

ethnicity group and underserved community group (if available); and

(iii) A narrative assessment of any innovations in automated underwriting or other policy taken during the applicable year and any future planned work intended to address identified disparities.

(c) *Report submission.* Each Enterprise shall submit its report to FHFA for review on or before February 15 annually.

(d) *FHFA review.* FHFA shall review each report and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(e) *Report publication.* Each Enterprise shall publish its report on its website on April 15 annually and maintain it thereafter. Each Enterprise shall ensure that reports are accessible to persons with disabilities.

(f) *Additional requirements and guidance.* FHFA may require additional information to be included in reports through other FHFA authorities, such as 12 U.S.C. 4514. From time to time, FHFA may issue public guidance on reports.

#### § 1293.24 Public engagement.

(a) *FHFA public engagement.* On or before June 15 annually, FHFA will conduct public engagement to allow the public to provide input for the Enterprises to consider in developing and implementing their plans and for FHFA to consider in its oversight.

(b) *Enterprise consultation.* The Enterprises shall consult with stakeholders, including members of underserved communities and housing market participants, in the development and implementation of their plans and updates.

#### § 1293.25 Program requirements.

(a) *Requirements for underserved communities.* An Enterprise shall ensure that a plan relies on adequate information in identifying the underserved community or communities addressed by that plan and shall document that information as part of the plan. In selecting one or more underserved communities to be the focus of a plan, an Enterprise shall consider, among other factors:

(1) Input from public engagement;

(2) Whether the underserved community has previously been the focus of a plan;

(3) The extent of the needs identified for the underserved community, including such needs that may remain despite prior efforts under a plan; and

(4) Whether the underserved community is covered by a different initiative or program of the Enterprise.

(b) *Requirements for objectives.* Objectives identified in a plan shall be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals.

(c) *Requirements for meaningful actions—(1) Relation to objectives and goals.* Meaningful actions shall be logically tied to one or more measurable goals and one or more objectives and support sustainable housing opportunities for an identified underserved community.

(2) *Other Enterprise goals and incremental action.* Meaningful actions may also serve other Enterprise objectives and goals; however, a plan shall reflect significant additional action above and beyond actions that are also serving other Enterprise objectives and goals and shall reflect more than *de minimis* action.

(3) *Significant dedication of resources.* Meaningful actions shall reflect a commitment commensurate with an Enterprise's prominence in the housing market, its available resources, its dedication of resources to other important efforts, the needs of underserved communities, market conditions, and safety and soundness.

(4) *Compliance with law.* Actions that are not compliant with the Safety and Soundness Act, the authorizing statutes, or other applicable law do not qualify as meaningful actions.

(5) *Required remedial actions.* Actions that are required to remediate supervisory findings or required as a result of enforcement actions do not qualify as meaningful actions.

(d) *Requirements for measurable goals.* Measurable goals shall be:

(1) Logically tied to one or more meaningful actions identified in a plan;

(2) Specific;

(3) Time-bound;

(4) Focused on outcomes; and

(5) Facilitative of measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

#### § 1293.26 Enterprise board equitable housing and mission responsibilities.

An Enterprise's board of directors shall appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals,

Duty to Serve plans and targets, and other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities.

#### §§ 1293.27–1293.30 [Reserved]

#### Subpart D—Data Collection

#### § 1293.31 Required Enterprise data collection and reporting.

Each Enterprise shall collect, maintain, and provide to FHFA the following data relating to single-family mortgages:

(a) The language preference of applicants and borrowers; and

(b) Whether applicants and borrowers have completed homeownership education or housing counseling and information about the homeownership education or housing counseling.

