

Paragraph heading “(c)(2)(iv) SAC adjustments.” should read “(c)(2)(iv) SAC adjustments.”

Paragraph heading “(c)(3) Billing SACs for organs generally.” Should read “(c)(3) *Billing SACs for organs generally.*”

[FR Doc. C2–2022–23918 Filed 8–31–23; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–450; FCC 23–62; FR ID 167068]

Affordable Connectivity Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the Affordable Connectivity Program (ACP).

DATES: Effective October 2, 2023.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Travis Hahn, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at Travis.Hahn@fcc.gov or 202–418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Sixth Report and Order (Order) in WC Docket No. 21–450; adopted on August 3, 2023 and released on August 4, 2023. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-acts-provide-subsidy-consumers-certain-high-cost-areas-0>.

I. Introduction

1. In this final rule, as required by the Infrastructure Investment and Jobs Act (Infrastructure Act), the Commission adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the ACP. The Infrastructure Act recognizes that in certain high-cost areas of the country, offering broadband service to ACP eligible households at the standard up-to-\$30 monthly benefit level could lead providers to experience particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network. To address this, the

Infrastructure Act allows for providers to provide an up-to-\$75 monthly benefit to ACP eligible households in high-cost areas upon a showing of such particularized economic hardship in a given high-cost area. The steps the Commission takes to implement this provision will help narrow the digital divide by ensuring that more low-income households throughout the country, including households in rural and insular areas, have access to discounted broadband services. In particular, the high-cost area benefit will maximize provider participation in the ACP, by encouraging additional providers to participate in the ACP in high-cost areas and incentivizing existing ACP providers experiencing an economic hardship in high-cost areas to continue participating in the program. The high-cost area benefit also complements and supports other Federal initiatives, including those in the Infrastructure Act, to spur deployment and adoption in rural areas by strengthening the business case for providers to deploy broadband in rural and insular areas.

II. Discussion

2. The Commission now establishes the requirements to implement the ACP high-cost area benefit as required by the Infrastructure Act. In this section, the Commission discusses determining high-cost areas that will be eligible for the high-cost area benefit, eligibility to receive the high-cost area benefit, requirements to make a showing of economic hardship, as well as other administrative aspects necessary to implement the high-cost area benefit.

3. Pursuant to the Infrastructure Act, for purposes of the ACP high-cost area benefit, the Commission must use the definition of high-cost areas established by the National Telecommunications and Information Administration (NTIA) for its Broadband Equity, Access, and Deployment (BEAD) grant program. The ACP statutory provisions specifically reference NTIA’s determination of high-cost areas under the BEAD program in defining a high-cost area for the ACP high-cost area benefit. As such, the high-cost areas used by the Commission for the ACP high-cost area benefit will be the same as the high-cost areas used for the BEAD program as determined by NTIA.

4. The statute establishing the BEAD program requires NTIA, “on or after the date on which the [Commission’s] broadband DATA maps are made public,” to allocate funding to eligible States for the high-cost areas within the State. By definition, a “‘high-cost area’ [as determined by NTIA in consultation

with the Commission] means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States.” For purposes of defining “high-cost area”, the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.

5. On June 26, 2023, NTIA announced the State allocations for the BEAD grant program. As part of BEAD, NTIA has made State allocations in part based on the determined “high-cost areas” within each State. Pursuant to the Infrastructure Act, the Commission therefore makes the ACP high-cost area benefit available in those high-cost areas identified by NTIA consistent with the Infrastructure Act’s definition of “high-cost area,” and subject to the provider’s demonstration of particularized economic hardship, as described in further detail in the following.

6. The Commission next addresses the requirements for participating providers seeking to offer a high-cost area benefit to eligible households located in designated high-cost areas served by the provider. Specifically, the Commission defines “particularized economic hardship,” to clarify that the benefit is limited to facilities-based providers, and address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship in a given high-cost area. The Commission also prescribes the process for submitting, reviewing, and taking action on such showings, and for requests for review of adverse decisions. Lastly, the Commission clarifies the interplay between the qualifying Tribal land and high-cost area benefits by interpreting the Infrastructure Act to mean that participating providers can either offer one or the other, but not both simultaneously, to eligible households located on both a Tribal land and in a designated high-cost area.

7. *Particularized Economic Hardship.* First, consistent with the Infrastructure Act, the Commission will require a participating provider to demonstrate economic hardship to be eligible for the high-cost area benefit. The Infrastructure Act directs the Commission to establish a mechanism whereby a “participating provider” in a high-cost area “may provide” an enhanced monthly benefit up to \$75 “upon a showing that the applicability of the lower [\$30] limit . . . would cause particularized economic hardship to the provider such that the provider may not be able to maintain the

operation of part or all of its broadband network.” The Commission implements this directive by requiring a participating provider seeking application of the high-cost area benefit to demonstrate the economic hardship to which it would be subject if only the standard \$30 monthly discount were applied to its provision of ACP service in a high-cost area(s). This approach to implementing the statute is consistent with the positions taken by several commenters in the record.

8. Next, the Commission defines particularized economic hardship by focusing on the provider’s operating costs and revenues in the high-cost area(s) where the provider seeks approval to offer the high-cost area benefit. The Commission finds that a provider that demonstrates it is unable to cover the costs of maintaining the operation of all or part of its broadband network in a high-cost area where it seeks to offer the high-cost area benefit as described in the following meets the “particularized economic hardship” standard. Hereafter, the Commission describes such a provider as operating at a loss. To establish “particularized economic hardship,” the Commission will require providers to submit documentation, such as an income statement, showing that they are unable to cover the costs of maintaining the operation of all or part of their broadband network for each high-cost area for which the high-cost area benefit is being sought. Aside from required documentation, the Commission will also require each provider to certify to and explain how the up to \$75 a month high-cost area benefit would materially improve the provider’s ability to offer service through the ACP and maintain and operate its broadband network and how the economic hardship limits its ability to “maintain the operation of all or part of its broadband network” in each high-cost area for which it seeks to offer the high-cost area benefit.

