action does not involve an information collection burden as defined by the Act.

Comment 1d: The NPRM lacked a supporting basis for an Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501 *et seq.,* statement that was tailored to the definitional changes. The commentor suggested that the EPA provide a tailored UMRA statement that briefly quantifies or explains the expected change (if any) in private-sector expenditures due to the definitional changes.

Response 1d: The EPA has complied with UMRA by making its own determination that this rule will not result in expenditures of $100M+, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532.

Comment 1e: The EPA may have invoked good cause to waive the 30-day delayed effective date for this action. The commentor suggested that the EPA rescind the waiver or provide a particularized justification.

Response 1e: This is factually inaccurate. The EPA did not include a good cause waiver in this action. The effective date of this action is 30 days after its date of publication in the **Federal Register**.

III. Final Action

The EPA approves the NHDES's title V operating permit program revisions to incorporate the definitions for ''hazardous air pollutant'' and ''regulated air pollutant'' at the New Hampshire Code of Administrative Rules, Chapter Env-A—Air Related Programs.

- N.H. Admin. Code § Env-A 103.41: ''Hazardous air pollutant'' means any air pollutant listed pursuant to section 112(b) of the Act.
- N.H. Admin. Code § Env-A 104.47: ''Regulated air pollutant'' means ''regulated air pollutant'' as defined in 40 CFR 70.2, reprinted in Appendix D.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve title V operating permit program revisions that comply with the provisions of the CAA and applicable Federal regulations. Thus, in reviewing revisions, the EPA's role is to approve state choices provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the PRA (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the UMRA of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 2026. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 70

Environmental protection, Air pollution control, Acid rain, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

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

Dated: July 16, 2026.

Mark Sanborn,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble the Environmental Protection Agency amends part 70 of chapter I, title 40 of the Code of Federal Regulations to read as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended under ''New Hampshire'' by adding paragraph (d) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

New Hampshire

* * * * *

(d) The New Hampshire Department of Environmental Services submitted program revisions on June 12, 2025, and July 31, 2025. The revisions incorporate the definitions of hazardous air pollutant and regulated air pollutant. The EPA hereby grants full approval effective on August 31, 2026.

[FR Doc. 2026–15363 Filed 7–29–26; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–8 and 105–9

[GSPMR Case 2026–01; Docket No. GSA–GSA–2026–0067 Sequence No.1]

RIN 3090–AK12

General Services Administration Property Management Regulation (GSPMR); Nondiscrimination on the Basis of the Age Act Regulation for Programs or Activities Receiving Federal Financial Assistance; Technical Amendment

AGENCY: Office of Government-Wide Policy (OGP), U.S. General Services Administration (GSA).

ACTION: Technical amendment.

SUMMARY: The General Services Administration (GSA) is publishing a technical amendment to effectuate the rule published March 6, 2026. That published rule required clarifying edits in the amendatory instructions in order to facilitate the removal of GSA's regulations from the government-wide Federal Property Management Regulation (FPMR) and the addition of those regulations into the General Services Administration Property Management Regulations (GSPMR).

DATES: This technical amendment is effective July 30, 2026. The subject GSPMR case continues to be effective March 6, 2026.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lisa Lee Anderson, Supervisory Equal Opportunity Specialist, Office of Civil Rights (OCR), at 202–501–0767 or *Lisa.Anderson@gsa.gov.* Please cite GSPMR Case 2026–01–Technical Amendment.

SUPPLEMENTARY INFORMATION:

Purpose of Amendments

GSA is issuing this technical amendment to the final rule, published on March 6, 2026, at 91 FR 10971, to make clarifying edits in the words of issuance, authority citations, amendatory instructions, CFR unit headings, and section numbering. These edits are purely administrative in nature. They have no impact on the substance of the regulations, which remain unchanged.

List of subjects in 41 CFR Parts 101–8 and 105–9

Administrative practice and procedure, Aged, Civil rights, Government property management, Individuals with disabilities, Reporting and recordkeeping requirements.

