

payment only if means are authorized for payment of necessary expenses above such limits.

#### § 26.23 Certification process.

(a) An appropriate State official may request in writing that the Attorney General determine whether the State meets the requirements for certification under § 26.22.

(b) Upon receipt of a State's request for certification, the Attorney General will make the request publicly available on the Internet (including any supporting materials included in the request) and publish a notice in the **Federal Register**—

(1) Indicating that the State has requested certification;

(2) Identifying the Internet address at which the public may view the State's request for certification; and

(3) Soliciting public comment on the request.

(c) The State's request will be reviewed by the Attorney General. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (b) of this section. The certification will be published in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the State for certification was established.

(d) A certification by the Attorney General reflects the Attorney General's determination that the State capital counsel mechanism reviewed under paragraph (c) of this section satisfies 28 U.S.C. chapter 154's requirements. A State may request a new certification by the Attorney General to ensure the continued applicability of chapter 154 in cases in which State postconviction proceedings occur after a change or alleged change in the State's certified capital counsel mechanism. Changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case.

Dated: February 25, 2011.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2011-4800 Filed 3-2-11; 8:45 am]

**BILLING CODE 4410-18-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

[Docket No. OW-2009-0090; FRL-9274-2]

RIN 2040-AF10

### Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The 1996 amendments to the Safe Drinking Water Act (SDWA) require that the United States Environmental Protection Agency (EPA or the Agency) establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored every five years. This action meets the SDWA requirement by proposing the design for the third UCMR cycle (*i.e.*, UCMR 3). EPA is proposing six EPA-developed analytical methods, and four equivalent consensus organization-developed methods to monitor for 28 new UCMR chemical contaminants. In addition, EPA proposes monitoring for two viruses, for a total of 30 UCMR 3 contaminants. As envisioned, virus analysis (along with related analysis for pathogen indicators) would be conducted in laboratories under EPA contract. UCMR 3 provides EPA and other interested parties with scientifically valid data on the occurrence of these contaminants in drinking water, permitting the assessment of the number of people potentially being exposed and the levels of that exposure. These data are the primary source of occurrence and exposure information the Agency uses to determine whether to regulate these contaminants. In addition, as part of an Expedited Methods Update, this proposed action also would amend regulations concerning inorganic chemical sampling and analytical requirements. A minor editorial correction to the table moves methods from the "Other" column to the "ASTM" column, as it applies to the inorganic chemical sampling and analytical requirements. The UCMR program is not affected by these changes.

**DATES:** Comments must be received on or before May 2, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OW-2009-0090, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov).

- *Mail:* Send three copies of your comments and any enclosures to: Water Docket, United States Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW-2009-0090. Commenters should use a separate paragraph for each issue discussed. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* Deliver your comments to Water Docket, EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW-2009-0090. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-OW-2009-0090. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. This Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** David J. Munch, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; telephone (513) 569-7843; or e-mail at [munch.dave@epa.gov](mailto:munch.dave@epa.gov); or Brenda D. Parris, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS

140), Cincinnati, Ohio 45268; telephone (513) 569-7961; or e-mail at [parris.brenda@epa.gov](mailto:parris.brenda@epa.gov). For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426-4791. The Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m., Eastern time. The Safe Drinking Water Hotline may also be found on the Internet at: <http://water.epa.gov/aboutow/ogwdw/hotline/>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities regulated by this action are public water systems (PWSs). All large community and non-transient non-community water systems serving more than 10,000 people would be required to monitor. A community water system (CWS) means a PWS which has at least 15 service connections used by year-round residents or regularly serves an average of at least 25 year-round residents. A non-transient non-community water system (NTNCWS) means a PWS that is not a CWS and that regularly serves at least 25 of the same people over six months per year. Only a nationally representative sample of community and non-transient non-community systems serving 10,000 or fewer people would be required to

monitor for chemical analytes (see USEPA, 2001 for a description of the statistical approach for the nationally representative sample). Transient non-community systems (i.e., systems that do not regularly serve at least 25 of the same people over six months per year) would not be required to monitor for the chemical analytes. However, transient ground water systems serving 1,000 or fewer would be subject to possible selection for virus monitoring. If selected, these systems would be required to permit EPA to sample and analyze for List 3 contaminants and pathogen indicators. EPA would pay for all sampling and analysis costs associated with virus monitoring at these small systems. States, Territories, and Tribes with primary enforcement responsibility (primacy) to administer the regulatory program for PWSs under the Safe Drinking Water Act (SDWA) may participate in the implementation of UCMR 3 through Partnership Agreements (PAs) (see discussion of PAs in section III.G. of today's action: "What Is the States' Role in the UCMR Program?"). These primacy agencies may choose to conduct analyses to measure for contaminants in water samples collected for the UCMR 3; however, the PWS remains responsible for compliance. Regulated categories and entities are identified in the following table.

Category	Examples of potentially regulated entities	NAICS <sup>a</sup>
State, Local, & Tribal Governments.	States, local and Tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and Tribal governments that directly operate community, transient and non-transient non-community water systems required to monitor.	924110
Industry .....	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities .....	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

<sup>a</sup> NAICS = North American Industry Classification System.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware may potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of Title 40 of the Code of Federal Regulations, and applicability criteria in § 141.40(a)(1) and (2) of today's proposed action. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Copies of This Document and Other Related Information*

This document is available for download at: <http://www.regulations.gov>. For other related information, see preceding discussion on docket.

**Abbreviations and Acronyms**

- µg/L Microgram per liter
- ASDWA Association of State Drinking Water Administrators
- ASTM American Society for Testing Materials
- CBI Confidential Business Information
- CCL Contaminant Candidate List
- CFR Code of Federal Regulations
- CWS Community water system
- DSMRT Distribution system maximum residence time

- EPA United States Environmental Protection Agency
- EPTDS Entry point to the distribution system
- FR Federal Register
- GC/MS Gas Chromatography/Mass Spectrometry
- GWUDI Ground water under the direct influence of surface water
- HCFC-22 Chlorodifluoromethane
- IC/MS Ion Chromatography/Mass Spectrometry
- ICR Information collection request
- IHS Indian Health Service
- LCMRL Lowest concentration minimum reporting level
- LC/MS/MS Liquid Chromatography/Tandem Mass Spectrometry
- LFSM Laboratory fortified sample matrix
- LFSMD Laboratory fortified sample matrix duplicate
- MRL Minimum reporting level

NAICS North American Industry Classification System  
 NCOD National Drinking Water Contaminant Occurrence Database  
 NPDR National primary drinking water regulation  
 NTNCWS Non-transient non-community water system  
 NTTAA National Technology Transfer and Advancement Act  
 OMB Office of Management and Budget  
 PA Partnership Agreement  
 PFBS Perfluorobutanesulfonic acid  
 PFHpA Perfluoroheptanoic acid  
 PFHxS Perfluorohexane sulfonic acid  
 PFNA Perfluorononanoic acid  
 PFOA Perfluorooctanoic acid  
 PFOS Perfluorooctane sulfonic acid  
 PT Proficiency testing  
 PWS Public water system  
 qPCR Quantitative polymerase chain reaction  
 RFA Regulatory Flexibility Act  
 SM Standard Methods  
 SRF State Revolving Fund  
 SBA Small Business Administration  
 SDWA Safe Drinking Water Act  
 SDWIS/Fed Federal Safe Drinking Water Information System  
 UCMR Unregulated Contaminant Monitoring Regulation  
 UMRA Unfunded Mandates Reform Act of 1995  
 USEPA United States Environmental Protection Agency  
 VOC Volatile Organic Compound

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**II. Statutory Authority and Background**

*A. What is the statutory authority for this action?*

Section 1445(a)(2) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires that once every five years, beginning in August 1999, the United States Environmental Protection Agency (EPA) issue a new list of no more than 30 unregulated contaminants to be monitored by public water systems (PWSs). It also requires that EPA enter the monitoring data into the Agency's National Drinking Water Contaminant Occurrence Database (NCOD). EPA's Unregulated Contaminant Monitoring Regulation (UCMR) program must ensure that only a national representative sample of PWSs serving 10,000 or fewer people would be required to monitor. EPA must vary the frequency and schedule for monitoring based on the number of persons served, the source of supply, and the contaminants likely to be found.

*B. How does EPA meet these statutory requirements?*

Today's notice proposes 30 contaminants for monitoring during the third five-year cycle, referred to as "UCMR 3." These contaminants include: 28 chemicals using six analytical methods and/or four equivalent consensus organization-developed methods, and two viruses using one analytical method. EPA has developed a proposed contaminant list (Exhibit 1) and sampling design for UCMR 3 (2012–2016) with input from both stakeholders and an EPA–State working group.

**EXHIBIT 1—PROPOSED CONTAMINANT LISTS**

**List 1, Assessment Monitoring**

17-β-estradiol	chlorodifluoromethane (HCFC–22)
17-α-ethynylestradiol (ethinyl estradiol)	bromochloromethane (Halon 1011)
estriol	1,4-dioxane
equilin	vanadium
estrone	molybdenum
testosterone	cobalt
4-androstene-3,17-dione	strontium
1,2,3-trichloropropane	chlorate
1,3-butadiene	perfluorooctane sulfonic acid (PFOS)
chloromethane (methyl chloride)	perfluorooctanoic acid (PFOA)
1,1-dichloroethane	perfluorononanoic acid (PFNA)
n-propylbenzene	perfluorohexane sulfonic acid (PFHxS)
bromomethane (methyl bromide)	perfluoroheptanoic acid (PFHpA)
sec-butylbenzene	perfluorobutanesulfonic acid (PFBS)

**List 3, Pre-Screen Testing**

enteroviruses	noroviruses
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EPA published the first list for the Unregulated Contaminant Monitoring Regulation cycle (*i.e.*, UCMR 1) in the **Federal Register** on September 17, 1999 (64 FR 50556), and the second list (*i.e.*, UCMR 2) on January 4, 2007 (72 FR 367). The monitoring lists that were applicable under UCMR 1 and 2 are available at: <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/>.

In UCMR 1, EPA established a three-tiered approach for monitoring contaminants based on the availability of analytical methods. Assessment Monitoring for List 1 contaminants typically relies on analytical methods that are in common use in drinking water laboratories. Screening Survey monitoring for List 2 contaminants relies on newly developed analytical methods that are not commonly used in drinking water laboratories. Laboratory capacity to perform List 2 analyses is expected to be limited. Finally, UCMR 1 established the option of Pre-Screen Testing for List 3 contaminants to address contaminants with analytical methods that are in an early stage of development. The expectation was that it would be used at a limited number of systems determined to be most vulnerable to the targeted contaminants.

For UCMR 2, EPA built on this established structure, and instituted some changes to the rule design. These changes were based upon lessons learned during UCMR 1. All large PWSs, serving more than 10,000 people, and a nationally representative selection of 800 small PWSs serving 10,000 or fewer people monitored for List 1 contaminants. This monitoring was conducted during a continuous 12-month period during the January 2008 to December 2010 sampling time frame (quarterly for surface water systems, and twice, at 6-month intervals, for ground water systems). Systems subject to UCMR 2 included community water systems (CWSs) and non-transient non-community water systems (NTNCWSs), except those systems that purchase all of their finished water from another PWS.

EPA designed the Assessment Monitoring sampling frame to ensure that sample results would yield a high level of confidence and a low margin of error. The design for a nationally representative sample of small systems called for the sample to be stratified by water source type (ground or surface water), service size category, and State (where each State is allocated a minimum of two systems in its State Monitoring Plan). With monitoring data

from all large PWSs (a census of all large systems) and a statistically representative sample of 800 small PWSs (for a total of over 4,000 systems), UCMR1 and UCMR 2 Assessment Monitoring provided sample data suitable to characterize exposure, as would UCMR 3. Twenty eight chemicals are being proposed for Assessment Monitoring under UCMR 3.

For the UCMR 2 Screening Survey, monitoring for List 2 contaminants was conducted by approximately 400 PWSs serving more than 100,000 people (*i.e.*, a census of all systems in this largest size category), with a randomly selected sample of 320 PWSs serving between 10,001 and 100,000 people, and 480 small PWSs serving 10,000 or fewer people (EPA included additional PWSs in the Screening Survey design under UCMR 2—as compared to UCMR 1—to increase the statistical power of the sample). During UCMR 2, Screening Survey systems were required to monitor during a continuous 12-month period during the time frame of January 2008 to December 2010 (quarterly for surface water systems, and twice, at 6-month intervals, for ground water systems). With approximately 1,200 systems participating in the Screening Survey, sufficient data were generated to provide an overall national estimate of population exposure. No List 2 Screening Survey monitoring is being proposed under UCMR 3.