9. The Commission finds this standard to be consistent with the language and intent of the statute, as well as the record. Congress did not provide details on the nature of the showing of economic hardship providers must make to obtain the high-cost area benefit. The statute provides that the provider must show that the applicability of the basic \$30 benefit would cause “particularized economic hardship . . . such that the provider may not be able to maintain the operation of part or all of its broadband network.” The Commission sought comment on the mechanism by which providers can show particularized economic hardship. Because a provider

operating at a loss in the high-cost area for which it seeks the high-cost area benefit may be unable to maintain broadband network operations in that area, the Commission finds this standard to be consistent with the language and intent of the statute. For purposes of this standard, the provider will need to factor in the standard monthly \$30 ACP benefit as well as subsidies and other financial benefits the provider receives, including Universal Service Fund (USF) high-cost support, as they are directly relevant when evaluating the overall costs and revenues of the provider. No commenter opposed the Commission’s proposal in the *Notice of Proposed Rulemaking (NPRM)*, 87 FR 8385, February 14, 2022, of including subsidies and other financial benefits in the economic hardship analysis.

10. The Commission rejects ACA Connects’ suggestion to interpret “particularized economic hardship” to mean those instances where the provider’s administrative costs of participating in the ACP exceeds the benefits received, and where the provider shows that in the context of its overall financial position, that net loss would affect its ability to maintain part of its broadband network. A provider could be profitable overall and willing to maintain network operations even if the costs of voluntarily participating in the ACP exceeded the benefits received. Conversely, a provider could be unprofitable overall, but the administrative costs of ACP participation could be less than the benefits received. Accordingly, the Commission finds ACA Connects’ suggested approach would not provide a meaningful indication of whether a provider can “maintain the operation of part or all of its broadband network” when just the standard \$30 benefit is available to eligible households in the designated high-cost areas it serves.

11. The Commission also declines to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service territory, as suggested by ACA Connects. The Commission did seek comment on this approach in the *NPRM* in response to earlier comments by NTCA—The Rural Broadband Association (NTCA) and Conexon. However, the Commission received no comments that would help them determine how to apply a standard under a threshold-based approach to determine whether a provider may not be able to maintain the operation of part or all of its broadband network without the high-cost area benefit. Furthermore,

the Commission believes that a subscriber threshold-based approach would be at odds with Congress’s directive to require a showing of “particularized” economic hardship. The Commission interprets the meaning of “particularized” in the context of the high-cost area benefit to mean that a provider must show that it is individually experiencing economic hardship. A subscriber-based threshold approach is inconsistent with this interpretation because it would necessarily assume that all providers that met the threshold were experiencing sufficiently similar circumstances to merit access to the high-cost area benefit, without regard to whether each provider’s specific circumstances demonstrated that the provider would experience economic hardship absent the application of the high-cost area benefit. Accordingly, the Commission finds that the statute requires them to define particularized economic hardship based on an individualized showing so that each provider can account for its own particularized cost and revenue structure.

12. To the extent that NTCA suggests an approach that allows providers to qualify for the high-cost area benefit based solely on the receipt of USF high-cost support, the Commission declines to adopt such an approach. Recipients of USF high-cost support receive subsidies to provide reasonably comparable services at rates reasonably comparable to those in urban areas. Indeed, those subsidies are a way for providers to cover certain costs of operating and maintaining their networks, which may, if anything, make it less likely that a provider would be suffering a particularized economic hardship in the geographic area where it receives high-cost support. Therefore, receipt of USF high-cost support, in and of itself, does not show the provider is experiencing a “particularized economic hardship” in general, or as defined herein. To bolster its argument, NTCA attempts to tie the ACP high-cost area benefit to the role USF high-cost support plays in enabling “‘affordable’ broadband services for all rural consumers, regardless of income level.” NTCA contends that the “‘enhanced’ ACP subsidy can make up for [the] ‘gap’ between ‘reasonable comparability’ and ‘affordability’ that the High-Cost USF program does not close on its own.” However, this argument does not address the specific language of the statute, which focuses on a provider’s inability to “maintain the operation of part or all of [a provider’s] broadband

network” rather than on whether the service at issue is affordable to subscribers with the standard ACP benefit. Accordingly, the Commission rejects this proposal.

13. The Commission also disagrees with the Wireless Internet Service Providers Association’s (WISPA) position that small Internet Service Providers “lack the administrative resources to establish their specific costs to provide broadband service in an area,” and that it is unnecessary to examine an individual operator’s cost of doing business.” Instead, WISPA asserts that all areas eligible for the Connect America Fund or Rural Digital Opportunity Fund, as well as any census block identified as a high-poverty area on the map created by the Department of Agriculture and NTIA, should be designated as high-cost areas eligible for the \$75 subsidy. WISPA’s suggested approach would seem to read the “particularized economic hardship” showing out of the statute entirely. As discussed in this document, the statute’s particularized economic hardship requirement is separate from and in addition to the requirement that this enhanced support only be made available in “high-cost areas,” and the determination of those high-cost areas will be made by NTIA. Moreover, the Commission expects that any business, regardless of size, will have knowledge of the costs and revenues associated with its business operations, at least to the extent necessary to determine if the provider is experiencing particularized economic hardship in a high-cost area.