Edward Forst,

Administrator.

For the reasons set forth in the preamble, GSA amends 41 CFR part 101–8 and chapter 105 as follows:

PART 101–8—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 101–8 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–8.7 [Removed]

■ 2. Under the authority of 42 U.S.C. 6101 *et seq.,* remove subpart 101–8.7, consisting of §§ 101–8.700 through 101–8.725.

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

■ 3. Add part 105–9 to read as follows:

PART 105–9—DISCRIMINATION PROHIBITED ON THE BASIS OF AGE

Sec.

Authority: 42 U.S.C. 6101 *et seq.*

§ 105–9.101 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975, as amended, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 105–9.102 Scope of General Services Administration's age discrimination regulation (this part).

This part sets out General Services Administration's (GSA) policies and procedures under the Age Discrimination Act of 1975, as amended, in accordance with 45 CFR part 90 (implementing regulations). The Act and implementing regulations permit Federally assisted programs or activities to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and implementing regulations.

§ 105–9.103 Applicability.

(a) This part applies to each GSA recipient and to each program or activity operated by the recipient.

(b) This part does not apply to:

(1) An age distinction contained in that part of Federal, State, local statute or ordinance adopted by an elected, general purpose legislative body that:

(i) Provides any benefits or assistance to persons based on age;

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age related terms.

(2) Any employment practice of any employer, employment agency, labor organization or any labor-management apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment.

§ 105–9.104 Definitions of terms.

As used in this part, the term:

Act means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

Action means any act, activity, policy, rule, standard, or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words that imply a particular age or range or ages (for example, *children, adults, older person,* but not *student*).

Agency means a Federal department or agency empowered to extend Federal financial assistance.

Agency Responsible Official means:

(1) *Administrator* means the Administrator of General Services.

(2) *Director, Office of Civil Rights* means the individual responsible for managing the agency's nondiscrimination Federal financial assistance policy, or his or her designee.

Federal financial assistance means—

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The services of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purposes of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which

has as one of its purposes the provision of assistance.

GSA means the United States General Services Administration.

Normal operation means the operation of a program or activity without significant changes that would inhibit meeting objectives.

Primary recipient means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government;

(ii) The entity of such State and local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

Statutory objective means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 105–9.105 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 105–9.106 and 105–9.107.

(a) *General rule.* No person in the United States may on the basis of age, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from GSA.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangement, use age distinctions or take any other actions that have the effect on the basis of age, of:

(1) Excluding individuals from participating in, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individual opportunity to participate in any program or activity receiving Federal financial assistance.

(c) *Qualification of rules.* The forms of age discrimination listed in paragraph (b) of this section are not necessarily a complete list.

§ 105–9.106 Exceptions to the rules against age discrimination.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic can be reasonably measured or approximated by the use of age; and

(d) The other characteristic is impractical to measure directly on an individual basis

§ 105–9.107 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by § 105–9.106, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 105–9.108 Burden of proof.

The recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 105–9.106 and 105–9.107.

§ 105–9.109 Affirmative action by recipient.

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient's program or activity.

§ 105–9.110 Special benefits for children and the elderly.

If a recipient's program or activity provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program or activity.

§ 105–9.111 Age distinctions contained in General Services Administration regulations generally.

Any age distinctions contained in a rule or regulation issued by GSA are presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies.

§ 105–9.112 General responsibilities.

Each recipient of Federal financial assistance from GSA is responsible for ensuring that its programs or activities comply with the Act and this part and must take steps to eliminate violations of the Act. A recipient is also responsible for maintaining records, providing information, and affording GSA access to its records to the extent GSA finds necessary to determine whether the recipient is complying with the Act and this part.

§ 105–9.113 Notice to subrecipients and beneficiaries.

(a) If a primary recipient passes on Federal financial assistance from GSA to subrecipients, the primary recipient provides to subrecipients, written notice of their obligations under the Act and this part.

