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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–1621; Airspace Docket No. 25–AWP–149]

RIN 2120–AA66

Amendment of Very High Frequency Omnidirectional Range Federal Airways V–108 in the Vicinity of Concord, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airway V–108 in the vicinity of Concord, California. The FAA is taking this action due to the planned decommissioning of the Concord VOR/Distance Measuring Equipment (DME) navigational aid (NAVAID) as part of the VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, October 29, 2026. The Director of the Federal Register approves this incorporation by reference action under 14 CFR part 71, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from www.federalregister.gov.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the

Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Services (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published an NPRM for Docket No. FAA–2026–1621 in the **Federal Register** (91 FR 8797; February 24, 2026), proposing to amend Very High Frequency Omnidirectional Range (VOR) Federal Airway V–108 in the vicinity of Concord, California. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO

7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

The FAA is amending 14 CFR part 71 by modifying VOR Federal Airway V–108 in the vicinity of Concord, California.

V–108: Prior to this final rule, V–108 extended between the intersection of the Point Reyes, CA, VOR/DME 006° and the Scaggs Island, CA, VORTAC 314° radials and the Hill City, KS, VORTAC. A portion of V–108, Scaggs Island VORTAC and the Linden, CA, VOR/DME will become unusable with the decommissioning of Concord, CA, VOR/DME. As amended, V–108 would extend between the intersection of the Point Reyes, CA, VOR/DME 006° and the Scaggs Island, CA, VORTAC 314° radials and the Hill City, KS, VORTAC.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Rulemaking and Guidance Procedure” (March 10, 2025); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending Very High Frequency Omnidirectional Range (VOR) Federal Airway V–108 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*, paragraph B–2.5(a) which categorically excludes from further environmental impact review rulemaking actions that

designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(k), which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change the concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. Additionally, in accordance with Appendix B, paragraph B–1 of FAA Order 1050.1G, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 6010 VOR Federal Airways.

* * * * *

V–108 [Amended]

From INT Point Reyes 006° and Scaggs Island 314° radials, via Scaggs Island, CA; INT Scaggs Island 131° and Oakland, CA, 004° radials; From INT Sacramento 194° and Linden 268° radials; Linden, CA. From Meeker, CO; via Red Table, CO; Black Forest, CO; Hugo, CO; 74 miles, 65 MSL, Goodland, KS; Hill City, KS.

* * * * *

Issued in Washington, DC, on July 30, 2026.

Alex W. Nelson,

Manager, Rules and Regulations Group.

[FR Doc. 2026–15680 Filed 7–31–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–3288; Airspace Docket No. 25–ANM–158]

RIN 2120–AA66

Establishment of United States Area Navigation Route T–581 in the Vicinity of Missoula, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) Route T–581 in the vicinity of Missoula, Montana. The FAA is taking this action to increase navigational flexibility and safety margins for the users and to expand Air Traffic Control operational capabilities.

DATES: Effective date 0901 UTC, October 29, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from www.federalregister.gov.

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History

The FAA published an NPRM for Docket No. FAA–2025–3288 in the **Federal Register** (90 FR 57721; December 12, 2025), proposing to establish United States Area Navigation (RNAV) Route T–581 in the vicinity of Missoula, Montana. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

The FAA is amending 14 CFR part 71 by establishing RNAV Route T–581 in the vicinity of Missoula, Montana.

T–581: As a new RNAV route, T–581 extends between the Missoula, MT, VOR/DME and the Kalispell, MT, VOR/DME.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing RNAV Route T–581 in the vicinity of Missoula, Montana, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*, paragraph B–2.5(a) which

categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(i), which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

T–581 MISSOULA, MT (MSO) TO KALISPELL, MT (FCA) [NEW]		
Missoula, MT (MSO)	VOR/DME	(Lat. 46°54′28.68″ N, long. 114°05′01.15″ W)
SULFY, MT	FIX	(Lat. 47°07′27.30″ N, long. 114°06′00.88″ W)
ARLEE, MT	FIX	(Lat. 47°08′27.42″ N, long. 114°05′59.11″ W)
Kalispell, MT (FCA)	VOR/DME	(Lat. 48°12′50.77″ N, long. 114°10′33.21″ W)

* * * * *

Issued in Washington, DC, on July 30, 2026.

Alex W. Nelson,

Manager, Rules and Regulations Group.

