6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0282; **FRL-10012-44-OW]**

State Formula Allocations for Sewer Overflow and Stormwater Reuse Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the proposed allotment formula for the Sewer Overflow and Stormwater Reuse Municipal Grants Program as required by the Clean Water Act. EPA is required to establish a formula to allocate proportional shares of the amount appropriated to state entities to fund actions that will help manage combined sewer overflows, sanitary sewer overflows, and stormwater. EPA was directed to develop a formula based on the relevant infrastructure needs submitted in the latest Clean Watersheds Needs Survey along with additional information considered appropriate by the EPA Administrator. A summary of the formula is included in this document. This document announces that EPA is seeking feedback from the public on the formula.

DATES: Comments on these items must be received on or before **[Insert date 30 days after date of publication in the *Federal Register*]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2020-0282, by the following method:

- Federal eRulemaking Portal: https://www.regulations.gov/. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this notification. Comments received may be posted without change to https://www.regulations.gov/, including

any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the section of this document.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via https://www.regulations.gov or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at https://www.epa.gov/dockets.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Michael Goralczyk, Office of Water (mail code 4204M), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460; telephone number: 202-564-7347; or e-mail: Goralczyk.Michael@epa.gov (preferred).

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2020-0282, at https://www.regulations.gov/. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The Agency will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via https://www.regulations.gov as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only For further information and updates on EPA Docket Center services, please visit us online at https://www.epa.gov/dockets.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

II. Background

The America's Water Infrastructure Act (AWIA) of 2018 aims to improve water quality, expand infrastructure investments, enhance public health, increase jobs, and bolster the economy. Section 4106 of the AWIA amended Section 221 of the Clean Water Act (CWA) to re-authorize the Sewer Overflow and Stormwater Reuse Municipal Grants Program. This amended statute directs EPA to award grants to the states, the District of Columbia, and U.S. territories (collectively referred to as "states") for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of:

1. treatment works to intercept, transport, control, treat, or reuse municipal combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), or stormwater; and
2. any other measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water.

III. Statutory Language for the Allotment Formula

According to the CWA, funds appropriated for this program shall be allocated to the states according to their total proportional needs for municipal CSOs, SSOs, and stormwater as identified in the most recent Clean Watersheds Needs Survey (CWNS) and any other additional information considered appropriate by the EPA Administrator. This is described in Section 221(g)(2) of the CWA:

> *"the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2020 and each fiscal year thereafter for making grants to States under subsection (a)(1) in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal*

combined sewer overflow controls, sanitary sewer overflow controls, and stormwater identified in the most recent detailed estimate and comprehensive study submitted pursuant to section 516 of this title and any other information the Administrator considers appropriate."

The CWNS includes documented infrastructure needs. However, the most recent CWNS in 2012 did not include complete CSO, SSO, and stormwater infrastructure needs for every state and territory. In order to equitably allocate appropriated funds based on existing infrastructure needs, as directed in the amended Section 221 of the CWA, it is appropriate to include additional factors to fully characterize needs for CSOs, SSOs, and stormwater management. EPA consulted with state representatives and EPA regional coordinators experienced in managing EPA grants at the state level on a series of supplemental factors. With the feedback of these partners, EPA selected three additional factors based on the common availability of data across the states and the ability of these factors to serve as surrogates for CSO, SSO, and stormwater infrastructure needs. The three additional proposed factors are annual average precipitation, total population, and urban population. The rationale for these additional factors includes the following:

(1) Annual average precipitation is a proposed factor because higher amounts of precipitation lead to greater CSO, SSO, and stormwater infrastructure needs to manage greater flows.

(2) Total population is a proposed factor because the larger the population of a state, the more infrastructure is generally required to serve them.

(3) Urban population is a proposed factor because there are relatively higher CSO, SSO, and stormwater infrastructure needs in urban environments from increased

impervious surfaces, which generate increased wet weather flows during precipitation events.