As under UCMR 1, no Pre-Screen Testing was conducted during the UCMR 2. However, in UCMR 3, two viruses are proposed for Pre-Screen monitoring.

EPA is proposing that UCMR 3 include: Assessment Monitoring for 28 chemicals; no Screening Survey; and, Pre-Screen Testing for two viruses. Other proposed changes between UCMR 2 and UCMR 3 are summarized in section III.A. “What Are the Changes Being Proposed for UCMR 3?”, and discussed in further detail throughout today’s proposed rule preamble.

### *C. How are the contaminant candidate list, the National Contaminant Occurrence Database, and the UCMR interrelated?*

The 1996 amendments to SDWA instituted the Contaminant Candidate List (CCL) and UCMR programs to provide information EPA needs to determine which drinking water contaminants have the greatest potential to present a meaningful opportunity to reduce health risk through a national primary drinking water regulation

(NPDWR). The CCL is the primary mechanism for the identification of contaminants that may require regulation while UCMR provides EPA with the data necessary to determine if a contaminant occurs at a frequency and concentration that would be a public health concern. The CCL and UCMR are coordinated parts of EPA’s risk management process, and they support each other. The UCMR sampling program is limited by statute to 30 contaminants at one time, and was designed in consideration of the technical difficulty and expense of analyzing up to 30 contaminants, as well as their potential to occur in treated drinking water at levels of public health concern. The data collected through the UCMR program are being stored in the NCOD to: facilitate analysis and review of contaminant occurrence; guide the conduct of the CCL process; and support the Administrator’s determination whether to regulate a contaminant in the interest of protecting public health, as required under SDWA section 1412 (b)(1). Results of the UCMR 1 and 2 monitoring can be viewed by the public at EPA’s UCMR Web site: <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/data.cfm>.

## **III. Requirements of the Unregulated Contaminant Monitoring Program**

### *A. What are the changes being proposed for UCMR 3?*

EPA developed, and is proposing in today’s action, a slightly revised design for UCMR 3 based on experience with UCMR 1 and UCMR 2. EPA reviewed various aspects of the UCMR 1 and 2 programs and identified several critical changes that would improve implementation. EPA’s proposed approach and rationale for changes are described in the following sections. Key aspects of the UCMR program that would remain the same include direct implementation of the rule by EPA, the design of Assessment Monitoring, and EPA funding for the small system testing. In addition to requesting comment on the proposed list of contaminants, EPA also requests comment on: Monitoring based on retail population; revised data elements; and other changes between UCMR 2 and UCMR 3 that are outlined in Exhibit 2. Updates to Web addresses, applicability dates, corrections of minor typographical errors, and other minor clerical edits are reflected in rule language, but do not appear in Exhibit 2.

EXHIBIT 2—NOTABLE CHANGES BEING PROPOSED FOR UCMR 3

Rule section		Description of change	Corresponding preamble section
Number	Title/description		
141.35(a) and 141.40(a) .....	Population-based applicability and related applicability date.	Base applicability on retail population. Under UCMR 1 and 2, systems that purchased all of their water were not required to monitor. These systems would now be subject to UCMR monitoring requirements. The new SDWIS/Fed applicability date ( <i>i.e.</i> , the date used to determine which systems are subject to monitoring) is also specified	III.E.
141.35(c)(3)(ii) .....	Demonstrating representative ground water sampling locations.	Clarifies that when identifying a representative well, the well must be one of the higher annual volume producing and consistently active wells. Should this location go off-line, an alternative location must be sampled.	III.F.
141.35(c)(6)(ii) and 141.40(a)(5)(vi).	Reporting schedule .....	Reduces time for labs to electronically report results (from 120 to 60 days); and for systems to review, approve, and report data (from 60 to 30 days).	III.F.
141.35(c)(6) and 141.35(d)(2)	Reporting monitoring results ..	Requires small and large systems to report all data elements in Table 1 with each sample. Previously, only a subset of the data elements were to be reported with each sample.	III.F.
141.35(e) .....	Data elements .....	Revises Table 1 of § 141.35 to: <ul style="list-style-type: none"> <li>• Add the zip code, optional zip code extension, and zip codes served to Data Element 4—Sampling Point Identification Code.</li> <li>• Clarify and update the definition of Data Element 6—Disinfectant Type.</li> </ul>	III.F. and V.J.
141.40(a)(1) .....	Applicability to transient systems.	Removes exemption for transient systems, which would now be subject to monitoring for List 3 contaminants if notified by EPA or State.	III.E.
141.40(a)(2)(ii)(C) and 141.40(a)(3).	Pre-Screen Testing viruses and indicators.	Systems participating in List 3 monitoring would be required to allow EPA to monitor for enterovirus and norovirus and collect specified pathogen indicators.	III.B. and III.F.
141.40(a)(3) .....	Analytes to be monitored and related specifications.	Revises Table 1 of this section to include: ..... New list of 28 priority contaminants, with 6 EPA-developed and 4 consensus organization developed analytical methods, as well as new monitoring dates of January 2013 through December 2015.	III.B. and III.F.
141.40(a)(4)(i)(B) .....	Sampling requirements—frequency.	Specifies that schedules must be adjusted based on sample point availability. Clarifies that sampling points within a system may have different schedules. Also, revises Table 2 of this section to include monitoring requirements for microbiological contaminants for ground water systems at a frequency of two times during a consecutive 12-month period.	III.F.
141.40(a)(4)(i)(C) .....	Location .....	Requires systems conducting Assessment Monitoring to collect metal and chlorate samples at distribution system maximum residence time (DSMRT) sampling locations. If these locations are not defined, requires PWS to collect samples at locations that best represents the maximum residence time in the distribution system.	III.F.
141.40(a)(5)(iii) .....	Minimum Reporting Level (MRL) definition.	Revises the definition of the MRL .....	III.C.

*B. What priority contaminants were selected for UCMR 3?*

EPA used a stepwise prioritization process to identify potential UCMR 3 contaminants. As a first step, the Agency reviewed the recently promulgated CCL 3 list and the “pre-CCL” contaminants considered in the development of CCL 3. Under the CCL 3 process, the Agency considered the best available data and information on health effects and occurrence to evaluate 7,500 unregulated contaminants. The final CCL 3 is comprised of 104 chemicals or chemical groups and 12 microbiological

contaminants that were selected through a data-driven process that considered adverse health effects (potency and severity) and occurrence (prevalence and magnitude). The list includes pesticides, biological toxins, disinfection byproducts, chemicals used in commerce, and waterborne pathogens (74 FR 51850, October 8, 2009 (USEPA, 2009c)). EPA used CCL 3, along with additional sources of information about other emerging contaminants of potential concern, to establish an initial list of approximately 150 potential UCMR 3 contaminants.

The proposed contaminant list for UCMR 3 was further pared down as follows: (1) Contaminants with no currently available methods, or methods that would not be ready in time for UCMR 3 monitoring were eliminated; and, (2) those contaminants included in UCMR 1 or UCMR 2 monitoring were also eliminated from inclusion. This narrowed list of fewer than 35 analytes was further considered by an EPA and State working group, and prioritized using health effects data and other critical endpoints, to arrive at a final proposed list of 30 analytes listed in Exhibit 3. Further information on this

prioritization process, and on the health effects and occurrence data EPA used to select the chemical analytes proposed for UCMR 3 are contained in "Possible Contaminants for Inclusion on UCMR 3—Information Compendium" (USEPA, 2010d).

EPA has not included hexavalent chromium (chromium-6) in the proposed list of chemicals for UCMR 3 monitoring; however, EPA is aware of potential concerns about chromium-6 occurrence in public water supplies. EPA thus requests comment on whether the Agency should include chromium-6 as one of the 30 contaminants for UCMR 3 Assessment Monitoring. EPA has recently issued voluntary guidance to water systems on monitoring for chromium-6, including recommendations regarding the use of a modified version of EPA Method 218.6 for the analysis of samples and a recommended reporting level of 0.06

ug/L (see <http://water.epa.gov/drink/info/chromium/guidance.cfm>). If EPA were to include chromium-6 in UCMR 3, the Agency would incorporate it into Assessment Monitoring. Under this approach, EPA would make chromium-6 monitoring mandatory for all large water systems and a subset of small systems; see also Section III.F.2 for further discussion of the Assessment Monitoring approach. EPA requests comments on what contaminant(s) should be removed from the list of 30 UCMR 3 contaminants if chromium-6 were added, as well as comments regarding the recommended and alternative analytical method(s) and the appropriate reporting level. EPA also requests comments on whether total chromium should also be measured concurrent with chromium-6. Side-by-side measurements may provide valuable information on relative occurrence and the utility of total

chromium monitoring as a surrogate for chromium-6.

EPA compiled background information for each of the 28 chemicals being proposed for monitoring, including: Source and use; health effects; production and release; occurrence in water; and persistence and mobility (USEPA, 2010d). Health effects, occurrence in water, transmission and treatment information were considered for the two viruses. The primary source of this information is CCL 3 (74 FR 51850, October 8, 2009 (USEPA, 2009c)). Where newer or additional information was available and for those proposed UCMR 3 contaminants that were not part of CCL 3, references are provided separately. In addition, preliminary occurrence data are included that were collected as part of EPA's second Six-Year Review of NPDWRs (75 FR 15500, March 29, 2010 (USEPA, 2010b)).

### EXHIBIT 3—30 PROPOSED UCMR 3 ANALYTES

#### 7 Hormones using EPA Method 539 (LC/MS/MS)<sup>1</sup>:

17-β-estradiol 17-α-ethynylestradiol (ethinyl estradiol) estriol (16-α-hydroxy-17-β-estradiol)	estrone testosterone 4-androstene-3,17-dione
equilin	

#### 9 Volatile Organic Compounds (VOC) using EPA Method 524.3 (GC/MS)<sup>2</sup>:

1,2,3-trichloropropane 1,3-butadiene chloromethane (methyl chloride) 1,1-dichloroethane n-propylbenzene	bromomethane (methyl bromide) sec-butylbenzene chlorodifluoromethane (HCFC-22) bromochloromethane (halon 1011)
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#### Synthetic Organic Compound using EPA Method 522 (GC/MS)<sup>3</sup>:

1,4-dioxane	
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#### 4 Metals using EPA Method 200.8 (IC/MS)<sup>4</sup> or alternate SM<sup>5</sup> or ASTM Methods<sup>6</sup>:

cobalt molybdenum	strontium vanadium
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#### Oxyhalide Anion using EPA Method 300.1 (IC/Conductivity)<sup>7</sup> or alternate SM<sup>8</sup> or ASTM Methods<sup>9</sup>:

chlorate	
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#### 6 Perfluorinated Chemicals using EPA Method 537 (LC/MS/MS)<sup>10</sup>:

perfluorooctane sulfonate (PFOS) perfluorooctanoic acid (PFOA) perfluorononanoic acid (PFNA)	perfluorohexane sulfonic acid (PFHxS) perfluoroheptanoic acid (PFHpA) perfluorobutane sulfonic acid (PFBS)
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#### 2 Viruses (see Section III.B.7 for methods discussion):<sup>11</sup>

enterovirus	norovirus
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1. EPA Method 539 (LC/MS/MS) (USEPA, 2010c)
2. EPA Method 524.3 (GC/MS) (USEPA, 2009a)
3. EPA Method 522 (GC/MS) (USEPA, 2008)
4. EPA Method 200.8 (ICP/MS) (USEPA, 1994)
5. SM 3125 (SM, 1997)
6. ASTM D5673–10 (ASTM, 2010)
7. EPA Method 300.1 (IC/Conductivity) (USEPA, 1997)
8. SM 4110D (SM, 1997)
9. ASTM D6581–08 (ASTM, 2008)

10. EPA Method 537 (LC/MS/MS) (USEPA, 2009b)

11. Monitoring also includes sampling for pathogen indicators such as total coliforms, *E. coli*, bacteriophage, *Enterococci* and aerobic spores. EPA would pay for all sampling and analysis costs associated with virus monitoring at these small systems.

## 1. Twenty-Eight Chemicals

EPA proposes monitoring for 28 chemicals in UCMR 3. Details of the health effects and occurrence data EPA used to make these selections are contained in "Possible Contaminants for Inclusion on UCMR 3—Information Compendium" (USEPA, 2010d), available at Docket ID No. OW-2009-0090.