[FR Doc. 2026–15675 Filed 7–31–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 13089]

RIN 1400–AG33

Visas: Visa Bond Program

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the temporary final rule that went into effect on August 20, 2025, which launched a 12-month long Visa Bond Pilot Program (Pilot Program), and establishes a permanent visa bond program. An alien applying for a visa as a temporary visitor for business or pleasure (B–1/B–2) may be required to

submit a bond (“visa bond”) to ensure that the alien maintains his or her nonimmigrant status and departs as required. Consular officers may require covered nonimmigrant visa applicants to post a bond of up to \$20,000 as a condition of visa issuance, as determined by the consular officers.

DATES: This final rule is effective August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Visa Services Office, Bureau of Consular Affairs, Department of State; telephone (202) 485–7611, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION:

I. Summary

This final rule amends 22 CFR part 41 to make permanent a Visa Bond Program (“Program”) under section 221(g)(3) of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1201(g)(3), which authorizes consular officers to require the posting of a bond by an alien applying for, and otherwise eligible to receive, a business

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

visitor/tourist (B–1/B–2) visa¹ “to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under [INA Section 248, 8 U.S.C. 1258], such alien will depart from the United States.”

The 2025 visa bond pilot,² which provided a framework for the Department of State, the Department of Homeland Security, and the Department of the Treasury to assess the feasibility of administering a visa bond program, has provided sufficient data to suggest that a visa bond program is an effective tool for enforcing compliance among bonded visa holders. The Immigration and Naturalization Service Data Management Improvement Act of 2000 mandated the implementation of an

¹ For purposes of this rulemaking, “B1/B2 visa” refers to a business visitor (B–1) visa, tourist (B–2) visa, or combined business visitor/tourist (B–1/B–2) visa.

² **Federal Register**, Visa Bond Pilot Program, 90 FR 37378 (Aug. 5, 2025), <https://www.federalregister.gov/documents/2025/08/05/2025-14826/visas-visa-bond-pilot-program>.

integrated entry and exit data system with annual reports to Congress including, among other information, “the number of aliens who arrived pursuant to a nonimmigrant visa . . . for whom no matching departure data have been obtained through the system or through other means as of the end of the alien’s authorized period of stay, with an accounting by the alien’s country of nationality and date of arrival in the United States.”³ A review of these reports going back over a decade demonstrates that hundreds of thousands of nonimmigrant visitors fail to timely depart in accord with the terms of their visitor visas.

This Program responds to Executive Order 14159, “Protecting the American People Against Invasion,” which directs the Secretary of the Treasury, in coordination with the Secretaries of State and Homeland Security, to “establish a system to facilitate the administration of all bonds” under the provisions of the INA.⁴ Under the Program, as discussed further below, visa bonds may be required from certain business/pleasure (B–1/B–2) visa applicants who are nationals of countries with high overstay rates, deficient information sharing, insufficient identity verification and criminal records, and that need improvement in the area of screening and vetting and the security of travel and civil documents, including in the granting of citizenship. The Department will announce the covered countries via <https://www.travel.state.gov> no fewer than 15 days before the Program takes effect, and this list may be amended on a rolling basis, with 15 days from announcement to enactment for any countries added and with immediate effect for any countries removed from the list. Nationals of countries that are subject to a visa bond requirement under the Visa Bond Pilot Program will continue to be subject to a visa bond

requirement pursuant to this rule on its effective date. The countries may be modified on a rolling basis, with removal effective immediately upon the removal date.

DHS regulations at 8 CFR 103.6 provide for the posting, processing, and cancellation of such visa bonds. However, the Secretary of Homeland Security delegated the authority to the employees of the Department of State, as designated by the Secretary of State, to perform duties related to the acceptance and processing of these bonds.⁵ The Secretary of State consents to Department of State employees performing duties related to the acceptance and processing of visa bonds as described in this final rule. The Departments of State, Homeland Security, and Treasury will be involved in the process of collecting, holding, cancelling, and returning all monies associated with this Program.

