

a plan that achieves a result inconsistent with the purposes of section 4966 of the Code, the distributions are treated as a single distribution for purposes of section 4966. For example, if a donor advises a distribution, that the sponsoring organization subsequently makes, from a donor advised fund to Charity X and the donor or the sponsoring organization arranges for Charity X to use the funds to make distributions to individuals recommended by the donor, the distribution will be a taxable distribution from the sponsoring organization to individuals.

(b) *Distribution for purpose not specified in section 170(c)(2)(B)*—(1) *In general.* For purposes of paragraph (a)(1)(ii)(A) of this section, a distribution to be used for an activity that is prohibited under section 501(c)(3) of the Code or for an activity that, if it were a substantial part of a section 501(c)(3) organization's total activities, would cause loss of tax exemption, is not for a purpose specified in section 170(c)(2)(B). For example, a distribution used for political campaign intervention activity or for attempting to influence legislation is considered to be for a purpose not specified in section 170(c)(2)(B). Purposes described in section 170(c)(2)(B) are treated as such whether or not carried out by an organization described in section 170(c).

(2) *Grants to noncharitable organizations.* If the distribution is a grant (as defined in § 53.4945-4(a)(2)) to any organization (other than an organization described in section 501(c)(3) and not in section 509(a)(4) of the Code), it will not be considered for a purpose specified in section 170(c)(2)(B) unless the grantee agrees either to separately account for the grant funds on its books or to segregate the grant funds.

(c) *Organizations described in section 170(b)(1)(A)*—(1) *In general.* For purposes of paragraph (a)(2)(i) of this section, an organization will be treated as described in section 170(b)(1)(A) if—

(i) It is described in both sections 170(b)(1)(A) and 170(c)(2), other than a disqualified supporting organization, and without regard to section 170(c)(2)(A);

(ii) It is a governmental unit described in section 170(b)(1)(A)(v) and 170(c)(1) (or an agency or instrumentality thereof, including an organization described in section 511(a)(2)(B) of the Code), as long as the distribution to it is made for exclusively public purposes; or

(iii) It is a foreign government (or an agency or instrumentality thereof), or an international organization designated as such by Executive Order under 22

U.S.C. 288, as long as the distribution to it is made exclusively for charitable purposes as described in section 170(c)(2)(B).

(2) *Certain foreign organizations.* For purposes of this section, a foreign organization distributee that does not have a ruling or determination letter that it is an organization described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) will be treated as described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) if, prior to the distribution, the sponsoring organization makes a good faith determination, using procedures similar to those set forth in § 53.4945-5(a)(5), that the distributee is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization).

(d) *Expenditure responsibility*—(1) *In general.* For purposes of paragraph (a)(1)(ii)(B) of this section, a sponsoring organization will be treated as exercising expenditure responsibility if it follows the procedures set forth in § 53.4945-5(b) through (e) as modified by paragraph (d)(2) of this section.

(2) *Special rules*—(i) *Non-applicability of certain Code provisions.* References to sections 507, 4945(d), and 4948 of the Code do not apply.

(ii) *Substituted terms.* In applying § 53.4945-5(b) through (e), substitute *sponsoring organization for private foundation, granting private foundation, granting foundation, grantor foundation, foundation, or grantor* (but not for private foundation grantees in § 53.4945-5(c)); substitute *distribution for grant or amount granted*; substitute *distributee for grantee*; and substitute *taxable distribution for taxable expenditure* each place they appear.

(iii) *Additional modifications.* In lieu of § 53.4945-5(b)(3)(iv)(c) and (b)(4)(iv)(c), the distributee must agree not to use any of the funds to make any grant to an organization that does not comply with the expenditure responsibility requirements of this paragraph (d), to make any grant to a natural person, or to make any grant, loan, compensation, or other similar payment (as described in section 4958(c)(2) of the Code) to a donor, donor-advisor, or related person with respect to the donor advised fund from which the distribution that is the subject of the agreement is made.

#### § 53.4966-6 Applicability date.

*Applicability date.* The rules of §§ 53.4966-1 through 53.4966-5 apply to taxable years ending on or after [the date of publication of the Treasury

decision adopting these rules as final regulations in the **Federal Register**].