## 2. Two Viruses

### a. Enterovirus and Norovirus

EPA proposes to monitor for enterovirus and norovirus in UCMR 3. Both enterovirus and norovirus (a group of viruses in the Caliciviruses family) are listed on CCL3. They are proposed for UCMR 3 monitoring because very limited data are available (Francy *et al.*, 2004) on their occurrence in undisinfected PWSs located in sensitive hydrogeological areas. Of particular concern are PWSs in areas with karst or fractured bedrock, as well as in non-community water systems. Recent data indicate that undisinfected ground water systems with low total coliform occurrence (and no Total Coliform Rule violations) had significant viral presence and disease manifestation (Borchardt, 2008). This draft study showed a statistically significant correlation between viral qPCR (quantitative polymerase chain reaction) and self-reported acute gastrointestinal illness. This indicates that qPCR can be used as an indicator of relative vulnerability and potential disease incidence. Borchardt's work showed a viral occurrence of 9% for enterovirus and 4% for norovirus in CWSs, almost all of which were in aquifers not considered sensitive. EPA proposes to perform this monitoring as a Pre-Screen Testing of targeted undisinfected ground water systems located in karst or fractured bedrock. The monitoring would include CWSs, as well as non-transient and transient non-community water systems. Monitoring would also include sampling for pathogen indicators such as total coliforms, *E. coli*, bacteriophage, *Enterococci* and aerobic spores.

The objectives of this monitoring are to obtain information concerning the occurrence of enterovirus and norovirus for further evaluation, and to gain a better understanding of the co-occurrence of pathogen indicators and viruses.

Enterovirus would be monitored using one method that has two detection

assays. The first is a tissue culture assay also used in the Information Collection Rule survey conducted by EPA (USEPA, 1996), with one change; the 1 MDS filter would be replaced with the NanoCeram<sup>®</sup> filter, to significantly reduce sampling cost. The NanoCeram<sup>®</sup> filter has proven to be as effective as 1 MDS filter for the recovery of enteroviruses (Karim *et al.*, 2009) and norovirus (Gibbons *et al.*, 2010). The second assay is the qPCR, which detects the viral nucleic acid.

Norovirus would only be monitored using qPCR, as there is no tissue culture method available. Both norovirus and enterovirus qPCR would be performed as per the protocol in Lambertini *et al.* (2008). The qPCR primers and probe for GI Norovirus would be as referenced in Jothikumar *et al.* (2005), while GII Norovirus primers and probe would be as referenced in Ando *et al.* (1995). Primers and probe referenced in De Leon *et al.* (1990) and Monpoeho *et al.* (2000) would be used for enterovirus qPCR.

A technical presentation describing Borchardt's work, and supporting EPA's rationale for including these viruses in UCMR 3, is available through the docket. EPA welcomes comments on the Borchardt data and on the merits of the proposed UCMR 3 monitoring. EPA anticipates that a peer-reviewed journal article describing the Borchardt work will be published in advance of the publication of the UCMR 3 final rule, and is committed to conducting appropriate peer review of the UCMR 3 virus data before any final regulatory determination by the Agency.

### C. How were minimum reporting levels determined?

The quality of measurement definition is based on a standard tool of analytical chemistry, percent recovery of a known amount of analyte added to a reagent water sample (spiked blank). The lowest concentration minimum reporting level (LCMRL) is defined as the lowest spiking concentration at which recovery of between 50 and 150% is expected 99% of the time by a single analyst.

The LCMRL is estimated using sophisticated statistical procedures that have been incorporated into an LCMRL calculator tool that is available on EPA's Web site ([http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods\\_ogwdw.cfm](http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm)). The statistical tool estimates a probability distribution for spike recovery as a

function of spiking concentration. This requires regression modeling that estimates expected value and expected variance for repeated measurements as functions of spiking concentration. Often this variance is an increasing function of spiking level. In this case, ordinary least squares regression is not appropriate to estimate the expected value function. Weighted least squares is used with weights proportional to the reciprocal of the expected variance, multiplied by a weight (Tukey's biweight) that gives robustness against outliers. The variance model is estimated using a Generalized Linear Model. To estimate these regressions, an experimental design with replicate spiking at multiple concentrations is required. If the LCMRL estimate is below the lowest non-blank spiking concentration or above the highest spiking concentration, another set of blanks must be spiked so that the LCMRL is bracketed by the lowest and highest spike concentrations when the LCMRL is re-estimated. The spiked concentrations must be contained within the instrument calibration curve that is routinely used for each analyte. The combined procedure provides a robust estimator of the LCMRL and a sophisticated and useful measure of method capability.

### MRL

In today's action, EPA is proposing revisions to the definition of the minimum reporting level (MRL). The proposed definition of the MRL reflects improvements in the statistical procedures for determining the LCMRL and MRL. These improvements were implemented by EPA to make the models more robust, *i.e.*, so that the models can accommodate a wider range of observed LCMRL data sets. The MRL for an analyte measured by a specified analytical method is designed to be an estimate of an LCMRL that is achievable, with 95% confidence, by a capable analyst/laboratory at least 75% of the time. Such a demonstration of ability to reliably make quality measurements at the MRL is intended to achieve high quality across the nation's laboratories.

In UCMR 2, the MRL was established by EPA by adding the mean of the LCMRL determined according to the procedure detailed in "Statistical Protocol for the Determination of The Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and

Validation of the Minimum Reporting Level (MRL)” (USEPA, 2004), ([http://www.epa.gov/ogwdw/methods/pdfs/methods/methods\\_lcmrl.pdf](http://www.epa.gov/ogwdw/methods/pdfs/methods/methods_lcmrl.pdf)) by the primary and secondary laboratories conducting the development and validation of the analytical method to three times the difference of the LCMRLs. If LCMRL data from three or more laboratories were available, the MRL was established by EPA by adding three times the standard deviation of the LCMRLs to the mean of the LCMRLs.

In UCMR 3, EPA estimated the MRL for an analyte/method by obtaining data from several laboratories performing corresponding LCMRL studies. These data are used to construct an approximation to the distribution that would result from picking at random a laboratory/analyst proficient in performing the analytical method, and having them perform an LCMRL study and compute an LCMRL estimate. The strategy for computing the MRL is two-fold. First, for each LCMRL data set, a distribution for repeated LCMRL determinations by the same laboratory/analyst is estimated by generating a large number of simulated values using a Bayesian bootstrap approach. Second, these values are combined to create an estimated overall distribution. If a result from one of the laboratories is significantly higher than that of other laboratories, this value would be down-weighted using a robust weight function. The resulting weighted values are used to construct a probability distribution from which the MRL is computed as the 95th percentile. EPA requests comments regarding the proposed definition of the MRL.

#### *D. How would laboratories conduct UCMR analyses?*

As proposed, all laboratories conducting analyses for UCMR 3 List 1 contaminants would need to receive EPA approval to perform those analyses. Laboratories seeking approval would be required to provide EPA with data that demonstrate their successful completion of an initial demonstration of capability as outlined in each method, verification of successful performance at the MRLs as specified in today’s action, and successful participation in an EPA Proficiency testing (PT) program for the analytes of interest. On-site audits of selected candidate laboratories may be conducted. Details of the EPA laboratory approval program are contained in the technical manual titled: “UCMR 3 Laboratory Approval Requirements and Information Document” (USEPA, 2010e). This document will be available on the electronic docket at: <http://www.regulations.gov> and will be

provided to laboratories that register for the laboratory approval program. In addition, EPA may supply analytical reference standards of known concentrations for selected analytes to participating/approved laboratories, where such standards are not readily available through commercial sources.

#### *Laboratory Approval Process for UCMR 3*

The proposed UCMR 3 laboratory approval program is the same as that employed in previous UCMR cycles. It is designed to assess and confirm the capability of laboratories to perform analyses using the methods listed in § 141.40(a)(3), Table 1, of today’s proposed rule. The UCMR 3 laboratory approval process is designed to assess whether laboratories meet the required equipment, laboratory performance, and data reporting criteria described in today’s action. This evaluation program is voluntary in that it only applies to laboratories intending to analyze UCMR 3 samples. However, EPA would require systems to use UCMR 3 approved laboratories when conducting monitoring for those analytes listed in Table 1 of § 141.40(a)(3) of this proposed rule. A list of laboratories approved for UCMR 3 would be posted to EPA’s UCMR Web site: <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/labs.cfm>. Laboratories are encouraged to apply for UCMR 3 approvals as early as possible, as schedules for large PWS sampling would be completed soon after the final rule is promulgated. The steps for the laboratory approval process are listed in the following paragraphs, a through f.

##### *a. Request to Participate.*

To request participation in the UCMR 3 laboratory approval process, the laboratory must contact EPA. Laboratories must send this request to: UCMR 3 Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or e-mail at: [UCMR\\_Sampling\\_Coordinator@epa.gov](mailto:UCMR_Sampling_Coordinator@epa.gov). EPA plans to begin accepting requests for registration forms for the List 1 (Assessment Monitoring) methods beginning March 3, 2011. EPA anticipates that the final opportunity for a laboratory to request the necessary registration forms would be 90 days after final rule publication, though laboratories are encouraged to apply as early as is practical after the publication of today’s proposed rule.

##### *b. Registration.*

Each laboratory that wishes to participate in UCMR 3 monitoring would be required to complete a

registration form. EPA expects this registration information to include: Laboratory name; mailing address; shipping address; contact name; phone number; fax number; e-mail address; and a list of the UCMR 3 methods for which the laboratory is seeking approval. The purpose of the registration step is to provide EPA with the necessary contact information, and ensure that each laboratory receives a customized application package of materials and instructions for the methods that it plans to use.

##### *c. Application Package.*

When EPA receives the registration information, a customized application package would be sent to the laboratory for completion. Information requested in the application would include the following: Initial demonstration of capability data, including precision, accuracy, and results of MRL studies, information regarding analytical equipment, proof of current drinking water laboratory certification, and example chromatograms for each method under review.

The laboratory would be required to confirm that it will post UCMR 3 monitoring results (on behalf of its PWS clients) to EPA’s UCMR electronic data reporting system.

##### *d. EPA Review of Application Package.*

EPA would review the application package and, if necessary, request follow-up information. Satisfactory completion of this portion of the process would be required for the laboratory to participate in the UCMR 3 Proficiency Testing (PT) program.

##### *e. Proficiency Testing.*

A PT sample is a synthetic sample containing a concentration of an analyte that is known to EPA, but unknown to the laboratory being tested. To complete the initial laboratory approval process, a laboratory would be expected to meet specific acceptance criteria for the analysis of a UCMR 3 PT sample(s) for each method for which the laboratory is seeking approval. EPA intends to offer up to four opportunities for a laboratory to successfully analyze the UCMR 3 PT samples. Up to three of these studies would be conducted prior to the publication of the final rule, but at least one study would be conducted after publication of the final rule. This would allow laboratories to complete their portion of the laboratory approval process prior to publication of the final rule, and therefore, receive their approval, immediately following the publication of the final rule, or to wait until the final rule is published before completing the required laboratory approval analyses. A laboratory only

needs to pass one of the PT studies for each analytical method for which they are requesting approval. Laboratories applying for UCMR 3 approval, and laboratories conducting UCMR 3 analyses, may be subject to on-site laboratory audits. No PT studies would be conducted after the start of monitoring; however, laboratory audits would be ongoing throughout the entire monitoring period of 2013–2015. Initial laboratory approval would be contingent upon successful completion of a PT study. Continued laboratory approval is contingent upon successful completion of audits.

*f. Written EPA Approval.*

After steps “a” through “e” of the PT approval process have been successfully completed, EPA would send the laboratory a letter listing the methods for which approval is pending (if the PT study and laboratory evaluation is conducted prior to promulgation of the final rule) or approval is granted (after promulgation of the final rule). Laboratories receiving a pending approval may then be approved without further action, following promulgation of the final rule, or they may need to take additional action, contingent upon what changes are applied to the rule between this proposal and promulgation of the final rule.

*E. What are the new applicability considerations?*

In section 141.40(a) of today’s proposed rule changes, EPA is proposing a new applicability date for information in the SDWIS/Fed system inventory. As proposed, the determination of whether a PWS is required to monitor under UCMR 3 would be based on the type of system (e.g., community water system, non-transient non-community water system, etc.), and its retail population served, as indicated by SDWIS/Fed on December 31, 2010.

In addition, EPA is proposing two changes to the applicability of UCMR 3 to PWSs. First, EPA proposes that applicability be based on retail population served. Whereas under UCMR 1 and 2 systems that purchased all of their water were not required to monitor; these systems would now be subject to UCMR monitoring requirements. Second, under UCMR 1 and 2, transient systems were exempt from monitoring. EPA’s proposed changes would include transient systems in the universe from which EPA may select small PWSs for List 3 monitoring. Such systems would only be included in UCMR 3 List 3 monitoring if they are notified by EPA that they have been selected, and this

monitoring would be done by EPA or its contractor. All other applicability criteria for UCMR 3 remain the same as those under UCMR 2.