**Sandra L. Thompson,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2023–08602 Filed 4–25–23; 8:45 am]

BILLING CODE 8070–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R07–OAR–2023–0201; FRL–10839–01–R7]

#### Air Plan Partial Approval and Partial Disapproval; Missouri; Revision to Sulfur Dioxide Control Requirements for Lake Road Generating Facility

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing partial approval and partial disapproval of revisions to the Missouri State Implementation Plan (SIP) submitted by the State of Missouri on February 17, 2022. In its submission, the Missouri Department of Natural Resources (MoDNR) requested that revisions to a 2016 Administrative Order on Consent (AOC) for controlling sulfur dioxide (SO<sub>2</sub>) emissions at the Lake Road power plant (hereinafter referred to as “2016 AOC”) be approved in the SIP. The revised AOC establishes more stringent fuel oil sulfur content limits, removes SO<sub>2</sub> emission limits that are no longer needed due to the strengthened fuel oil sulfur requirements, and streamlines reporting requirements. The changes proposed for approval meet the requirements of the Clean Air Act (CAA). The EPA is proposing disapproval of a new provision in the AOC that would potentially allow Lake

Road to exceed the fuel oil sulfur content limits on a temporary basis.

**DATES:** Comments must be received on or before May 26, 2023.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2023-0201 to [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: [donohue.allie@epa.gov](mailto:donohue.allie@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” refer to the EPA.

## Table of Contents

- I. Written Comments
- II. What is being addressed in this document?
  - A. 1997 Violation of the 1971 SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS)
  - B. Designation of Buchanan County for the 2010 SO<sub>2</sub> NAAQS
  - C. 2016 AOC and Amendment #1
  - D. Amendment #2
- III. Have the requirements for approval of a SIP revision been met?
- IV. What action is the EPA taking?
- V. Incorporation by Reference
- VI. Environmental Justice Considerations
- VII. Statutory and Executive Order Reviews

## I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2023-0201, at [www.regulations.gov](http://www.regulations.gov). Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

## II. What is being addressed in this document?

The EPA is proposing to partially approve and partially disapprove a SIP revision submitted by the State of Missouri on February 17, 2022. In its submission, MoDNR requested that AOC No. APCP-2015-118 between MoDNR and Evergy (formerly Kansas City Power & Light) submitted in 2016, and amended in 2018 (Amendment #1), be replaced with Amendment #2 to the AOC in the SIP. The EPA is proposing to approve these SIP revisions, with the exception of Amendment #2 paragraph 12.A. The revisions proposed for approval meet the requirements of the Clean Air Act. The EPA is proposing disapproval of Amendment #2 paragraph 12.A. because this provision potentially allows Lake Road to burn fuel oil with a sulfur content greater than the sulfur content limit of 15 parts per million (ppm) on a temporary basis. Paragraph 12.A. is severable from Amendment #2 because it is a new paragraph that was not previously included in the 2016 AOC and Amendment #1 and is not approved in the SIP. The technical support document (TSD) included in this docket discusses our review and analysis of Amendment #2 and provides support for our proposed action.

### A. 1997 Violation of the 1971 SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS)

In 1997, a monitor in St. Joseph (Buchanan County), Missouri measured a violation of the 1971 24-hour SO<sub>2</sub> NAAQS. At the time of the 1997 violation, Buchanan County was designated as “Better than National Standards” (equivalent to “attainment”) for the 1971 24-hour SO<sub>2</sub> NAAQS. To address the violation, the State of Missouri and the St. Joseph Light and Power (SJLP) Company entered into a Consent Decree that required SO<sub>2</sub> control measures at the SJLP Lake Road power generating facility, hereinafter referred to as the “2000 Consent Decree.”<sup>1</sup> The 2000 Consent Decree was

<sup>1</sup>The EPA is referring to the Consent Decree as the “2000 Consent Decree” to be consistent with the State’s November 2, 2018, SIP revision submittal. The 2000 Consent Decree was entered by the Circuit

submitted by the State of Missouri in order to maintain attainment of the 1971 24-hour SO<sub>2</sub> NAAQS and was not submitted because of a SIP call. On November 15, 2001, the EPA approved the 2000 Consent Decree as a revision to Missouri’s SIP (66 FR 57389, November 15, 2001).