(b) Each recipient makes necessary information about the Act and this part available to its beneficiaries to inform them about the protections against discrimination provided by the Act and this part.

§ 105–9.114 Assurance of compliance and recipient assessment of age distinctions.

(a) *Assurance of compliance.* Each recipient of Federal financial assistance from GSA signs a written assurance as specified by GSA that it intends to comply with the Act and this part.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 105–82.715 of this chapter or complaint investigation under § 105–82.718 of this chapter, GSA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from GSA to assess the recipient's compliance with the Act.

(2) If an assessment indicates a violation of the Act and this part, the recipient takes corrective action.

§ 105–9.115 Information requirements.

Each recipient must:

(a) Keep records in a form and containing information that GSA determines necessary to ensure that the recipient is complying with the Act and this part.

(b) Provide to GSA upon request, information and reports that GSA determines necessary to find out whether the recipient is complying with the Act and this part.

(c) Permit reasonable access by GSA to books, records, accounts, facilities, and other sources of information to the extent GSA finds it necessary to find out whether the recipient is complying with the Act and this part.

(d) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 59–511), the reporting and record keeping provisions included in this part will be submitted, for approval, to the Office of Management and Budget (OMB). No data collection or record keeping requirement will be imposed on recipients or donees without the required OMB approval number.

§ 105–9.116 Compliance reviews.

(a) GSA may conduct compliance reviews and use similar procedures to investigate and correct violations of the Act and this part. GSA may conduct the reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this part has occurred.

(b) If a compliance review indicates a violation of the Act or this part, GSA attempts to achieve voluntary compliance with the Act. If compliance cannot be achieved, GSA arranges for enforcement as described in § 105–9.121.

§ 105–9.117 Complaints.

(a) Any person, individually or as a member of a class (defined at § 105–9.104 or on behalf of others, may file a complaint with GSA alleging discrimination prohibited by the Act or this part based on an action occurring after July 1, 1979. A complainant must file a complaint within 80 days from the date the complainant first has knowledge of the alleged act of discrimination. However, for good cause shown, GSA may extend this time limit.

(b) GSA considers the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) GSA attempts to facilitate the filing of complaints if possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes the action or practice complained of, and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint; and

(3) Notifying the complainant and the recipient (or their representative) of their right to contact GSA for information and assistance regarding the complaint resolution process.

(d) GSA returns to the complainant any complaint outside the jurisdiction of this part and states the reason(s) why it is outside the jurisdiction of this part.

§ 105–9.118 Mediation.

(a) GSA promptly refers to the mediation agency designated by the Secretary, HHS, all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this part, unless the age distinction complained of is clearly within an exception; and

(2) Contain the information needed for further processing.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgement that an agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient agree, the mediator will prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator must send a copy of the agreement to GSA. GSA takes no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation proceeds for a maximum of 60 calendar days after a complaint is filed with GSA. Mediation ends if:

(1) 60 calendar days elapse from the time the complaint is filed; or

(2) Before the end of the 60 calendar-day period an agreement is reached; or

(3) Before the end of that 60 calendar-day period, the mediator finds that an agreement cannot be reached.

(f) The 60 calendar-day period may be extended by the mediator, with the concurrence of GSA, for not more than 30 calendar days if the mediator determines that agreement is likely to be reached during the extension period.

(g) The mediator must return unresolved complaints to GSA.

§ 105–9.119 Investigation.

(a) *Informal investigation.* GSA investigates complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement. As part of the initial investigation, GSA uses informal fact-finding methods, including joint or separate discussions with the complainant and the recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. GSA may seek the assistance of any involved State agency. GSA puts any agreement in writing and has it signed by the parties and an authorized official designated by the Administrator or the Director, Office of Organization and Personnel. The settlement may not affect the operation of any other enforcement efforts of GSA, including compliance reviews and investigation of other complaints that may involve the recipient. The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If GSA cannot resolve the complaint through informal investigation, it begins to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of this part, GSA attempts to obtain voluntary compliance. If GSA cannot obtain voluntary compliance, it begins enforcement as described in § 105–9.121.