*1. Applicability Based on Population Served*

Under UCMR 1, large PWSs were defined as those systems that served a population of more than 10,000 people and small PWSs were those that served 10,000 or fewer people. While this included the sum of the population served by the combined distribution system, this requirement was occasionally misunderstood. For UCMR 2, EPA clarified the population definition to include the sum of the retail population served directly by the PWS plus the population served by any consecutive system(s), receiving all or part of its finished water from that PWS. As established in the Stage 2 Disinfectants and Disinfection Byproducts Rule (68 FR 49548, August 18, 2003 (USEPA, 2003)), EPA defines a “consecutive system” as a PWS that buys or otherwise receives some or all of its finished water from one or more wholesale system(s). Under the population definition of UCMR 2, systems that purchased all of their water from other systems were not required to monitor. EPA is proposing a change in the definition of system population to include only a system’s retail population. UCMR 3 requirements for systems would be based on their retail population served as reported to SDWIS/Fed as “Population Served” (i.e., wholesale or consecutive populations are not included).

EPA is proposing that PWSs be required to monitor for UCMR 3 contaminants, regardless of whether they purchase any or all of their water from another system. The population definitions used for the previous UCMRs created an inconsistency for PWSs purchasing their water. If a PWS purchased all of their water, they were not required to monitor at all, and systems that had no retail connections did have to monitor. If a PWS purchased some of their water, they were required to monitor from their own sources as well as their purchased source. The new proposed definition would eliminate this inconsistency. It would also eliminate the requirements for systems with no retail connections to monitor. EPA is aware that PWSs that purchase water evaluate their supply needs and associated costs, and may make adjustments during the UCMR monitoring period. They have been known to change wholesale suppliers or switch sources that they can directly access and treat for their retail

customers. The dynamic nature of wholesale water supply is prompting EPA to propose and solicit stakeholder comment on establishing retail population as a clearer measure for determining applicability of the UCMR 3 requirements. Retail population is a consistent factor for applicability determination and evaluating the direct sources (all entry points including wholesale connections) would improve data quality by directly assessing the drinking water served to the respective retail population. It is also difficult to accurately determine the total population served by each source of water. For example, if PWS “A” buys all of its water from three different PWSs (“B, C, D”), it is unclear how to divide PWS A’s retail population among the three PWSs to determine the wholesale populations for systems B, C, and D. Under the previous UCMR specifications, the total population of all systems was added together, which could lead to overestimating the population served by each source of water.

Moreover, a system’s population is used to determine exposure estimates. Because the retail population comprises all of the people exposed to water from a particular system, EPA would have a clearer understanding of the number of people exposed to a detected contaminant. The proposed change to the definition of population would allow EPA to better estimate the total population served by a water system and ensures that exposure calculations are more accurate.

PWSs are required to report their retail population to the Safe Drinking Water Information System-Federal (SDWIS/Fed), so this population is readily accessible to EPA when determining which systems are required to monitor for the UCMR 3. Using a system’s retail population would also make the list of PWSs subject to UCMR more stable over the UCMR 3 monitoring period, and eliminate another inconsistency in previous UCMRs. In past UCMRs, if a PWS began purchasing all of their water after the applicability date, the PWS would still have to monitor under UCMR. If, however, a system began using its own water sources after the UCMR applicability date, the system would not be required to begin monitoring under UCMR. Using a system’s retail population to determine whether a system is subject to UCMR requirements would eliminate this disparity.

Note that systems that purchase water with multiple connections from the same wholesaler would be permitted to propose one representative connection

from that wholesaler. PWSs would choose a sampling location from among the higher annual volume EPTDS connections. If the connection selected as the representative EPTDS was not available for sampling, an alternate representative connection would need to be sampled.

2. Applicability for Transient Systems

Under UCMR 1 and 2, Section 141.40(a)(1), transient non-community water systems were specifically exempted from UCMR monitoring. EPA is proposing revisions that would allow for certain transient systems to be selected for Pre-Screen Testing for List 3 contaminants. Under UCMR 3, EPA is proposing to conduct Pre-Screen Testing for enterovirus and norovirus and related pathogen indicators at targeted undisinfected ground water systems that serve 1,000 or fewer customers. EPA is

proposing to include transient systems among the possible targeted systems—and to focus on viruses and not chemicals at those systems—since viruses are acute pathogens and exposure through a one-time ingestion (e.g., at a transient system) is of potential health concern. EPA requests comments regarding the inclusion of transient systems in UCMR 3 Pre-Screen Testing.

As proposed under 141.40(a)(1) and 141.40(a)(2)(ii)(C), if any system (including transient systems) is notified by EPA or their state that they have been selected for Pre-Screen Testing the system must permit EPA (at EPA's expense) to sample and analyze for List 3 contaminants, and pathogen indicators, such as total coliform, *E. coli*, bacteriophage, *Enterococci*, and aerobic spores.

F. UCMR 3 Sampling Design and Reporting Considerations

As proposed, PWSs and EPA would conduct sampling and analysis for List 1 and List 3 contaminants at each PWS during a 12 month period within the 2013 to 2015 timeframe. Preparation would begin prior to 2013 and would include coordination of laboratory approval, selection of representative samples of small systems, development of State Monitoring Plans, establishment of monitoring schedules, and notification of participating PWSs. As proposed, UCMR 3 would not include a Screening Survey for List 2 contaminants. Exhibit 4 illustrates the major activities that would take place in preparation for and during implementation of UCMR 3.

Exhibit 4: Proposed Timeline of UCMR 3 Activities				
2012	2013	2014	2015	2016
<p><i>After proposed rule publication:</i> EPA lab approval program begins</p> <p><i>After final rule publication:</i> (1) EPA/State primacy authorities (PAs) and State monitoring plans developed (including national representative sample, and ground water systems for List 3);(2) Inform PWSs/ establish monitoring plans</p>	<p>← Assessment Monitoring → List 1 Contaminants <i>All systems serving more than 10,000; 800 systems serving 10,000 or fewer</i></p>			<p>Complete reporting and analysis of data</p>
	<p>← Pre-Screen Testing → List 3 Contaminants <i>800 non-disinfecting ground water wells from systems serving 1,000 or fewer</i></p>			

To minimize the impact of the rule on small systems (those serving 10,000 or fewer people), EPA would pay for the sample kit preparation, sample shipping fees, and analysis costs for these systems. In addition, no small system would be required to monitor for both List 1 and List 3 contaminants. Large systems (those serving more than 10,000

people) would pay for the cost of shipping and laboratory testing.

1. UCMR 3 Reporting Considerations

EPA is proposing a few notable changes to reporting requirements based on lessons learned from UCMR 1 and UCMR 2, as well as some necessary

changes related to new UCMR 3 analytes.

*Demonstrating Representative Ground Water Sampling Locations:* As established under UCMR 2, large systems that use ground water sources and have multiple EPTDSs can, with prior approval, conduct monitoring at representative entry point(s) rather than

at each EPTDS. To monitor at representative EPTDSs, large systems must meet the reporting criteria specified in § 141.35(c)(3)(ii), and receive approval from EPA or the State. Today's proposed changes to the rule language clarify that when identifying a representative well, the well must be one of the higher annual volume producing and consistently active wells. In addition, should this location go off-line, an alternative location must be sampled.

**Reporting Schedule:** As under previous UCMR cycles, large systems would be responsible for reviewing, approving, and submitting (i.e., "reporting") monitoring results to EPA. To help ensure that monitoring and reporting is conducted as scheduled, EPA is proposing that systems must require their laboratories to post data to the EPA's electronic data reporting system—Safe Drinking Water Accession and Review System—within 60 days of sample collection; and that large systems must review, approve, and submit the data to the State and EPA within 30 days of when the laboratory posts the data. These time frames are specified in 141.35(c)(6)(ii) and 141.40(a)(5)(vi) and compare to 120 days, and 60 days, (respectively) that were allowed under UCMR 1 and 2. With the previous turn-around times, it was sometimes difficult to ensure compliance with established monitoring schedules; these new turnaround times would reduce the chance of scheduled monitoring being missed or delayed. If systems do not electronically approve the laboratory data within 30 days of the laboratory's posting to EPA's electronic reporting system, the data would be considered approved for EPA and State review. EPA and the State would conduct its quality control reviews of the data after the system reports the data. States would also be given at least 60 days for their quality control review. After the EPA and State quality control review, EPA would place the data in the NCOD at the time of the next database update, typically three to four times per year. EPA requests comment on these shortened reporting timeframes.

**Changes to Data Elements and their Reporting:** EPA is proposing two changes to the data elements listed in Table 1 of 141.35(e). In addition, EPA is proposing a related change that would require systems to report all data elements with each sample.

- Adding zip code, optional zip code extension, and zip codes served to Data Element 4—Sampling Point Identification Code: This additional location information is being requested related to sampling points because

current information identifying the location of sampling points is limited. Zip code of the sampling point would assist with future vulnerability assessments. Zip codes tying the populations served to each sampling point would assist with future occurrence and exposure analyses.

- Clarifying and updating the definition of Data Element 6—Disinfectant Type: Under UCMR 2, Data Element 6 was established to provide information on "Disinfectant Residual Type" as it related to distribution system monitoring for nitrosamines (part of Screening Survey monitoring). EPA is proposing modification to the definition of this data element to account for changes to the analyte and monitoring specifications between UCMR 2 and UCMR 3. This revised definition lists additional disinfectant types to accommodate recent advances and changes to disinfectant technologies being used by water systems, and it provides that this data element be reported with all sample results.

- Reporting all data elements with each sample: Under UCMR 2 Assessment Monitoring, systems were required to report data elements 1 through 5 and 7 through 15. Data Element 6 (Disinfectant Residual Type) was only reported as required by systems subject to the List 2 Screening Survey monitoring of nitrosamines in distribution systems. EPA is proposing revisions to UCMR that would require systems to report all data elements with each sample (including Data Element 6 (Disinfectant Type)) since Assessment Monitoring within the distribution system is proposed and since the information on disinfectant type would be useful in the Agency's evaluation of results for chlorate and the metals on List 1—Assessment Monitoring and confirming no disinfection is applied at systems subject to List 3—Pre-Screen Testing.

## 2. Assessment Monitoring

As proposed, Assessment Monitoring for List 1 contaminants would be conducted from January 1, 2013 through December 31, 2015 by all large systems (those systems serving more than 10,000 people), and by a nationally representative sample of 800 small systems (those serving 10,000 people or fewer). Other than these new monitoring dates, there are no other changes to the schedule and frequency of Assessment Monitoring between UCMR 2 and UCMR 3. Small systems would be selected using the same type of stratified, random selection process as used in previous UCMRs. Samples would be collected from the entry point

to the distribution systems (EPTDSs). Large ground water systems with multiple EPTDSs would be permitted to sample at representative sampling locations for each ground water source if those sites have been approved by EPA or the State. In addition to EPTDS monitoring, the four metals—cobalt, molybdenum, vanadium, and strontium—as well as chlorate, would be sampled at one distribution system sampling point per treatment plant (i.e., at the distribution system maximum residence time (DSMRT)). If the system's treatment plant/water source is subject to sampling requirements under § 141.132(b)(1) (the Stage 2 Disinfectants and Disinfection Byproducts Rule), samples for the metals and chlorate must be collected at the DSMRT sampling location(s) identified for that rule. If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples must be collected at a location that, in the judgment of the PWS, represents the maximum residence time in the distribution system.

Chlorate is being monitored at both the EPTDS and the DSMRT to determine the magnitude of chlorate increases in the distribution system. The metals are monitored at both locations to assess any potential contribution from the distribution system. EPA is requesting comment on DSMRT sampling for the metals and chlorate.

As under previous UCMR cycles, samples at ground water locations would be collected twice during a designated consecutive 12-month period. Samples at locations that are fed in whole or part by a surface water or ground water under the direct influence of surface water (GWUDI) source would be collected quarterly during a designated consecutive 12-month period. Large system schedules (year and months of monitoring) would initially be determined by EPA in conjunction with the States (as described in section III.G. of today's action) and these systems would have an opportunity to modify this schedule. In today's proposed action, EPA has incorporated clarifying revisions in 141.40(a)(4)(i)(B) to specify that large system monitoring schedules must be adjusted based on sample point availability. If it is not possible for a system to meet its specified sampling schedule (if, for instance, a particular sampling point is inactive during the scheduled sampling timeframe), the system must notify EPA to reschedule their sampling. As under previous UCMR cycles, the Agency would continue to schedule and coordinate

small system monitoring, working closely with partnering States. State monitoring plans would provide a venue for States to review and revise the initial sampling schedules that EPA proposes (see discussion of State monitoring plans in section III.G. of today's action: "What is the States' Role in the UCMR Program?"). The 28 proposed List 1 contaminants to be monitored under Assessment Monitoring are listed in Exhibit 3, in section III.B of today's action.