### B. Designation of Buchanan County for the 2010 SO<sub>2</sub> NAAQS

On June 22, 2010, the EPA established a new 1-hour SO<sub>2</sub> standard (“the 2010 SO<sub>2</sub> NAAQS”) and revoked the existing 24-hour and annual primary SO<sub>2</sub> standards (75 FR 35520, June 22, 2010, at 75 FR 35592). The EPA directed States to continue implementing any attainment and maintenance requirements of the 1971 24-hour SO<sub>2</sub> NAAQS until the requirements were subsumed by any new planning and control requirements associated with the 2010 SO<sub>2</sub> NAAQS (75 FR 35520, June 22, 2010, at 75 FR 35580). Accordingly, areas designated as nonattainment for the 2010 SO<sub>2</sub> NAAQS or areas that do not meet the requirements of a SIP call for the 1971 SO<sub>2</sub> NAAQS remain subject to the 1971 SO<sub>2</sub> NAAQS until the area submits, and EPA approves, an attainment plan for the 2010 SO<sub>2</sub> NAAQS. *See* 40 CFR 50.4(e). However, the EPA also stated that any existing SIP provisions under Clean Air Act (CAA) sections 110, 191 and 192 for the 1971 24-hour SO<sub>2</sub> NAAQS remain in effect (75 FR 35520, June 22, 2010, at 75 FR 35581).

On January 9, 2018, Buchanan County was designated as Attainment/Unclassifiable for the 2010 SO<sub>2</sub> NAAQS (83 FR 1098, January 9, 2018) and therefore the State of Missouri was not required to submit a SIP providing for attainment of the SO<sub>2</sub> NAAQS under sections 191 and 192 of the CAA. However, because the 2000 Consent Decree was approved pursuant to section 110 of the CAA, the provisions of the Consent Decree remain in effect notwithstanding EPA’s revocation of the 1971 24-hour SO<sub>2</sub> NAAQS and designation of Buchanan County as Attainment/Unclassifiable for the 2010 SO<sub>2</sub> NAAQS.

### C. 2016 AOC and Amendment #1

Kansas City Power & Light (KCPL) acquired SJLP’s Lake Road facility in 2008. On March 30, 2015, KCPL notified the MoDNR of its intent to cease the combustion of coal in Boiler No. 6 at the facility by April 16, 2016, to comply with the Mercury Air Toxics Standards rule, 40 CFR part 63, subpart UUUUU.

Court of Buchanan County, Missouri, on May 25, 2001.

KCPL also requested to use natural gas instead of coal as the primary fuel and to designate No. 2 fuel oil the secondary fuel of Boiler No. 6.

Because the 2000 Consent Decree stipulated the type of fuel to be used in each combustion unit, including Boiler No. 6, MoDNR and KCPL entered into an AOC on March 30, 2016, that included the substantive requirements from the 2000 Consent Decree and revised the fuel requirements for Boiler No. 6.

On June 13, 2018, the MoDNR and KCPL issued Amendment #1 to the 2016 AOC to require low sulfur coal as the primary fuel in Boiler No. 5, rather than a blend of high and medium sulfur coal as required by the 2000 Consent Decree and the 2016 AOC. The EPA approved the 2016 AOC and Amendment #1 into Missouri's SIP at 40 CFR 52.1320(d)(32) and (33) in August 2019.<sup>2</sup>

#### D. Amendment #2

Evergy became the current owner and operator of Lake Road after KCPL and Westar Energy merged to become Evergy in 2018. In 2021 MoDNR and Evergy revised the AOC for Lake Road by issuing Amendment #2 that consolidates all requirements into a single document, lowers the fuel oil sulfur content limit from 500 ppm to 15 ppm, eliminates SO<sub>2</sub> emission rate limits that are no longer necessary due to the more stringent fuel oil sulfur content limits, makes the retirement of Boiler No. 3 permanent and enforceable, and streamlines reporting and record keeping requirements. Amendment #2 does not revise the SO<sub>2</sub> emission rate limit of 1.349 pounds per million British thermal units (lb/MMBtu) for Boiler No. 5. Amendment #2 also adds language in paragraph 12.A. that allows MoDNR to grant temporary exemptions to the fuel oil requirements due to unforeseen circumstances.

In its submission, MoDNR included an analysis of SO<sub>2</sub> emissions from the Lake Road facility between 2002 through 2020. MoDNR's analysis demonstrated that Lake Road SO<sub>2</sub> emissions have decreased by 94.84 percent from 2002 through 2020, attributable to the 2000 Consent Decree and the fuel requirements provided in the 2016 AOC, Amendment #1, and Amendment #2. MoDNR states that Amendment #2 will ensure the SO<sub>2</sub> emissions decreases at Lake Road over the past 20 years remain permanent and further assist with maintenance and attainment of both the 1971 and 2010 SO<sub>2</sub> NAAQS.

Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Based on our analysis of Amendment #2, the EPA proposes to conclude that the SIP revision, with the exception of paragraph 12.A., is in accordance with the requirements of section 110(l) of the CAA. The EPA proposes to disapprove Amendment #2 paragraph 12.A. because it potentially allows the facility to burn fuel oil with sulfur content that exceeds the 15 ppm sulfur content limit on a temporary basis. The EPA's analysis of Amendment #2 can be found in the TSD included in this docket.

#### III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from November 1, 2021, to December 9, 2021, and received no comments. In addition, as explained above and in more detail in the TSD which is part of this docket, the revisions proposed for approval meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

As explained in section II and further in the TSD, EPA is proposing to disapprove Amendment #2 paragraph 12.A. regarding temporary exemptions from fuel requirements.

#### IV. What action is the EPA taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. We are publishing the proposed rule in the **Federal Register** to partially approve and partially disapprove the SIP submission. Any parties interested in commenting must do so by the date listed in the **DATES** section of the document. For further information about commenting on this proposed rule, see the **ADDRESSES** section of the document. If the EPA receives adverse comment, we will address all public comments in the subsequent final rule based on the proposed rule.

#### V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR

51.5, the EPA is proposing to add the incorporation by reference of the Missouri Amendment #2 to Administrative Order on Consent state effective October 18, 2021, between MoDNR and Evergy related to controlling sulfur dioxide (SO<sub>2</sub>) emissions at the Lake Road power plant, as discussed in Section II of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also, in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Missouri Administrative Order on Consent and Amendment #1 (state effective September 27, 2018) from the Missouri State Implementation Plan, which was incorporated by reference in accordance with the requirements of 1 CFR part 51. As described in the proposed amendments to 40 CFR part 52 set forth below, EPA is also proposing to remove an outdated reference to the St. Joseph Light and Power SO<sub>2</sub> consent agreement (state effective May 21, 2001).

#### VI. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within a 2-mile radius of the Lake Road facility Census 2010 Summary Report available on Environmental Justice Screen (EJSCREEN). The EPA then compared the data to the state average for each of the demographic groups using 2010 state census data from the United States Census Bureau. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the 2-mile radius of the Lake Road facility, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (16 percent versus 21 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the state average (3 percent versus 12 percent) and the percent of the population that is American Indian/Alaska Native is similar to the state average (1 percent versus 1 percent).

<sup>2</sup> See 84 FR 44233; August 23, 2019.

The percent of the population that is two or more races is similar to the state average (3 percent versus 3 percent). The percent of people with low income within the 2-mile radius of the Lake Road facility is higher than the state average (41 percent versus 31 percent).

**VII. Statutory and Executive Order Reviews**

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

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

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an

evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

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

Dated: April 18, 2023.  
**Meghan A. McCollister,**  
*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart AA—Missouri**

- 2. In § 52.1320, in the table in paragraph (d):
  - a. Remove and reserve entries “(17)”, “(32)”, and “(33)”; and
  - b. Add entry “(38)” in numerical order.

The addition reads as follows:

**§ 52.1320 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

**EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS**

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
*(38) Kansas City Power and Light—Lake Road Facility.	* Amendment #2 to Administrative Order on Consent No. APCP–2015–118.	* 10/18/2021	* [Date of publication of the final rule in the <b>Federal Register</b> ], [Federal Register citation of the final rule].	* EPA is approving Amendment #2 to AOC No. APCP–2015–118, except for paragraph 12.A.

\* \* \* \* \*

[FR Doc. 2023-08596 Filed 4-25-23; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Parts 435, 457, and 600****Office of the Secretary****45 CFR Parts 152 and 155**

[CMS-9894-P]

RIN 0938-AV23

**Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children's Health Insurance Programs**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would make several clarifications and update the definitions currently used to determine whether a consumer is eligible to enroll in a Qualified Health Plan (QHP) through an Exchange; a Basic Health Program (BHP), in States that elect to operate a BHP; and for some State Medicaid and Children's Health Insurance Programs (CHIPs).

