service lines in a water system's replacement pool, on an annual basis, results in an annual number of replacements per household served by the water system that exceeds 0.039, the system may complete replacement of all lead and galvanized requiring replacement service lines by a deadline that corresponds to the system replacing 0.039 average annual replacements per household served calculated over a rolling three-year period in accordance with paragraph (d)(5)(iii) of this section. To calculate the minimum average annual replacement rate, the system must divide 100 by the number of years needed to achieve replacing 0.039 average annual replacements per household, expressed as a percentage.

(6) Calculation of the replacement pool, the annual number of replacements needed, and the number of service lines replaced to calculate a system's average annual replacement rate and achieve the replacement deadline are as follows:

(i) *Replacement pool.* To calculate the baseline replacement pool, systems must add the total number of lead, galvanized requiring replacement, and lead status unknown service lines in the baseline inventory submitted by the compliance date specified in § 141.80(a)(3). At the beginning of each program year, water systems must update the replacement pool according to the counts of specific types of recategorized service lines in the inventory annually thereafter as described this paragraph (d)(6)(i):

(A) Unknown service lines that are identified as non-lead service lines must be subtracted from the replacement pool. Unknown service lines that are identified as lead or galvanized requiring replacement service lines must be recategorized appropriately in the inventory and replacement pool, but they do not change the number of service lines in the replacement pool because recategorization does not remove these service lines from the replacement pool.

(B) Non-lead service lines discovered to be lead or galvanized requiring replacement service lines must added to the replacement pool.

(C) Each entire service line shall count only once for purposes of calculating the replacement pool.

(ii) *Annual number of replacements needed.* To calculate the number of lead and galvanized requiring replacement service lines a system needs to replace in a given program year, divide the most up-to-date replacement pool by the total number of years allowed under paragraph (d)(4) of this section to complete mandatory service line replacement (*e.g.,* 10 years).

(iii) *Number of service lines replaced.* When calculating the average annual replacement rate, the water system may only include full service line replacements of lead or galvanized requiring replacement service lines when counting the number of service lines replaced. Wherever the system conducts a replacement of a lead or galvanized requiring replacement service line (either a portion of a service line or the entire service line), the replacement counts as a full service line replacement only if, after the replacement, the entire service line can be categorized in the inventory as non-

lead under paragraph (a)(3)(iii) of this section.

(A) For purposes of mandatory service line replacement, systems must count each entire service line once, including where ownership of the service line is shared, with a single material categorization in accordance with table 2 to this paragraph (d)(6)(iii)(A).

TABLE 2 TO PARAGRAPH (d)(6)(iii)(A)

System-owned portion	Customer-owned portion	Categorization for entire service line
Lead	Lead	Lead.
Lead	Galvanized Requiring Replacement	Lead.
Lead	Non-lead	Lead.
Lead	Lead Status Unknown	Lead.
Non-lead	Lead	Lead.
Non-lead and never previously lead	Non-lead, specifically galvanized pipe material.	Non-lead.
Non-lead	Non-lead, material other than galvanized	Non-lead.
Non-lead	Lead Status Unknown	Lead Status Unknown.
Non-lead, but system is unable to demonstrate it was not previously Lead.	Galvanized Requiring Replacement	Galvanized Requiring Replacement.
Lead Status Unknown	Lead	Lead.
Lead Status Unknown	Galvanized Requiring Replacement	Galvanized Requiring Replacement.
Lead Status Unknown	Non-lead	Lead Status Unknown.
Lead Status Unknown	Lead Status Unknown	Lead Status Unknown.

(B) A full service line replacement is counted where a non-lead service line is installed for use and the lead or galvanized requiring replacement service line is disconnected from the water main or other service line. If the lead or galvanized requiring replacement service line is disconnected from the water main or system-owned portion of the service line but not removed, the water system must be subject to a State or local law or have a written policy to preclude the water system from reconnecting the lead or galvanized requiring replacement service line to the water main or other service line.

(C) A full service line replacement may be counted where a system physically disconnects a service line that is not in use and the water system does not install a new non-lead service line because there is no service line in use (*e.g.,* at an abandoned property). If the disconnected lead or galvanized requiring replacement service line is not removed, the water system must be subject to a State or local law or have a written policy to preclude the water system from reconnecting the disconnected service line (*i.e.,* a new non-lead service line must be installed if active use is to resume).

(D) Water systems must not count the following as a full service line replacement for purposes of this rule:

(*1*) Where the service line is partially replaced as defined in § 141.2.

(*2*) Where a lead, galvanized requiring replacement, or unknown service line is determined to be a non-lead service line.

(*3*) Where only a lead connector is replaced.

(*4*) Where pipe lining or coating technologies are used while the lead or galvanized requiring replacement service line remains in use.

(7) Where a water system conducts a full lead or galvanized requiring replacement service line replacement, the system must comply with the notification and mitigation requirements specified in paragraph (h)(3) of this section.

(e) *Replacement of lead connectors when encountered by a water system.* (1) The water system must replace any lead connector when encountered during planned or unplanned water system infrastructure work unless the connector is not under the control of the system (*e.g.,* where the system does not or cannot obtain access to conduct the connector replacement).

(i) Upon replacement of any connector that is attached to a lead or galvanized requiring replacement service line, the water system must follow risk mitigation procedures for disturbances as specified in § 141.85(g)(2).

(ii) Following replacement of a lead connector, the water system must include the replaced lead connector in its inventory in accordance with paragraph (b)(2) of this section.

(2) The water system must comply with any State or local laws that require additional connectors to be replaced.

(f) *Replacement of a service line prompted by the customer.* (1) If State or local laws or water tariff agreements do not prevent customers from conducting partial lead or galvanized requiring replacement service line replacements (''customer-initiated replacements''), the water system must meet the following requirements:

(i) If the water system is notified by the customer that the customer intends to conduct a partial lead or galvanized requiring replacement service line replacement, the water system must:

(A) Replace the remaining portion of the lead or galvanized requiring replacement service line at the same time as, or as soon as practicable after, the customer-initiated replacement, but no later than 45 days from the date of the customer-conducted a partial replacement;

(B) Provide notification and risk mitigation measures in accordance with paragraph (h) of this section, as applicable, before the affected service line is returned to service; and

(C) Notify the State within 30 days if it fails to meet the deadline in paragraph (f)(1)(i)(A) of this section and complete the replacement no later than 180 days of the date of the customer-initiated replacement.

(ii) If the water system is notified or otherwise learns that a customer-initiated replacement occurred within the previous six months and left in place the system-owned portion of a lead or galvanized requirement replacement service line, the water system must:

(A) Replace any remaining portion of the affected service line within 45 days from the day of becoming aware of the customer-initiated replacement; and

(B) Provide notification and risk mitigation measures in accordance with paragraph (h) of this section within 24 hours of becoming aware of the customer replacement.

(iii) When a water system is notified or otherwise learns of a customer-initiated replacement of a lead or galvanized requiring replacement service line that occurred more than six months in the past, this rule does not require the water system to complete the lead or galvanized requiring replacement service line replacement of the system-owned portion under this paragraph (f). However, the remaining portion of the lead or galvanized requiring replacement service line must be identified in the inventory in accordance with paragraph (b) of this section and replaced in accordance with paragraph (d) of this section.

(g) *Requirements for conducting partial service line replacements*—(1) *Partial service line replacement.* This rule prohibits water systems from conducting a partial lead service line replacement or a partial galvanized requiring replacement service line replacement as defined under § 141.2 unless it is conducted as part of an emergency repair or in coordination with planned infrastructure work, excluding planned infrastructure work solely for the purposes of lead or galvanized requiring replacement service line replacement. Where a water system conducts partial service line replacement, the system must comply with the notification and mitigation requirements specified in paragraphs (h)(1) and (2) of this section.

(i) Whenever a water system conducts a partial replacement of a lead or galvanized requiring replacement service line, the system must include a dielectric coupling separating the remaining service line and the replaced service line (*i.e.,* newly installed service line) to prevent galvanic corrosion unless the replaced service line is made of plastic.

(ii) [Reserved]

(h) *Protocols for notification and mitigation for partial and full service line replacements.* (1) Notification and mitigation requirements for partial service line replacement. Whenever a water system plans to partially replace a lead or galvanized requiring replacement service line in coordination with planned infrastructure work, the water system must provide written notice to the owner of the affected service line, or the owner's authorized agent, as well as non-owner occupant(s) served by the affected service line at least 45 days prior to the replacement. The notice must explain that the system is planning to replace only a portion of the line (the portion of the line under control of the system) and offer to replace the remaining portion of the service line.

(i) Before the affected service line is returned to service, the water system must provide written notification that explains that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement and that meets the content requirements of § 141.85(a)(1)(ii) through (iv) and contact information for the water system. In instances where multi-family dwellings or multiple non-residential occupants are served by the affected service line to be partially replaced, the water system may elect to post the information at a conspicuous location instead of providing individual written notification to all residents or non-residential occupants.

(ii) The water system must provide written information about a procedure for consumers to flush service lines and premise plumbing of particulate lead following partial replacement of a lead or galvanized requiring replacement service line before the affected service line is returned to service.

(iii) The water system must provide the consumer with a pitcher filter or point-of-use device certified by an American National Standards Institute accredited certifier to reduce lead, six months of replacement cartridges, and instructions for use before the affected service line is returned to service. If the affected 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 or point-of-use device, six months of replacement cartridges and use instructions to every residential and non-residential unit in the building.

(iv) The water system must offer to collect a follow up tap sample between three months and six months after the completion of any partial replacement of a lead service line. The tap sample must be a first- and fifth-liter paired sample after at least six hours of stagnation, following the sample protocol under § 141.86(b). The water system must provide the results of the sample to the persons served by the service line in accordance with § 141.85(d).

(2) Notification and mitigation requirements for emergency partial service line replacement. Any water system that creates a partial replacement of a lead or galvanized requiring replacement service line due to an emergency repair must provide notice and risk mitigation measures to the persons served by the affected service line in accordance with paragraphs (h)(1)(i) through (iv) of this section before the affected service line is returned to service. The water system must offer to replace the partial service line created by the emergency repair within 45 days.

(3) Notification and mitigation requirements for full service line replacement. Any water system that conducts a full lead or galvanized requiring replacement service line replacement must provide written notice to the owner of the affected service line, or the owner's authorized agent, as well as non-owner resident(s) or non-residential occupant(s) served by the affected service line as soon as possible but no longer than 24 hours following completion of the replacement.

(i) The written notification must explain that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement and must meet the content requirements of § 141.85(a)(1)(ii) through (iv) as well as contact information for the water system. In instances where multi-family dwellings or multiple non-residential occupants are served by the lead or galvanized requiring replacement service line to be replaced, the water system may elect to post the information at a conspicuous location instead of providing individual written notification to all persons served in residential and non-residential units.

(ii) The water system must provide written information about a procedure for customers to flush service lines and premise plumbing of particulate lead following full replacement of a lead or galvanized requiring replacement service line before the replaced service line is returned to service.

(iii) The water system must provide the consumer with a pitcher filter or point-of-use device certified by an American National Standards Institute accredited certifier to reduce lead, six months of replacement cartridges, and instructions for use before the replaced service line is returned to service. 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 or point-of-use device, six months of replacement cartridges and instructions for use to every residential and non-residential unit in the building.

(iv) The water system must offer to the consumer to take a follow up tap sample between three months and six months after completion of any full replacement of a lead or galvanized requiring replacement service line. The tap sample must be a first-liter sample after at least six hours of stagnation, following the sample protocol under § 141.86(b). The water system must provide the results of the sample to the

consumer in accordance with § 141.85(d).

(i) *Reporting to demonstrate compliance to the State.* To demonstrate compliance with paragraphs (a) through (h) of this section, a water system must report to the State the information specified in § 141.90(e).

■ 7. Amend § 141.85 by:

■ a. Revising the introductory text, paragraph (a)(1) introductory text, and paragraphs (a)(1)(i) and (ii), (a)(1)(iii)(B), and (a)(1)(iv)(A) through (E);

■ b. Adding paragraphs (a)(1)(iv)(F) through (H);

■ c. Revising paragraphs (a)(1)(vi) through (vii);

■ d. Removing and reserving paragraph (a)(2);

■ e. Revising paragraphs (b) through (e);

■ f. Removing and reserving paragraph (f); and

■ g. Revising paragraphs (g) through (j).

The revisions and additions read as follows:

§ 141.85 Public education and supplemental monitoring and mitigation requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 must distribute the public education materials contained in paragraph (a) of this section in accordance with the delivery requirements in paragraph (b) of this section. Water systems that exceed the lead action level must offer to sample the tap water of any customer who requests it in accordance with paragraph (c) of this section. Water systems must offer to sample for lead in the tap water of any person served by a lead, galvanized requiring replacement, or lead status unknown service line who requests it in accordance with paragraph (c) of this section. All water systems must deliver a consumer notice of lead tap water monitoring results and copper tap water monitoring results to persons served by the water system at sites that are sampled, as specified in paragraph (d) of this section. A water system with lead, galvanized requiring replacement, or lead status unknown service lines must deliver public education materials to persons with a lead, galvanized requiring replacement, or lead status unknown service line as specified in paragraphs (e) through (g) of this section. All community water systems that fail to meet the minimum replacement rate for mandatory service line replacement as required under § 141.84(d) must conduct outreach activities as specified in paragraph (h) of this section. All community water systems must conduct annual outreach to local and State health agencies as outlined in paragraph (i) of this section. Water systems with multiple lead action level exceedances, as specified in paragraph (j)(1) of this section, must conduct annual public outreach and make filters certified to reduce lead available as specified in paragraphs (j)(2) through (6) of this section. For water systems serving a large proportion of consumers with limited English proficiency, as determined by the State, all public education materials required under § 141.85 must comply with the language requirements in paragraph (b)(1) of this section.

(a) *Content of written public education materials*—(1) *Community water systems and non-transient non-community water systems.* Water systems must include the following elements in written materials (*e.g.,* brochures and pamphlets) in the same order as listed in paragraphs (a)(1)(i) through (vii) of this section. In addition, language in paragraphs (a)(1)(i), (ii), and (vii) of this section must be included in the materials, exactly as written, except for the text in brackets for which the water system must include system-specific information. States may approve changes to the content requirements if the State determines the changes are more protective of human health. Any additional information presented by a water system must be consistent with the information in paragraphs (a)(1)(i) through (vii) of this section and be in plain language that can be understood by the general public. Water systems must submit a copy of all written public education materials to the State prior to delivery. The State may require the system to obtain approval of the content of written public education materials prior to delivery.