3. Pre-Screen Testing

As proposed, sampling under the Pre-Screen Testing for List 3 contaminants would be conducted from January 1, 2013 through December 31, 2015 by a targeted sample of 800 PWSs serving

1,000 or fewer people. Sampling would occur twice during a designated consecutive 12-month period at each PWS.

EPA proposes to monitor for enterovirus and norovirus (as well as associated pathogen indicators) in UCMR 3. Both enterovirus and norovirus are listed on CCL3. EPA proposes to perform this monitoring under Pre-Screen Testing at 800 targeted undisinfected ground water wells from systems serving 1,000 or fewer customers that include CWSs, NTNCWSs and transient non-community water systems. This monitoring is proposed for systems that serve 1,000 or fewer customers because these smaller systems are the least likely to be disinfected, and therefore, would

be most vulnerable to contamination with viruses. The wells would be selected from vulnerable areas such as karst or fractured bedrock. Monitoring would also include sampling for pathogen indicators such as total coliforms, *E. coli*, bacteriophage, *Enterococci*, and aerobic spores. The objectives of this monitoring are: (1) To obtain occurrence information to support regulatory determinations for enterovirus and norovirus; (2) to gain a better understanding of pathogen indicator and viral co-occurrence; and, (3) to gain more exposure/health risk information on viruses and indicators.

A summary of the estimated number of systems to monitor under each UCMR 3 component is listed in Exhibit 5.

EXHIBIT 5—SYSTEMS TO PARTICIPATE IN UCMR 3 MONITORING

System size (number of people served)	Assessment monitoring for 28 List 1 chemicals	Pre-screen testing for two List 3 microbials <sup>1</sup>	Total <sup>2</sup>
	National sample		
<b>Small Systems</b>			
25–10,000 .....	800 randomly selected systems .....	800 selected undisinfected ground water wells from systems serving 1,000 or fewer.	1,600
<b>Large Systems <sup>3</sup></b>			
10,001 and over .....	All (4,200) .....	0 .....	4,200
Total .....	5,000 .....	800 .....	5,800

<sup>1</sup> Sampling for List 3 contaminants to be conducted at 800 undisinfected wells, located in karst or fractured bedrock, in systems serving 1,000 or fewer customers. Monitoring also includes sampling for pathogen indicators: Total coliforms, *E. coli*, bacteriophage, *Enterococci* and aerobic spores. EPA would pay for all sampling and analysis costs associated with virus and pathogen indicator monitoring at these small systems.

<sup>2</sup> Total for small systems is additive because these systems would only be selected for one component of UCMR 3 sampling. Number is approximate.

<sup>3</sup> Large system counts are approximate.

G. What is the States' role in the UCMR program?

Under UCMR 1 and UCMR 2, EPA described implementation and oversight activities that States could agree to through a Partnership Agreement (PA) process. Because the UCMR is a direct implementation rule, State participation is voluntary. Under UCMR 1, specific activities for individual States were identified in the rule language. Beginning with UCMR 2, specific activities for individual States are identified and established exclusively through the PAs, not through rule language. UCMR 3 would maintain this previously established process for UCMR 2.

In compliance with SDWA section 1445(a)(2)(C)(i), the UCMR program provides a role for States in developing a representative monitoring plan for small systems. This is important because States/primacy agencies most often have the best information about PWSs in their State. Through PAs,

States can help EPA implement the UCMR program and help ensure that the UCMR data used for future regulatory determinations are of the highest quality possible. EPA would continue to use the previously established PA structure during implementation of UCMR 3 to address the following: The process for review and revision of the state monitoring plans; replacing and updating system information; modifying timing for monitoring, review and approval of proposed representative EPTDS; notification and instructions for systems; and compliance assistance.

As established under UCMR 1 and 2, state monitoring plans include tabular listings of the systems that EPA selected to conduct monitoring and the EPA proposed date on which they are to be sampled. Initial state monitoring plans also include instructions to States for revising and/or correcting the state monitoring plans, including modifications to sampling schedules for small systems. EPA incorporates

revisions from States, and returns the final state monitoring plans to each State.

IV. Cost of This Proposed Action

In today's action, EPA proposes a new set of contaminants for monitoring in the third five-year UCMR monitoring cycle. In addition, UCMR 3 incorporates modifications to improve the rule design. UCMR 3 Assessment Monitoring (for List 1 contaminants) would be conducted from January 2013 through December 2015 by 800 systems serving 10,000 or fewer people, and by all systems serving more than 10,000 people. Eight hundred small systems would be randomly selected for List 1 monitoring. The Pre-Screen Testing for List 3 contaminants would also be conducted from January 2013 through December 2015 in 800 undisinfected ground water wells from systems serving 1,000 or fewer persons. It is assumed for this cost estimation that one-third of systems would monitor

during each of the three monitoring years.

Labor costs pertain to systems, States, and EPA. They include activities such as reading the regulation, notifying systems selected to participate, sample collection, data review, reporting, and recordkeeping. Non-labor costs would be incurred primarily by EPA and by large PWSs. They include the cost of shipping samples to laboratories for testing and the cost of the actual laboratory analyses.

In today's action, EPA proposes six EPA developed analytical methods and four equivalent consensus organization developed methods to monitor for 28 new UCMR 3 chemical contaminants. While the preamble to this proposed rule also describes the analytical methods that would be used for the proposed virus monitoring, the proposal does not address these methods. Laboratory approval for virus monitoring is not expected to be necessary since all of the analyses for the two viruses are expected to be conducted in laboratories under EPA contract and at EPA's expense. However, estimated system and EPA costs are based on the analytical costs for all UCMR 3 methods. With the exception of Methods 200.8 and 300.1, these methods are comparatively new and would not coincide with other compliance monitoring (*i.e.*, no cost savings for coincident monitoring can be realized). Laboratory analysis and

shipping of samples account for approximately 86% of the total national cost for UCMR 3 implementation. These costs are calculated as follows: The number of systems, multiplied by the number of sampling locations, multiplied by the sampling frequency, multiplied by the unit cost of laboratory analysis. Under UCMR 3, for List 1 Assessment Monitoring, surface water (and GWUDI) sampling points would be monitored four times during the applicable year of monitoring, and ground water sample points would be monitored twice during the applicable year of monitoring. Systems would monitor for the four metals—cobalt, molybdenum, vanadium, and strontium—as well as chlorate, at their EPTDS sampling locations and at one distribution system sampling point per treatment plant (*i.e.*, at the DSMRT). Pre-Screen Testing systems would monitor two times during the three-year monitoring period (2013 through 2015) at their EPTDS. EPA estimates of laboratory fees are based on consultations with national drinking water laboratories and a review of the costs of analytical methods similar to those proposed in today's action. The cost of the Assessment Monitoring analysis for the UCMR 3 chemicals is estimated at \$1,320 per sample set (at the EPTDS); the cost of the Pre-Screen analyses for viruses and related pathogen indicators (*i.e.*, total coliform, *E. coli*, bacteriophage, *Enterococci*, and

aerobic spores) is estimated at \$1,650 per sample set. Shipping estimates are added to the calculated costs to derive the total direct analytical non-labor costs. Estimated shipping costs were based on the average cost of shipping a 25-pound package.

In preparing the UCMR 3 information collection request (ICR), EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the PWS inventory, number of sampling points per system, and labor rates. EPA expects that States would incur only labor costs associated with voluntary assistance with UCMR 3 implementation. State costs were estimated using the relevant modules of the State Resource Model that was developed by the Association of State Drinking Water Administrators (ASDWA) in conjunction with EPA (ASDWA, 2003) to help States forecast resource needs. Model estimates were adjusted to account for actual levels of State participation under UCMR 2. Because State participation would be voluntary, level of effort would vary across States and depend on their individual agreements with EPA.

Over the UCMR implementation period of 2012–2016, EPA estimates that nationwide, the average annual cost of UCMR 3 is approximately \$14.9 million. These total estimated annual costs (labor and non-labor) are incurred as follows:

Respondent	Average annual cost (all respondents (2012–16))
Small Systems (25–10,000), including labor only, non-labor costs paid for by EPA .....	\$0.049 m
Large Systems (10,001–100,000), including labor and non-labor costs .....	8.75 m
Very Large Systems (100,001 and greater), including labor and non-labor costs .....	2.1 m
States, including labor costs related to implementation coordination .....	0.75 m
EPA, including labor for implementation, non-labor for small system testing .....	3.3 m
<b>Average Annual National Total .....</b>	<b>14.949 m</b>

Additional details regarding EPA's cost assumptions and estimates can be found in the ICR Number 2192.04 amendment prepared for this proposed rule (Office of Management and Budget (OMB) number 2040—NEW), which presents estimated cost and burden for the 2012–2014 period. Estimates of costs over the entire third five-year UCMR cycle of 2012–2016 are attached as an appendix to the ICR. Copies of the ICR and its amendment may be obtained from the EPA public docket for this proposed rule, which includes this ICR, under Docket ID Number OW–2004–0001.

**V. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs associated with this action. This analysis is briefly

summarized in section IV of the preamble of this proposed rule.

*B. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2192.04.

The information to be collected under today's proposed rule fulfills the statutory requirements of section 1445(a)(2) of SDWA, as amended in 1996. The data to be collected would

describe the source of the water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants would be evaluated regarding health effects and would be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

The annual burden and cost estimates described in this section are for the implementation assumptions described in section IV. Cost and Benefits of the Rule, in today's proposed action. Respondents to the UCMR 3 would include 1,600 small water systems (800 for Assessment Monitoring, and 800 wells for Pre-Screen Testing), the 4,191 large PWSs, and the 56 States and Primacy agencies (5,047 total respondents). The frequency of response varies across respondents and years. System costs (particularly laboratory analytical costs) vary depending on the number of sampling locations. For cost estimations, it is assumed that systems would conduct sampling evenly across January 2013 through December 2015 (*i.e.*, one-third of systems in each of the 3 consecutive 12-month periods). Because the applicable ICR period is 2012–2014, there is one year of monitoring activity (*i.e.*, January through December of 2015) that is not captured in the ICR estimates.

Small systems (those serving 10,000 or fewer) that are selected for UCMR 3 monitoring would sample an average of 1.5 times per system (*i.e.*, number of responses per system) across the three-year ICR period of 2012–2014. The average burden per response for small systems is estimated to be 3.0 hours. Large systems (those serving 10,001 to 100,000 people) and very large systems (those serving more than 100,000 people) would sample and report an average of 2.7 and 3.7 times per system, respectively, across the three-year ICR period of 2012–2014. The average burden per response for large and very large systems is estimated to be 6.1 and 6.3 hours, respectively. States are assumed to have an average of 1.0 response per year, related to coordination with EPA and systems, with an average burden per response of 184 hours. In aggregate, during the ICR period of 2012–2014, the average response (*e.g.*, responses from systems and States) is associated with a burden of 8.3 hours, with a labor plus non-labor cost of \$2,714 per response.

The annual average per respondent burden hours and costs for the ICR period of 2012–2014 are: small systems—1.5 hour burden at \$34 for labor; large systems—5.5 hours at \$170 for labor, and \$2,381 for analytical costs;

very large systems—7.7 hours at \$295 for labor, and \$5,460 for analytical costs; and States—233.4 hours at \$13,992 for labor. Annual average burden and cost per respondent (including both systems and States) is estimated to be 8.3 hours, with a labor plus non-labor cost of \$1,985 per respondent (note that small systems do not pay for testing costs, and thus only incur labor costs). Burden is defined at 5 CFR 1320.3(b).