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2023-24982 Filed 11-13-23; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 257

[EPA-HQ-OLEM-2020-0107; FRL-7814-05-OLEM]

RIN 2050-AH14

### Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments

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

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is announcing the availability of new information and data pertaining to the Agency's May 18, 2023 proposed rulemaking on the Disposal of Coal Combustion Residuals (CCR) from Electric Utilities; Legacy CCR Surface Impoundments. EPA is seeking public comment on this additional information, which may affect the Agency's decisions as it develops a final rule. EPA is not reopening any other aspect of the proposal, the CCR regulations, or the underlying support documents that were previously available for comment.

**DATES:** Comments must be received on or before December 11, 2023.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0107, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this notice of data availability, Michelle Lloyd, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-0560; email address: [Lloyd.Michelle@epa.gov](mailto:Lloyd.Michelle@epa.gov).

For more information on this rulemaking please visit <https://www.epa.gov/coalash>.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *A. Docket*

EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2020-0107. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

#### *B. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0107, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit 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. EPA will generally not consider comments or comment contents located

outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about DBI, PBI, or multimedia submissions; and general guidance on making effective comments.

### **II. General Information**

#### *A. Does this action apply to me?*

This document applies to and may affect all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112. The reference to NAICS code 221112 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *B. What is the purpose of this NODA?*

With this document, EPA is reopening the comment period on the proposed rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments (88 FR 31982, May 18, 2023), herein referred to as the “2023 proposed rule,” for the limited purpose of obtaining public comment on additional information that may be relevant to the development of a final rule. Some of the information includes data or analyses that were received during the comment period for the 2023 proposed rule and that could have the potential to play a role in support of decisions in the final rule. It also includes information obtained based on further EPA research conducted both during and after the close of the comment period, and which was therefore not available for public comment during the prior comment period on the 2023 proposed rule. This document describes some new information and data that EPA has received and new analyses that have

been conducted. All the information subject to this document can be accessed as described in Unit II.C of this document.

EPA is still in the process of evaluating this information and deliberating the provisions of a final rule. Therefore, EPA cannot definitively state whether this information will provide support for any provision of the final rule, or that the Agency has determined that it is appropriate to rely on this information in developing the final rule. In addition, it should not be assumed that the specific information identified in this document is the full sum of information received in comments that will be considered or that will influence the Agency’s decisions in this rulemaking. However, in the interests of ensuring that the public has had a full and complete opportunity to comment on the information that EPA has so far identified as having the potential to weigh in EPA’s decisions on the final rule, EPA is reopening the comment period for the limited purpose of allowing the public to comment on the validity and propriety of using this information, data, and potential analyses in developing the final rule. EPA is not reopening the comment period on any other aspect of the proposed rule. This is not an opportunity for the public to supplement their comments on the proposed rule, or to raise issues that could have been raised during the original comment period. The only issues on which the Agency is soliciting comment relate to the information in the docket supporting this document. Comments submitted on any issues other than those specifically identified in this document will be considered “late comments” on the proposed rule. EPA will not respond to such comments, and they will not be considered part of the rulemaking record.

#### *C. Where can the information identified in the document be found?*

Most documents are available from the docket for viewing and downloading through <http://www.regulations.gov>; however, copyrighted documents are only available for viewing by visiting EPA’s Docket Center.

#### *D. What is the Agency’s authority for taking this action?*

EPA is publishing this document under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as

amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

### III. Background

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) in a rule titled, “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,” (80 FR 21302) (2015 CCR rule or CCR regulations). The 2015 CCR rule, codified in subpart D of part 257 of Title 40 of the Code of Federal Regulations, established regulations for existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions of CCR units. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, recordkeeping, notification and internet posting requirements.

The 2015 CCR rule imposed requirements on inactive surface impoundments<sup>1</sup> at active facilities,<sup>2</sup> but did not impose requirements on inactive surface impoundments at inactive facilities. The preamble to the 2015 CCR rule (80 FR 21344, April 17, 2015) explained that inactive units at inactive facilities were not covered by the rule in part due to possible complications that were specific to inactive or closed facilities: the concern that the present owner of the land on which an inactive site was located might have no connection (other than present ownership of the land) with the prior disposal activities. For that reason, EPA exempted those units at § 257.50(e). On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in the case of *Utility Solid Waste Activities Group, et al. v. EPA* (“USWAG”), which vacated and remanded the provision that

exempted inactive impoundments at inactive facilities from the CCR regulations.