When combined with the needs determined in the CWNS, these three proposed factors improve the representation of the CSO, SSO, and stormwater infrastructure needs in each state. This collective approach for assessing CSO, SSO, and stormwater infrastructure needs is the basis for this proposal on how to derive an allocation formula for appropriating funds for this program.

IV. Proposed Allotment Formula

EPA is proposing to use the following methodology to allocate appropriated funds to the states for the Sewer Overflow and Stormwater Reuse Municipal Grant Program. A graphical depiction of the methodology is shown in Figure 1.

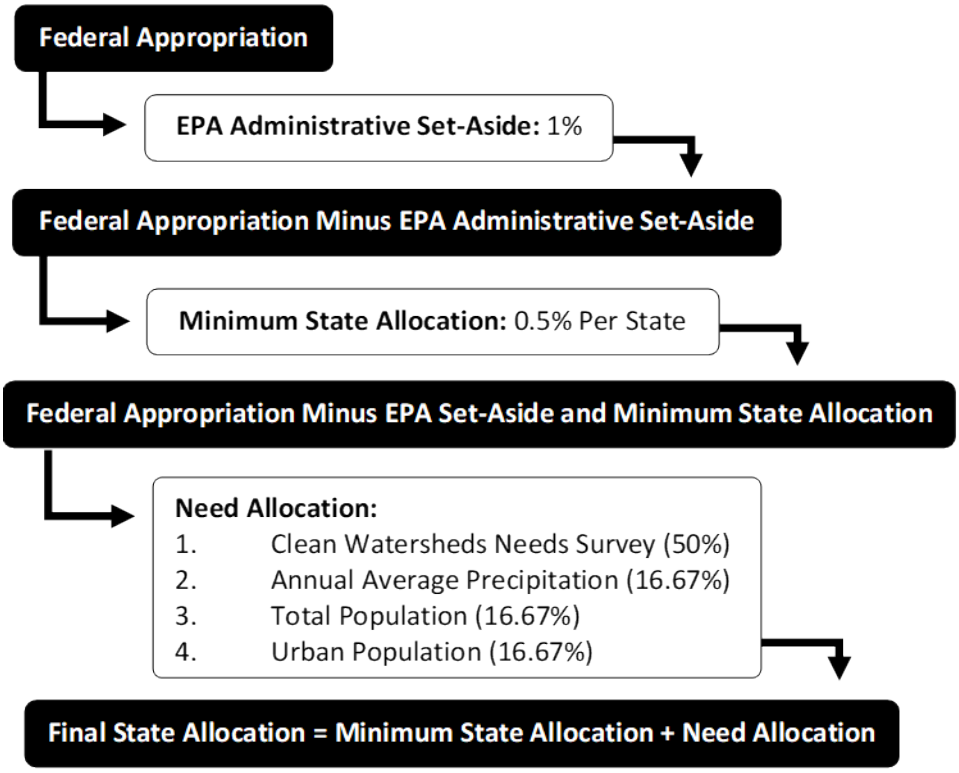

Fig. 1: Proposed Formula Structure for the Sewer Overflow and Stormwater Reuse Municipal Grant Program.

Proposed Methodology:

1. Reserve 1% of the federal appropriation for EPA's administrative expenses per Section 221(h) of the CWA.
2. Allocate 0.5% of the remaining amount (federal appropriation minus EPA administrative set-aside) to each state to represent the "minimum state allocation."
3. Allocate the remaining amount (federal appropriation minus EPA administrative set-aside and minimum state allocation) based on several factors to characterize the "need allocation" of each state. In addition to the most recent CWNS and as allowed by Section 221(g)(2) of the CWA, EPA chose additional objective factors to help characterize the infrastructure needs of each state. EPA assigned weights to each of the factors in the allocation formula. The CWNS needs are weighted at 50% and the additional factors are weighted evenly to collectively account for the remaining 50%. The combination of the following factors forms the need allocation for each state.
    - *Clean Watersheds Needs Survey*: This factor is included as the statute directs EPA to use the needs survey submitted pursuant to Section 516 of the CWA. EPA will use the latest available CWNS information that provides a comprehensive assessment of CSOs, SSOs, and stormwater infrastructure needs. This factor represents 50% of the need allocation as these needs were directly identified in the survey.
    - *Annual Average Precipitation*: This factor is included to account for the volume of annual precipitation a state receives which suggests the amount of stormwater

runoff that needs to be managed. This factor represents 16.67% of the need allocation.