II. Purpose of This Rule

The Department is publishing this final rule to amend its regulations to implement a permanent Visa Bond Program, including: (1) the criteria for identifying visa applicants who will be required to post visa bonds; (2) three levels for the amount of the bond, with the level to be selected by the consular officer based on an alien’s individual circumstances; (3) how covered countries will be announced; and (4) certain terms and conditions applicable to visa bonds. Executive Order 14159 directs Treasury, in coordination with DHS and the Department, to take all appropriate action to implement a visa bond program. The Pilot Program helped the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with Treasury and DHS, for the purpose of ensuring the legally required departure of an alien from the United States as described in Section 221(g)(3) of the INA. As a result of the Pilot Program, the Department has determined the bonds’ efficacy in reducing visa misuse and overstay, and will continue use of visa bonds to address the national security and foreign policy priorities articulated in Executive Order 14159, which directs the Secretary of the Treasury, in coordination with the Secretary of State and the Secretary of Homeland Security, “to establish a system to facilitate the administration of all bonds that the Secretary of State or the Secretary of Homeland Security may lawfully

require to administer the provisions of the INA.”⁶

III. Background

A. Foreign Policy Justification

By its design and intention, the Program is a tool of diplomacy, intended to encourage foreign governments to take immediate action to reduce the overstay rates by encouraging their nationals to comply with U.S. immigration laws, improve information sharing to address insufficient identity verification and criminal records, and to encourage countries to improve screening and vetting and the security of travel and civil documents, including in the granting of citizenship. As such, the rule properly is described as a key pillar of the President’s foreign policy to protect the United States from the clear national security threat posed by visa overstay and deficient screening and vetting.

The Secretary of State determined in *Public Notice 12682*⁷ that securing America’s borders and protecting its citizens from external threats is the first and highest priority of the foreign affairs function of the United States.⁸ This effort requires the United States to marshal all available resources and authorities in support of securing the borders of the United States, including removing individual aliens who remain in the United States unlawfully. As explained by Executive Order 14159, “Many of these aliens unlawfully present in the United States present significant threats to national security and public safety. Others are engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities. [T]heir presence in the United States has cost taxpayers billions of dollars at the Federal, state, and local levels.” This rule addresses the President’s call to protect the American people by faithfully executing the immigration laws of the United States.

DHS produces annual reports containing nonimmigrant overstay data. In the DHS FY 2024 Entry/Exit Overstay Report, DHS data indicated there were over 480,000 “Suspected In-Country Overstays”⁹ (i.e., aliens who remained in the country past the end of their authorized stays and had yet to depart the country) among nonimmigrants

³ Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (June 15, 2000). As explained in the Congressional Record for May 25, 2000, section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, div. C, 110 Stat. 3009–546, mandated an automated entry-exit control system with collection of data related to individuals who overstayed their authorized stay. The legislative effort from 2000 provided the former Immigration and Naturalization Service (INS) additional time to carry out the mandated entry-exit data collection in order to carry out the purpose of section 110 of the IIRIRA, which was to track individuals who overstay their authorized period of admission in the United States.

⁴ 90 FR 8443 (published Jan. 29, 2025), <https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion>.

⁵ See 8 U.S.C. 1103(a)(6); 8 CFR 2.1.

⁶ 90 FR at 8446.

⁷ See Determination: Foreign Affairs Function of the United States, 90 FR 12200 (Mar. 14, 2025).

⁸ See, e.g., Executive Orders 14150, 14157, 14160, 14161, 14165.

⁹ See DHS, Fiscal Year 2024 Entry/Exit Overstay Report, <https://www.dhs.gov/publication/entryexit-overstay-report>.

admitted through air or sea ports of entry.¹⁰ The Department's review of DHS nonimmigrant reports, which have been regularly published since 2015, indicates that the average number of aggregated annual overstays is typically in the hundreds of thousands, with several countries having significant numbers or percentages of individual aliens who are believed to have overstayed their authorized period of admission as nonimmigrants.¹¹ Furthermore, the total number of annual overstays among foreign nationals admitted to the United States at an air or sea port of entry as nonimmigrant visitors for business or pleasure on a B–1 or B–2 visa, excluding travelers from Mexico, Canada, and Visa Waiver Program (VWP) participating countries,¹² has fluctuated in recent years, based on statistics published by DHS. For fiscal years beginning in 2015, DHS has published an “Entry/Exit Overstay Report” with a broad range of statistics relating to “overstays,” which DHS defines, for purposes of these reports, as “a nonimmigrant who was lawfully admitted to the United States for an authorized period but stayed in the United States beyond [his or her] authorized admission period.”¹³ As explained in the report, if a nonimmigrant timely applies for an extension of the authorized period of admission or applies to change or adjust status, the authorized period of admission may be extended, thereby avoiding being counted as overstay. The reports for fiscal years 2015 through 2024 include statistics on foreign nationals who entered the United States at an airport or sea port of entry on a B–1 or B–2 visa, excluding travelers from Mexico, Canada, and VWP