14. *Facilities-Based Provider Limitation.* Pursuant to the Infrastructure Act’s direction that a provider show that particularized economic hardship may impair its ability “to maintain the operation of part or all of its broadband network,” the Commission clarifies that only facilities-based providers will be eligible for the high-cost benefit. The Commission finds that the Act directs them to prohibit non-facilities-based providers from receiving a high-cost area benefit as such providers would not experience an inability to maintain their network absent the application of the high-cost benefit. For purposes of this final rule, the Commission defines facilities-based provider consistent with its rules regarding the Form 477 collection, to include provider owned physical facilities, and wireless spectrum. The Commission directs the Universal Service Administrative Company (USAC) to validate and verify a provider’s facilities-based status as part of the process of approving providers to offer the high-cost area

benefit. Providers will additionally be required to certify to their status as a facilities-based provider as part of their application to offer the high-cost area benefit.

15. *Showing to Support Request for Approval to Offer the High-Cost Area Benefit.* The Commission’s objective is to administer the high-cost area benefit consistent with the statutory language requiring, among other things, a showing of particularized economic hardship by the ACP provider balanced with “a minimal burden on qualifying households and providers.” In implementing this approach, the Commission seeks to safeguard program integrity while also minimizing the administrative burden for a provider seeking to demonstrate that it is unable to cover the costs of operating and maintaining all or part of its network operations in the high-cost area(s) absent the high-cost area benefit.

16. The Commission outlines the type of documentation that it expects would be sufficient for a provider to demonstrate that it is experiencing “particularized economic hardship” for purposes of the high-cost area benefit. Participating providers must demonstrate particularized economic hardship by submitting an affidavit supported by an income statement demonstrating the provider is currently operating at a loss in each high-cost area(s) for which the provider is seeking approval to offer the high-cost area benefit. To facilitate the administration of the benefit and minimize provider burdens, providers may submit a single application with supporting documentation for all of the high-cost areas where they are seeking approval to offer the high-cost area benefit.

17. To support its affidavit, the provider must include a copy of its most recent income statement(s), prepared in the ordinary course of business, consolidated and at the component level, as applicable, covering the previous fiscal year of operations or the last six quarters of operations, and separately identify, in the method determined by the Wireline Competition Bureau (the Bureau), the high-cost areas, as designated by NTIA, that the provider serves and in which it is seeking to provide the high-cost area benefit. An income statement, otherwise known as a profit and loss statement, showing the provider’s revenue, expenses, gains, and losses during the required time period, strikes the appropriate balance between ensuring the high-cost area benefit is appropriately limited and minimizing the administrative burden on providers. An income statement is a routine financial statement prepared by

companies, and thus most providers already prepare such statements in the normal course of business. The income statement must, at a minimum, include detailed information on the provider’s net income, operating revenue and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses. To protect program integrity providers that are publicly traded or that prepare audited income statements in the ordinary course of business shall be required to submit the audited income statement, rather than an unaudited income statement, to support their affidavit. The Commission delegates authority to the Bureau, in consultation with the Office of Economics and Analytics (OEA) as appropriate, and consistent with the standard established in this Order, to further specify or modify the types of documentation that providers must submit to show “particularized economic hardship”.

18. To protect program integrity, and consistent with other submissions made to justify the receipt of a Federal benefit, such an affidavit shall be made under penalty of perjury from a company officer with knowledge of the provider company’s costs and revenues. The affidavit must describe in sufficient detail the methodology used for determining that the annualized expenses of maintaining the operation of the provider’s broadband network in a particular high-cost area exceeds the provider’s expected total revenues in that high-cost area. This should include an allocation of provider broadband internet access service revenues and costs for the relevant high-cost area(s) if the income statement is too broad to demonstrate that the provider is operating at a loss relative to providing broadband internet access service in the high-cost area(s) in question. The affidavit should also factor in payments from customers for broadband internet access service as well as the up-to-\$30 ACP benefit and additional subsidies and other financial benefits received, including USF high-cost support related to providing broadband internet access service. The affidavit must also include an explanation as to how the economic hardship resulting from the operating loss may limit the provider’s ability to maintain the operation of all or part of its broadband network in the high-cost area(s) for which it seeks to offer the high-cost area benefit. Additionally, in the affidavit, each provider must explain when and why the provider originally began operating in the high-

cost area(s). In support of the affidavit a provider is also required to submit any Federal income tax returns relating to the submitted income statements. These tax returns could be used to identify anomalies or other potential issues in the financial data being provided as part of the application for the high-cost area benefit.

19. To demonstrate that a provider is operating at a loss, the income statement, and cost-allocation as applicable, must show that the provider's broadband revenue has been below broadband expenses in at least four of the last six fiscal quarters or for the last full fiscal year for each relevant high-cost area. If the income statement includes costs and revenues for broadband network operations outside of the high-cost areas for which the provider seeks approval to offer the high-cost area benefit, then the provider will need to allocate the costs and revenues associated with the relevant high-cost area(s) and provide the cost and revenue allocation for the high-cost area(s) in the supporting affidavit.

20. To determine the share of the provider's total operating costs that are associated with its broadband network operations in the relevant high-cost area(s), the provider must use a reasonable cost assignment and/or cost-allocation method. A provider should first attempt to directly assign or attribute costs to broadband internet access services and to the relevant high-cost area(s). Costs that are not directly assignable (*e.g.*, common or shared costs) should be allocated based on a cost-causative mechanism wherein the participating provider should identify a cost-causative link to an expense category (or group of categories) that has already been directly assigned or attributed. Finally, where none of the methods described in this document are possible, the participating provider should employ a reasonable cost-allocation of operating expenses, which may be based on factors, such as, for the relevant high-cost area(s), the share of a provider's total investments, total locations served, or in proportion to the share of directly assignable investments or expenses for the relevant high-cost area(s). Different cost allocators may be used to allocate different shared costs and must be sufficiently described in the supporting affidavit. For providers applying for multiple high-cost areas, the cost allocation methods should be consistent for all relevant high-cost areas to the extent feasible. To determine the share of the provider's total revenues associated with its broadband network operations in the relevant high-cost area(s), the provider

must calculate and allocate revenue for the relevant time periods based on revenues for the applicable high-cost area(s), and account for any subsidies received by the provider or other financial benefits, including USF high-cost support. Regardless of which cost allocation methods is used, all company-wide financial data submitted in support of an application for the high-cost area benefit must comply with generally accepted accounting principles.