§ 105–9.120 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act of this part; or

(b) Cooperates in any mediation, investigation, hearing, conciliation, and enforcement process.

§ 105–9.121 Compliance procedure.

(a) GSA may enforce the Act and this part through:

(1) Termination of a recipient's Federal financial assistance from GSA under the program or activity involved where the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceeding to enforce any rights of the United States or obligations of the recipients created by the Act or this part; or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that has the effect of correcting a violation of the Act or this part.

(b) GSA limits any termination to the particular recipient and program or activity or part of such program or activity GSA finds in violation of this part. GSA does not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from GSA.

(c) GSA takes no action under paragraph (a) of this section until:

(1) The administrator advises the recipient of its failure to comply with the Act and this part and determines that voluntary compliance cannot be obtained; and

(2) 30 calendar days elapse after the Administrator sends a written report of the grounds of the action to the committees of Congress having legislative jurisdiction over the program or activity involved. The Administrator files a report if any action is taken under paragraph (a) of this section.

(d) GSA may also defer granting new Federal financial assistance from GSA to a recipient when a hearing under § 105–9.122 is initiated.

(1) New Federal financial assistance from GSA includes all assistance for which GSA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from GSA does not include assistance approved before the beginning of a hearing.

(2) GSA does not begin a deferral until the recipient receives notice of an opportunity for a hearing under § 105–9.122. GSA does not continue a deferral for more than 60 calendar days unless a hearing begins within that time or the time for beginning the hearing is extended by mutual consent of the recipient and the Administrator. GSA does not continue a deferral for more than 30 calendar days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) GSA limits any deferral to the particular recipient and program or activity or part of such program or activity GSA finds in violation of this part. GSA does not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not, receive Federal financial assistance from GSA.

§ 105–9.122 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action; and either fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing or advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act, and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at GSA in Washington, DC, at a time fixed by GSA's Associate Administrator, for the Office of Civil Rights unless he or she determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings/Virtual hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and GSA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with secs. 5 through 8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Officer conducting the hearing at the outset of or during the hearings. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and

opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part, and the regulations of one or more other Federal departments or agencies issued under Title VI of the Civil Rights Act of 1964, the responsible GSA official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 105–9.123.

§ 105–9.123 Decisions and notices.

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Agency designated reviewing authority for final decision. A copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph (a) or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for GSA may, within the period provided for in the rules of procedure issued by GSA official, file with the reviewing authority exceptions to the initial decision, with his or her reasons therefore. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue a decision including the reasons therefore. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 105–9.122(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Administrator.* If the Administrator has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for GSA may request the Administrator to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible GSA official. Such review is not a matter of right and shall be granted only where the Administrator determines there are special and important reasons therefore. The Administrator may grant or deny such request, in whole or in part. He or she may also review such a decision in accordance with rules of procedure issued by the responsible GSA official. In the absence of a review under this paragraph (e), a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of GSA when the Administrator transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph (e) shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this part applies, and may contain such terms, conditions and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this part applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part unless and until it corrects its noncompliance and satisfies the responsible GSA official that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible GSA official determines that those requirements have been satisfied, he or she shall restore such eligibility.

(3) If the responsible GSA official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall therefore be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g)(3) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 105–9.124 Remedial action by recipient.

If GSA finds a recipient discriminated against on the basis of age, the recipient must take any remedial action that GSA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that discriminated, GSA may require both recipients to take remedial action.

§ 105–9.125 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 calendar days elapse after the complainant files the complaint and GSA makes no finding with regard to the complaint; or

(2) GSA issues a finding in favor of the recipient.

(b) If GSA fails to make a finding within 180 days or issues a finding in favor of the recipient, GSA must:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant must give 30 calendar days notice by registered mail to the Secretary, HHS, The Administrator, the Attorney General of the United States, and the recipient;

(iv) That the notice must state the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 105.9–126 Alternate funds disbursal.