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OW–2009–0090. Submit any comments related to the ICR to EPA and OMB. *See ADDRESSES* section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 3, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by April 4, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3)

a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5)). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be PWSs serving 10,000 or fewer people, because this is the system size specified in SDWA as requiring special consideration with respect to small system flexibility. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7606, February 13, 1998 (USEPA, 1998a)), requested public comment, consulted with the SBA, and finalized the alternative definition in the Consumer Confidence Reports rulemaking, (63 FR 44512, August 19, 1998 (USEPA, 1998b)). As stated in that Final Rule, the alternative definition would be applied to future drinking water regulations, including this regulation.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are PWSs serving 10,000 or fewer people. EPA has determined that the small entities subject to the requirements of this proposed rule are a subset of the small PWSs (those serving 10,000 or fewer people). The Agency has determined that 1,600 small PWSs (across Assessment Monitoring and Pre-Screen Testing), or approximately 3% of small systems, would experience an impact of less than 0.4% of revenues; the remainder of small systems would not be impacted.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. To ensure that this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA will assume all costs for analyses of the samples and for shipping the samples from these systems to the laboratories contracted by EPA to analyze UCMR 3 samples. EPA has set

aside \$2.0 million each year from the State Revolving Fund (SRF) with its authority to use SRF monies for the purposes of implementing this provision of SDWA. Thus, the costs to these small systems will be limited to the labor hours associated with collecting a sample and preparing it for shipping.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

The evaluation of the overall impact on small systems, summarized in the preceding discussion, is further described as follows. EPA analyzed the impacts for privately-owned and publicly-owned water systems separately, due to the different economic characteristics of these ownership types, such as different rate structures and profit goals. However, for both publicly- and privately-owned systems, EPA used the "revenue test," which compares annual system costs attributed to the rule to the system's

annual revenues. Median revenue data from the not yet published 2006 Community Water System Survey were used for public and private water systems. EPA assumes that the distribution of the sample of participating small systems will reflect the proportions of publicly- and privately-owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented in Exhibit 6.

**EXHIBIT 6—NUMBER OF PUBLICLY- AND PRIVATELY-OWNED SMALL SYSTEMS SUBJECT TO UCMR 3**

System size (number of people served)	Publicly-owned	Privately-owned	Total
<i>Ground Water</i>			
500 and under .....	126	378	504
501 to 3,300 .....	477	182	659
3,301 to 10,000 .....	207	48	255
Subtotal GW .....	810	608	1,418
<i>Surface Water (and GWUDI)</i>			
500 and under .....	2	3	5
501 to 3,300 .....	35	13	48
3,301 to 10,000 .....	100	29	129
Subtotal SW .....	137	45	182
Total of Small Water Systems .....	947	653	1,600

The basis for the UCMR 3 RFA certification for this proposed rule is as follows: for the 1,600 small water systems that would be affected, the average annual costs for complying with

this rule represent less than 0.4% of system revenues (the highest estimated percentage is for ground water systems serving 500 or fewer people, at 0.38% of its median revenue). Exhibit 7 presents

the yearly costs to small systems, and to EPA for the small system sampling program, along with an illustration of system participation for each year of the UCMR 3 program.

**EXHIBIT 7—EPA AND SYSTEMS COSTS FOR IMPLEMENTATION OF UCMR 3 AT SMALL SYSTEMS**

Cost description	2012	2013	2014	2015	2016	Total
<i>Costs to EPA for Small System Program (including Assessment Monitoring, and Pre-Screen Testing)</i>						
	\$0	\$3,943,827	\$3,943,827	\$3,943,827	\$0	\$11,831,481
<i>Costs to Small Systems (including Assessment Monitoring, and Pre-Screen Testing):</i>						
	\$0	\$81,707	\$81,707	\$81,707	\$0	\$245,121
<i>Total Costs to EPA and Small Systems for UCMR 2:</i>						
	\$0	\$4,025,533	\$4,025,533	\$4,025,533	\$0	\$12,076,599
<i>System Monitoring Activity Timeline:<sup>1</sup></i>						
Assessment Monitoring	.....	1/3 PWSs Sample .....	1/3 PWSs Sample .....	1/3 PWSs Sample .....	.....	800
Pre-Screen Testing	.....	1/3 PWSs Sample .....	1/3 PWSs Sample .....	1/3 PWSs Sample .....	.....	800

<sup>1</sup> Total number of systems is 1,600. No small system conducts more than one type of monitoring study.

System costs are attributed to the labor required for reading about their requirements, monitoring, reporting,

and record keeping. The estimated average annual burden across the five-year UCMR 3 implementation period of

2012–2016 is estimated to be 1.3 hours at \$31 per small system. Average annual cost, in all cases, is less than 0.4% of

system revenues. As required by the SDWA, the Agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping,

and quality control for small entities. As a result, EPA incurs the entirety of the non-labor costs associated with UCMR 3 small system monitoring, or 98% of total small system testing costs. Exhibits

8 and 9 present the estimated economic impacts in the form of a revenue test for publicly- and privately-owned systems.

**EXHIBIT 8—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PUBLICLY-OWNED SYSTEMS (2012–2016)**

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue test <sup>1</sup> (percent)
<b>Ground Water Systems</b>				
500 and under .....	25	1.1	\$22.63	0.07
501 to 3,300 .....	96	1.2	26.84	0.02
3,301 to 10,000 .....	41	1.7	43.71	0.01
<b>Surface Water (and GWUDI) Systems</b>				
500 and under .....	1	1.8	38.06	0.07
501 to 3,300 .....	7	1.9	41.99	0.02
3,301 to 10,000 .....	20	2.0	51.02	0.005

<sup>1</sup> The Revenue Test was used to evaluate the economic impact of an information collection on small government entities (e.g., publicly-owned systems); costs are presented as a percentage of median annual revenue in each size category.

**EXHIBIT 9—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PRIVATELY-OWNED SYSTEMS (2012–2016)**

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue test <sup>1</sup> (percent)
<b>Ground Water Systems</b>				
500 and under .....	76	1.1	\$22.63	0.38
501 to 3,300 .....	36	1.2	26.84	0.02
3,301 to 10,000 .....	10	1.7	43.71	0.004
<b>Surface Water (and GWUDI) Systems</b>				
500 and under .....	1	1.8	38.06	0.11
501 to 3,300 .....	3	1.9	41.99	0.02
3,301 to 10,000 .....	6	2.0	51.02	0.005

<sup>1</sup> The “Revenue Test” was used to evaluate the economic impact of an information collection on small private entities (e.g., privately-owned systems); costs are presented as a percentage of median annual revenue in each size category.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This rule does not contain a Federal mandate 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. Total annual costs of today’s proposed rule (across the implementation period of 2012–2016), for State, local, and Tribal governments and the private sector, are estimated to be \$14.9 million, of which EPA would pay \$3.3 million, or approximately 22%. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory

requirements that might significantly or uniquely affect small governments. The Agency expects to pay for the reasonable costs of sample analysis for the small PWSs required to monitor for unregulated contaminants under this proposed rule, including those owned and operated by small governments. The only costs that small systems would incur are those attributed to collecting the UCMR samples and packing them for shipping to the laboratory (EPA would pay for shipping). These costs are minimal. They are not significant or unique. Thus, today’s rule is not subject to the requirements of UMRA section 203.

*E. Executive Order 13132: Federalism*

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132. The cost to State and local governments is minimal, and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the

funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this action will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. As described previously, this proposed rule requires monitoring by all large systems (*i.e.*, those serving more than 10,000 people); 17 Tribal water systems have been identified as large systems based on information in the SDWIS/Fed water system inventory. EPA estimates the average annual cost to each of these large systems, over the five-year rule period, to be less than \$2,381. This cost is based on a labor component (associated with the collection of samples) and a non-labor component (associated with shipping and laboratory fees) and represents less than 0.126% of average revenue/sales for large systems. UCMR also requires monitoring by a nationally representative sample of small systems (*i.e.*, those serving 10,000 or fewer people). EPA estimates that approximately one percent of small Tribal systems will be selected as a nationally representative sample for Assessment Monitoring. EPA estimates the average annual cost over the five-year rule period to be \$34. Such cost is based on the labor associated with collecting a sample and preparing it for shipping and represents less than 0.4% of average revenue/sales for small systems. All other small-system expenses (associated with shipping and laboratory fees) are paid by EPA.

EPA consulted with Tribal officials early in the process of developing the UCMR program to permit them to have meaningful and timely input into its development. In developing the original UCMR rule, EPA held stakeholder meetings and prepared background information for stakeholder review. EPA sent requests for review of stakeholder documents to nearly 400 Tribes, Tribal organizations, and small systems organizations to obtain their input. Representatives from the Indian Health Service (IHS) Sanitary Deficiency System and Tribes were consulted regarding decisions on rule design, the design for the statistical selection of small systems, and potential costs. Tribes raised issues concerning the selection of the nationally representative sample of small systems, particularly the manner in which Tribal systems would be considered under the

sample selection process. EPA developed the sample frame for Tribal systems and Alaska Native water systems in response to those concerns. EPA worked with the Tribes, Alaska Natives, the IHS, and the States to determine how to classify each Tribal system for consideration in the statistically-based selection of the nationally representative sample of small systems. As a result of those discussions, small PWSs located in Indian country in each of the EPA Regions containing Indian country were evaluated as part of a Tribal category that receives selection consideration comparable to that of small systems outside of Indian country. Thus, Tribal systems have the same probability of being selected as other water systems in the stratified selection process that weighs systems by water source and size class by population served. Today's proposed rule, addressing the third UCMR period, maintains the basic program design of UCMR 1 and 2, and continues to build upon the structure of this cyclical program. As part of the development of this proposed rule, EPA held a public stakeholder meeting on April 7, 2010. This meeting was announced to the public in a **Federal Register** notice dated February 23, 2010 (75 FR 8063 (USEPA, 2010a)). Prior to the meeting, background materials and rule development information were sent to specific stakeholders, including representatives from the Indian Health Service and the Native American Water Association.

EPA specifically solicits additional comment on this proposed action from tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and it is not an economically significant regulation pursuant to EO 12866.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. None of the proposed UCMR requirements involve actions that use a measurable amount of energy.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes to use the methods developed by the Agency for the analysis of UCMR 3 contaminants. The Agency conducted a search of potentially applicable voluntary consensus standards and identified three major voluntary consensus method organizations whose methods might be acceptable for determinations under Unregulated Contaminant Monitoring. These organizations are Standard Methods, Association of Analytical Communities International, and American Society for Testing and Materials. For the majority of the parameters included in this proposed action, EPA was unable to identify methods from voluntary consensus method organizations that were applicable to the monitoring required. However, EPA identified acceptable consensus method organization standards for the analysis of vanadium, molybdenum, cobalt, strontium and chlorate. Therefore, EPA is proposing analytical methods published by EPA, Standard Methods, and American Society for Testing and Materials for these analytes.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, UCMR furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies. UCMR uses a statistically-derived set of systems for the nationally representative sample that is population-weighted within each system size and source water category so that any PWS within a category has an equivalent likelihood of selection. Additionally, EPA is proposing to require additional reporting elements that include U.S. Postal Service Zip Codes for both the finished water entry point(s) and the PWS's service area. EPA is soliciting comment on additional actions the Agency could take to further address environmental justice within the UCMR program. EPA requests stakeholder input on additional reporting elements to consider to support the Agency's assessment of the monitoring results. EPA also requests comments regarding sampling and/or modeling approaches, and the feasibility and utility of applying these approaches, to determine disproportionate impacts on drinking water quality at PWSs serving minority and low-income populations.

## VI. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities for the purpose of providing early input to regulation development. When designing and developing the UCMR program, in the late 1990s, EPA held meetings for developing the CCL, establishing the information requirements of the NCOD, and selecting priority contaminants for monitoring. During the initial

development of the UCMR program, stakeholders, including PWSs, States, industry, and other organizations attended meetings to discuss the UCMR. Seventeen other meetings were held specifically concerning UCMR development. For a description of public involvement activities related to the first UCMR (UCMR 1), please see the discussion in the September 17, 1999 UCMR Final Rule **Federal Register** at 64 FR 50556 (USEPA, 1999).

Specific to the development of UCMR 3, a stakeholder meeting was held on April 7, 2010, in Washington, DC. There were 22 attendees, representing State agencies, laboratories, PWSs, environmental groups, and drinking water associations. The topics of presentations and discussions included: Status of UCMR 2; rationale for developing a new list of potential contaminants; analytical methods that could be used in measuring these contaminants; sampling design; procedure for determining LCMRLs; laboratory approval; and other potential revisions based on lessons learned during implementation of UCMR 1 and UCMR 2 (see USEPA, 2010f for presentation materials, and 2010g for meeting notes).

EPA has established a public docket for this rule, under Docket ID No. OW-2009-0090. EPA is soliciting comments on this proposed regulation. Please see the summary section at the beginning of this notice for instructions on submitting comments.