- *Total Population*: This factor is included to represent the proportional need of each state's population size acknowledging that higher populations generally have greater infrastructure needs. This factor represents 16.67% of the need allocation.
- *Urban Population*: This factor is included to represent the needs that urban centers have for CSOs, SSOs, and stormwater management due to high concentrations of impervious surfaces. This factor represents 16.67% of the need allocation.

4. For each state, the minimum state allocation and the need allocation are combined to equal the final state allocation.

V. Data Sources for the Proposed Allotment Formula

- *Clean Watersheds Needs Survey*: The CWNS includes and documents identified capital investment needs for Sanitary Sewer Overflow Correction (Categories I-IV where states have shown a designated SSO need), Combined Sewer Overflow Correction (Category V), and Stormwater Management (Category VI). Information for this factor will be taken from the most recent published CWNS[1] and will be updated accordingly.
- *Annual Average Precipitation*: The proposed precipitation factor for each state is the annual average amount of precipitation collected from the past 10 years of data from the National Oceanographic and Atmospheric Association (NOAA) National Centers for

[1] *Clean Watersheds Need Survey 2012 Report to Congress*, January 2016. https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-2012-report-and-data

Environmental Information, Climate at a Glance: Statewide Time Series. These data will be updated annually to form a 10-year rolling average.[2] Due to data limitations, alternative data sources are proposed to be used for the following states:

- *Hawaii*: The past 10 years of data for annual average precipitation will be collected from the Hilo Area, Honolulu Area, Kahului Area, and Lihue Area from the Honolulu Forecast Office of NOAA.[3] These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for Hawaii.
- *District of Columbia*: The past 10 years of data for annual average precipitation will be collected from the Washington Area from the Baltimore/Washington Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for the District of Columbia.[4]
- *Puerto Rico*: The past 10 years of data for annual average precipitation will be collected from the San Juan Area and Ensenada and Morovis weather stations from the San Juan Forecast Office of NOAA. These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for Puerto Rico.[5]

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[2] NOAA National Centers for Environmental information, Climate at a Glance: Statewide Time Series, accessed April 2020, https://www.ncdc.noaa.gov/cag/statewide/time-series
[3] NOAA, Honolulu Forecast Office, Hilo Area, Honolulu Area, Kahului Area, and Lihue Area Data, https://w2.weather.gov/climate/xmacis.php?wfo=hnl
[4] NOAA, Baltimore/Washington Forecast Office, Washington Area Data, https://w2.weather.gov/climate/xmacis.php?wfo=lwx
[5] NOAA, San Juan Forecast Office, San Juan Area and Ensenada, and Morovis Weather Station Data. https://w2.weather.gov/climate/xmacis.php?wfo=sju

- *American Samoa*: The past 10 years of data for annual average precipitation will be collected from the Pago Pago Area from the Pago Pago Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for American Samoa.[6]
- *Guam*: The past 10 years of data for annual average precipitation will be collected from the Guam Area from the Tiyan Forecast Office of NOAA. This is the most complete data set in the relevant timeframe and is considered the best available representation for Guam.[7]
- *Northern Mariana Islands*: The past 10 years of data for the annual average precipitation will be collected from the Guam Area from the Tiyan Forecast Office of NOAA. There are no available weather stations in the Northern Mariana Islands. However, the Northern Mariana Islands are covered by the Tiyan Forecast Office and Guam is located approximately 130 miles away. It has been determined that data from the Guam Area can be considered an acceptable surrogate for precipitation amounts in the Northern Mariana Islands.[8]
- *U.S. Virgin Islands*: The past 10 years of data for the annual average precipitation will be collected from the Christiansted Airport and St. Thomas weather stations from the San Juan Forecast Office of NOAA. These sources constitute the most complete data set in the relevant timeframe and are considered the best available representation for the U.S. Virgin Islands.[9]