(i) *Important information about lead in your drinking water.*

Figure 1 to Paragraph (a)(1)(i)

IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER [INSERT NAME OF WATER SYSTEM] found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant people and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(ii) *Health effects of lead.*

Figure 2 to Paragraph (a)(1)(ii)

There is no safe level of lead in drinking water. Exposure to lead in drinking water can cause serious health effects in all age groups, especially pregnant people, infants (both formula-fed and breastfed), and young children. Some of the health effects to infants and children include decreases in IQ and attention span. Lead exposure can also result in new or worsened learning and behavior problems. The children of persons who are exposed to lead before or during pregnancy may be at increased risk of these harmful health effects. Adults have increased risks of heart disease, high blood pressure, kidney or nervous system problems. Contact your health care provider for more information about your risks.

(iii) * * *

(B) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home/building plumbing materials, service lines, and connectors that may contain lead and information about the definition of lead free as provided in Safe Drinking Water Act section 1417 of 1986 and as subsequently revised in 2011.

* * * * *

(iv) * * *

(A) Explain that using a filter, certified by an American National Standards Institute accredited certifier to reduce lead, is effective in reducing lead exposures. If the system makes filters available in accordance with paragraph (j)(2) of this section, also include information on how the consumer can obtain a filter.

(B) Encourage running the water to flush out the lead. Explain that lead levels increase over time as water sits in lead-containing plumbing materials and regular water usage in the building can reduce lead levels in drinking water. Advise consumers served by lead and galvanized requiring replacement service lines that they may need to flush the water for longer periods.

(C) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(D) Explain that boiling water does not reduce lead levels.

(E) Encourage regular cleaning of faucet aerators.

(F) Discuss other steps consumers can take to reduce exposure to lead in drinking water, especially for pregnant persons, infants, and young children, such as using alternative sources of water.

(G) Suggest that parents have their child's blood tested for lead. Provide contact information for the State and/or local health department.

(H) Tell consumers how to get their water tested, including information in accordance with paragraph (c) of this section.

* * * * *

(vi) *Information on lead, galvanized requiring replacement, and unknown service lines.* For systems with lead, galvanized requiring replacement, or lead status unknown service lines in the system's inventory pursuant to § 141.84(a) and (b), public education materials must meet the requirements of paragraphs (a)(1)(vi)(A) through (G) of this section. For systems with known lead connectors or unknown connectors in the system's inventory pursuant to § 141.84(a) and (b), public education materials must meet the requirements of paragraph (a)(1)(vi)(C) of this section:

(A) Discuss opportunities to replace lead and galvanized requiring replacement service lines;

(B) Discuss opportunities to have the material of a lead status unknown service line identified;

(C) Include information on how to obtain a copy of the service line inventory or view the inventory on the internet if the system is required to make the inventory available online so the consumer can find out if they are served by a lead, galvanized requiring replacement, or lead status unknown service line, or known lead connector or unknown connector;

(D) Include information on how to obtain a copy of the service line replacement plan or view the plan on the internet if the system is required to make the service line replacement plan available online;

(E) Include information about programs that provide financing solutions to assist property owners with replacement of their portion of a lead or galvanized requiring replacement service line; and

(F) Include a statement that the water system is required to replace its portion of a lead or galvanized requiring replacement service line when the property owner notifies the water system that they are replacing their portion of the lead or galvanized requiring replacement service line.

(G) Include a statement that provides instructions for the customer to notify the water system if they disagree with the service line material categorization in the inventory.

(vii) *More information about lead.*

Figure 3 to Paragraph (a)(1)(vii)

For more information, call us at [INSERT WATER SYSTEM PHONE NUMBER] [(IF APPLICABLE), or visit our website at [INSERT WATER SYSTEM WEBSITE]]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's website at *https://www.epa.gov/lead* or contact your health care provider.

* * * * *

(b) *Timing, format, and delivery method of public education materials.* (1) For water systems serving a large proportion of consumers with limited English proficiency, as determined by the State, all public education materials required under this section must contain information in the appropriate language(s) regarding the importance of the materials and contain a telephone number, address, or contact information where such consumers may obtain a translated copy of the public education materials or assistance in the appropriate language, or the materials must be in the appropriate language.

(2) Each time a community water system exceeds the lead action level based on tap water samples collected in accordance with § 141.86, the system must conduct the public education tasks under this section within 60 days after the end of the tap sampling period in which the exceedance occurred. For systems that are on standard monitoring, the end of the tap sampling period is June 30 or December 31. For systems that are required to conduct monitoring annually or less frequently, the end of the tap sampling period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate four-month tap sampling period, the last day of that period.

(i) Deliver written materials meeting the content requirements of paragraph (a) of this section to each customer receiving a bill and to other service connections to which water is delivered by the water system. In the case of multi-family dwellings, the water system must deliver the written materials to each unit or post the information at a conspicuous location.

(ii)(A) Contact customers who are most at risk by delivering education materials that meet the content requirements of paragraph (a) of this section to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all of the agencies' potentially affected customers or community water system's users. The water system must contact the local public health agencies directly by phone, email, or in person. If local public health agencies provide a specific list of additional community-based organizations serving populations at greatest risk from lead exposure (*e.g.,* pregnant people, children), including organizations outside the service area of the water system, then the system must deliver education materials that meet the content requirements of paragraph (a) of this section to all organizations on the provided lists.

(B) Contact customers who are most at risk by delivering materials that meet the content requirements of paragraph (a) of this section to the following organizations listed in paragraphs (b)(2)(ii)(B)(*1*) through (*7*) of this section that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users:

(*1*) Schools, child care facilities, and school boards.

(*2*) Women, Infants and Children (WIC) and Head Start programs.

(*3*) Public and private hospitals and medical clinics.

(*4*) Pediatricians.

(*5*) Family planning clinics.

(*6*) Local welfare agencies.

(*7*) Obstetricians-Gynecologists and Midwives.

(iii) No less often than quarterly, provide information with each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the statement in figure 4 to this paragraph exactly as written except for the text in brackets for which the water system must include system-specific information: The message or delivery mechanism can be modified in consultation with the State; specifically, the State may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

Figure 4 to Paragraph (b)(2)(iii)

[INSERT NAME OF WATER SYSTEM] found elevated levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [INSERT NAME OF WATER SYSTEM] [or visit (INSERT YOUR WEBSITE)].

(iv) Post material meeting the content requirements of paragraph (a) of this section on the water system's website if the system serves a population greater than 50,000. The system must retain material on the website for as long as the system exceeds the action level.

(v) Submit a press release to media outlets including newspaper, television, and radio stations. The submitted press release must state the water system found elevated levels of lead in drinking water in some homes/buildings and meet the content requirements of paragraph (a) of this section.

(vi) Implement at least three additional activities from one or more categories listed below. The educational content and selection of these activities must be determined in consultation with the State.

(A) Public Service Announcements.

(B) Paid advertisements.

(C) Public Area Information Displays.

(D) Emails to customers.

(E) Public Meetings.

(F) Household Deliveries.

(G) Targeted Individual Customer Contact.

(H) Direct material distribution to all multi-family homes and institutions.

(I) Contact organizations representing plumbers and contractors to provide information about lead in drinking water, sources of lead, and the importance of using lead free plumbing materials.

(J) Other methods approved by the State.

(vii) [Reserved]

(3) A community water system must repeat the activities in paragraph (b)(2) of this section until the system is at or below the lead action level based on tap water samples collected in accordance with § 141.86. These repeated activities must be completed within 60 days of the end of each tap sampling period. A calculated 90th percentile level at or below the lead action level based on fewer than the minimum number of required samples under § 141.86 cannot be used to meet the requirements of this provision.

(4) Within 60 days after the end of each tap sampling period in which a lead action level exceedance occurs, a non-transient non-community water system must deliver the public education materials specified by paragraph (a) of this section as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system until the system is at or below the lead action level based on tap water samples collected in accordance with § 141.86; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system. The State may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(iii) For systems that are on standard monitoring, the end of the tap sampling period is June 30 or December 31. For systems that are required to conduct monitoring annually or less frequently, the end of the tap sampling period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate tap sampling period, the last day of that period.

(5) A non-transient non-community water system must repeat the tasks contained in paragraph (b)(4) of this section until the system is at or below the lead action level based on tap water samples collected in accordance with § 141.86. These repeated activities must be completed within 60 days of the end of each tap sampling period. A calculated 90th percentile level at or below the lead action level based on fewer than the minimum number of required samples under § 141.86 cannot be used to meet the requirements of this provision.

(6) A water system may discontinue delivery of public education materials if the system is at or below the lead action level during the most recent six-month tap sampling period conducted pursuant to § 141.86. Such a system must recommence public education in accordance with this section if it subsequently exceeds the lead action level during any tap sampling period.

(7) A water system may request an extension from the State, in writing, to complete the activities in paragraph (b)(2)(ii) through (vi) of this section as follows:

(i) The extension must be approved in writing by the State before the 60-day deadline;

(ii) The State may only grant the extension on a case-by-case basis if the system has demonstrated that it is not feasible to complete the activities in (b)(2)(ii) through (vi) of this section;

(iii) The activities in paragraph (b)(2) of this section must be completed no later than six months after the end of the tap sampling period in which the exceedance occurred.

(8) A community water system meeting the criteria of paragraphs (b)(8)(i) and (ii) of this section may apply to the State, in writing (unless the State has waived the requirement for prior State approval), to perform the tasks listed in paragraphs (b)(4) and (5) of this section in lieu of the tasks in paragraphs (b)(2) and (3) of this section if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point-of-use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(9) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(i) With respect to the requirements of paragraph (b)(2)(ii) of this section, a system serving 3,300 or fewer people may limit the distribution of the public education materials required under that paragraph to facilities and organizations served by the system that are most likely to be visited regularly by pregnant people and children.

(ii) With respect to the requirements of paragraph (b)(2)(v) of this section, the State may waive this requirement for systems serving 3,300 or fewer persons as long as the system distributes notices to every household served by the system.

(iii) With respect to the requirements of paragraph (b)(2)(vi) of this section, a system serving 3,300 or fewer must implement at least one of the activities listed in that paragraph.

(c) *Supplemental monitoring and notification of results.* (1) A water system that exceeds the lead action level based on tap samples collected in accordance with § 141.86 must offer to sample for lead in the tap water of any customer who requests it. At sites served by a lead, galvanized requirement replacement, or lead status unknown service line, the water system must offer to collect samples that capture both water in contact with premise plumbing and water in contact with the service line (*e.g.,* first- and fifth-liter samples).

(2) Water systems must offer to sample for lead in the tap water of any person served by a lead, galvanized requiring replacement, or lead status unknown service line who requests it. The water system must offer to collect samples that capture both water in contact with premise plumbing and water in contact with the service line (*e.g.,* first- and fifth-liter samples).

(3) All water systems must provide a notice of the individual tap results from supplemental tap water monitoring carried out under the requirements of paragraph (c) of this section 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 building where the tap was sampled). Water systems must provide the consumer notice in accordance with the requirements of paragraphs (d)(2) through (4) of this section.

(d) *Notification of results*—(1) *Notice requirement.* All water systems must provide a notice of the individual tap results from any lead and copper 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 building where the tap was sampled).

(2) *Timing of notification.* A water system must provide the consumer notice as soon as practicable but no later than three calendar days after the water system learns of the tap monitoring results. Notification by mail must be postmarked within three days of the system learning of the tap monitoring results.

(3) *Content.* (i) The consumer notice for lead must include the results of lead tap water monitoring for the tap that was tested, an explanation of the health effects of lead that meets the requirements of paragraph (a)(1)(ii) of this section, a list of steps consumers can take to reduce exposure to lead in drinking water that meets the requirements of paragraph (a)(1)(iv) of this section, and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from § 141.153(c).

(ii) The consumer notice for copper must include the results of copper tap water monitoring for the tap that was tested, an explanation of the health effects of copper as provided in appendix B to subpart Q of this part, a list of steps consumers can take to reduce exposure to copper in drinking water, and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for copper and the definitions for these two terms from § 141.153(c).

(4) *Delivery.* Water systems must provide consumer notice to persons served at the tap that was sampled. The notice must be provided electronically (*e.g.,* email or text message), by phone, hand delivery, by mail, or another method approved by the State. For example, upon approval by the State, a non-transient non-community water system could post the results in a conspicuous area, such as on a bulletin board, in the facility to allow users to review the information. Water systems that choose to deliver the notice to consumers electronically or by phone must follow up with a written notice to consumers hand delivered or postmarked within three days of the water system learning of the tap monitoring results. The notices of lead and copper tap sampling results may be combined in one notice.

(e) *Notification of service line that is known to or may potentially contain lead*—(1) *Notification requirements.* All water systems with lead, galvanized requiring replacement, or lead status unknown service lines in their inventory pursuant to § 141.84(a) and (b) must provide notification of a service line that is known to or may potentially contain lead to customers and all persons served by the water system at the service connection with a lead, galvanized requiring replacement, or lead status unknown service line.

(2) *Timing of notification.* A water system must provide notification no later than 30 days of completion of the baseline inventory required under § 141.84(a)(2) and repeat the notification no later than 30 days after the deadline for each annual update to the service line inventory under § 141.90(e)(4) until the entire service connection is no longer a lead, galvanized requiring replacement, or lead status unknown service line. For notifications to new customers, water systems must provide the notice at the time of service initiation.

(3) *Content*—(i) *Persons served by a confirmed lead service line or galvanized requiring replacement service line.* The notice must include:

(A) A statement that the person's service line is lead or galvanized requiring replacement as applicable.

(B) An explanation of the health effects of lead that meets the requirements of paragraph (a)(1)(ii) of this section.

(C) Steps persons at the service connection can take to reduce exposure to lead in drinking water that meet the requirements of paragraph (a)(1)(iv) of this section.

(D) A statement that the customer can request to have their tap water sampled in accordance with paragraph (c) of this section.

(E) Include information on how to obtain a copy of the service line replacement plan or view the plan on the internet if the system is required to make the service line replacement plan available online.

(F) Information about opportunities to replace lead and galvanized requiring replacement service lines. Where customer payment for a portion of the replacement is required by State or local law or a water tariff agreement, the notice must include information about programs that provide financing solutions to assist property owners with replacement of their portion of a lead or galvanized requiring replacement service line.

(G) A statement that the water system is required to replace its portion of a lead or galvanized requiring replacement service line when the property owner notifies the water system that they are replacing their portion of the lead or galvanized requiring replacement service line.

(H) A statement that provides instructions for the customer to notify the water system if they disagree with the service line material categorization in the inventory.

(ii) *Persons served by a lead status unknown service line.* The notice must include a statement that the person's service line material is unknown but may be lead, the information in paragraphs (e)(3)(i)(B) through (E) of this section, and information about opportunities to verify the material of the service line.