participating countries. For fiscal year 2019, DHS reported a total of 320,086 overstays among this category of nonimmigrant visitors, including “out-of-country” overstays (*i.e.*, those who departed after their authorized period of admission but before the end of FY 2019) and in-country overstays (*i.e.*, those who remained in the United States at the end of FY 2019).¹⁴ The number of such overstays fluctuated during and after the COVID pandemic, rising from 352,748 for FY 2020,¹⁵ to 504,636 for FY 2022,¹⁶ and then decreasing in subsequent years with 314,111 for FY 2023, and 269,382 for FY 2024.¹⁷

The reports indicate that countries which are members of the VWP have substantially lower visa overstay rates in the United States. For fiscal year 2019, DHS reported a total of 102,505 overstays among nationals of VWP countries who entered the United States at an airport or sea port of entry including “out-of-country” overstays and in-country overstays.¹⁸ This is a total overstay rate of 0.44 percent, compared to the 2.06 percent total overstay rate for non-VWP travelers.¹⁹ The number of such overstays slightly fluctuated during and after the COVID pandemic, rising to 104,621 for FY 2020,²⁰ falling to 97,632 for FY 2022,²¹ rising to 99,460 for FY 2023,²² and falling to 93,079 for FY 2024.²³

By focusing the Program on certain non-VWP countries with high overstay rates, deficient information sharing, and insufficient identity verification and criminal records, the Department sends a message to all countries to reduce overstay rates by encouraging their nationals to comply with U.S. immigration laws, and to encourage countries to improve screening and

vetting and the security of travel and civil documents, including in the granting of citizenship.

B. Legal Framework Underlying the Program

As detailed below, the INA grants, and Department regulations implement, consular officer authority to require bonds in appropriate circumstances. Although, historically, as a matter of policy, consular officers have not been instructed to exercise their authority and require bonds, a fresh review of DHS entry-exit data has been compiled since 2015, and pursuant to authorities set forth in 1996 by the Illegal Immigration Reform and Immigrant Responsibility Act, amended by the Immigration and Naturalization Service Data Management Improvement Act of 2000, and viewed in conjunction with E.O. 14159 and Public Notice 12682, the Department has revisited this historical guidance and determined that it is feasible to use visa bonds to address the significant foreign policy and national security threats presented by the hundreds of thousands of annual nonimmigrant visitor overstays. This approach is informed by the success of the Visa Bonds Pilot Program, in which consular officers required bonds as a condition of issuance for applicants from named countries, and saw a significant increase in compliance from visa bonded travelers as compared with prior years' travel without bonds. As described below, the overall number of overstays from designated countries has dropped significantly.

1. INA Provisions

Section 221(g)(3) of the INA, 8 U.S.C. 1201(g)(3), authorizes consular officers to require the posting of a bond by an alien applying for, and otherwise eligible to receive, a business/tourist (B–1/B–2) visa “to insure that at the expiration of the time for which such alien has been admitted . . . or upon failure to maintain the status under which [the alien] was admitted, or to maintain any status subsequently acquired under [INA Section 248, 8 U.S.C. 1258], such alien will depart from the United States.” INA Section 221(g)(3), 8 U.S.C. 1201(g)(3), implicitly recognizes that there is no guarantee that an alien will depart in a timely fashion, even when an applicant is found otherwise eligible for the visa. Consequently, the same INA section contemplates that it may be appropriate

¹⁰ “Fiscal Year 2024 Entry/Exit Overstay Report” prepared by DHS and submitted to Congress pursuant to Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (June 15, 2000) (DHS FY 2024 Entry/Exit Overstay Report), found at <https://www.dhs.gov/publication/entryexit-overstay-report>. In the Report, DHS further explained that by the end of February 2025, the number of Suspected In-Country Overstays for FY 2024 decreased to 427,204, due to departures and adjustments of status by aliens in that population. The report explains that overstay statistics reported do not take into account diplomats and other representatives, crewmembers, aliens in transit, and section 1367 special-protected classes, because they have “unspecified authorized periods of stay and legal protections.” DHS FY 2024 Entry/Exit Overstay Report at Section III(C).

¹¹ See historical listing of DHS Entry/Exit Overstay Reports from 2015 to 2024, <https://www.dhs.gov/publication/entryexit-overstay-report>.