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[6] NOAA, Pago Pago Forecast Office, Pago Pago Area Data, https://w2.weather.gov/climate/xmacis.php?wfo=samoa
[7] NOAA, Tivan Forecast Office, Guam Area Data, https://w2.weather.gov/climate/xmacis.php?wfo=guam
[8] Ibid.
[9] NOAA, San Juan Forecast Office, Christiansted Airport and St. Thomas Weather Station Data, https://w2.weather.gov/climate/xmacis.php?wfo=sju

- *Total Population*: Data for the proposed total population factor will be from the most recent published U.S. Census Bureau decennial census. The initial allocation will be based on the 2010 U.S. Census and will be updated accordingly.
    - The states, the District of Columbia, and Puerto Rico population data will be taken from the U.S. Census Bureau State Population Totals and Components of Change.[10]
    - American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands population data will be taken from the U.S. Census Bureau Island Area Tables.[11]
- *Urban Population*: The proposed urban population factor for each state will be based on the available data from the most recent U.S. Census Bureau decennial census.[12] The initial formula will be based on the 2010 U.S. Census and data will be updated as future decennial censuses are published. Urban population estimates for American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands are not available through the Census. The following alternative data sources will be used and updated as needed.
    - *American Samoa*: Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 87.2%) will be multiplied by the total population.[13]

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[10] U.S. Census Bureau, State Population Totals and Components of Change 2010-2019, https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html
[11] U.S. Census Bureau, 2010 Island Area Tables, https://www.census.gov/data/tables/2010/dec/2010-island-areas.html
[12] U.S. Census Bureau, Census Urban and Rural Classification and Urban Area Criteria, https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html
[13] Central Intelligence Agency, World Factbook, American Samoa, https://www.cia.gov/library/publications/the-world-factbook/geos/aq.html

- *Guam*: Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 94.9%) will be multiplied by the total population.[14]
- *Northern Mariana Islands*: Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 91.8%) will be multiplied by the total population.[15]
- *U.S. Virgin Islands*: Data from the Central Intelligence Agency World Factbook will be used. The percentage of the total population considered to be urban (currently 95.9%) will be multiplied by the total population.[16]

VI. Request for Public Comment

It is important to EPA that its programs respond to the water quality needs of communities around the country. EPA seeks to ensure that the development of its grant programs complies with the applicable statutory language and legislative intent. EPA developed the proposed allotment formula for the Sewer Overflow and Stormwater Reuse Municipal Grants Program to best address CSO, SSO, and stormwater needs for each state as determined by the data from the latest CWNS and additional relevant factors. EPA is requesting comment on the methodology of this proposed allotment formula including the factors and data used in determining CSO, SSO, and stormwater infrastructure needs. Feedback on ways to more holistically assess CSO, SSO, and stormwater needs will be appreciated and evaluated for the initial and future formulas. EPA

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[14] Central Intelligence Agency, World Factbook, Guam, https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html

[15] Central Intelligence Agency, World Factbook, Northern Mariana Islands, https://www.cia.gov/library/publications/the-world-factbook/geos/cq.html

[16] Central Intelligence Agency, World Factbook, U.S. Virgin Islands, https://www.cia.gov/library/publications/the-world-factbook/geos/vq.html

is also seeking input on the collection method, frequency, and source of the information used for the proposed allotment formula. EPA seeks to balance any burden the collection would impose on the public with the benefit the information would provide to the Agency in making allocations to the states under the Sewer Overflow and Stormwater Reuse Municipal Grants Program.

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[FR Doc. 2020-16866 Filed: 8/3/2020 8:45 am; Publication Date: 8/4/2020]