## VII. References

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- USEPA. 1994. *Method 200.8—Determination of Trace Elements in Waters and Wastes*



Contaminant	Methodology <sup>13</sup>	EPA Method	ASTM <sup>3</sup>	SM <sup>4</sup> (18th, 19th ed.)	SM <sup>4</sup> (20th ed.)	SM Online <sup>22</sup>	Other
	Colorimetric, ascorbic acid, single reagent.	.....	D515–88 A	4500–P E	4500–P E		
	Colorimetric Phosphomolybdate; Automated-segmented flow; .....						<sup>5</sup> I-1601–85
	Automated Discrete .....						<sup>5</sup> I-2601–90
	Ion Chromatography .....	<sup>6</sup> 300.0 <sup>19</sup> 300.1	D4327–97, 03	4110 B	4110 B	4110 B–00	<sup>5</sup> I-2598–85
	Capillary Ion Electrophoresis .....	.....	D6508–00				
	*	*	*	*	*	*	*

\* \* \* \* \*

<sup>3</sup>Annual Book of ASTM Standards, 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

<sup>4</sup>Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995) or 20th edition (1998). American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

<sup>5</sup>Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85. See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd edition, 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

<sup>6</sup>“Methods for the Determination of Inorganic Substances in Environmental Samples,” EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

<sup>7</sup>The procedure shall be done in accordance with the Technical Bulletin 601 “Standard Method of Test for Nitrate in Drinking Water,” July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

<sup>8</sup>Method B–1011. “Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,” August, 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757, Telephone: 508/482–2963, Fax: 508/482–4056.

\* \* \* \* \*

<sup>13</sup>Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2x pre-concentration step during sample digestion, MDLs determined when samples

are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B, sample pre-concentration using pneumatic nebulization may be required to achieve lower detection limits. Pre-concentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

<sup>19</sup>“Methods for the Determination of Organic and Inorganic Compounds in Drinking Water,” Vol. 1, EPA 815–R–00–014, August 2000. Available at NTIS, PB2000–106981.

<sup>22</sup>Standard Methods Online are available at <http://www.standardmethods.org>. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

3. Section 141.35 is amended as follows:

- a. In paragraph (a) by revising the third sentence,
- b. By revising paragraph (b) introductory text,
- c. In paragraph (b)(1) by revising the third sentence,
- d. In paragraph (b)(2) by revising the second sentence,
- e. In paragraph (c)(1) by removing “April 4, 2007” and adding in its place, “[DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”
- f. In paragraph (c)(2) by removing “August 2, 2007” and adding in its place, “[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”
- g. In paragraph (c)(2) by revising the last sentence,
- h. In paragraph (c)(3)(i) by removing “May 4, 2007” and adding in its place, “[DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”
- i. In paragraph (c)(3)(ii) by adding a new second and third sentence,
- j. In paragraph (c)(4) by removing “June 4, 2007” and adding in its place, “[DATE 150 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”

k. In paragraph (c)(5)(i) by removing the two instances of the date “August 2, 2007” and add in their place, “[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”

- l. By revising paragraph (c)(6) introductory text,
- m. By revising paragraph (c)(6)(ii),
- n. By revising paragraph (d)(2), and
- o. In the table to paragraph (e) by revising entries 4 and 6.

The revisions and additions read as follows:

**§ 141.35 Reporting for unregulated contaminant monitoring results.**

- (a) \* \* \* For the purposes of this section, PWS “population served” is the retail population served directly by the PWS as reported to the Federal Safe Drinking Water Information System (SDWIS/Fed). \* \* \*
- (b) *Reporting by all systems.* You must meet the reporting requirements of this paragraph if you meet the applicability criteria in § 141.40(a)(1) and (2). \* \* \*
- (1) \* \* \* Information that must be submitted using EPA’s electronic data reporting system must be submitted through: <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm>. \* \* \*
- (2) \* \* \* If you have received a letter from EPA concerning your required monitoring and your system does not meet the applicability criteria for UCMR established in § 141.40(a)(1) or (2), or if a change occurs at your system that may affect your requirements under UCMR as defined in § 141.40(a)(3) through (5), you must fax, mail, or e-mail a letter to EPA, as specified in paragraph (b)(1) of this section. \* \* \*
- (c) \* \* \*
- (2) \* \* \* If this information changes, you must report updates, including new sources and sampling locations which are put in use before or during the PWS’ UCMR sampling period, to EPA’s electronic data reporting system within 30 days of the change. \* \* \*
- (3) \* \* \*

(ii) \* \* \* The proposed representative well must be one of the higher annual volume producing and more consistently active wells in the representative array. If that representative well is not in use at the scheduled sampling time, an alternative representative well must be sampled.

specified in paragraph (b)(1) of this section.

approved by you and available for State and EPA review.

\* \* \* \* \*

(ii) *Reporting schedule.* You must ensure that your laboratory posts the data to EPA's electronic data reporting system within 60 days from the sample collection date (sample collection must occur as specified in § 141.40(a)(4)). You have 30 days from when the laboratory posts the data in EPA's electronic data reporting system to review, approve, and submit the data to the State and EPA, at the Web address specified in paragraph (b)(1) of this section. If you do not electronically approve and submit the laboratory data to EPA within 30 days of the laboratory's posting to EPA's electronic reporting system, the data will be considered

(d) \* \* \*  
 (2) *Reporting sampling information.* You must record all data elements listed in Table 1 of paragraph (e) of this section on each sample form and sample bottle provided to you by the UCMR Sampling Coordinator. You must send this information as specified in the instructions of your sampling kit, which will include the due date and return address. You must report any changes made in data elements 1 through 6 by mailing or e-mailing an explanation of the nature and purpose of the proposed change to EPA, as specified in paragraph (b)(1) of this section.  
 (e) \* \* \*

TABLE 1—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS

Data element	Definition
4. (a) Sampling Point Identification Code, (b) Sampling Point Zip Code, (c) Optional Zip Code Extension, and (d) Zip Codes Served.	(a) An identification code established by the State, or at the State's discretion, by the PWS, that uniquely identifies each sampling point. Each sampling code must be unique within each applicable facility, for each applicable sampling location ( <i>i.e.</i> , entry point to the distribution system or distribution system sample at maximum residence time). The same identification code must be used to represent the sampling location for all current and future UCMR monitoring. (b) The U.S. Postal Service (USPS) ZIP code in which the sampling point is located, with format: ZZZZ. (c) The optional Zip Code Extension in which the sampling point is located, with format: EEEE. (d) Zip codes of all areas supplied with water from this sampling point, with format: ZZZZ.
6. Disinfectant Type .....	The disinfectant in use at the time of UCMR monitoring. To be reported by systems for each sampling point, with possible values including: CLG = gaseous chlorine. CLS = Sodium hypochlorite solution. CLP = Potassium hypochlorite solution. CAG = chloramine (gaseous chlorine). CAS = chloramine (sodium hypochlorite solution). CAP = chloramine (potassium hypochlorite solution). CLD = chlorine dioxide. GOS = Hypochlorite generated off site. GIH = Hypochlorite generated at DW facility. OTH = all other types of disinfectant (e.g. ozone). NOD = no disinfectant used.

**Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use**

4. Section 141.40 is amended as follows:
- a. By revising paragraph (a) introductory text,
  - b. By revising paragraph (a)(1),
  - c. By revising paragraph (a)(2)(i) introductory text,
  - d. By revising paragraph (a)(2)(ii) introductory text,
  - e. By revising paragraph (a)(2)(ii)(C),
  - f. By revising paragraph (a)(3),

- g. In paragraph (a)(4)(i) introductory text by removing “August 2, 2007” and adding in its place, “[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],”
- h. By revising paragraph (a)(4)(i)(B),
- i. By revising paragraph (a)(4)(i)(C),
- j. In paragraph (a)(4)(i)(D) by removing the last sentence,
- k. By revising paragraph (a)(4)(ii)(G),
- l. In paragraph (a)(5)(ii) by removing “April 4, 2007” and adding in its place, “[DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]” and by revising the last sentence,

- m. By revising paragraph (a)(5)(iii) introductory text,
- n. By revising paragraph (a)(5)(iii)(A)(1),
- o. By revising paragraph (a)(5)(iv), and
- p. By revising paragraph (a)(5)(vi).  
 The revisions read as follows:

**§ 141.40 Monitoring requirements for unregulated contaminants.**

(a) *General applicability.* This section specifies the monitoring and quality control requirements that must be followed if you own or operate a public water system (PWS) that is subject to the Unregulated Contaminant Monitoring

Regulation (UCMR), as specified in paragraphs (a)(1) and (2) of this section. In addition, this section specifies the UCMR requirements for State and Tribal participation. For the purposes of this section, PWS “population served,” “State,” “PWS Official,” “PWS Technical Contact,” and “finished water” apply as defined in § 141.35(a). The determination of whether a PWS is required to monitor under this rule is based on the type of system (e.g., community water system, non-transient non-community water system, etc.), and its retail population, as indicated by SDWIS/Fed on December 31, 2010.

(1) *Applicability to transient non-community systems.* If you own or operate a transient non-community water system, you will have to monitor for the contaminants specified on List 3 of Table 1, in paragraph (a)(3) of this section if you are notified by your State or EPA.

(2) \* \* \*

(i) *Large systems.* If you own or operate a retail PWS (other than a transient non-community system) that serves more than 10,000 people, you must monitor according to the specifications in this paragraph (a)(2)(i). If you believe that your applicability status is different than EPA has specified in the notification letter that you received, or if you are subject to UCMR requirements and you have not been notified by either EPA or your State, you must report to EPA, as specified in § 141.35(b)(2) or (c)(4).

(ii) *Small systems.* Small PWSs, as defined in this paragraph, will not be selected to monitor for any more than one of the three monitoring lists provided in Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. EPA will provide sample containers, provide pre-paid air bills for shipping the sampling materials, conduct the laboratory analysis, and

report and review monitoring results for all small systems selected to conduct monitoring under paragraphs (a)(2)(ii)(A) through (C) of this section. If you own or operate a PWS that serves 10,000 or fewer people you must monitor as follows:

\* \* \* \* \*

(C) *Pre-Screen Testing.* You must allow EPA or its representative to collect samples to support monitoring for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring plan for Pre-Screen Testing. In addition, you must permit the collection of samples as necessary for EPA to perform analysis for total coliform, *E. coli*, bacteriophage, *Enterococci*, and aerobic spores.

(3) *Analytes to be monitored.* Lists 1, 2, and 3 of unregulated contaminants are provided in the following table:

TABLE 1—UCMR CONTAMINANT LIST

1—Contaminant	2—CAS Registry No.	3—Analytical methods <sup>a</sup>	4—Minimum reporting level <sup>b</sup>	5—Sampling location <sup>c</sup>	6—Period during which monitoring to be completed
<b>List 1: Assessment Monitoring—Chemical Contaminants</b>					
<b>Hormones</b>					
17-β-estradiol .....	50–28–2	EPA 539 <sup>d</sup> .....	0.0004 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
17-α-ethynylestradiol .....	57–63–6	EPA 539 <sup>d</sup> .....	0.0009 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
estriol .....	50–27–1	EPA 539 <sup>d</sup> .....	0.0008 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
equilin .....	474–86–2	EPA 539 <sup>d</sup> .....	0.004 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
estrone .....	53–16–7	EPA 539 <sup>d</sup> .....	0.002 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
testosterone .....	58–22–0	EPA 539 <sup>d</sup> .....	0.0001 µg/L .....	EPDTS .....	1/1/2013–12/31/2015.
4-androstene-3,17-dione .....	63–05–8	EPA 539 <sup>d</sup> .....	0.0003 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
<b>Volatile Organic Compounds</b>					
1,2,3-trichloropropane .....	96–18–4	EPA 524.3 <sup>e</sup> .....	0.03 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
1,3-butadiene .....	106–99–0	EPA 524.3 <sup>e</sup> .....	0.1 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
chloromethane .....	74–87–3	EPA 524.3 <sup>e</sup> .....	0.2 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
1,1-dichloroethane .....	75–34–3	EPA 524.3 <sup>e</sup> .....	0.03 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
n-propylbenzene .....	103–65–1	EPA 524.3 <sup>e</sup> .....	0.03 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
bromomethane .....	74–83–9	EPA 524.3 <sup>e</sup> .....	0.2 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
sec-butylbenzene .....	135–98–8	EPA 524.3 <sup>e</sup> .....	0.04 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
chlorodifluoromethane (HCFC-22) .....	75–45–6	EPA 524.3 <sup>e</sup> .....	0.08 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
bromochloromethane (halon 1011) .....	74–97–5	EPA 524.3 <sup>e</sup> .....	0.06 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
<b>Synthetic Organic Compound</b>					
1,4-dioxane .....	123–91–1	EPA 522 <sup>f</sup> .....	0.07 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
<b>Metals</b>					
vanadium .....	7440–62–2	EPA 200.8 .....	0.2 µg/L .....	EPTDS and DSMRT.	1/1/2013–12/31/2015.
molybdenum .....	7439–98–7	ASTM D5673–10 .....	1. µg/L .....	EPTDS and DSMRT.	1/1/2013–12/31/2015.
		SM 3125 <sup>g</sup> .....			
		EPA 200.8 .....			
cobalt .....	7440–48–4	ASTM D5673–10 .....	1. µg/L .....	EPTDS and DSMRT.	1/1/2013–12/31/2015.
		SM 3125 <sup>g</sup> .....			
		EPA 200.8 .....			