(4) *Delivery.* The notice must be provided to customers and persons served by the water system at the service connection with a lead, galvanized requiring replacement, or lead status unknown service line, by mail or by another method approved by the State.

* * * * *

(g) *Notification due to a disturbance to a service line that is known to or may potentially contain lead.* (1) Water systems that cause disturbance to a lead, galvanized requiring replacement, or lead status unknown service line must provide customers and the persons served by the water system at the service connection with information about the potential for elevated lead levels in drinking water as a result of the disturbance. Actions taken by a water system that cause a disturbance include actions that result in a shut off or bypass of water to an individual service line or a group of service lines (*e.g.,* operating a valve on a service line or meter setter, or reconnecting a service line to the main), or other actions that cause a disturbance to a service line or group of service lines, such as undergoing physical action or vibration that could result in pipe scale dislodging and associated release of particulate lead. The provided information must include:

(i) Public education materials that meet the content requirements in paragraphs (a)(1)(ii) through (iv) of this section and contact information for the water system; and

(ii) Instructions for a flushing procedure to remove particulate lead.

(2) If the disturbance of a lead, galvanized requiring replacement, or lead status unknown service line results from the replacement of an inline water meter, a water meter setter, or connector, the water system must provide the person served by the water system at the service connection with the information in paragraph (g)(1)(i) of this section and a pitcher filter or point-

of-use device certified by an American National Standards Institute accredited certifier to reduce lead, instructions to use the filter, and six months of filter replacement cartridges.

(3) The water system must comply with the requirements in this paragraph (g) before any service line that has been shut off or bypassed is returned to service. Where there was a disturbance, but service was not shut off or bypassed, the water system must comply with the requirements in this paragraph (g) as soon as possible, but not to exceed 24 hours following the disturbance.

(4) A water system that conducts a partial or full replacement of a lead or galvanized requiring replacement service line must follow procedures in accordance with the requirements in § 141.84(h). Partial or full replacement of a lead or galvanized requiring replacement service line is not considered a ''disturbance'' for purposes of this paragraph (g).

(h) *Outreach activities for failure to meet the lead service line replacement rate.* (1) Water systems that do not meet the service line replacement rate calculated across a rolling three-year period as required under § 141.84(d) must conduct at least one outreach activity listed below to discuss their mandatory service line replacement program and opportunities for replacement and to distribute public education materials that meet the content requirements in paragraph (a) of this section except paragraphs (a)(1)(i) and (v) of this section. The water system must conduct the activity in the year following the deadline for calculating the rolling average and annually thereafter until the water system meets the replacement rate or until there are no lead, galvanized requirement replacement, or lead status unknown service lines remaining in the inventory, whichever occurs first.

(2) For water systems serving more than 3,300 persons, the outreach activity must be one of the activities identified in paragraphs (h)(2)(i) through (iv) of this section unless the water system conducts two activities listed in paragraphs (h)(2)(v) through (viii) of this section. If the water system serves 3,300 persons or fewer, the outreach activity must be one of the activities identified in paragraphs (h)(2)(i) through (viii) of this section.

(i) Conduct a townhall meeting.

(ii) Participate in a community event to provide information about its service line replacement program.

(iii) Contact customers by phone, text message, email, or door hanger.

(iv) Use another method approved by the State to discuss the service line replacement program and opportunities for lead and galvanized requiring replacement service line replacement.

(v) Send certified mail to customers and all persons served by the water system at the service connection with a lead or galvanized requiring replacement service line to inform them about the water system's service line replacement program and opportunities for replacement of the service line.

(vi) Conduct a social media campaign.

(vii) Conduct outreach via the media including newspaper, television, or radio.

(viii) Visit targeted customers (*e.g.,* customers in areas with lower service line replacement participation rates) to discuss the service line replacement program and opportunities for replacement.

(i) *Public education to local and State health agencies*—(1) *Distribution System and Site Assessment results.* All community water systems must provide information to local and State health agencies about distribution system and site assessment activities conducted in accordance with § 141.82(j) including the location of the tap sample site that exceeded 0.010 mg/L, the result of the initial tap sample, the result of the follow up tap sample, the result of water quality parameter monitoring, and any distribution system management actions or corrosion control treatment adjustments made.

(2) *Timing and content.* Community water systems must annually send copies of any public education materials the system was required to provide under paragraphs (b) and (h) of this section in the previous calendar year no later than July 1 of the following year.

(3) *Delivery.* Community water systems must send public education materials and distribution system and site assessment information to local and State health agencies by mail or by another method approved by the State.

(j) *Additional requirements for water systems with multiple lead action level exceedances.* (1) A water system that exceeds the lead action level at least three times in a rolling five-year period, based on tap water samples collected in accordance with § 141.86, must conduct the activities in this section. The first rolling five-year period ends five years after the compliance date in § 141.80(a)(3) and is assessed every six months thereafter. If a water system exceeds the lead action level at least three times within the first five-year period, the system must conduct these actions upon the third action level exceedance even if the first rolling five-year period has not elapsed.

(2) No later than 60 days after the tap sampling period in which a water system meets the criteria of paragraph (j)(1) of this section, a water system must make available to all consumers pitcher filters or point-of-use devices certified by an American National Standards Institute accredited certifier to reduce lead, six months of replacement cartridges, and instructions for use. A water system must continue to make replacement cartridges available until the system may discontinue actions in accordance with paragraph (j)(6) of this section.

(3) No later than 30 days after a water system meets the criteria of paragraph (j)(1) of this section for the first time, the water system must submit a filter plan to the State, and the State must review and approve the plan within 15 days. If the water system subsequently meets the criteria of paragraph (j)(1) again, the water system is not required to submit the filter plan again unless requested by the State or if the system has made updates to the plan. The plan must include:

(i) A description of which methods the system will use to make filters and replacement cartridges available in accordance with paragraph (j)(2) of this section (*e.g.,* operating distribution facilities, delivering filters when requested by the consumer); and

(ii) A description of how the system will address any barriers to consumers obtaining filters.

(4) A water system that meets the criteria of paragraph (j)(1) of this section must conduct a community outreach activity to discuss the multiple lead action level exceedances, steps the system is taking to reduce lead in drinking water, measures consumers can take to reduce their risk consistent with the content requirements of paragraph (a)(1)(iv) of this section, and how to obtain a filter certified to reduce lead as required in paragraph (j)(2) of this section. This activity is in addition to the public education activities required under paragraph (b)(2) of this section for community water systems, and under paragraph (b)(4) of this section for non-transient non-community water systems, that exceed the lead action level. The water system must conduct at least one activity from the following list beginning in the monitoring period after the most recent lead action level exceedance. The water system must conduct at least one activity every six months until the system no longer meets the criteria of paragraph (j)(1) of this section.

(i) Conduct a townhall meeting.

(ii) Participate in a community event where the system can make information

about ongoing lead exceedances available to the public.

(iii) Contact customers by phone, text message, email, or door hanger.

(iv) Conduct a social media campaign.

(v) Use another method approved by the State.

(5) A water system that is already conducting an outreach activity listed in paragraph (j)(4) of this section in order to meet the requirements of paragraph (h) of this section may conduct one activity that meets the requirements of both paragraphs, unless otherwise directed by the State.

(6) A water system may discontinue the requirements of this paragraph (j) when the system no longer has at least three lead action level exceedances in a rolling five-year period, based on tap water samples collected in accordance with § 141.86. A calculated 90th percentile level at or below the lead action level based on fewer than the minimum number of required samples under § 141.86 cannot be used to meet the requirements of this provision.

■ 8. Revise § 141.86 to read as follows:

§ 141.86 Monitoring requirements for lead and copper in tap water.

All water systems must sample for lead and copper at taps used to provide water for human consumption in accordance with the requirements of this section.

(a) *Sample site location.* (1) By the start of the first tap monitoring period in which sampling for lead and copper is required under paragraphs (c) and (d) of this section, each water system must identify potential tap sampling sites and submit a site sample plan to the State as required in § 141.90(a)(1)(i). Each water system must identify a pool of tap sampling sites that allows the water system to collect the number of lead and copper tap samples required in paragraphs (c) and (d) of this section.

(i) To select sampling sites, a water system must use information on lead, copper, and galvanized iron or steel that is required to be identified under § 141.42(d) for a materials evaluation and the information on service line and connector material that is required to be collected under § 141.84.

(ii) Water systems must select sampling sites from the highest tier available, in accordance with paragraph (a)(4) of this section.

(iii) Sampling sites cannot include sites with installed point-of-entry (POE) treatment devices or taps with point-of-use (POU) devices designed to remove inorganic contaminants, except in water systems using these devices at all service connections for primary drinking water taps to meet other primary and secondary drinking water standards.

(2) A water system that has fewer than five drinking water taps that can be used for human consumption meeting the sample site criteria of this paragraph (a) to reach the required number of sample sites listed in paragraphs (c) and (d) of this section, must collect at least one sample from each tap and collect additional samples from those taps on different days during the tap sampling period to meet the required number of sites. Alternatively, the State may allow these water systems to collect a number of samples less than the number of sites specified in paragraphs (c) and (d) of this section, provided that 100 percent of all taps that can be used for human consumption are sampled. The State must approve this reduction of the minimum number of samples in writing based on a request from the system or onsite verification by the State. States may specify sampling locations when a system is conducting reduced monitoring.

(3) A water system serving sites with premise plumbing made of lead and/or that are served by a lead service line must collect all samples for monitoring under this section from sites with premise plumbing made of lead and/or are served by a lead service line. A water system that cannot identify enough sampling sites with premise plumbing made of lead and/or are served by lead service lines must still collect samples from every site containing lead pipes and/or served by a lead service line and collect the remaining samples in accordance with tiering requirements under paragraph (a)(4) of this section.

(4) Sampling sites must be selected from the highest tier available (Tier 1 is the highest tier and Tier 5 is the lowest tier). A system without a large enough number of sites from a higher tier to meet the number of sites required in paragraphs (c) and (d) of this section may include sites from the next highest tier. For water systems where Tier 2 sites comprise at least 20 percent of the residential structures served by the community water system, then Tier 2 sites may be included along with Tier 1 sites.

(i) Tier 1 sampling sites are single-family structures with premise plumbing made of lead and/or are served by a lead service line.

(ii) Tier 2 sampling sites are buildings, including multiple-family residences, with premise plumbing made of lead and/or served by a lead service line.

(iii) Tier 3 sampling sites are sites that are served by a lead connector. Tier 3 sites are also sites served by a galvanized service line or containing galvanized premise plumbing that are identified as ever being downstream of a lead service line or lead connector in the past. Tier 3 for community water systems only includes single-family structures.

(iv) Tier 4 sampling sites are sites that contain copper pipes with lead solder installed before the effective date of the State's applicable lead ban. Tier 4 for community water systems only includes single-family structures.

(v) Tier 5 sampling sites are sites that are representative of sites throughout the distribution system. For the purpose of this paragraph (a), 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.

(b) *Sample collection methods.* (1) With the exception of follow-up samples collected under distribution system and site assessment, all tap samples collected for analysis of lead and copper must be one liter in volume and have stood motionless in the plumbing system and/or service line of each sampling site for at least six hours. Bottles used to collect samples for analysis must be wide-mouth one-liter sample bottles. Samples from residential housing must be collected from the cold-water kitchen or bathroom sink tap. Samples from a nonresidential building must be one liter in volume and collected at a tap from which water is typically drawn for human consumption. Samples may be collected by the system, or the system may allow residents to collect samples after instructing the residents of the sampling procedures specified in this paragraph (b)(1). Sample collection instructions provided to customers cannot direct the customer to remove or clean the aerator or flush taps prior to the start of the minimum six-hour stagnation period. To protect residents from injury due to handling nitric acid, samples may be acidified up to 14 days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified by the approved EPA method before analysis. If a system allows residents to perform sampling, the system cannot challenge the accuracy of sampling results based on alleged sample collection errors.

(i) The first liter sample must be analyzed for lead and copper at sample sites where both contaminants are required to be monitored. At sample sites where only lead is required to be monitored, the first liter sample may be analyzed for lead only.

(ii) For sites served by a lead service line (Tier 1 and Tier 2 sites), an additional fifth liter sample must be collected at the same time as the first liter sample and must be analyzed for lead. To collect a first liter and fifth liter paired sample, systems must collect tap water in five consecutively numbered, wide-mouth, one-liter sample bottles after the water has stood motionless in the plumbing of each sampling site, including the service line, for at least six hours without flushing the tap prior to sample collection. Systems must collect samples starting with the first sample bottle with each subsequently numbered bottle being filled until the final bottle is filled, with the water running constantly during sample collection. The first liter sample is the first sample collected in this sequence and the fifth liter sample is the final sample collected in this sequence.

(iii) State-approved samples collected pursuant to paragraph (b)(3) of this section must be one liter in volume and must be collected at an interior tap from which water is typically drawn for consumption.

(iv) Follow-up samples for distribution system and site assessment under § 141.82(j) and samples collected following customer requests under § 141.85(c) may use different sample volumes or different sample collection procedures to assess the source of elevated lead. Systems must submit these sample results to the State.

(2) In consecutive monitoring periods, a water system must collect tap samples from the same sampling sites. If a site no longer qualifies under the tiering criteria or if, for reasons beyond the control of the water system, the water system cannot gain entry to a sampling site in order to collect a tap sample, the system must collect the tap sample from another sampling site in its sampling pool that meets the same tiering criteria, and is within reasonable proximity of the original site, where such a site exists. Systems must report any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed, as required in § 141.90(a)(2)(v).

(3) A non-transient non-community water system, or a community water system that meets the criteria of § 141.85(b)(8), that does not have enough taps that can supply first liter samples or first liter and fifth liter paired samples meeting the six-hour minimum stagnation time, as defined in paragraph (b)(1) of this section, may apply to the State in writing to substitute first liter or first liter and fifth liter paired samples that do not meet the six-hour minimum stagnation time. Such systems must collect as many first liter or first liter and fifth liter paired samples from interior taps used for human consumption as possible and must identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The State has the discretion to waive the requirement for prior State approval of sites not meeting the six-hour stagnation time either through State regulation or written notification to the system.

(c) *Standard monitoring.* Standard monitoring is a six-month tap monitoring period that begins on January 1 or July 1.

(1) *Standard monitoring sites.* During a standard tap monitoring period, a water system must collect at least one sample from the number of sites in the following table 1 to this paragraph (c)(1). Standard monitoring sites must be selected in accordance with the sampling tiers identified in paragraph (a) of this section.