21. To maximize flexibility, the Commission will allow a provider to choose the reasonable cost and revenue allocation method(s) within the parameters described in this document, rather than prescribe one. To mitigate any program integrity issues that this discretion might introduce, however, the Commission requires providers to identify and justify their chosen allocation method(s). Allowing providers options for reasonable cost and revenue allocation method(s) will allow even those providers with limited financial expertise to submit a showing based on their records that meets the standards adopted herein. The Commission directs the Bureau to develop a more detailed process for determining, in consultation with OEA, whether the provider's allocation method and justification are reasonable.

22. Notwithstanding the Commission's recognition that the needs to minimize the burden on participating providers and to encourage provider participation in the ACP are paramount, the Commission requires the filing of documentation showing that a provider will experience particularized economic hardship, which shall include the filing of both an affidavit with the information outlined in this document, along with the required income statement, and tax filings. An income statement alone would not provide sufficient assurances that a provider has satisfied the standard for offering the high-cost area benefit in a given high-cost area. The affidavit is an important safeguard for ensuring that the high-cost area benefit is appropriately limited to providers that are facing "particularized economic hardship" such that they will be unable to maintain part or all of their broadband network if they can only offer the standard \$30 ACP benefit. The Commission recognizes that providers may not routinely prepare cost-allocations specific to the relevant high-cost areas. However, for income statements that are not specific to the relevant high-cost areas, cost allocations are necessary to satisfy the statute's requirement that the high-cost area benefit only be made available in high-

cost areas where the provider experiences economic hardship. As noted earlier, to minimize the burden associated with cost-allocations, the Commission allows providers some flexibility in determining which cost-allocation method to use where the provider is unable to directly assign or attribute costs to broadband internet access services and to the relevant high-cost area(s) or use a cost-causative mechanism. An affidavit accompanying an income statement strikes the appropriate balance between protecting program integrity while minimizing the burden on providers.

23. Commenters stressed the importance of the Commission choosing a means for "qualification that imposes the least administrative burdens on providers, while protecting against waste, fraud, and abuse." The Commission agrees, although it also concludes that proposals that effectively eliminate the need for any showing altogether are at odds with the statute. Similarly, the Commission finds that a mere certification as to a provider's particularized economic hardship in the high-cost area(s) it serves, as suggested by ACA Connects, is insufficient to satisfy the express "showing" mandated by Congress and impedes the Commission's ability to ascertain whether the provider is, in fact, experiencing a particularized economic hardship.

24. The Commission declines to adopt the suggestion from the Mississippi Center for Justice that it requires service providers to submit additional speed and coverage tests before allowing a broadband service provider to receive the high-cost area benefit. While the Commission is sympathetic to concerns about whether a provider's asserted coverage and speed matches actual network performance, the Infrastructure Act is clear that the only criterion it may consider when deciding whether a provider can receive the high-cost area benefit, is whether the absence of a high-cost area benefit would cause a particularized economic hardship to the provider. Furthermore, the Commission has taken steps in other proceedings to address service quality concerns and the reporting of accurate coverage and speed data. Accordingly, the Commission declines to require participating providers to perform these additional tests.

25. Additional Information Required for High-Cost Area Benefit Application. To facilitate the evaluation of a provider request for approval to offer the high-cost area benefit and to help protect program integrity, the Commission directs USAC to communicate with the

provider about its request and collect information, as part of the application for approval to offer the high-cost area benefit, sufficient to identify the provider and the nature of the services it offers in the relevant high-cost areas, such as: contact information; FCC Registration Number; Unique Entity Identifier; Federal Tax ID Number; Service Provider ID Number; whether the provider is facilities-based in the relevant high-cost areas; and the nature of the provider's broadband network technology in the relevant high-cost area(s). Finally, a provider's submission must include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that: (1) all information submitted is true and correct to the best of the filer's knowledge; (2) the provider will comply with all applicable statutes and the Commission's rules and orders; and (3) the provider will use any reimbursed funds received for its intended purpose of providing discounted broadband internet access services to eligible low-income households.

26. To help protect program integrity, a participating provider will also be required to indicate in its application seeking to offer the ACP high-cost area benefit whether it has previously applied for Federal financial assistance in the three fiscal years prior to the provider's application. Upon request, the participating provider must submit to USAC or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider's RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable. The requirement to submit these documents is an important safeguard against provider manipulation of the financial information in its application. This requirement will also assist USAC in ascertaining the validity of the financial information in the provider's application materials. Finally, in evaluating a provider's request for approval to offer the high-cost area benefit and to help protect program integrity the Commission or USAC must consider the extent to which other providers are operating in the high-cost area and not requesting this benefit.

27. *Submission and Review of Showings and Appeals.* The Commission directs USAC, under the oversight of the Bureau and the Office of the Managing Director, to develop a mechanism to enable participating

providers to electronically submit the requisite particularized economic hardship showings. The Commission further directs USAC, under the oversight of the Bureau and OEA, to produce provider education and training materials concerning seeking approval to offer the high-cost area benefit and the Commission directs the Bureau to provide additional guidance to providers on the submission process. All provider submissions will be treated as presumptively confidential and will not be available for routine public inspection consistent with the Freedom of Information Act and the Commission's rules. While the actual content of the provider filings will remain confidential, the Commission directs USAC to publicly issue information identifying which providers are approved to offer the high-cost area benefit and the high-cost areas where they are approved to offer it. The Commission further directs the Bureau to release a Public Notice within 90 days after NTIA's determination of high-cost areas, announcing the date upon which providers can start to submit applications requesting authority to offer the high-cost area benefit. The Bureau shall have the discretion to determine whether to establish an initial deadline for provider requests or accept applications on a rolling basis.