If GSA withholds Federal financial assistance from a recipient under this part, the Administrator may disburse the assistance to an alternate recipient; any public or nonprofit private organization; or agency or State or political subdivision of the State. The Administrator requires any alternate recipient to demonstrate:

(a) The ability to comply with this part; and

(b) The ability to achieve the goals of the Federal Statutes authorizing the Federal financial assistance.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[CMS–6109–N]

RIN 0938–ZC04

Medicare Program; Updates to the Master List of Items Potentially Subject to Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements; Updates to the Required Face-to-Face Encounter and Written Order Prior to Delivery List; and Updates to the Required Prior Authorization List

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

ACTION: Updates to the Master List of Items Potentially Subject to Face-To-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements (the ''Master List''); Updates to the Required Face-to-Face Encounter and Written Order Prior to Delivery List; and Updates to the Required Prior Authorization List.

SUMMARY: This document announces updates to the Healthcare Common Procedure Coding System (HCPCS) codes on the Master List. It also announces updates to the HCPCS codes on the Required Face-to-Face Encounter and Written Order Prior to Delivery List and the Required Prior Authorization List.

DATES: Implementation of updates to the Master List, the Required Face-to-Face Encounter and Written Order Prior to Delivery List, and the Required Prior Authorization List, excluding upper limb orthoses, are effective October 28, 2026.

Prior authorization requirements for the upper limb orthoses will be implemented in three phases. Phase one includes New York, Michigan, Florida, and California and is effective October 28, 2026. Phase two includes the States in phase one and Pennsylvania, Massachusetts, Ohio, Illinois, Texas, Georgia, Arizona, and Oregon and is effective January 26, 2027. Phase three includes all States and territories not included in phases one and two and is effective April 26, 2027.

FOR FURTHER INFORMATION CONTACT: For information related to the Required Face-to-Face Encounter and Written Order Prior to Delivery List, contact Jennifer Phillips, (410) 786–1023; Misty Whitaker, (410) 786–4975; or Olufemi Shodeke, (410) 786–1649.

For information related to the Master List or Required Prior Authorization List, contact Justin Carlisle, (410) 786–4265; Karen Leban, (410) 786–2476; or Jessica Martindale, (410) 786–1558.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 2019, the Centers for Medicare & Medicaid Services (CMS) published a final rule titled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Amounts, DMEPOS Competitive Bidding Program (CBP) Amendments, Standard Elements for a DMEPOS Order, and Master List of DMEPOS Items Potentially Subject to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements'' (the November 2019 final rule) (84 FR 60648). The rule became effective January 1, 2020, harmonizing the lists of DMEPOS items created by former rules and establishing one ''Master List of DMEPOS Items Potentially Subject to Face-to-Face Encounter and Written Orders Prior to Delivery and/or Prior Authorization Requirements'' (the ''Master List'').

The Master List serves as a library of items, that have been identified as potential vulnerabilities to the Trust Fund based on criteria outlined in 42 CFR 414.234(b), from which items may be selected to be placed on either the Required Face-to-Face Encounter and Written Orders Prior to Delivery List (the ''F2F/WOPD List'') and/or Required Prior Authorization List under the authority provided under sections 1834(a)(1)(E)(iv), 1834(a)(11)(B), and 1834(a)(15) of the Social Security Act (the Act). Only those items that are selected and announced via **Federal Register** notice are subject to such regulatory conditions of payment. The November 2019 final rule provided that the **Federal Register** notice would be for a period of no less than 60 days. It also clarified that certain items (that is, power mobility devices (PMDs)) require a face-to-face encounter per statute and would remain on both the Master List and the F2F/WOPD List.

The requirements in the November 2019 final rule related to face-to-face encounters, written orders prior to delivery, and standard written orders for specified DMEPOS items were codified in 42 CFR 410.38. The information in