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by June 23, 2023.

**ADDRESSES:** In commenting, please refer to file code CMS-9894-P.

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

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

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9894-P, P.O. Box 8016, Baltimore, MD 21244-8016.

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

3. *By express or overnight mail.* You may send written comments to the

following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9894-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

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

**FOR FURTHER INFORMATION CONTACT:**

Morgan Gruenewald, (301) 492-5141, or Anna Lorschach, (301) 492-4424, for matters related to Exchanges.

Sarah Lichtman Spector, (410) 786-3031, or Annie Hollis, (410) 786-7095, for matters related to Medicaid, CHIP, and BHP.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background**

The Patient Protection and Affordable Care Act (ACA)<sup>1</sup> generally<sup>2</sup> requires

<sup>1</sup> The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rulemaking, the two statutes are referred to collectively as the "Patient Protection and Affordable Care Act", "Affordable Care Act", or "ACA".

<sup>2</sup> States may pursue a waiver under section 1332 of the Affordable Care Act (ACA) that could waive the "lawfully present" framework in section 1312(f)(3) of the ACA. See 42 U.S.C. 18052(a)(2)(B). There is currently one State (Washington) with an approved section 1332 waiver that includes a waiver of the "lawfully present" framework to the extent necessary to permit all State residents, regardless of immigration status, to enroll in a QHP and Qualified Dental Plan (QDP) through the State's Exchange, as well as to apply for State subsidies to defray the costs of enrolling in such coverage. Consumers who are eligible for Exchange coverage under the waiver remain ineligible for PTC. For more information on this State's section 1332

that in order to enroll in a Qualified Health Plan (QHP) through an Exchange, an individual must be either a citizen or national of the United States or be "lawfully present" in the United States.<sup>3</sup> The ACA also generally requires that individuals be "lawfully present" in order to be eligible for insurance affordability programs such as premium tax credits (PTC),<sup>4</sup> advance payments of the premium tax credit (APTC),<sup>5</sup> and cost-sharing reductions (CSRs);<sup>6</sup> additionally, enrollees in a Basic Health Program (BHP) are required to meet the same citizenship and immigration requirements as QHP enrollees.<sup>7</sup> Further, the ACA required that individuals be "lawfully present" in order to qualify for the Pre-Existing Condition Insurance Plan Program (PCIP), which expired in 2014.<sup>8</sup> The ACA does not define "lawfully present" beyond specifying that an individual is only considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment.<sup>9</sup> The ACA also requires the Centers for Medicare & Medicaid Services (CMS) to verify that Exchange applicants are lawfully present in the United States.<sup>10</sup>

As such, consistent with its statutory authority under the ACA and in order to facilitate the operation of its programs, CMS issued regulations in 2010 to define "lawfully present" for the purposes of determining eligibility for PCIP (75 FR 45013); in 2012 for purposes of determining eligibility to enroll in a QHP through an Exchange by cross-referencing the existing PCIP definition (77 FR 18309); and in 2014 to cross-reference the existing definition for purposes of determining eligibility to enroll in a BHP (79 FR 14111). In this proposed rule, we propose to amend these three regulations in order to update the definition of "lawfully present" at 45 CFR 152.2, which is used to determine whether a consumer is eligible to enroll in a QHP through an Exchange and for a BHP. Exchange regulations apply this definition to the eligibility standards for APTC and CSRs by requiring an applicant to be eligible to enroll in a QHP to be eligible for

waiver, see [https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section\\_1332\\_state\\_innovation\\_waivers-](https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-)

<sup>3</sup> 42 U.S.C. 18032(f)(3).

<sup>4</sup> 26 U.S.C. 36B(e)(2).

<sup>5</sup> 42 U.S.C. 18082(d).

<sup>6</sup> 42 U.S.C. 18071(e).

<sup>7</sup> 42 U.S.C. 18051(e).

<sup>8</sup> 42 U.S.C. 18001(d)(1).

<sup>9</sup> 42 U.S.C. 18032(f)(3), 42 U.S.C. 18071(e)(2).

<sup>10</sup> 42 U.S.C. 18081(c)(2)(B).