On May 18, 2023, EPA proposed revisions to the CCR regulations (88 FR 31982). These revisions included establishing regulations specifying that inactive surface impoundments at inactive facilities (“legacy CCR surface impoundments”) are subject to 40 CFR part 257, subpart D and requiring owners and operators of legacy CCR surface impoundments to comply with all the appropriate requirements applicable to inactive CCR surface impoundments at active facilities. In addition, EPA proposed to establish requirements to address the risks from currently exempt solid waste management that involves the direct placement of CCR on the land. EPA proposed to extend a subset of the existing requirements in 40 CFR part 257, subpart D to CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and other areas where CCR is managed directly on the land. In the proposal, EPA referred to these as CCR management units, or CCRMU. This proposal would apply to all existing CCR facilities and all inactive facilities with legacy CCR surface impoundments. Lastly, EPA proposed to make several technical corrections to the CCR regulations. These are (1) to clarify the definitions of “feasible” and “technically feasible”; (2) to correct the CFR reference in the definition of wetlands at § 257.61(a); (3) to correct a reference in the groundwater monitoring scope section; (4) to standardize the references to CCR websites throughout the CCR regulations; and (5) EPA requested comment on extending the period for document retention and posting.

The Agency received over 33,500 comments on the proposed rule, with over 600 unique comments. Commenters included individual electric utilities and independent power producers, national trade associations, state agencies, public interest and environmental groups, and entities involved with the beneficial use of CCR. All public comments submitted in response to the proposal can be found in the docket for the proposed rule.

### IV. What information is EPA seeking?

#### A. Risk Analysis

In response to public comments and additional information made available since publication of the 2023 proposed rule, EPA has prepared a supplemental risk assessment in support of the 2023

proposed rule. This risk assessment builds on the findings of the previous 2014 Risk Assessment<sup>3</sup> and better quantifies the specific risks that may result from placement of CCR in legacy CCR surface impoundments and CCRMU. To accomplish this task, EPA used mathematical models to estimate the rate at which constituents may escape into surrounding media, the fate and transport of these constituents through the environment, and the potential risk of adverse effects to individual receptors that may occur in the absence of regulation. This supplemental risk assessment incorporates much of the same groundwater data and model framework as the 2014 Risk Assessment, updated where necessary to best reflect the relevant exposure scenarios. Additionally, this supplemental risk assessment considers additional exposure scenarios that may result from radionuclides present within CCR. EPA is requesting comment on all aspects of the assessment including the validity and propriety of relying on the new information, data, and analyses contained in the updated risk assessment to inform the final rule.

#### B. Information About Legacy CCR Surface Impoundments and CCR Management Units

EPA is also seeking information that would further document the universe of legacy CCR surface impoundments and CCRMU. In response to the USWAG decision, EPA issued an ANPRM on October 14, 2020 (85 FR 65015) to solicit comment and data on legacy CCR surface impoundment at inactive facilities to assist in the development of future regulations for legacy CCR surface impoundments. EPA received 156 comments on the ANPRM regarding the presence, condition, and history of potential legacy CCR surface impoundments of which, 127 cited the sources of the information. EPA placed the data on these potential legacy CCR surface impoundments in the docket of the 2023 proposed rule for legacy CCR surface impoundments (88 FR 31982, May 18, 2023) and requested further comments and data on these units as well as any CCRMU. In response to the 2023 proposed rule, EPA received additional comments regarding the location, presence, condition, and history of additional potential legacy CCR surface impoundments and of CCRMU at both active and inactive

<sup>1</sup> An “inactive CCR surface impoundment” is defined at § 257.53 as a CCR surface impoundment that no longer received CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

<sup>2</sup> An “active facility or active electric utilities or independent power producers” is defined at § 257.53 as any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

<sup>3</sup> U.S. EPA. 2014a. “Final Human and Ecological Risk Assessment of Coal Combustion Residuals.” RIN: 2050-AE81. Prepared by the EPA Office of Solid Waste and Emergency Response. Washington, DC. December.

facilities. EPA is placing the data received in response to the proposed rule in the docket for the present NODA and is soliciting public comment on these data in connection with this rulemaking.