TABLE 1 TO PARAGRAPH (c)(1)

System size (number of people served)	Standard number of sites for lead and copper sampling
>100,000	100
10,001 to 100,000	60
3,301 to 10,000	40
501 to 3,300	20
101 to 500	10
≤100	5

(2) *Criteria for standard monitoring.* The following systems must conduct standard monitoring for at least two consecutive tap monitoring periods. Systems may then reduce monitoring in accordance with paragraph (d) of this section.

(i) All water systems with lead, galvanized requiring replacement, and/or lead status unknown service lines, including those deemed optimized under § 141.81(b)(3), and systems that did not conduct monitoring that meets all requirements of this section between [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], must begin its first standard tap monitoring period on January 1 or July 1 following [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is sooner.

(ii) Systems without lead, galvanized requiring replacement, and/or lead status unknown service lines that conducted monitoring meeting all requirements of this section between [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] must continue monitoring as follows:

(A) Systems that do not meet the reduced monitoring criteria under paragraph (d) of this section must conduct standard monitoring.

(B) Systems that meet the reduced monitoring criteria under paragraph (d) of this section must continue to monitor in accordance with the criteria in paragraph (d).

(iii) Systems meeting the following criteria must resume or continue standard monitoring in the six-month tap monitoring period beginning January 1 or July 1, whichever is sooner, following the monitoring period in which the criteria occur.

(A) Any water system that exceeds a lead or copper action level.

(B) Any system that fails to operate at or above the minimum value or within the range of values for the optimal water quality parameters specified by the State under § 141.82(f) for more than nine days in any monitoring period specified in § 141.87.

(C) Any water system that becomes a large water system without corrosion control treatment or any large water system without corrosion control treatment whose lead 90th percentile exceeds the lead practical quantitation limit of 0.005 mg/L.

(D) Any water system that installs or re-optimizes OCCT as a result of exceeding the lead or copper action level, or any water system that adjusts OCCT following a distribution system and site assessment. The system must continue standard monitoring until the State specifies new optimal water quality parameters.

(E) Any water system for which the State has specified new values for optimal water quality parameters under § 141.82.

(F) Any water system that installs source water treatment pursuant to § 141.83(a)(3).

(G) Any water system that has notified the State in writing in accordance with § 141.90(a)(4) of an upcoming addition of a new source or long-term change in treatment, unless the State determines that the addition of the new source or long-term change in treatment is not significant and, therefore, does not warrant more frequent monitoring.

(d) *Reduced monitoring based on 90th percentile levels.* Reduced monitoring refers to an annual or triennial tap monitoring period. The reduced monitoring frequency is based on the

90th percentile value for the water system.

(1) *Reduced monitoring sites.* During a reduced tap monitoring period, a water system must collect at least one sample from the number of sites specified in table 2 to this paragraph (d)(1), unless otherwise specified. Reduced monitoring sites must be selected in accordance with the sampling tiers identified in paragraph (a) of this section. Lead and copper sampling results under § 141.93(c)(1) cannot be used to meet the criteria for reduced monitoring under this section.

TABLE 2 TO PARAGRAPH (d)(1)

System size (number of people served)	Reduced minimum number of sites for lead and copper sampling
>100,000	50
10,001 to 100,000	30
3,301 to 10,000	20
501 to 3,300	10
101 to 500	5
≤100	5

(2) *Criteria for reduced monitoring.* Systems are eligible for reduced monitoring following two consecutive tap monitoring periods that meet all requirements of this section, including collecting at least the minimum number of required samples. The State may require that a system conduct more frequent monitoring.

(i) Any system that does not exceed the lead and copper action levels for two consecutive six-month tap monitoring periods may reduce the monitoring frequency to annual monitoring. Systems with an annual tap monitoring period must sample at the standard number of sampling sites for lead in paragraph (c) and the reduced number of sites for copper as specified in this paragraph (d). Systems operating OCCT must also have maintained the range of optimal water quality parameters set by the State in accordance with § 141.82(f) for the same period and receive a written determination from the State approving annual monitoring based on the State's review of monitoring, treatment, and other relevant information submitted by the system as required by § 141.90. For systems that reduce to annual monitoring, the first annual tap monitoring period must begin no later than the calendar year immediately following the last calendar year in which the system sampled.

(ii) Any small or medium water system that does not exceed the lead and copper action levels during three consecutive years of monitoring (standard monitoring completed during both six-month periods of a calendar year will be considered one year of monitoring) may sample at the reduced number of sites for lead and copper in accordance with this paragraph (d) and reduce the monitoring frequency to triennial monitoring. Any such systems operating OCCT must also have maintained the range of optimal water quality parameters set by the State in accordance with § 141.82(f) for the same three-year period and receive a written determination from the State approving triennial monitoring based on the State's review of monitoring, treatment, and other relevant information submitted by the system as required by § 141.90. For systems that reduce to triennial monitoring, the first triennial tap sampling period must begin no later than three calendar years after the last calendar year in which the system sampled.

(iii) Any water system that demonstrates for two consecutive six-month tap monitoring periods that its 90th percentile lead level, calculated under § 141.80(c)(3), is less than or equal to 0.005 mg/L and the 90th percentile copper level, calculated under § 141.80(c)(3), is less than or equal to 0.65 mg/L may sample at the reduced number of sites for lead and copper in accordance with paragraph (c) of this section and reduce the frequency of monitoring to triennial monitoring. Any such water systems operating OCCT must also have maintained the range of optimal water quality parameters set by the State in accordance with § 141.82(f) for the same period and receive a written determination from the State approving triennial monitoring based on the State's review of monitoring, treatment, and other relevant information submitted by the system as required by § 141.90. For systems that reduce to triennial monitoring, the first triennial tap sampling period must begin no later than three calendar years after the last calendar year in which the system sampled.

(3) *Tap sampling period under reduced monitoring.* Systems monitoring annually or less frequently must use a tap sampling period within the months of June, July, August, or September, unless the State has approved a different tap sampling period in accordance with paragraph (d)(3)(i) of this section. Water systems on triennial monitoring must conduct sampling under a tap sampling period no less frequently than once every three years.

(i) The State may approve a different tap sampling period for conducting the lead and copper tap sampling for systems collecting samples at a reduced frequency. Such a period must be no longer than four consecutive months, within one calendar year, 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 must designate a period that represents normal operation for the system. The tap sampling period must begin during the period approved or designated by the State in the calendar year immediately following the end of the second six-month tap monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive year of annual monitoring for systems initiating triennial monitoring.

(ii) Systems monitoring annually that have been collecting samples during the months of June through September and that receive State approval to alter their sampling period under paragraph (d)(3)(i) 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 period as per paragraph (d)(3)(i) of this section must collect their next round of samples during a time period that ends no later than 45 months after the previous tap sampling period. Subsequent monitoring must be conducted annually or triennially, as required by this section.

(iii) 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 sampling period as per paragraph (d)(3)(i) of this section must collect their next round of samples before the end of the 9-year period.

(e) *Inclusion of lead and copper tap samples for calculation of the 90th percentile.* (1) Water systems and the State must consider the results of any sampling conducted in addition to the minimum number required of this section (*e.g.,* customer-requested sampling conducted in accordance with § 141.85(c)) in making any determinations (*i.e.,* calculating the 90th percentile lead or copper level) under

this subpart if the samples meet the requirements of this section.

(2) Water systems with lead service lines that are unable to collect the minimum number of samples from Tier 1 or 2 sites must calculate the 90th percentile using data from all the lead service lines sites and the highest lead and copper values from lower tier sites to meet the specified minimum number of samples. If the minimum number of samples is met by Tier 1 and 2 sites, systems must submit data from additional Tier 3, 4, or 5 sites to the State, but cannot use these results in the 90th percentile calculation. Water systems must include customer-requested samples from known lead service line sites in the 90th percentile calculation if the samples meet the requirements of this section.

(3) Systems cannot include samples collected as part of distribution system and site assessment under § 141.82(j) in the 90th percentile calculation.

(4) Systems cannot include follow-up samples collected as a result of monitoring after service line replacement under § 141.84(h) in the 90th percentile calculation.

(f) *Invalidation of lead and copper tap samples used in the calculation of the 90th percentile.* A sample invalidated under this paragraph (f) does not count towards determining lead or copper 90th percentile levels under § 141.80(c)(3) or towards meeting the minimum monitoring requirements of paragraph (c) or (d) of this section.

(1) The State may invalidate a lead or copper tap water sample if at least one of the following conditions is met:

(i) The laboratory establishes that improper sample analysis caused erroneous results.

(ii) The State determines that the sample was taken from a site that did not meet the site selection criteria for use in the calculation of the 90th percentile under paragraph (a)(4) of this section or was collected in a manner that did not meet the sample collection criteria under paragraph (b)(1) of this section.

(iii) The sample container was damaged in transit.

(iv) There is a substantial reason to believe that the sample was subject to tampering. The system must report the results of all samples to the State and all supporting documentation for samples the system believes should be invalidated.

(2) To invalidate a sample under paragraph (f)(1) of this section, the decision and the rationale for the decision must be documented in writing. States may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(3) The water system must collect replacement samples for any samples invalidated under this section if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements of paragraph (c) or (d) of this section. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the State invalidates the sample or by the end of the tap sampling period, whichever occurs later. Replacement samples taken after the end of the applicable tap sampling period must not also be used to meet the monitoring requirements of a subsequent tap monitoring period. The replacement samples must be taken at the same locations as the invalidated samples, except when the sample is invalidated due to an error in meeting the site selection criteria, or it is not possible to sample at the same location. The replacement samples must then be taken at locations that meet the site selection criteria other than those locations already used for sampling during the tap monitoring period.

(g) *Monitoring waivers for systems serving 3,300 or fewer persons.* Any water system serving 3,300 or fewer persons that meets the criteria of this paragraph (g) may apply, in writing, to the State to reduce the frequency of monitoring for lead and/or copper to once every nine years if it meets the materials criteria specified in paragraph (g)(1) of this section and the monitoring criteria specified in paragraph (g)(2) of this section. Systems meeting only the criteria for lead may apply for a lead waiver, systems meeting only the criteria for copper may apply for a copper waiver, and systems meeting the criteria for both lead and copper may apply for a full waiver.

(1) *Materials criteria.* The system must demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials, as those terms are defined in this paragraph, as follows:

(i) *Lead.* To qualify for a lead waiver, the water system must provide certification and provide supporting documentation to the State that the system, including the distribution system, is free of all lead-containing materials, as follows:

(A) It contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers; and

(B) It is free of lead service lines, lead connectors, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 U.S.C. 300g–6(e) (SDWA section 1417(e)).

(ii) *Copper.* To qualify for a copper waiver, the water system must certify and provide supporting documentation to the State that the system contains no copper premise plumbing or copper service lines.

(2) *Monitoring criteria for waiver issuance.* The system must have completed at least one six-month round of standard tap water monitoring for lead and copper at sites approved by the State and from the number of sites required by paragraph (c) of this section and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the system became free of all lead-containing and/or copper-containing materials, as appropriate, meet the following criteria.

(i) *Lead levels.* To qualify for a lead waiver, the system must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(ii) *Copper levels.* To qualify for a copper waiver, the system must demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

(3) *State approval of waiver application.* The State must notify the system of its waiver determination, in writing, setting forth the basis of its decision and any condition of a waiver that is approved. As a condition of a waiver, the State may require the system to perform specific activities (*e.g.,* limited monitoring, periodic outreach to customers to remind them to avoid installing materials that might void the waiver) to avoid lead or copper concentrations of concern in tap water. The water system must continue monitoring for lead and copper at the tap as required by paragraphs (c) and (d) of this section, as appropriate, until it receives written notification from the State that a waiver has been approved.

(4) *Monitoring frequency for systems with waivers.* (i) A system with a full waiver must conduct tap monitoring for lead and copper in accordance with paragraph (d) of this section at least once every nine years. A system with a full waiver must provide the State with the materials certification specified in paragraph (g)(1) of this section for both lead and copper when submitting their tap sample results to the State. Samples collected every nine years must be

collected no later than every ninth calendar year.

(ii) A system with a lead waiver or copper waiver must conduct tap monitoring for only the waived contaminant in accordance with paragraph (d) of this section at least once every nine years. A system with a lead waiver or copper waiver must provide the State with the materials certification specified in paragraph (g)(1) of this section for only the waived contaminant when submitting their tap sample results to the State. Also, a system must continue to monitor for the non-waived contaminant in accordance with the requirements of paragraphs (c) and (d) of this section, as appropriate.

(iii) Any water system with a waiver must notify the State in writing in accordance with § 141.90(a)(3) about any upcoming long-term change in treatment or addition of a new source water, as described in that section. The State may add or modify waiver conditions (*e.g.,* require recertification that the system is free of lead-containing and/or copper-containing materials, require additional round(s) of monitoring), if the State deems any modifications are necessary to address treatment or source water changes at the system.

(iv) If a system with a waiver becomes aware that the system is no longer free of lead-containing or copper-containing materials, as appropriate (*e.g.,* as a result of new construction or repairs), the system must notify the State in writing no later than 60 days after becoming aware of such a change.

(5) *Discontinuation of eligibility.* A system with a waiver where any of the following conditions occurs is not allowed to continue monitoring under its waiver:

(i) A system with a full waiver or a lead waiver no longer satisfies the materials criteria of paragraph (g)(1)(i) of this section or has a 90th percentile lead level greater than 0.005 mg/L.

(ii) A system with a full waiver or a copper waiver no longer satisfies the materials criteria of paragraph (g)(1)(ii) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

(iii) The State notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(6) *Requirements following waiver revocation.* A system whose waiver is revoked may re-apply for a waiver when it meets the appropriate materials and monitoring criteria of paragraphs (g)(1) and (2) of this section. A system whose waiver is revoked by the State is subject to the following corrosion control treatment and lead and copper tap water monitoring requirements:

(i) If the system exceeds the lead and/or copper action level, the system must implement or re-optimize corrosion control treatment in accordance with the deadlines specified in § 141.81, and any other applicable requirements of this subpart.

(ii) If the system meets both the lead and copper action levels, the system must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sampling sites specified in paragraph (d) of this section.

(7) *Pre-existing waivers.* Waivers approved by the State in writing prior to April 11, 2000, are still in effect in the following instances:

(i) If the system has demonstrated that it is both free of lead-containing and copper-containing materials, as required by paragraph (g)(1) of this section and that its 90th percentile lead levels and 90th percentile copper levels meet the criteria of paragraph (g)(2) of this section, the waiver remains in effect if the system does not meet the waiver ineligibility criteria of paragraph (g)(5) of this section. The first round of tap water monitoring conducted pursuant to paragraph (g)(4) of this section must be completed no later than nine years after the last time the system monitored for lead and copper at the tap.