28. The Commission directs USAC to review each economic hardship submission for completeness and then either approve or deny each submission pursuant to guidance and oversight by the Bureau and OEA. Each decision by USAC shall be made in writing, provide a written explanation of the basis for the decision, and provide the approval period for the high-cost area benefit as appropriate. Each USAC decision will be subject to the restrictions of § 54.702(c) of the Commission's rules which prohibits USAC from making policy, interpreting unclear provisions of the statute or rules, or from interpreting the intent of Congress. Any provider aggrieved by an action taken by USAC may seek review of that action, as set forth in Subpart I of the Commission's rules. While review of that action is pending, a provider will be able to submit claims for up to the \$30 standard monthly benefit. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in 47 CFR 54.1808. The provider may only submit revised claims for up to \$75 per month per eligible subscriber for the snapshot dates from the start of the

period of approval, and the provider will be responsible for passing the full benefit amount on to subscribers as a discount off the price of their monthly bills before seeking reimbursement for the high-cost area benefit amount.

29. The Commission directs USAC to make updates to ACP systems, including to the National Lifeline Accountability Database, as appropriate, to allow providers that are approved to receive reimbursement for the high-cost area benefit to enroll households with the high-cost area benefit or to update existing ACP subscribers' records to reflect the designated high-cost areas associated with the participating provider's approved showing. The Commission also directs USAC to incorporate the high-cost area benefit into the ACP claims and enrollment tracker, with a separate column for households receiving the up to \$75 high-cost area benefit. The Commission further directs USAC, with Bureau oversight, to develop provider training materials on how to enroll or update subscriber information to reflect the high-cost area benefit and to seek reimbursement for the enhanced benefit for eligible households in the relevant high-cost areas.

30. *Annual Resubmission Requirement.* To account for changing financial circumstances, participating providers approved to offer the high-cost area benefit must annually resubmit a showing of particularized economic hardship to demonstrate continued eligibility to offer the high-cost area benefit. The Commission directs the Bureau to determine any modifications providers should make to the financial showing for the resubmission, consistent with the statutory language and standard outlined in this Order, as well as the deadline for such resubmissions. The deadline shall allow sufficient time for review and a determination on the renewal submission, and provider notification to households of any benefit level changes as appropriate, before the expiration of the prior approval period. The Commission directs USAC to issue reminders to providers with current approvals of the renewal submission requirements within at least 30 days and at least 15 days of the deadline the Bureau announces for resubmissions. These reminders shall also inform providers that failure to make a resubmission will result in the loss of their approval to offer the high-cost area benefit and the date on which the provider must cease offering and can no longer claim the high-cost area benefit if it does not timely make a renewal submission. The Commission directs the

Bureau to ensure that the renewal resubmissions are reviewed and a determination is issued in a reasonable timeframe.

31. There may be instances where a provider fails to submit the renewal submission, or does not satisfy the criteria to offer the high-cost area benefit based on its renewal submission. The Commission recognizes that the loss of the high-cost area benefit may cause a financial burden to low-income households that would be transitioned to the standard discount rather than the higher subsidy. To mitigate financial hardship and to avoid an accrual of household debt related to the loss of the high-cost area benefit, the Commission adopts several protections for ACP households where the provider is no longer approved to offer the high-cost ACP benefit. If a provider fails to submit the renewal submission by the deadline, the provider shall provide written notice to its ACP households receiving the high-cost area benefit at least 30 days prior to the last date that the provider is approved to offer the high-cost area benefit and a second notice at least 15 days before the last date that the provider is approved to offer the high-cost area benefit. If USAC determines that a provider no longer qualifies for the high-cost area benefit based on its renewal submission, the provider shall also follow the same customer notification process and deadlines as providers that fail to submit the renewal submission by the deadline. Such notices shall include: (1) a statement that the provider will no longer be offering the high-cost benefit; (2) the effective date of the loss of the high-cost area benefit; (3) a statement that upon the effective date of the loss of the high-cost area benefit, the ACP-supported service purchased by the household will no longer be discounted at the higher subsidy amount; and (4) the amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

32. The Commission finds that providers may transition a household to a lower-priced service plan once the provider is no longer eligible to offer the high-cost area benefit upon advance notice to the household and after offering a reasonable opportunity for the household to agree to retain its current service plan or switch to another service plan. If the provider offers to transition the eligible household to a lower-priced plan, the offer to transition must be included in the required 30-day and 15-day notices, and must: (1) provide details about the new plan and monthly price; (2) inform the subscribers they

can opt out of the transition and retain their current service plan or change to a different service plan than the lower-priced plan the service provider identified; (3) provide instructions for opting out of the transition or switching plans; and (4) provide the deadline for opting out of the transition or switching plans. The Commission believes this approach minimizes the potential for bill shock by allowing providers to transition eligible subscribers to a lower-priced plan, while also giving them an opportunity to opt out of the transition and either remain on their current service plan or choose another service plan. The Commission clarifies that moving eligible subscribers to a lower-priced plan upon advance notice and reasonable opportunity for subscribers to opt out of such a transition where the high-cost area benefit is no longer available does not constitute inappropriate down-selling.