EPA is specifically soliciting supplementary comments, data, or sources of information on the location, presence, condition, history, and risk associated with any of the potential legacy CCR surface impoundments or any of the potential CCRMU within the docket, including any information regarding the presence of water, distance to surface water bodies, proximity to floodplains, unit size, CCR volume, depth to groundwater, date of CCR placement, closure status, any corrective action associated with the unit, and any groundwater monitoring data. In addition to information regarding the docket items for this NODA, EPA also requests comment on the accuracy of the information that was submitted regarding potential legacy CCR surface impoundments or potential CCRMU. Furthermore, EPA is seeking similar information on any other potential legacy CCR surface impoundments or potential CCRMU of which EPA may not be aware or for which we may have incomplete information. In all instances, it is important that commenters on this NODA provide verifiable sourcing information for data that is provided, as EPA may not consider information without a verifiable source in developing a final rule.

The information included in the docket for this NODA is in PDFs and Microsoft Excel spreadsheets. While some of the information in the PDFs and the Microsoft Excel spreadsheets is duplicative, the docket items contain distinct data.

#### V. Request for Comment and Additional Information

EPA is seeking comment on all questions and topics described in this NODA, including the issues identified in Unit IV of this document, and requests that you submit any information, that you believe is important for EPA to consider in connection with these questions and topics. At the same time, EPA will not consider comments that are beyond the scope of the questions and topics described in this NODA.

Instructions for providing written comments are provided under **ADDRESSES**, including how to submit any comments that contain CBI.

#### List of Subjects in 40 CFR Part 257

Environmental protection, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

**Michael S. Regan,**

*Administrator.*

[FR Doc. 2023-24941 Filed 11-13-23; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 675

[Docket No. FTA-2023-0018]

RIN 2132-AB46

#### Transit Worker Hours of Service and Fatigue Risk Management Virtual Listening Session

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Proposed rule; public meeting.

**SUMMARY:** The Federal Transit Administration (FTA) will hold a virtual public listening session concerning the topics of hours of service and fatigue risk management for transit workers on December 5, 2023. On October 30, 2023, FTA published an Advance Notice of Proposed Rulemaking (ANPRM) seeking public input on those topics. The virtual listening session will allow all interested persons an opportunity to present comments, views, and relevant research on those topics in addition to providing written comments to the docket. A transcript will be placed in the rulemaking docket for public inspection.

**DATES:** The webinar will be held on December 5, 2023, from 2:30 p.m. to 3:45 p.m. ET.

**ADDRESSES:** The listening session will be held virtually. Interested parties should register in advance at <https://usdot.zoomgov.com/j/1608968545?pwd=c0tVNIJ3OTRPUmxYTHN4STFZczNYQT09>.

Access information and codes will be provided to those groups and interested members of the public who register for the event. The total number of participants in the virtual listening session will be limited to the maximum allowed by the live webcast platform.

**FOR FURTHER INFORMATION CONTACT:** For information on the listening session, contact Valerie Beck, Office of Transit Safety and Oversight, FTA, telephone at

(202) 366-9178 or [valerie.beck@dot.gov](mailto:valerie.beck@dot.gov). Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 30, 2023, FTA published in the **Federal Register** (Docket No. FTA-2023-0018, 88 FR 74107) an Advance Notice of Proposed Rulemaking (ANPRM) seeking public input in two areas: (1) hours of service; and (2) fatigue risk management programs. At present, there are no Federal minimum standards for hours of service and fatigue risk management programs in the transit industry. FTA held an in-person listening session on October 8, 2023, in Orlando, Florida. The virtual listening session will allow additional interested persons to present comments, views, and relevant research on those topics. FTA seeks information to better understand current industry practices, priorities, requirements, and the costs and benefits of Federal requirements.

##### II. Meeting Participation

The listening session is open to the public.

##### III. Registration

The session will be held virtually. Interested parties should register in advance at <https://usdot.zoomgov.com/j/1608968545?pwd=c0tVNIJ3OTRPUmxYTHN4STFZczNYQT09>.

(Authority: 49 U.S.C. 5329; 49 CFR 1.91)

**Joseph P. DeLorenzo,**

*Associate Administrator for Transit Safety and Oversight.*

[FR Doc. 2023-25052 Filed 11-13-23; 8:45 am]

**BILLING CODE 4910-57-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 231107-0264]

RIN 0648-BM55

#### Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish and Golden Tilefish Fisheries; 2024 Specifications

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

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