(ii) If the system has met the materials criteria of paragraph (g)(1) of this section but has not met the monitoring criteria of paragraph (g)(2) of this section, the system must conduct a round of monitoring for lead and copper at the tap demonstrating that it meets the criteria of paragraph (g)(2) of this section no later than September 30, 2000. Thereafter, the waiver may remain in effect unless the system meets the discontinuation of eligibility criteria of paragraph (g)(5) of this section. The first round of monitoring conducted pursuant to paragraph (g)(4) of this section must be completed no later than nine years after the round of monitoring conducted pursuant to paragraph (g)(2) of this section.

(h) *Public availability of tap monitoring results used in the 90th percentile calculation.* Unless done so by the State, all water systems must make the tap monitoring results, including data used in the 90th percentile calculation under § 141.80(c)(3), publicly available within 60 days of the end of the tap sampling period. Under this rule, water systems are not required to make the addresses of tap sampling sites publicly available.

(1) Large water systems must make the tap monitoring results and associated data publicly available in a digital format.

(2) Small and medium water systems must make the tap monitoring results and associated data publicly available in either a written or digital format.

(3) Water systems must certify to the State, in writing, compliance with this paragraph (h) in accordance with § 141.90(a)(2)(iii) and must retain monitoring data in accordance with the recordkeeping requirements under § 141.91.

■ 9. Revise § 141.87 to read as follows:

§ 141.87 Monitoring requirements for water quality parameters.

All large water systems and all medium water systems with corrosion control treatment (unless deemed optimized under § 141.81(b)(3)), and all small and medium water systems that exceed the lead or copper action level must sample and monitor water quality parameters in addition to lead and copper in accordance with the requirements of this section. Any system may be required to monitor water quality parameters as determined by the State, including as provided in this section.

(a) *General requirements*—(1) *Distribution system samples for water quality parameters.* (i) Distribution system samples collected at water taps must be representative of water quality throughout the distribution system, considering the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling sites under this section can be the same as or different from tap sampling sites targeted for lead and copper sampling under § 141.86(a). Systems may consider selecting sites also used for total coliform sampling under § 141.21(a)(1). Sites selected for tap samples under this section must be included in the site sample plan specified under § 141.90(a)(1). The site sample plan must be updated prior to changes to the sampling locations.

(ii) Samples collected at taps must be analyzed for the following parameters when applicable as specified:

(A) pH;

(B) Alkalinity;

(C) Orthophosphate (as PO_4), when an inhibitor containing an orthophosphate compound is used;

(D) Silica, when an inhibitor containing a silicate compound is used; and

(E) Any parameters specified by the State under § 141.82(a)(1) or (f)(6).

(2) *Entry point samples for water quality parameters.* (i) Samples

collected at the entry point(s) to the distribution system must be from locations representative of each source water after treatment. If a system draws water from more than one source water and the source waters are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources typically being used.

(ii) Except as provided in paragraph (b)(3)(ii) of this section for groundwater systems, the following parameters must be measured at each entry point to the distribution system, when applicable as specified:

(A) pH;

(B) When alkalinity is adjusted as part of corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration;

(C) When a corrosion inhibitor is used as part of corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate (as PO_4) or silica (whichever is applicable); and

(D) Any parameters specified by the State under § 141.82(a)(1) or (f)(6).

(b) *Standard monitoring for water quality parameters*—(1) *Number of samples*—(i) *Distribution system samples.* Systems must collect two distribution system samples for applicable water quality parameters during each monitoring period specified under paragraphs (b)(2) through (4) of this section from each of the minimum number of sites listed in Table 5 of this paragraph (b)(1)(i). Systems that collect distribution system samples for water quality parameters from additional sites as a result of the distribution system and site assessment requirements in § 141.82(j) must add those sites to the minimum number of sites listed in Table 5 to this paragraph (b)(1)(i) up to a maximum of not more than twice the minimum number of sites.

TABLE 1 TO PARAGRAPH (b)(1)(i)

System size (number of people served)	Minimum number of sites for water quality parameters
>100,000	25
10,001 to 100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(ii) *Samples at entry points.* (A) Except as provided in paragraph (b)(3)(iii) of this section for small systems without corrosion control treatment that do not exceed the lead or copper action level, systems without installed or re-optimized OCCT and/or without State-designated optimal water quality parameters required to collect entry point samples must collect a minimum of two entry point samples for each applicable water quality parameter at each entry point to the distribution system at least once during each monitoring period specified in paragraph (b)(2) of this section.

(B) Systems with installed OCCT or re-optimized OCCT and/or State-designated optimal water quality parameters required to collect entry point samples must collect one entry point sample for each applicable water quality parameter at each entry point to the distribution system at least once every two weeks during each monitoring period the system is required to conduct sampling as specified in paragraphs (b)(3) and (4) and (c) of this section.

(2) *Initial sampling for water systems.* A large water system without corrosion control treatment must begin monitoring for water quality parameters as specified in paragraphs (b)(2)(i) and (ii) of this section during the first two six-month monitoring periods beginning no later than January 1 of the calendar year after the system either becomes a large water system or exceeds the PQL for lead. Any medium system without corrosion control treatment that exceeds the lead or copper action level must begin monitoring for applicable distribution system and entry point water quality parameters as specified in paragraphs (b)(2)(i) and (ii) of this section for two consecutive six-month periods beginning the month immediately following the end of the tap monitoring period in which the action level exceedance occurred. Any small water system that exceeds the lead or copper action level must begin monitoring for applicable distribution system and entry point water quality parameters as specified in paragraphs (b)(2)(i) and (ii) of this section for two consecutive six-month periods beginning the month immediately following the end of the tap monitoring period in which the action level exceedance occurred.

(i) At taps, collect two samples for:

(A) pH; and

(B) Alkalinity;

(ii) At each entry point to the distribution system, collect all the applicable parameters listed in paragraph (a)(2)(i) of this section.

(3) *Monitoring after installation of OCCT or re-optimized OCCT.* (i) A system that installs or modifies OCCT pursuant to § 141.81(d)(5) or (e)(5) and is required to conduct follow-up monitoring for lead or copper pursuant to § 141.81(d)(6) or (e)(6) must monitor for applicable tap and distribution system water quality parameters as specified in paragraphs (a)(1) and (2) of this section every six months until the State specifies new water quality parameter values for OCCT pursuant to paragraph (b)(4) of this section. Water systems must collect these samples at a regular frequency throughout the six-month monitoring period to reflect seasonal variability.

(ii) Any groundwater system can limit entry point sampling described in paragraph (a)(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 must provide to the State, written information and documentation identifying the selected entry points, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(iii) States may require small systems with corrosion control treatment for which the State has not designated optimal water quality parameters that do not exceed the lead and copper action levels to conduct water quality parameter monitoring as described in paragraph (b) of this section or the State can develop its own water quality control parameter monitoring structure for these systems.

(4) *Monitoring by systems with State-designated optimal water quality parameter values for OCCT.* Monitoring must occur at a regular frequency throughout the monitoring period to reflect seasonal variability and be consistent with the requirements in paragraphs (a)(1) and (2) of this section.

(i) Medium water systems with corrosion control treatment and all large water systems must sample for the applicable water quality parameters specified by the State and determine compliance with the requirements of § 141.82(g) every six months with the first six-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).

(ii) A small water system with corrosion control treatment that exceeds

the lead and/or copper action level(s) must begin monitoring during the six-month period immediately following the tap monitoring period in which the action level exceedance(s) occurs and continue monitoring until the water system no longer exceeds the lead and/or copper action level(s) and meets the optimal water quality parameters in two consecutive six-month tap monitoring periods under § 141.86(c). For any small water system that is subject to a reduced monitoring frequency pursuant to § 141.86(d) at the time of the action level exceedance, the start of the six-month monitoring period under this paragraph must coincide with the start of the tap monitoring period under § 141.86(c).

(iii) Compliance with State-designated optimal water quality parameter values must be determined as specified under § 141.82(g).

(iv) States have the discretion to require systems described in this paragraph (b)(4)(ii) to continue to monitor optimal water quality parameters.

(c) *Reduced monitoring.* (1) A medium or large water system that maintains the range of values for the water quality parameters reflecting OCCT specified by the State under § 141.82(f) and does not exceed the lead and copper action levels in either of the two consecutive six-month monitoring periods under paragraph (b)(4) of this section must collect two distribution system samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period. These water systems must collect these samples at a regular frequency throughout the six-month monitoring period to reflect seasonal variability. A system meeting these requirements must continue to monitor at the entry point(s) to the distribution system as specified in paragraph (a)(2) of this section.

TABLE 2 TO PARAGRAPH (c)(1)

System size (number of people served)	Reduced minimum number of sites for water quality parameters
>100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(2)(i) A water system that maintains the range of values for the water quality parameters reflecting OCCT specified by the State under § 141.82(f) and does not exceed the lead or copper action level during three consecutive years of monitoring may reduce the frequency with which it collects distribution system samples for applicable water quality parameters specified in paragraph (c)(1) of this section from every six months to annually. This sampling must begin during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs.

(ii) A water system may reduce the frequency with which it collects distribution system samples for applicable water quality parameters specified in paragraph (c)(1) of this section to every year 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 of 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L as calculated in accordance with § 141.80(c)(3), and that it also has maintained the range of values for the water quality parameters reflecting OCCT specified by the State under § 141.82(f).

(3) A water system that conducts tap sampling for water quality parameters annually must collect these samples at a regular frequency throughout the year to reflect seasonal variability.

(4) A water system monitoring at a reduced frequency that fails to operate at or within the range of values for the optimal water quality parameters specified by the State in § 141.82(f) for more than nine days in any six-month period under paragraph (b)(4) of this section must resume distribution system sampling in accordance with the number and frequency requirements in paragraph (b)(4) of this section. Such a system may resume annual monitoring for water quality parameters in the distribution system at the reduced number of sites specified in paragraph (c)(1) of this section after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of paragraph (c)(1) of this section and/or may resume annual monitoring for water quality parameters in the distribution system at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (c)(2)(i) or (ii) of this section.

(5) Any water system monitoring at a reduced frequency that exceeds the lead or copper action level must resume standard water quality parameter monitoring beginning with the six-month period immediately following the tap monitoring period in which the action level exceedance(s) occurs. When the water system no longer exceeds the lead and/or copper action level(s) and meets the optimal water quality parameters in two consecutive six-month tap monitoring periods, the system may then reduce monitoring in accordance with paragraphs (c)(1) and (2) of this section.

(d) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section must be considered by the water system and the State in determining concentrations of water quality parameters under this section or § 141.82.

■ 10. Amend § 141.90 by:
■ a. Revising paragraphs (a), (b), and (c)(1) and (4);
■ b. Adding paragraph (c)(5);
■ c. Revising paragraphs (e), (f)(1) introductory text, (f)(1)(i), and (f)(3) and (4);
■ d. Removing and reserving paragraph (f)(5);
■ e. Revising paragraphs (f)(6) and (7);
■ f. Adding (f)(8) through (10); and
■ g. Revising paragraphs (g) through (i) and (j)(1) and (2).

The revisions and additions read as follows:

§ 141.90 Reporting requirements.

* * * * *

(a) *Reporting requirements for tap monitoring for lead and copper and for distribution system and entry point monitoring for water quality parameters.* (1) By the start of a system's first lead and copper tap monitoring period in § 141.86, water systems must submit the following to the State:

(i) A site sample plan, including a list of tap sample site locations for lead and copper sampling identified from the inventory in § 141.84(a), and a list of tap sampling sites for water quality parameter monitoring selected under § 141.87(a)(1) and (2). Changes to the site sample plan require submission of an updated site sample plan prior to the next tap sampling period conducted by the system. The State may require modifications to the site sample plan as necessary.

(A) Water systems with lead, galvanized requiring replacement, and/or lead status unknown service lines in the service line inventory conducted under § 141.84(a) and (b) must evaluate the tap sampling locations for lead and copper used in their sampling pool prior to each round of tap sampling, or annually, whichever is more frequent, beginning with the compliance date specified in § 141.80(a)(3). Evaluations that lead to changes in the site sample plan require submission of an updated

site sample plan prior to the next tap sampling period conducted by the system.

(B) Water systems with lead or lead status unknown service lines in their inventory with insufficient lead service line sites to meet the minimum number required in § 141.86, must submit documentation in support of the conclusion that there are an insufficient number of lead service line sites meeting the criteria under § 141.86(a)(4)(i) or (ii), as applicable, prior to the next round of tap sampling;

(ii) A copy of the tap sampling protocol that is provided to individuals who are sampling. The State shall verify that wide-mouth collection bottles are used, as defined at § 141.2, and that recommendations for pre-stagnation flushing and aerator cleaning or removal prior to sample collection are not included pursuant to § 141.86(b). The tap sampling protocol shall contain instructions for correctly collecting a first liter sample for sites without lead service lines and a first liter and fifth liter paired sample for sites with lead service lines. If the water system seeks to modify its tap sampling protocol specified in this paragraph (a)(1)(ii), it must submit the updated version of the protocol to the State for review and approval no later than 60 days prior to use.

(2) Notwithstanding the requirements of § 141.31(a), a water system must report the information specified in paragraphs (a)(2)(i) through (vii) of this section, for all lead and copper tap samples specified in § 141.86 and for all water quality parameter distribution system and entry point samples specified in § 141.87, within the first 10 days following the end of each applicable sampling period specified in §§ 141.86 and 141.87, unless the State has specified an earlier reporting requirement. For tap sampling periods with a duration less than six months, the end of the sampling period is the last date samples can be collected as specified in § 141.86.

(i) The results of all tap samples for lead and copper, including results for both first liter and fifth liter samples collected at lead service line sites, the location of each site, and the site selection criteria under § 141.86(a)(3) and (4) used as the basis for 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) Documentation that the results of monitoring will be made publicly available, as specified in § 141.86(h);

(iv) The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each tap monitoring period (calculated in accordance with § 141.80(c)(3)), unless the State calculates the water system's 90th percentile lead and copper levels under paragraph (h) of this section;

(v) With the exception of initial tap sampling conducted pursuant to § 141.86(c)(2)(i), the water system must 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 water quality parameters that are required to be collected under § 141.87(b) through (d);

(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(d);

(3) For a non-transient non-community water system, or a community water system meeting the criteria of § 141.85(b)(8), that does not have enough taps that can provide first liter or first liter and fifth liter paired samples meeting the six-hour minimum stagnation time, the water system must either:

(i) Provide written documentation identifying standing times and locations for enough samples that do not meet the six-hour minimum stagnation time to make up its sampling pool under § 141.86(b)(3) by the start of the system's first applicable tap monitoring period under § 141.86(c) unless the State has waived prior approval of sample sites not meeting the six-hour stagnation time selected by the water system pursuant to § 141.86(b)(3); or

(ii) If the State has waived prior approval of sample sites not meeting the six-hour stagnation time selected by the system, identify, in writing, each site that did not meet the six-hour minimum standing time and the length of standing time for that particular substitute sample collected pursuant to § 141.86(b)(3) 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.