¹² The Visa Waiver Program is described in INA 217, 8 U.S.C. 1187.

¹³ DHS Fiscal Year 2023 Entry/Exit Overstay Report, <https://www.dhs.gov/publication/entryexit-overstay-report> (DHS FY 2023 Overstay Report), at Section III(C).

¹⁴ *Id.* at page 14, Table 2.

¹⁵ DHS Entry/Exit Overstay Report for Fiscal Year 2020, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 14, Table 1.

¹⁶ DHS Entry/Exit Overstay Report for Fiscal Year 2022, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 12, Table 1.

¹⁷ DHS Entry and Exit Overstay Report for Fiscal Year 2023, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 10, Table 1.

¹⁸ DHS Entry/Exit Overstay Report for Fiscal Year 2019, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 13, Table 1.

¹⁹ *Id.* at page 13, Table 1.

²⁰ DHS Entry/Exit Overstay Report for Fiscal Year 2020, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 14, Table 1.

²¹ DHS Entry/Exit Overstay Report for Fiscal Year 2022, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 12, Table 1.

²² DHS Entry and Exit Overstay Report for Fiscal Year 2023, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 10, Table 1.

²³ DHS Entry/Exit Overstay Report for Fiscal Year 2024, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 11, Table 1.

to require a bond when an applicant is otherwise eligible for a visa.²⁴

2. Applicable Regulations

Regulations regarding visa bonds include 22 CFR 41.11(b)(2), which provides that, “[i]n a borderline case in which an alien appears to be otherwise entitled to receive a visa under INA 101(a)(15)(B) or (F) but the consular officer concludes that the maintenance of the alien’s status or the departure of the alien from the United States as required is not fully assured, a visa may nevertheless be issued upon the posting of a bond with the Secretary of Homeland Security under terms and conditions prescribed by the consular officer.” Additionally, 22 CFR 41.31(a)(1) references consular officer authority to require bonds from applicants for visas for temporary visits for business or pleasure (B–1/B–2) whose maintenance of status or departure “does not seem fully assured.” DHS regulations at 8 CFR 221.1 provide, “The district director having jurisdiction over the intended place of residence of an alien may accept a bond on behalf of an alien defined in section 101(a)(15)(B) or (F) of the Act prior to the issuance of a visa to the alien or upon receipt of a request directly from a U.S. consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond; such a bond also may be accepted by the district director with jurisdiction over the port of entry or pre-inspection station where inspection of the alien takes place.” The DHS regulations also outline some procedural aspects of bond processing and refer to DHS regulations

at 8 CFR 103.6, which describe procedures relating to bond riders, acceptable sureties, cancellation, or breaching of bonds.

The aforementioned regulations reinforce the authority of the Department and consular officers to require bonds to ensure the compliance with U.S. immigration laws including the timely departure from the United States of any nonimmigrant visitor in B status, or any nonimmigrant status subsequently acquired under Section 248 of the INA, 8 U.S.C. 1258.

C. 2025 Temporary Final Rule

1. Overview

In August 2025, to comply with Section 14 of Executive Order 14159, the Department established the Visa Bond Pilot Program. This pilot helped the Department assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with Treasury and DHS, for the purpose of ensuring the legally required departure of an alien from the United States as described in Section 221(g)(3) of the INA, 8 U.S.C. 1201(g)(3).

2. Impact

The 2025 Temporary Final Rule on visa bonds proved to be an effective tool for ensuring visa holders complied with the terms of the visa and did not remain unlawfully in the United States. During the initial 10 months of the pilot, a total of 50 countries were added to the Pilot Program, and all otherwise qualified B visa applicants were required to pay a bond as a condition of visa issuance. In FY 2024, there were 45,488 overstays from these 50 countries.²⁵ In the first 10 months of the pilot, the number of overstays was fewer than 50. The visa bond requirement has also resulted in a decrease in visa issuance, as some applicants appear to self-select by not paying a bond. Compared to the same 10-month period the preceding year, visa issuance rates declined by 83 percent as of July 2026. Those who paid a bond and were issued a visa overwhelmingly complied with the terms of both the visa and the bond. The bonds proved to be an effective tool for reducing overstays.