TABLE 1—UCMR CONTAMINANT LIST—Continued

1—Contaminant	2—CAS Registry No.	3—Analytical methods <sup>a</sup>	4—Minimum reporting level <sup>b</sup>	5—Sampling location <sup>c</sup>	6—Period during which monitoring to be completed
strontium .....	7440–24–6	EPA 200.8 ..... ASTM ..... D5673–10 ..... SM 3125 <sup>g</sup> .....	0.3 µg/L .....	EPTDS and DSMRT.	1/1/2013–12/31/2015.
<b>Oxyhalide Anion</b>					
Chlorate .....	14866–68–3	EPA 300.1 ..... ASTM D ..... 6581–08 ..... SM 4110D <sup>h</sup> .....	20 µg/L .....	EPTDS and DSMRT.	1/1/2013–12/31/2015.
<b>Perfluorinated Compounds</b>					
perfluorooctane sulfonic acid (PFOS)	1763–23–1	EPA 537 <sup>i</sup> .....	0.04 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
perfluorooctanoic acid (PFOA) .....	335–67–1	EPA 537 <sup>i</sup> .....	0.02 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
perfluorononanoic acid (PFNA) .....	375–95–1	EPA 537 <sup>i</sup> .....	0.02 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
perfluorohexane sulfonic acid (PFHxS)	355–46–4	EPA 537 <sup>i</sup> .....	0.03 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
perfluoroheptanoic acid (PFHpA) .....	375–85–9	EPA 537 <sup>i</sup> .....	0.01 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
perfluorobutanesulfonic acid (PFBS) ...	375–73–5	EPA 537 <sup>i</sup> .....	0.09 µg/L .....	EPTDS .....	1/1/2013–12/31/2015.
<b>List 2: Screening Survey</b>					
Reserved .....	Reserved	Reserved .....	Reserved .....	Reserved .....	Reserved.
<b>List 3: Pre-Screen Testing—Microbiological Contaminants</b>					
enteroviruses .....	N/A	N/A .....	N/A .....	EPTDS .....	1/1/2013–12/31/2015.
noroviruses .....	N/A	N/A .....	N/A .....	EPTDS .....	1/1/2013–12/31/2015.

## Column headings are:

1—Contaminant: the name of the contaminant to be analyzed.

2—CAS (Chemical Abstract Service) Registry Number or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants. For List 3, analysis will only be performed by laboratories under contract to EPA.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods. For List 3, minimum reporting level is based on volume of water filtered and PCR amplification level.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Period During Which Monitoring to be Completed: the time period during which the sampling and testing are to occur for the indicated contaminant.

<sup>a</sup>The analytical procedures shall be performed in accordance with the documents associated with each method (per the following footnotes). The incorporation by reference of the following documents listed in footnotes d–i was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information

on how to obtain these documents can be provided by the Safe Drinking Water Hotline at (800) 426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20460, Telephone: (202) 566–2426; or at the National Archives and Records Administration (NARA). For information on availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/Federal-register/cfr/index.html>. The version of the EPA methods which you must follow for this Regulation are listed in footnotes d through i as follows:

<sup>b</sup>The minimum reporting level (MRL) is the minimum concentration of each analyte that must be reported to EPA.

<sup>c</sup>Sampling must occur at entry points to the distribution system (EPTDSs) after treatment is applied that represent each non-emergency water source in routine use over the 12-month period of monitoring. Systems that purchase water with multiple connections from the same wholesaler may propose one representative connection from that wholesaler. This representative EPTDS sampling location must be one of the higher annual volume connections. If the connection selected as the representative EPTDS is not available for sampling, an alternate representative connection must be sampled. See 40 CFR 141.35(c)(3) for an explanation of the requirements related to use of representative ground water EPTDSs. Sampling for metals and chlorate at disinfection byproduct distribution system maximum residence time (DSMRT) sampling locations as defined in 40 CFR

141.132(b)(1)(i). If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples for metals must be collected at a location that the system determines represents the maximum residence time in the distribution system.

<sup>d</sup>EPA Method 539 “Determination of Hormones in Drinking Water Using Liquid Chromatography Tandem Mass Spectrometry,” is available at [http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods\\_ogwdw.cfm](http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm).

<sup>e</sup>EPA Method 524.3 “Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,” Version 1.0, June 2009 is available at [http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods\\_ogwdw.cfm](http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm).

<sup>f</sup>EPA Method 522 “Determination of 1,4-Dioxane in Drinking Water by Solid Phase Extraction (SPE) and Gas Chromatography/Mass Spectrometry (GC/MS) with Selective Ion Monitoring (SIM),” Version 1.0, September 2008 is available at <http://www.epa.gov/nerlcwww/ordmeth.htm>.

<sup>g</sup>EPA Method 200.8 “Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,” Version 5.4, 1994 is available at <http://www.NEMI.gov>.

ASTM D5673–10. Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry. Available for purchase on the Internet at <http://www.astm.org/Standards/D5673.htm>.

SM 3125. Metals by Inductively Coupled Plasma/Mass Spectrometry (1997). Available

for purchase on the Internet at <http://www.standardmethods.org/store/ProductView.cfm?ProductID=211>.

<sup>h</sup>EPA Method 300.1 “Determination of Inorganic Anions in Drinking Water by Ion Chromatography,” Revision 1.0, 1997 is available at [http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods\\_ogwdw.cfm](http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm).

ASTM D6581–08. Standard Test Methods for Bromate, Bromide, Chlorate, and Chlorite in Drinking Water by Suppressed Ion Chromatography. Available for purchase on the Internet at <http://www.astm.org/Standards/D6581.htm>.

SM 4110D. Determination of Anions by Ion Chromatography, Part D, Ion

Chromatography Determination of Oxyhalides and Bromide. Available for purchase on the Internet at <http://www.standardmethods.org/store/ProductView.cfm?ProductID=31>.

<sup>i</sup>EPA Method 537 “Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry,” Version 1.1, September 2009 is available at <http://www.epa.gov/nerlcwww/ordmeth.htm>.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) *Frequency*. You must collect the samples within the time frame and

according to the frequency specified by contaminant type and water source type for each sampling location, as specified in Table 2, in this paragraph. For the second or subsequent round of sampling, if a sample location is non-operational for more than one month before and one month after the scheduled sampling month (*i.e.*, it is not possible for you to sample within the window specified in Table 2, in this paragraph), you must notify EPA as specified in § 141.35(c)(5) to reschedule your sampling.

TABLE 2—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Time frame	Frequency
Chemical .....	Surface water or ground water under the direct influence of surface water (GWUDI) (includes all sampling locations for which some or all of the water comes from a surface water or GWUDI source at any time during the 12 month monitoring period).	12 months ...	You must monitor for 4 consecutive quarters. Sample events must occur 3 months apart.
	Ground water .....	12 months ...	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.
Microbiological .....	Ground water .....	12 months ...	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.

(C) *Location*. You must collect samples for each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, as specified in Table 1, in paragraph (a)(3) of this section. Samples must be collected at each sample point that is specified in column 5 and footnote c of Table 1, in paragraph (a)(3) of this section. If you are a ground water system with multiple EPTDSs, and you request and receive approval from EPA or the State for sampling at representative EPTDS(s), as specified in § 141.35(c)(3), you must collect your samples from the approved representative sampling location(s). Systems conducting Assessment Monitoring must also sample for metals and chlorate at the disinfection byproduct distribution system maximum residence time (DSMRT) sampling location(s) if they are subject to sampling requirements in § 141.132(b)(1). If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples must be collected at a location that the system determines represents the maximum residence time in the distribution system.

(ii) \* \* \*

\* \* \* \* \*

(G) *Sampling forms*. You must completely fill out each of the sampling forms and bottles sent to you by the UCMR Sampling Coordinator, including data elements listed in § 141.35(e) for each sample, as specified in § 141.35(d)(2). You must sign and date the sampling forms.

\* \* \* \* \*

(5) \* \* \*

\* \* \* \* \*

(ii) \* \* \* Correspondence must be addressed to: UCMR Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive, (MS 140), Cincinnati, OH 45268; or e-mailed to EPA at: [UCMR\\_Sampling\\_Coordinator@epa.gov](mailto:UCMR_Sampling_Coordinator@epa.gov).

(iii) *Minimum Reporting Level*. The MRL is an estimate of the quantitation limit that, with 95% confidence, is achievable by a capable analyst/laboratory at least 75% of the time. Assuming good instrumentation and experienced analysts, with 95% confidence, an MRL is achievable by 75% of laboratories nationwide.

(A) \* \* \*

(1) All laboratories performing analysis under UCMR must demonstrate that they are capable of meeting data quality objectives (DQOs) at or below

the MRL listed in Table 1, column 4, in paragraph (a)(3) of this section.

\* \* \* \* \*

(iv) *Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate*. You must ensure that your laboratory prepares and analyzes the Laboratory Fortified Sample Matrix (LFSM) sample for accuracy and Laboratory Fortified Sample Matrix Duplicate (LFSMD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, in paragraph (a)(3) of this section. LFSM/LFSMD samples must be prepared using a sample collected and analyzed in accordance with UCMR requirements and analyzed at a frequency of 5% (or 1 LFSM/LFSMD set per every 20 samples) or with each sample batch, whichever is more frequent. In addition, the LFSM/LFSMD fortification concentrations must be alternated between a low-level fortification and mid-level fortification approximately 50% of the time. (For example: a set of 40 samples will require preparation and analysis of 2 LFSM/LFSMD paired samples. The first LFSM/LFSMD paired sample set must be fortified at either the low-level or mid-level, and the second LFSM/LFSMD paired sample set must be fortified with the other standard, either the low-level or mid-level, whichever

was not used for the initial LFSM/LFSMD paired sample set.) The low-level LFSM/LFSMD fortification concentration must be within  $\pm 50\%$  of the MRL for each contaminant (e.g., for an MRL of 1  $\mu\text{g/L}$  the acceptable fortification levels must be between 0.5  $\mu\text{g/L}$  and 1.5  $\mu\text{g/L}$ ). The mid-level LFSM/LFSMD fortification concentration must be within  $\pm 20\%$  of the mid-level calibration standard for each contaminant, and should represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no UCMR contaminant recovery acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

\* \* \* \* \*

(vi) *Reporting.* You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system, accessible at (<http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm>), within 60 days from the sample collection date. You then have 30 days from when the laboratory posts the data to review, approve and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 30 days of the laboratories posting to EPA's electronic reporting system, the data will be considered approved and available for State and EPA review.

\* \* \* \* \*

## PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

5. 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.

### Subpart B—Primary Enforcement Responsibility

6. Section 142.16 is amended as follows:

a. In paragraph (j) introductory text by removing “§ 141.40”.

b. In paragraph (j)(1) by revising the first sentence.

#### § 142.16 Special primacy requirements.

\* \* \* \* \*

(j) \* \* \*

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23 and 141.24, the State shall describe the procedures and criteria

which it will use to review waiver applications and issue wavier determinations. \* \* \*

\* \* \* \* \*

[FR Doc. 2011–4641 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 10–108; Report No. 2925]

#### Petition for Reconsideration of Action of Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration.

**SUMMARY:** In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed in this document (Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa)).

**DATES:** Oppositions to the Petition must be filed by March 18, 2011. Replies to an opposition must be filed March 28, 2011.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's document, Report No. 2925, released February 7, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

This document is published pursuant to 47 CFR 1.429(e). See 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

**Subject:** In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa) (MB Docket No. 10–108).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–4687 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090225241–0561–02]

RIN 0648–AX70

#### Fisheries of the Northeastern United States; Monkfish; Amendment 5

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

**ACTION:** Proposed rule; amendment; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 5 to the Monkfish Fishery Management Plan (Monkfish FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Amendment 5 to bring the Monkfish FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is considering disapproving proposed annual catch targets (ACT) that are not consistent with the most recent scientific advice. This proposed rule also proposes three management measures in Amendment 5 to promote efficiency and reduce waste: Automatic days-at-sea (DAS) adjustment for trip limit overages; authorization to land monkfish heads; and enable changes to the Monkfish Research Set-Aside (RSA) Program through framework adjustment, and to bring the biological and management reference points in the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on April 4, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 5 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.