(4) At a time specified by the State, or if no specific time is designated, as early as possible but no later than six months prior to the addition of a new source or any long-term change in water treatment, a water system must submit written documentation describing the addition of a new source or long-term change in treatment to the State. Systems may not implement the addition of a new source or long-term treatment change without State approval. 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. Examples of long-term treatment changes include but are not limited to the addition of a new treatment process or modification of an existing treatment process. Long-term changes can also include dose changes to existing inhibitor concentration. They do not, however, include chemical dose fluctuations associated with daily raw water quality changes where a new source has not been added. 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).

(5) Any system serving 3,300 or fewer persons 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 system's first applicable tap monitoring period in § 141.86(c), any 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 (4), each 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 system with a monitoring waiver shall provide written notification setting forth the circumstances resulting in the lead-containing and/or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to take to remove these materials.

(6) Each ground water system that limits water quality parameter monitoring to a subset of entry points under § 141.87(b)(3)(ii) 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 system.

(b) *Source water monitoring reporting requirements.* A water system shall report the following 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.

(1) The sampling results for all source water samples collected in accordance with § 141.88

(2) With the exception of the first round of source water sampling conducted pursuant to § 141.88(b), the system shall specify any site which was not sampled during the previous monitoring period, and include an explanation of why the sampling point has changed.

(c) * * *

(1) For water systems demonstrating that they have already optimized corrosion control without optimized water quality parameters set by the State, information required in § 141.81(b)(1) through (3).

* * * * *

(4) For systems required to install OCCT or re-optimized OCCT designated by the State under § 141.82(d), a letter certifying that the system has completed installing that treatment.

(5) For systems not required to complete the corrosion control treatment steps under § 141.81(f), a letter certifying that the system has completed the lead service line replacement program.

* * * * *

(e) *Service line inventory and replacement reporting requirements.* Water systems must report the following information to the State to demonstrate compliance with the requirements of §§ 141.84 and 141.85:

(1) No later than October 16, 2024, the water system must submit an initial inventory of service lines as required in § 141.84(a)(1), including the following:

(i) The number of lead service lines in the initial inventory;

(ii) The number of galvanized requiring replacement service lines in the initial inventory;

(iii) The number of lead status unknown service lines in the initial inventory;

(iv) Where ownership of the service line is shared, the system must report the information in paragraphs (e)(1)(i) through (iii) of this section counting each full service line only once.

(2) No later than the compliance date in § 141.80(a)(3), the water system must submit to the State a baseline inventory of service lines and connectors as required in § 141.84(a)(2).

(3) No later than the compliance date in § 141.80(a)(3), any water system that has inventoried a lead, galvanized requiring replacement, or lead status unknown service line in its distribution system must submit a service line replacement plan as specified in § 141.84(c).

(4) The water system must provide the State with an updated inventory annually, beginning no later than one year after the compliance date in § 141.80(a)(3). The updated inventory must conform with inventory requirements under § 141.84(a) and (b).

(i) When the water system has demonstrated that its inventory contains no lead, galvanized requiring replacement, or lead status unknown service lines, or known lead connectors or unknown connectors, it is no longer required to submit inventory updates to the State, except as required in paragraph (e)(4)(ii) of this section.

(ii) In the case that a water system meeting the requirements of paragraph (e)(4)(i) of this section subsequently discovers any lead or galvanized requiring replacement service lines or lead connectors in its distribution system, it must notify the State within 60 days of discovering the service line(s) and connector(s) and prepare an updated inventory in accordance with § 141.84(b) on a schedule established by the State.

(5) No later than 30 days of the end of each calendar year, the water system must certify to the State that it replaced any encountered lead connectors in accordance with § 141.84(e) or that it encountered no lead connectors during the calendar year.

(6) No later than 30 days after the end of each calendar year, the water system must certify to the State that it conducted the notification and mitigation requirements for any partial and full service line replacements in accordance with § 141.84(h) or that it conducted no replacements of lead or galvanized requiring replacement service lines during the calendar year.

(7) If the water system fails to meet the 45-day deadline to complete a customer-initiated lead or galvanized requiring replacement service line replacement pursuant to § 141.84(f), it must notify the State within 30 days of the replacement deadline to request an extension of the deadline up to 180 days of the customer-initiated service line replacement.

(i) No later than 30 days after the end of the calendar year, the water system must certify annually that it completed all customer-initiated lead and galvanized requiring replacement service line replacements in accordance with § 141.84(f).

(ii) [Reserved]

(8) No later than 30 days after the end of each program year for mandatory service line replacement pursuant to § 141.84(d), the water system must submit the following information to the State:

(i) The following information from the baseline inventory submitted in paragraph (e)(2) of this section, in accordance with the table in § 141.84(d)(6)(iii)(A):

(A) The number of lead service lines in the inventory,

(B) The number of galvanized requiring replacement service lines in the inventory,

(C) The number of lead status unknown service lines in the inventory,

(D) The number of non-lead service lines in the inventory,

(E) The number of lead connectors in the inventory,

(F) Where ownership of the service line is shared, the system must report the information in paragraphs (e)(8)(i)(A) through (D) of this section counting each full service line only once;

(ii) The number of full lead service line replacements that have been conducted in the preceding program year and the address associated with each replaced lead service line;

(iii) The number of partial lead service line replacements that have been conducted in the preceding program year and the address associated with each replaced partial lead service line;

(iv) The number of full galvanized requiring replacement service line replacements that have been conducted in the preceding program year and the address associated with each replaced service line;

(v) The number of lead connectors that have been replaced in the preceding program year and the address associated with each replaced lead connector;

(vi) The number of service lines in the replacement pool updated at the beginning of the proceeding program year in accordance with § 141.84(d)(6)(i);

(vii) The number of lead status unknown service lines remaining in the inventory;

(viii) The total number of lead status unknown service lines determined to be non-lead; and

(ix) The address of each non-lead service line discovered in the preceding program year to be a lead or galvanized requiring replacement service line and, if available, the method or methods originally used to categorize the material of the service line.

(x) The applicable deadline for completion of service line replacement and the expected date of completion of service line replacement.

(9) Systems validating service line inventories pursuant to § 141.84(b)(5) must submit a list of the locations of any non-lead service lines identified to be a lead or galvanized requiring replacement service line as well as the method(s) used to categorize the service lines, if available, as a result of the assessment. The information must be submitted no later than seven years after the compliance date in § 141.80(a)(3), unless otherwise specified by the State, in accordance with § 141.84(b)(5)(iv).

(10) No later than 30 days after the end of each program year for mandatory service line replacement pursuant to § 141.84(d), any water system that was not able to obtain property owner consent after making a reasonable effort in accordance with § 141.84(d)(3) must certify to the State the number of service lines not replaced due to property owners not providing consent where consent is required by State or local law.

(11) [Reserved]

(12) Any system that collects samples following a partial lead or galvanized requiring replacement service line replacement required by § 141.84(h)(1)(iv) must report the results to the State within the first ten days following the month in which the system receives the laboratory results or as specified by the State. Systems must also report any additional information as specified by the State, and in a time and manner prescribed by the State, to verify that all partial lead and galvanized requiring replacement service line replacement activities have taken place.

(13) No later than the compliance date in § 141.80(a)(3), any water system eligible for either of the following deferred deadline conditions in accordance with § 141.84(d)(5)(v) must submit the following information to the State:

(i) The number of years needed to reach the deferred deadline when the system replaces 10,000 lead and galvanized requiring replacement service lines annually in accordance with § 141.84(d)(5)(v)(A); or

(ii) Documentation that shows that ten percent of the known lead and galvanized requiring replacement service lines in the inventory results in the annual number of replacements per household served by the system to exceed 0.039 as well as the number of years needed to reach the deferred deadline in accordance with § 141.84(d)(5)(v)(B).

(14) No later than 30 days after the end of each calendar year, the water system must certify to the State that it offered to inspect service lines that customers who suspected the inventory incorrectly categorized their service line material within 60 days of receiving the customer notification in accordance with § 141.84(b)(4).

(f) *Public education program reporting requirements.* (1) Any water system that is subject to the public education requirements in § 141.85 must, within ten days after the end of each period in which the system is required to perform public education in accordance with § 141.85(b), send written documentation to the State that contains:

(i) The public education materials that were delivered, and a statement certifying 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

* * * * *

(3) No later than three months following the end of the tap sampling period, each water system must send 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 by July 1, the water system must demonstrate to the State that it delivered consumer notification and delivered service line information materials to affected consumers with a lead, galvanized requiring replacement, or lead status unknown service line in accordance with § 141.85(e) for the previous calendar year. The water system must also provide a sample copy of the notification and information materials to the State.

* * * * *

(6) Annually, by July 1, the water system must certify to the State that it delivered notification to affected customers and the persons served by the water system at the service connection and complied with the filter requirements in § 141.85(g) after any disturbance of a service line known to contain or potentially containing lead in accordance with § 141.85(g) for the previous calendar year, or that the water system has not caused any disturbance of a service line known to contain or potentially contain lead, during the preceding year. The water system must also submit a copy of the notification to the State. Water systems that are required to provide filters under § 141.85(g) must also report the number of sites with disturbances that require filters as specified under § 141.85(g) and number of filters provided.

(7) Annually by July 1, the water system must demonstrate to the State that it conducted an outreach activity in accordance with § 141.85(h) when failing to meet the service line replacement rate as specified in § 141.84(d) for the previous calendar year. The water system must also submit a copy to the State of the outreach materials provided.

(8) Annually, by July 1, the water system must certify to the State that it delivered the required distribution system and site assessment information to the State and local health departments for the previous calendar year in accordance with § 141.85(i).

(9) No later than 30 days after a system first meets the criteria of multiple lead action level exceedances in § 141.85(j)(1), the system must submit a filter plan to the State as specified in § 141.85(j)(3). Thereafter, a system is not required to resubmit a filter plan unless requested by the State or if the system has made updates to their plan.

(10) Every six months (*i.e.,* by January 1 or July 1), any water system that meets the criteria of multiple lead action level exceedances in § 141.85(j)(1) must:

(i) Certify compliance with the filter requirements in the previous six months in accordance with § 141.85(j)(2) and report the number of filters provided; and

(ii) Certify that the water system completed a public outreach activity in the previous six months in accordance with § 141.85(j)(4) and submit a copy of the public education materials provided to consumers.

(g) *Reporting of additional monitoring data.* (1) Any water system which collects more samples than the minimum required, must 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 distribution system and site assessment pursuant to §§ 141.82(j) and 141.86(b)(1)(iv).

(2) The system must certify to the State the number of customer refusals or non-responses for follow-up sampling under § 141.82(j) it received and information pertaining to the accuracy of the refusals or non-responses, within the first 10 days following the end of the applicable tap sampling period in which an individual sample exceeded the action level.

(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 tap sampling period, as required by paragraph (a)(2)(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 the water system provides the results of lead and copper tap water samples no later than 10 days after the end of the applicable tap sampling period; and

(2) The 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 site selection criteria under § 141.86(a)(4) used as the basis for which the site was selected for the water system's sampling pool; and

(ii) An identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation of 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 within 15 days of the end of the tap sampling 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 must provide a list of the schools and child care facilities they serve to the State by the compliance date in § 141.80(a)(3) in accordance with § 141.92(b)(1). A water system that certifies that no schools or child care facilities are served by the water system is not required to report the information in paragraphs (i)(2) through (3) of this section.

(2) A community water system must report the lead analytical sampling results for schools and child care facilities within 30 days of receipt of the results in accordance with § 141.92(g)(1)(iii).

(3) A community water system must 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 the water system made a good faith effort to identify schools and child care facilities in accordance with § 141.92(b). The good faith effort may include reviewing customer records and requesting lists of schools and child care facilities from the State or other licensing agency. If there are changes to the list of schools and child care facilities that a water system serves, an updated list must be submitted at least once every five years in accordance with § 141.92(b)(2). If there are no changes to the list of schools or child care facilities the water system serves, the water system must certify there are no changes to the list.

(ii) Certification that the water system has delivered information about health risks from lead in drinking water to the school and child care facilities that they serve in accordance with § 141.92(c)(1).

(iii) During the first five years after the compliance date in § 141.80(a)(3), certification that the water system has completed the notification and sampling requirements in § 141.92(c)(2)(i) and (d)(1) for elementary schools and child care facilities and the information in paragraphs (i)(3)(iii)(A) through (D) of this section and certification that the water system has completed the notification and sampling requirements of § 141.92(c)(2)(ii) and (e) for secondary schools and the information in paragraphs (i)(3)(iii)(A) and (B) of this section. Starting with the sixth year after the compliance date in § 141.80(a)(3), the water system shall certify completion of the notification requirements of § 141.92(c)(3) and sampling requirements of § 141.92(d)(2) in elementary schools and child care facilities and § 141.92(e) for secondary schools and the information in paragraphs (i)(3)(iii)(A) and (B) of this section, thereafter.

(A) The number and names of schools and child care facilities served by the water system;

(B) The number and names of schools and child care facilities sampled in the calendar year;

(C) The number and names of elementary schools and child care facilities that have declined sampling;

(D) The number and names of elementary schools and child care facilities that have not responded to outreach attempts for sampling;

(E) Information pertaining to outreach attempts for sampling that were declined or not responded to by the elementary school or child care facility; and

(iv) Certification that sampling results were provided to schools, child care facilities, and local and State health departments.

(j) * * *

(1) Small water systems serving 3,300 or fewer and non-transient non-community water systems implementing the point-of-use device option under § 141.93(c)(1), shall report the results from the tap sampling required under § 141.93 no later than 10 days after the end of the monitoring period. If the action level is exceeded, the water system must reach out to the homeowner and/or building management within 24 hours of receiving the tap sample results. Corrective action must be completed within 30 days. If corrective action is not completed within 30 days, the system must provide documentation to the State within 30 days explaining why it was unable to correct the issue. Upon request by the State, the water system must provide documentation to certify maintenance of the point-of-use devices.

(2) Small water systems serving 3,300 or fewer and non-transient non-community water systems implementing the small system compliance flexibility option to replace all lead-bearing plumbing under § 141.93(c)(2) must provide certification to the State that all lead-bearing material has been replaced on the schedule established by the State, within one year of designation of the option under § 141.93(c)(2).