33. *Subscriber Initial Notice Concerning High-Cost Area Benefit.* The Commission requires providers to seek annual approval to continue offering the high-cost area benefit. Accordingly, there is a potential for ACP subscribers receiving the high-cost area benefit to experience financial difficulty if their provider ceases being eligible to offer the high-cost area benefit.

34. To promote transparency and avoid the potential for subscriber confusion, participating providers approved to offer the high-cost area benefit must provide written notice to the subscriber when the provider first applies the high-cost area benefit to the subscriber's bill, stating: (1) that the subscriber is receiving an high-cost area benefit and specifying the difference between the standard ACP benefit and the high-cost area benefit being applied to the subscriber's ACP service; (2) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the high-cost area benefit; (3) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and (4) that the provider is required to provide the subscriber advance notice of any changes to the subscriber's ACP service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

35. *Program Integrity.* To ensure that providers are only seeking reimbursement for households that are eligible to receive the ACP high-cost area benefit, the Commission directs USAC to conduct program integrity reviews of claims related to the high-cost area benefit on an annual basis, in

addition to targeted reviews of providers approved to offer the high-cost area benefit as needed (e.g., based on indicia of program integrity risks). The Commission recognizes that a risk exists where providers receiving the high-cost benefit could attempt to raise rates or push ACP subscribers to higher priced plans to maximize their reimbursement for the high-cost area benefit claims. The Commission reminds providers that they are required to offer the same services to ACP households on the same terms and conditions as non-ACP households and inappropriate upselling is a violation of the ACP rules. The Commission also clarifies that, as with the standard benefit and the enhanced Tribal benefit, providers are required to pass through the entire benefit to ACP eligible households. In addition to USAC's program integrity reviews, the Bureau, in coordination with OEA, shall also use available data from ACP providers to maximize program integrity with respect to the high-cost area benefit, including, but not limited to, inflating rates, or claiming the high-cost area benefit for a greater number of households than the number of the provider's broadband serviceable locations in a given high-cost area. The Commission reminds providers that it may suspend or remove a participating provider from the ACP for a variety of reasons, including violations of the rules or requirements of ACP or any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the ACP or undermines the integrity of the program. The Commission further directs the Bureau, in coordination with USAC, to provide additional details and procedures, as necessary, in conformance with this Order to ensure the efficient functioning of the high-cost area benefit.

36. Lastly, the Commission reminds providers that the Infrastructure Act allows eligible households to apply the ACP benefit to "any internet service offering of the participating provider, at the same terms available to households that are not eligible households." The Commission has found this requirement will help "ensure the marketplace will not be limited, and consumers can apply the affordable connectivity benefit to a plan of their choosing." This, in turn, will help minimize concerns that "providers may introduce or alter plans solely to maximize the reimbursement amount." However, as the Commission clarified, providers are not precluded "from making internet service offerings that are only available to ACP

subscribers provided that the terms are at least as good as plans that are available to non-eligible households. . . .”

37. *Clarification of the Scope of Both ACP Enhanced Benefits.* The statute is silent on whether a household that is both eligible for the ACP high-cost area benefit and the ACP enhanced qualifying Tribal land benefit may receive both benefits simultaneously. However, nothing indicates that Congress intended for households in this scenario to be eligible to receive more than one ACP enhanced benefit. Further, allowing households to receive both enhanced ACP benefits at the same time would not be a fiscally responsible use of limited ACP funds. Absent Congressional intent to the contrary, the Commission clarifies that the ACP enhanced benefits are not cumulative and thus, a participating provider can only offer and seek reimbursement for one ACP enhanced benefit to eligible households in such situations. Accordingly, a participating provider is allowed to seek reimbursement for the enhanced qualifying Tribal land or the high-cost area benefit per eligible household up to the maximum benefit amount of \$75 per month, not both.

III. Procedural Matters

A. Paperwork Reduction Act

38. Pursuant to 47 U.S.C. 1752(h)(2) the collection of information sponsored or conducted under the regulations promulgated in this Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

B. Congressional Review Act

39. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this final rule to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) released in March 2021. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the

IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

41. In the Infrastructure Act, Congress established the ACP, which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The ACP funds an affordable connectivity benefit consisting of a per month discount up to \$30 on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a per month discount up to \$75 on such prices for households on qualifying Tribal lands. The Commission established rules governing the affordable connectivity standard \$30 benefit and the enhanced Tribal lands benefit in the *ACP Report and Order*, 87 FR 8346, February 14, 2022, adopted on January 14, 2022.

42. The Infrastructure Act also establishes a separate, enhanced affordable connectivity benefit for eligible households served by participating providers in certain high-cost areas. Specifically, the Infrastructure Act makes available a high-cost area benefit of up to \$75 per month for broadband internet access service offered by participating providers in certain areas where the cost of building broadband facilities is relatively high, upon a showing that the lower \$30 per month benefit “would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.” In the earlier *NPRM* to which the IRFA applied, the Commission sought comment on the rules to implement this enhanced benefit.

43. In the Order, the Commission adopts the rules necessary to implement the enhanced benefit in high-cost areas the NTIA designated in consultation with the Commission. Specifically, the Commission addresses the rules and procedures for participating providers that are facilities-based to offer an high-cost area benefit to eligible households located in designated high-cost areas served by the provider. The Commission defines “particularized economic hardship” for purposes of determining eligibility for the high-cost area benefit. The Commission then addresses the specific showing that participating providers must make to demonstrate

they are experiencing a particularized economic hardship. The Commission also prescribes the process for submitting, reviewing, taking action on such showings, and for requests for review of adverse decisions.

44. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

45. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

46. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

47. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

48. Small entities potentially affected by the rules herein include Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs).