■ 11. Revise § 141.92 to read as follows:

§ 141.92 Monitoring for lead in schools and child care facilities.

(a) *General requirements.* (1) All community water systems must conduct public education and lead monitoring at the schools and child care facilities they serve unless those schools or child care facilities were constructed or had full plumbing replacement on or after January 1, 2014 or the date the State adopted standards that meet the definition of lead free in accordance with section 1417 of the Safe Drinking Water Act, as amended by the Reduction of Lead in Drinking Water Act, whichever is earlier.

(2) The provisions of this section do not apply to a school or child care facility that is regulated as a public water system.

(b) *List of schools and child care facilities.* (1) All community water systems must compile a list of schools and child care facilities they serve and submit the list to the State in accordance with § 141.90(i)(1) by the compliance date specified in § 141.80(a)(3).

(2) Within five years following the compliance date in § 141.80(a)(3) and at least once every five-year period after, all community water systems must either confirm in writing to the State there have been no changes to the list of schools and child care facilities or

submit a revised list to the State in accordance with § 141.90(i)(3)(i).

(c) *Public education to schools and child care facilities.* (1) At least once a year beginning with the compliance date in § 141.80(a)(3), community water systems must contact all schools and child care facilities identified by the system in paragraph (b) of this section to provide information about the health risks from lead in drinking water consistent with the content requirements of § 141.85(a)(1). Community water systems may provide this information to schools and child care facilities more frequently than once a year.

(2) Within the first five years following the compliance date in § 141.80(a)(3), community water systems must:

(i) Notify elementary schools and child care facilities, in accordance with the frequency requirements in paragraph (d)(1) of this section, that they are eligible to be sampled for lead by the water system. This notice must include:

(A) A proposed schedule for sampling at the facility; and

(B) Information about sampling 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).

(ii) Notify all secondary schools identified in paragraph (b) of this section at least once a year that they are eligible to sampled for lead by the community water system on request. The notice must provide:

(A) Information on how to request sampling for lead at the facility; and

(B) Information about sampling 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).

(3) Starting with the sixth year after the compliance date in § 141.80(a)(3), a community water system must contact all elementary schools, secondary schools, and child care facilities identified in paragraph (b) of this section to notify them that they are eligible to be sampled for lead by the community water system on request and provide the information in paragraphs (c)(2)(ii)(A) and (B) of this section.

(4) Thirty days prior to any sampling event, community water systems must provide schools and child care facilities with instructions to identify outlets for lead sampling and prepare for a sampling event.

(d) *Frequency of sampling at elementary schools and child care facilities.* (1) Within the first five years following the compliance date in § 141.80(a)(3), community water systems must collect samples from at least 20 percent of the total of elementary schools served by the system per year and at least 20 percent of the total of child care facilities served by the system per year, or according to an alternative schedule approved by the State, until all elementary schools and child care facilities identified under paragraph (b) of this section have been sampled once or have declined to participate or are non-responsive.

(i) Community water systems must provide documentation to the State in accordance with § 141.90(i)(3) if an elementary school or child care facility is non-responsive or otherwise declines to participate in the monitoring or education requirements of this section. For the purposes of this section:

(A) A community water system may consider an elementary school or child care facility non-responsive after the community water system makes at least two separate outreach attempts to contact the facility to schedule sampling and does not receive any response on either attempt; and

(B) A community water system may count a refusal or non-response from an elementary school or child care facility as part of the minimum 20 percent of elementary schools and child care facilities sampled per year.

(ii) [Reserved]

(2) Starting with the sixth year after the compliance date in § 141.80(a)(3), community water systems must conduct sampling as specified in paragraph (f) of this section when requested by an elementary school or child care facility.

(i) A community water system is not required under this rule to sample more than 20 percent of the elementary schools and child care facilities identified in paragraph (b) of this section in any given year. A community water system is not required under this rule to sample an individual elementary school or child care facility more than once in any five-year period.

(ii) [Reserved]

(3) The first time a water system includes an elementary school or child care facility in an update to the list of schools and child care facilities required to be submitted to the State in paragraph (b)(2) of this section, the water system must conduct outreach at those elementary schools and child care facilities as specified in paragraph (c)(2) once prior to conducting sampling in accordance with paragraph (d)(2) of this section.

(i) A community water system may consider an elementary school or child care facility non-responsive after the community water system makes at least two separate outreach attempts to contact the facility to schedule sampling and does not receive any response on either attempt.

(ii) [Reserved]

(e) *Frequency of sampling at secondary schools.* (1) Starting with the compliance date in § 141.80(a)(3), community water systems must conduct sampling as specified in paragraph (f) of this section when requested by a secondary school.

(2) A community water system is not required under this rule to sample more than 20 percent of the secondary schools identified in paragraph (b) of this section in any given year. A community water system is not required under this rule to sample an individual secondary school more than once in any five-year period.

(f) *Lead sampling protocol for schools and child care facilities.* (1) Community water systems must collect five samples per school and two samples per child care facility at outlets typically used to provide water for human consumption. Except as provided in paragraphs (f)(1)(iii) through (v) of this section, the outlets cannot have point-of-use (POU) devices. The community water system must sample the following types and number of outlets:

(i) For schools: two drinking water fountains, one kitchen faucet used for drinking or cooking, one classroom faucet or other outlet used to provide water for human consumption, 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 drinking or cooking or one classroom faucet or other outlet used to provide water for human consumption.

(iii) If any school or child care facility has fewer than the required number of outlets, the community water system must sample all outlets used to provide water for human consumption.

(iv) The community water system may sample at outlets with POU devices if the facility has POU devices installed on all outlets typically used to provide water for human consumption.

(v) If any school or child care facility does not contain the type of outlet listed above, the community water system must collect a sample from another outlet typically used to provide water for human consumption as identified by the facility, to meet the required number of samples as provided in this paragraph (f)(1).

(2) Community water systems must collect the samples from the cold water tap subject to the following additional requirements:

(i) Each sample for lead must be a first draw sample;

(ii) The sample must be 250 ml in volume;

(iii) 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; and

(iv) Samples must be analyzed using acidification and the corresponding analytical methods in § 141.89.

(3) Community water system, school, or child care facility staff, or other appropriately trained individuals must collect samples in accordance with paragraphs (f)(1) and (2) of this section.

(g) *Notification of results.* (1) Community water systems must provide sampling results, regardless of lead sample concentration, as soon as practicable but no later than 30 days after receipt of the results to:

(i) The sampled school or child care facility, along with information about potential options to remediate lead in drinking water (consistent with EPA's 3Ts for Reducing Lead in Drinking Water Toolkit, EPA–815–B–18–007, or subsequent EPA guidance);

(ii) The local and State health department; and

(iii) The State in accordance with § 141.90(i).

(2) [Reserved]

(h) *Alternative school and child care lead sampling programs.* (1) If schools and child care facilities served by a community water system are sampled for lead in drinking water under a State or local law or program, the State may exempt one or more community water system(s) from the requirements of this section by issuing a written waiver:

(i) If the sampling meets the frequency requirements in paragraph (d) of this section for elementary schools and child care facilities and paragraph (e) of this section for secondary schools and the protocol requirements in paragraph (f) of this section; or

(ii) If the sampling meets the frequency requirements in paragraph (d) of this section for elementary schools and child care facilities and paragraph (e) of this section for secondary schools and the protocol requirements in paragraph (f) of this section with the exception of sample size and stagnation time in paragraphs (f)(2)(ii) and (iii) of this section and the sampling is conducted in addition to any of the following actions to remediate lead in drinking water:

(A) Disconnect affected fixtures;

(B) Replace affected fixtures with fixtures certified as lead free; and

(C) Install and maintain POU devices certified by an American National Standards Institute accredited certifier to reduce lead levels; or

(iii) If the sampling is conducted in schools and child care facilities served by the community water system less frequently than once every five years and that sampling is conducted in addition to any of the actions to remediate lead in drinking water specified in paragraph (h)(1)(ii) of this section; or

(iv) If the school or child care facility maintains POU devices as defined in § 141.2 on all outlets used to provide water for human consumption; or

(v) If the sampling is conducted under a grant awarded under section 1464(d) of the SDWA, consistent with the requirements of the grant and at least the minimum number of samples required in paragraph (f) of this section are collected.

(2) The duration of the waiver cannot exceed the time period covered by the sampling and will automatically expire at the end of any 12-month period during which sampling is not conducted at the required number of schools or child care facilities.

(3) The State must only issue a waiver to the community water system for the subset of the schools or child care facilities served by the system as designated under paragraph (b) of this section that are sampled under an alternative program as described in paragraph (h)(1) of this section.

(4) The State may issue a written waiver applicable to more than one community water system (*e.g.,* one waiver for all community water systems subject to a statewide sampling program that meets the requirements of this paragraph (h)).

(5) The State may issue a waiver for community water systems to conduct the requirements of § 141.92 for the first five years following the compliance date in § 141.80(a)(3) in the schools and child care facilities that were sampled for lead between January 1, 2021 and the compliance date in § 141.80(a)(3) that otherwise meets the requirements of paragraph (h)(1) of this section.

■ 12. Revise § 141.93 to read as follows:

§ 141.93 Small water system compliance flexibility.

Small community water systems serving 3,300 or fewer persons and all non-transient non-community water systems that exceed the lead action level, but do not exceed the copper action level, may elect to use this provision in lieu of the corrosion control treatment requirements otherwise applicable to small systems in § 141.81(a)(3), if approved by the State. This compliance flexibility is not available to water systems where the State has obtained primacy for this rule and the State does not adopt regulations to provide compliance flexibility consistent with this section.

(a) Small community water systems and non-transient non-community water systems that elect to use this provision must:

(1) For water systems with corrosion control: Collect water quality parameters in accordance with § 141.87 and, if the system has not re-optimized OCCT in accordance with § 141.81(d), evaluate compliance options in paragraphs (c)(1) and (2) of this section and corrosion control treatment under § 141.81(d)(1). Water systems with corrosion control treatment in place must continue to operate and maintain optimal corrosion control treatment until the State determines, in writing, that it is no longer necessary, and meet any requirements that the State determines to be appropriate before implementing a State approved alternative compliance option described in this section.

(2) For systems without corrosion control: Collect water quality parameters in accordance with § 141.87 and, if the system has not installed OCCT in accordance with § 141.81(e), evaluate compliance options in paragraphs (c)(1) and (2) of this section and corrosion control treatment under § 141.81(e)(1).

(b) The system must make a compliance option recommendation to the State within six months of the end of the tap sampling period in which the lead action level exceedance occurred. Within six months of the recommendation by the water system, the State must approve or disapprove the recommendation. If the State disapproves the recommendation, the State may designate the other compliance alternative as an option for the system. If the State does not designate the other compliance alternative as an option for the system, the system must comply with the otherwise applicable corrosion control treatment requirements under § 141.81(d) for systems with corrosion control or § 141.81(e) for systems without corrosion control treatment. Water systems must follow the schedules in § 141.81(d) or (e), beginning with Step 3 in § 141.81(d)(3) or (e)(3) unless the State specifies optimal corrosion control treatment pursuant to either § 141.81(d)(2) or (e)(2), as applicable. If the system fails to implement the approved alternative compliance option, or the State revokes approval for the alternative compliance option, then the system must follow the

requirements for small and non-transient non-community water systems as described under § 141.81(a)(3).

(c) *Alternative compliance options*—(1) *Point-of-use devices.* A water system that elects this compliance option, must install, maintain, and monitor POU devices in each household and each building served by the water system.

(i)(A) A community water system must install a minimum of one POU device (at one tap) in every household and at every tap that is used for cooking and/or drinking in every non-residential building in its distribution system on a schedule specified by the State, but not to exceed one year.

(B) A non-transient non-community water system must provide a POU device to every tap that is used for cooking and/or drinking on a schedule specified by the State, but not to exceed three months.

(ii) The POU device must be independently certified by a third party to meet the American National Standards Institute standard applicable to the specific type of POU unit to reduce lead in drinking water.

(iii) The POU device must be maintained by the water system in accordance with the manufacturer's recommendations to ensure continued effective filtration, including but not limited to changing filter cartridges and resolving any operational issues. The POU device must be equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The water system must provide documentation to the State to certify maintenance of the POU devices, unless the State waives this requirement, in accordance with § 141.90(j)(1).

(iv) The water system must monitor, in accordance with this paragraph, one-third of the POU devices each year and all POU devices must be monitored within a three-year cycle. First liter tap samples collected under this section must be taken after water passes through the POU device to assess its performance. Samples must be one-liter in volume and have had a minimum 6-hour stagnation time. All samples must be at or below 0.010 mg/L. Water systems must report the results from the tap sampling no later than 10 days after the end of the tap sampling period in accordance with § 141.90(j)(1). If a sample exceeds 0.010 mg/L, the water system must notify the homeowner and/or building management no later than 24 hours of receiving the tap sample results. The system must document and take corrective action at each site where the sample result exceeds the lead action level. Corrective action must be completed within 30 days. If the corrective action is not completed within 30 days, the system must provide documentation to the State within 30 days explaining why it was unable to correct the issue.

(v) The water system must provide public education to consumers to inform them of proper use of POU devices to maximize the units' lead level reduction effectiveness.

(A) *Content.* All small community water systems and non-transient non-community water systems that elect to implement POU devices under paragraph (c)(1) must provide public education materials to inform users how to properly use POU devices to maximize the units' effectiveness in reducing lead levels in drinking water.

(B) *Timing.* Water systems must provide the public education materials at the time of POU device delivery.

(C) *Delivery.* Water systems must provide the public education materials in person, by mail, or by another method approved by the State, to persons at locations where the system has delivered POU devices.

(vi) The water system must operate and maintain the POU devices even if the system is at or below the action level in future tap monitoring periods until the system receives State approval to select the other compliance flexibility option or follow § 141.81(d) or (e) and the system has fully implemented it.

(2) *Replacement of lead-bearing plumbing.* A water system that has control over all plumbing in its buildings, and is not served by unknown, galvanized requiring replacement, or lead service lines, must replace all plumbing that does not meet the definition of ''lead free'' in 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. The replacement of all lead-bearing plumbing must occur on a schedule established by the State but not to exceed one year. Water systems must provide certification to the State that all lead-bearing material has been replaced in accordance with § 141.90(j)(2).

■ 13. Amend § 141.153 by:

■ a. Revising paragraph (d)(4)(xi);

■ b. Adding paragraphs (d)(4)(xiii) and (xiv); and

■ c. Revising paragraph (f)(3).

The revisions and additions read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(xi) The report shall include a statement that a service line inventory (including inventories where the publicly accessible inventory consists of a written statement that there are no lead, galvanized requiring replacement, or lead status unknown service lines, known lead connectors or unknown connectors) has been prepared and include instructions to access the service line inventory; and

* * * * *

(xiii) For systems with lead, galvanized requiring replacement, or lead status unknown service lines in the system's inventory pursuant to § 141.84(a) and (b), the report must include information on how to obtain a copy of the service line replacement plan or view the plan on the internet if the system is required to make the service line replacement plan available online.

(xiv) The report must include a statement that the water system is required to sample for lead in schools and licensed child care facilities as requested by the facility and may direct the public to contact their school or child care facility for further information about potential sampling results.

* * * * *

(f) * * *

(3) Lead and copper control requirements prescribed by subpart I of this part. For systems that fail to take one or more actions prescribed by §§ 141.80 through 141.93, the report must include the applicable language of appendix A to this subpart for lead, copper, or both.

* * * * *

■ 14. Amend § 141.154 by revising 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 information in figure 1 to this paragraph:

Figure 1 to Paragraph (d)(1)

Lead can cause serious health effects in people of all ages, especially pregnant people, infants (both formula-fed and breastfed), and young children. Lead in drinking water is primarily from materials and parts used in service lines and in home plumbing. [INSERT NAME OF UTILITY] is responsible for providing high quality drinking water and removing lead pipes, but cannot control the variety of materials used in

the plumbing in your home. You can help protect yourself and your family by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Using a filter, certified by an American National Standards Institute accredited certifier to reduce lead, is effective in reducing lead exposures. Follow the instructions provided with the filter to ensure the filter is used properly. Use only cold water for drinking, cooking, and making baby formula. Boiling water does not remove lead from water. Before using tap water for drinking, cooking, or making baby formula, flush your pipes for several minutes. You can do this by running your tap, taking a shower, doing laundry or a load of dishes. If you have a lead service line or galvanized requirement replacement service line, you may need to flush your pipes for a longer period. If you are concerned about lead in your water and wish to have your water tested, contact [INSERT 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 *https://www.epa.gov/safewater/lead.*

* * * * *

■ 16. Amend appendix A to subpart O of part 141 under the heading ''Inorganic contaminants'' by revising the entry for ''Lead'' to read as follows:

Appendix A to Subpart O of Part 141—Regulated Contaminants

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Inorganic contaminants:						
*	*	*	*	*	*	*
Lead (mg/L)	AL = 0.010	1,000	AL = 10	0	Corrosion of household plumbing systems and service lines connecting buildings to water mains, erosion of natural deposits.	There is no safe level of lead in drinking water. Exposure to lead in drinking water can cause serious health effects in all age groups, especially pregnant people, infants (both formula-fed and breastfed), and young children. Some of the health effects to infants and children include decreases in IQ and attention span. Lead exposure can also result in new or worsened learning and behavior problems. The children of persons who are exposed to lead before or during pregnancy may be at increased risk of these harmful health effects. Adults have increased risks of heart disease, high blood pressure, kidney or nervous system problems. Contact your health care provider for more information about your risks.
*	*	*	*	*	*	*

* * * * *

■ 16. Amend § 141.202 by revising paragraph (b)(1) to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

* * * * *

(b) * * *

(1) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation or other situation requiring Tier 1 public notice;

* * * * *

■ 17. Amend appendix A to subpart Q of part 141 in section I by revising the entries for ''C. Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)'' and ''1. Lead and Copper Rule (TT)'' 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 0.010 mg/L, for copper is 1.3 mg/L):				
1. Lead and Copper Rule (TT)	2	§ 141.80 (except §§ 141.80(c))–141.84, 141.85(a)–(c) (except (c)(3)), (h), and (j), and § 141.93.	3	§§ 141.86–141.90, 141.92.
*	*	*	*	*

Appendix A—Endnotes

* * * * *

[1] Violations and other situations not listed in this table (*e.g.,* failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, 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.

* * * * *

■ 18. Amend appendix B to subpart Q of part 141 by revising the entry for ''23. Lead'' and endnote 13 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
National Primary Drinking Water Regulations (NPDWR)			
*	*	*	* * * * *
D. Lead and Copper Rule			
*	*	*	* * * * *
23. Lead	zero	TT [13]	There is no safe level of lead in drinking water. Exposure to lead in drinking water can cause serious health effects in all age groups, especially pregnant people, infants (both formula-fed and breastfed), and young children. Some of the health effects to infants and children include decreases in IQ and attention span. Lead exposure can also result in new or worsened learning and behavior problems. The children of persons who are exposed to lead before or during pregnancy may be at increased risk of these harmful health effects. Adults have increased risks of heart disease, high blood pressure, kidney or nervous system problems. Contact your health care provider for more information about your risks.
*	*	*	* * * * *

Appendix B—Endnotes

* * * * *

[1] MCLG—Maximum contaminant level goal.

[2] MCL—Maximum contaminant level.

* * * * *

[13] Action Level = 0.010 mg/L.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 19. 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.

■ 20. In § 142.14, republish paragraph (d) introductory text and revise paragraphs (d)(8) and (9) and (d)(10)(ii) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) Each State which has primary enforcement responsibility shall retain, for not less than 12 years, files which shall include for each such public water system in the State:

* * * * *

(8) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR part 141, subpart I for the control of lead and copper. If, for the records identified in paragraphs (d)(8)(i) through (d)(8)(xvii) of this section, no change is made to State determinations during a 12-year retention period, the State shall retain the record until a new decision, determination, or designation has been issued.

(i) Section 141.81(b)—for any water system deemed to be optimized under § 141.81(b) of this chapter, any conditions imposed by the State on specific water systems to ensure the continued operation and maintenance of corrosion control treatment in place;

(ii) Sections 141.81(b)(4), 141.86(c)(2)(iii)(G), and 141.86(g)(4)(iii)—determinations of additional monitoring requirements and/or other actions required to maintain optimal corrosion control by systems that change treatment or add a new source of water;

(iii) Section 141.82(b)—decisions to require a water system to conduct corrosion control treatment studies;

(iv) Section 141.82(d)—designations of optimal corrosion control treatment and any simultaneous compliance considerations that factored into the designation;

(v) Section 141.83(b)(2)—determinations of source water treatment;

(vi) Section 141.83(b)(4)—designations of maximum permissible concentrations of lead and copper in source water;

(vii) Section 141.84(d)—determinations as to whether a shortened replacement deadline is feasible for mandatory full lead and galvanized requiring replacement service line replacement;

(viii) Section 141.85—system-specific decisions regarding the content of written public education materials and/or the distribution of these materials;

(ix) Section 141.86(b)(3)—system-specific determinations regarding use of samples that do not meet the six hour minimum stagnation time at non-transient non-community water systems, and community water systems meeting the criteria of § 141.85(b)(8) of this chapter, that operate 24 hours a day;

(x) Section 141.86(d)—system-specific designations of sampling locations for systems subject to reduced monitoring;

(xi) Section 141.86(d)(3)—system-specific determinations pertaining to alternative sample collection periods for systems subject to reduced monitoring;

(xii) Section 141.86(g)—determinations of small system monitoring waivers, waiver recertifications, and waiver revocations;

(xiii) Section 141.87(b)(3)(ii)—determinations regarding representative entry point locations at ground water systems;

(xiv) Section 141.88—evaluation and approval of water system source water or treatment changes;

(xv) Section 141.90(e)(4)—system-specific determinations regarding the submission of information to demonstrate compliance with partial lead and galvanized requiring replacement service line replacement requirements;

(xvi) Section 141.90(f)—system-specific decisions regarding the resubmission of detailed documentation demonstrating completion of public education requirements, including resubmission of filter distribution plans under 141.90(f)(9); and

(xvii) Section 141.93—identification of community 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.

(9) Records of reports and any other information submitted by PWSs under § 141.90 of this chapter, including:

(i) Records of any 90th percentile values calculated by the State under § 141.90(h) of this chapter;

(ii) Completed initial service line inventories, baseline inventories, and required updates to inventories and information under § 141.90(e) of this chapter;

(iii) Service line replacement plans under § 141.90(e)(3) of this chapter; and

(iv) Compliance sampling pools in site sample plan and any changes to sampling pools under § 141.90(a)(1) of this chapter.

(10) * * *

(ii) Verify compliance with the requirements related to partial or customer-initiated lead and galvanized requiring replacement service line replacement under § 141.84(f), (g) and (h)(1) and (2) of this chapter and compliance with full service line replacement under § 141.84(h)(3) of this chapter, and compliance with lead connector replacement when encountered under § 141.84(e); and

* * * * *

■ 21. Amend § 142.15 by:

■ a. Removing and reserving paragraph (c)(4)(i);

■ b. Revising paragraph (c)(4)(iii) introductory text;

■ c. Revising paragraphs (c)(4)(iii)(B) through (F); and

■ d. Adding paragraph (c)(4)(iii)(G).

The revisions and addition read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(4) * * *

(iii) States shall report the PWS identification number of each water system identified in paragraphs (c)(4)(iii)(A) through (G) of this section.

* * * * *

(B) For each water system (regardless of size), the 90th percentile copper level calculated during each tap sampling period specified in § 141.86 of this chapter, in which the system exceeds the copper action level, and the first and last days of each tap sampling period in which an exceedance occurred;

(C) For each water system for which the State has designated optimal water quality parameters under § 141.82(f) of this chapter, the specific corrosion control treatment designated, the date of the determination and the paragraph(s) under which the State made its determination, the water system's optimal water quality parameters;

(D) For each water system the number of lead service lines, galvanized requiring replacement service lines, lead status unknown service lines, lead connectors, unknown connectors, and non-lead service lines in its inventory, reported separately;

(E) For each water system required to conduct mandatory replacement of lead and galvanized requiring replacement service lines, as specified in § 141.84(d) of this chapter, the number and type of service lines replaced, the deadline for the system to complete replacement of all lead and galvanized requiring replacement service lines, and the expected date of completion of service line replacement;

(F) For each water system that has implemented optimal corrosion control, completed applicable source water treatment requirements pursuant to § 141.83 of this chapter and/or completed service line replacement requirements pursuant to § 141.84 of this chapter, and the date of the State's determination that these requirements have been met. The date reported shall be the latest of the following events:

(*1*) The date the State received the results of corrosion control evaluations under § 141.82(d) or (e) or optimal corrosion control treatment recommendation by the system.

(*2*) For systems for which the State has designated optimal corrosion control treatment under § 141.82(d), the date of the determination, and the date the system completed installation of treatment as certified under § 141.90(c)(4);

(*3*) The date the State designates optimal water quality parameters under § 141.82(f) of this chapter or deems the system to have optimized corrosion control pursuant to § 141.81(b)(1) or (3) of this chapter;

(*4*) For systems which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, the date the State designates maximum permissible source water levels under § 141.83(b)(4) of this chapter or determines pursuant to § 141.83(b)(2) of this chapter that source water treatment is not required; or

(*5*) For systems required to conduct service line replacement, the date the system completes service line replacement pursuant to § 141.84(d) of this chapter.

(*6*) For systems not required to complete the corrosion control treatment steps under § 141.81(f), the date the system is required to complete service line replacement.

(G) Each State which has primary enforcement responsibility shall submit to the Administrator the 90th percentile lead concentration calculated during each tap sampling period in which the system exceeds the lead action level in § 141.80(c)(2) of this chapter within the first 15 days following the end of each tap sampling period specified in § 141.86 of this chapter or 24 hours of receiving notification of an action level exceedance from a water system, whichever is earlier.

* * * * *

■ 22. Amend § 142.16 by revising paragraphs (d)(1)(ii) and (d)(3) through (10) and adding paragraph (d)(11) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(d) * * *

(1) * * *

(ii) Section 141.82(g)—Designating an alternative approach for aggregating multiple measurements collected during the same day for a water quality parameter at a sampling location, if the State elects to adopt a formula other than the one specified in § 141.82(g)(2)(A) of this chapter.

* * * * *

(3) Section 141.90(e)—Verifying compliance with service line replacement schedules and completion of all partial lead and galvanized requiring replacement service line replacement activities.

(4) Section 141.86(d)(3)(i)—Designating an alternative period for sample collection for community water systems subject to reduced monitoring.

(5) Section 141.84—Providing or requiring the review of any evidence-based resource, information, or identification method for the development of the baseline inventory or inventory updates. Requiring water systems whose inventories contain no lead, galvanized requiring replacement, or lead status unknown service lines, no known lead connectors and no unknown connectors to prepare an updated inventory on a schedule determined by the State if the system subsequently finds a lead service line, galvanized requiring replacement service line, or lead connector within its system.

(6) Section 141.84(d)(5)(iv)—Determining whether a shortened service line replacement deadline is feasible for mandatory lead and galvanized requiring replacement service line replacement and notifying the system of the determination in

writing at any time throughout a system's replacement program and notifying the system of the determination. For systems required to replace service lines in accordance with a shortened deadline, or for systems eligible for a deferred deadline, determining the deadline to complete inventory validation in accordance with § 141.84(b)(5) of this chapter.

(7) Section 141.82—Verifying compliance with distribution system and site assessment requirements.

(8) Section 141.84(d)—Identifying any State laws, including statutes and constitutional provisions, that pertain to a water system's access to conduct full service line replacement and notifying water systems in writing whether any such laws exist or not, by the compliance date specified in § 141.80(a) of this chapter and within six months of the enactment of any new or revised State law that pertains to a water system's access to conduct full service line replacement.

(9) Section 141.88—Reviewing any change in source water or treatment and making related determinations, including approval; establishment of additional requirements to ensure the system will operate and maintain optimal corrosion control treatment; and an evaluation of how this change may impact compliance with other national primary drinking water regulations in part 141 of this chapter.

(10) Section 141.92—Reviewing lists of schools and child care facilities to ensure entries conform to the definitions of school and child care facility as defined in § 141.2 of this chapter and is complete.

(11) Section 141.92—Determining whether any existing State or local testing program is at least as stringent as the Federal requirements, including how the State will use the definitions of elementary school, secondary school, and childcare facility as defined in § 141.2 of this chapter to issue waivers.

* * * * *

■ 23. In § 142.19, revise paragraph (a) introductory text and paragraph (a)(2) to read as follows:

§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.

(a) Pursuant to the procedures in this section, the Regional Administrator may review State determinations establishing corrosion control or source water treatment requirements for lead or copper and may issue an order establishing Federal treatment requirements for a public water system pursuant to §§ 141.82(d) and (f) and 141.83(b)(2) and (4) of this chapter where the Regional Administrator finds that:

* * * * *

(2) A State has abused its discretion; or

* * * * *

[FR Doc. 2023–26148 Filed 12–5–23; 8:45 am]

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