49. *High-Cost Area Benefit.* Providers of wireline or wireless broadband internet access services, including small businesses, that voluntarily seek to qualify for the enhanced benefit will need to report and retain certain data about their operations. The necessary data include the costs of deploying and maintaining broadband internet access networks in particular high-cost areas, including the cost of capital, depreciation expenses, operating costs, and other associated expenses. These costs may vary, in part, depending on the topological features, population distribution, and other conditions in such areas. Other relevant factors may include estimates of consumer demand and likely revenues from providing broadband internet access services. Importantly, no small entity will be required to report or retain such data as a general matter.

50. The recordkeeping or reporting requirements adopted in this proceeding will apply only to those providers that choose to participate in the ACP and that voluntarily seek to provide service that qualifies for the enhanced benefit in high-cost areas where the benefit may be available. Moreover, because participation is entirely optional, the Commission believes that providers that voluntarily avail themselves of the enhanced benefit component of the ACP will enjoy benefits that far exceed the reporting and recordkeeping costs.

51. The Commission therefore finds the cost of compliance for small entities will be minimal given the steps taken to

minimize the administrative burden as discussed in this FRFA.

52. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

53. The actions taken by the Commission in this final rule were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. In the following, the Commission discusses actions it takes in this final rule to minimize any significant economic impact on small entities and some alternatives that were considered.

54. *High-Cost Area Benefit.* As discussed in this FRFA, the Commission is constrained by the plain language of the statute to require a participating provider to make a showing of “particularized economic hardship” to offer the high-cost area benefit. Such a showing inevitably involves a measure of a provider’s costs and revenues. The Commission has, however, taken steps to minimize the burden on small entities. A provider will only need to submit an affidavit asserting it will incur a “particularized economic hardship” and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, would the provider need to submit information, in addition to the income statement and an affidavit, to allocate costs and revenues to the high-cost areas it intends to serve. These steps will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small providers, by eliminating the need, in the first instance, to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal

to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service area, but determined this approach was inconsistent with the statutory language, as discussed in this final rule.

IV. Ordering Clauses

55. Accordingly, *it is ordered* that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by Section 60502 of the Infrastructure Investment and Jobs Act and codified at 47 U.S.C. 1752, this Sixth Report and Order, *is adopted* and shall be effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

56. *It is further ordered*, that Part 54 of the Commission’s rules, 47 CFR part 54, is *amended* as set forth in this document, and such rule amendments shall be effective thirty (30) days following publication of the text or summary thereof in the **Federal Register**.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends part 54 of title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, 1752, unless otherwise noted.

Subpart R—Affordable Connectivity Program

■ 2. Amend § 54.1803 by revising paragraph (a) to read as follows:

§ 54.1803 Affordable Connectivity Program support amounts.

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal

the actual discount provided to an eligible household off of the actual amount charged to such household but not more than \$30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than \$75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(s), or not more than \$75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household in a high-cost area, as defined in § 54.1814(a), and is approved to offer the enhanced high-cost benefit in that high-cost area pursuant to the process in § 54.1814(b).

* * * * *

■ 3. Add § 54.1814 to read as follows:

§ 54.1814 High-cost area benefit.

(a) *Definitions*—(1) *Audited income statement*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, an “audited income statement” is an income statement that has been audited by an independent Certified Public Accountant (CPA).

(2) *Component-level income statement*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a “component-level income statement” is an income statement that shows financial results for the subsidiary or business component that is operating and/or offering retail broadband internet access service for sale in the designated high-cost areas as defined by 47 U.S.C. 1702(a)(2)(G).

(3) *Consolidated income statement*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a “consolidated income statement” is an income statement that shows aggregated financial results for multiple entities or subsidiaries connected with a single parent company.

(4) *High-cost area*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, the term “high-cost area” means an area as defined by 47 U.S.C. 1702(a)(2)(G) as determined by the National Telecommunications and Information Administration.

(5) *Particularized economic hardship*. A provider has a “particularized economic hardship” in a high-cost area only if:

(i) It is not possible for that provider to offer service in the high-cost area while covering the costs of maintaining

the operation of all or part of its broadband network in that area at the standard up to \$30 a month discount; and

(ii) The up to \$75 a month high-cost area benefit would materially improve the provider’s ability to offer service through the ACP and maintain and operate its broadband network in that area.

(b) *High-cost area benefit approval process*. A facilities-based ACP participating provider in a high-cost area (as defined in paragraph (a) of this section) may provide an affordable connectivity benefit in an amount up to \$75.00 for a broadband internet access service offering in a high-cost area upon a showing that the applicability of the standard up to \$30.00 benefit under § 54.1803(a) by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network in that high-cost area.

(1) A participating provider seeking approval to provide the high-cost area benefit must first electronically file a request with the Universal Service Administrative Company by the deadline established by the Wireline Competition Bureau.

(i) The electronic request shall require the participating provider to specify whether it has previously applied for Federal financial assistance, as defined in 2 CFR 25.406, in the three fiscal years prior to the provider’s application. Upon request, the participating provider must submit to the Administrator or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider’s RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable.

(ii) [Reserved]

(2) The participating provider’s request shall include the documentation required to demonstrate particularized economic hardship. The request shall include an income statement, a supporting affidavit, any applicable Federal tax filings and/or returns, and any other relevant documentation as determined by the Bureau and OEA.

(i) The income statement(s) must:

(A) Be produced in the ordinary course of business;

(B) Include both consolidated and component-level income statements;

(C) Be audited by an independent public accountant, where such statements are produced in the ordinary

course of business or are required by 17 U.S.C. 78m, 78o(d); and

(D) Include detailed information on the provider’s net income, operating revenue, and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses.

(ii) The supporting affidavit, must include revenue and cost allocations and a description of the methodology, demonstrating that the provider was operating at a loss related to providing broadband internet access service in the relevant high-cost area(s) for the last fiscal year or in at least four of the last six fiscal quarters, or other acceptable documentation determined by the Wireline Competition Bureau in consultation with the Office of Economics and Analytics.

(iii) The participating provider must first attempt to directly assign or attribute costs to broadband internet access services, and if that is not possible, must use a cost-causative mechanism to the extent possible. If neither is possible, the participating provider must employ a reasonable cost-allocation with a justification for its methodology.

(iv) The tax filing should include Form 1120, Form 1120-S or other applicable Federal Income Tax returns as required by 26 CFR part 1.

(2) The participating provider’s application must also include certifications from a company officer with knowledge of the provider’s cost and revenues under penalty of perjury that:

(i) All information submitted is true and correct to the best of the filer’s knowledge;

(ii) The provider will comply with all applicable statutes and the Commission’s rules and orders; and

(iii) The provider will use any reimbursed funds received for its intended purpose of providing discounted broadband internet access services to eligible low-income households.

(iv) The provider is a facilities-based provider as defined by 47 CFR 1.7001(a)(2)(i) through (v).

(v) The provider used cost allocation methodology consistent with the rules.

(c) *Review process*. The Administrator, under oversight of the Wireline Competition Bureau and the Office of Economics and Analytics, shall review each participating provider’s request to offer the high-cost area benefit and determine whether the provider has demonstrated a particularized economic hardship in the

high-cost areas for which it is requesting to offer the high-cost area benefit. If the Administrator finds the particularized economic hardship showing is satisfied in accordance with the Commission's rules and orders, and any guidance from the Wireline Competition Bureau and the Office of Economics and Analytics, then the Administrator will approve the request and notify the participating provider. Otherwise, the Administrator will deny the request and provide the participating provider a written explanation of the basis for the denial.

(1) The Administrator will review applications within a timeline to be determined by the Bureau.

(2) Providers may appeal the Administrator's determination as set forth in subpart I in this part of the Commission's rules.

(3) Providers may only submit claims for up to the \$30.00 standard benefit amount while an appeal of an Administrator's determination is underway. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in § 54.1808. The provider may submit revised claims for up to \$75.00 only from the start of the approval period indicated in the appeal determination letter.

(d) *Annual renewal process.* A participating provider that has been approved to provide the high-cost area benefit must request approval annually thereafter to continue to provide the enhanced benefit to eligible households in a subsequent year. The participating provider will need to demonstrate particularized economic hardship in the renewal submission, through the documentation specified by the Wireline Competition Bureau. The deadline for submitting the renewal request shall be determined by the Wireline Competition Bureau.

(e) *Notice to eligible households.* (1) Participating providers approved to offer the high-cost area benefit shall provide Affordable Connectivity Program subscribers written notice when the provider begins applying the high-cost area benefit to the subscriber's bill. The written notice must state:

(i) That the subscriber is receiving a high-cost area benefit and the difference between the standard benefit amount and the enhanced high-cost benefit being applied to the subscriber's supported service;

(ii) That the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the enhanced high-cost area benefit;

(iii) That the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and

(iv) That the provider is required to provide the subscriber advance notice of any changes to the subscriber's supported service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

(2) If a participating provider fails to timely submit the renewal submission by the deadline or no longer qualifies to offer the high-cost area benefit based on its annual resubmission, then the participating provider shall provide written notice to its Affordable Connectivity Program customers receiving the high-cost area benefit at least 30 days and at least 15 days before the expiration of its approval to offer the high-cost area benefit. Such subscriber notices shall include:

(i) A statement that the provider will no longer be offering the high-cost area benefit in the relevant high-cost area;

(ii) The effective date of the end of the high-cost area benefit;

(iii) A statement that upon the effective date of the loss of the high-cost area benefit, the Affordable Connectivity Program supported service purchased by the household will no longer be discounted at the higher subsidy amount; and

(iv) The amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

(3) If a participating provider is no longer authorized to offer the high-cost area benefit, the provider may transition an eligible household to a lower-priced ACP service plan once the high-cost area benefit is no longer available, upon advance notice to the household and an opportunity for the household to opt out of the change and remain on its current service plan or select another service plan. Participating providers must include the advance transition notice in the required written notice about the end of the provider's approval to offer the high-cost area benefit. The advanced notice must:

(i) Provide details about the new plan and monthly price;

(ii) State that the subscriber may remain on its current plan or choose another plan;

(iii) Provide instructions on how the subscriber can opt out of the transition or change its service plan;

(iv) Provide the deadline for the subscriber to notify the provider that the

subscriber would like to remain on its current plan or choose another plan.

[FR Doc. 2023-18621 Filed 8-31-23; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA-2021-0058 (HM-264A)]

RIN 2137-AF55

Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA, in coordination with the Federal Railroad Administration (FRA), is amending the Hazardous Materials Regulations to suspend authorization of liquefied natural gas (LNG) transportation in rail tank cars pursuant to a final rule published on July 24, 2020, pending the earlier of either completion of a companion rulemaking evaluating potential modifications to requirements governing rail tank car transportation of LNG, or June 30, 2025.

DATES: This final rule is effective on October 31, 2023.

FOR FURTHER INFORMATION CONTACT: Alexander Wolcott, Transportation Specialist, Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366-8553, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview
- II. Background
 - A. Historical Regulation of LNG by Rail
 - B. A New Regulatory Approach and Enabling Research
 - C. Another Hard Look Incorporating NASEM Recommendations and Ongoing Research Efforts
 - D. East Palestine, OH Derailment
- III. Discussion of Comments to the NPRM and Adoption of a Temporary Suspension of the July 2020 Final Rule
 - A. Comments Requesting an Immediate, Permanent Ban of LNG by Rail
 - B. Comments Requesting the Removal of the June 30, 2024, Sunset Date