IV. Purposes and Discussion of Final Rule

This final rule makes the Visa Bond Program permanent and sets forth the criteria for selecting countries, as an effective tool to reduce visa overstays. The Program will be limited to aliens

who are: applying for business visitor/tourist (B–1/B–2) nonimmigrant visas and are nationals of countries who are not members of VWP and otherwise identified by the Department, based on failing to meet rigorous standards relating to overstays, information sharing, screening and vetting, civil, criminal and identity records, and document security. All of these factors contribute to increased overstays and visa misuse.

For example, the Department finds that nationals from countries with high visa overstay rates, or high overall visa refusal rates which correspond with high visa overstay rates, are more likely to overstay their admission period than those from countries with both lower overstay rates and lower visa refusal rates. Second, the Department finds that nationals of countries where screening and vetting are deficient are nationals about whom the Department finds there are increased overstay risks as it is difficult to obtain full background and criminal history information. Third, the Department finds that insufficient information sharing causes gaps in verifying identities and criminal records, also posing a threat to legitimate travel. The Department will use these criteria but will maintain flexibility as inclusion in the Program is not mandatory if the criteria are met. While the Department recognizes that the qualifying refusal rates and increased information sharing of VWP²⁶ countries may be a general goal, VWP participation will preclude a country from inclusion, and other factors as articulated in the criteria above may be taken into consideration when choosing whether to include a country into the Program. An applicant from a country that does not participate in information sharing or is subject to scrutiny for

²⁴ Issuance of a visa does not guarantee admission to the United States. See INA sec. 221(h), 8 U.S.C. 1201(h) (“Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law.”). DHS also may impose departure bonds for nonimmigrants. See INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1) (“The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary of Homeland Security] may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the [Secretary] shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under [INA section 248, 8 U.S.C. 1258], such alien will depart from the United States.”); 8 CFR 214.1(a)(3)(iii) (“At the time a nonimmigrant alien applies for admission or extension of stay, he or she must post a bond on Form I–352 in the sum of not less than \$500, to ensure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so . . .”).

²⁵ DHS Entry/Exit Overstay Report for Fiscal Year 2024, <https://www.dhs.gov/publication/entryexit-overstay-report>, at page 11, Table 1.

²⁶ To be designated as a VWP country, countries must demonstrate a low nonimmigrant visitor visa refusal rate of less than 3 percent in addition to meeting other strict immigration, travel document security, counterterrorism, law enforcement, and information sharing requirements. Countries cannot reach this target refusal rate without simultaneously demonstrating very low overstay rates. Participation in the VWP also requires countries to increase counterterrorism, law enforcement, and immigration enforcement cooperation with the United States. See generally INA sec. 217, 8 U.S.C. 1187. After designation in the VWP, participants must maintain high and consistent security standards to remain VWP participants. In addition, VWP participants with a 2 percent or greater rate of visitors overstaying the terms of their admission into the United States must initiate a public information campaign to reduce overstay violations by educating their nationals on the conditions for admission in the United States. DHS, in consultation with the Department of State, continuously monitors all VWP participants’ compliance to ensure that their continued designation in the VWP will not adversely affect the security of the United States.

overstays may generally be more likely to overstay his or her authorized period of admission to the United States, or otherwise fail to maintain the status in which he or she was admitted or any nonimmigrant status subsequently acquired.

Covered visa applicants will be required to post a bond of up to \$20,000 as a condition of visa issuance, with the exact amount of the bond either \$10,000, \$15,000, or \$20,000, based upon the applicant's circumstances as determined by the consular officer, unless the bond requirement is waived. All bonds must be posted in U.S. currency/denominations. Beginning October 1, 2027, and every seven years thereafter, this maximum bond amount will automatically adjust for inflation, based on the cumulative annual percentage change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average reported by the Bureau of Labor Statistics, as compared to the \$20,000 maximum bond amount set in this rule. The bond amount will be rounded up, to the nearest \$1,000, upon adjusting for inflation. Compliance with the bond will require arrival into and departure from the United States by commercial air from a U.S. port of entry or CBP Preclearance location, based on the system in place to confirm that the alien has departed the United States in accordance with the bond's conditions.

A. Overstay Rates

The DHS Entry/Exit Overstay Report, produced each fiscal year, provides data on departures and overstays, by country of nationality, for foreign visitors to the United States who were expected to depart in any fiscal year (October 1–September 30). For purposes of the DHS Entry/Exit Overstay Report and this Program, a “visa overstay” is an alien who was lawfully admitted to the United States and remains in the United States beyond the period of admission authorized by DHS. As described in the report, the initial authorized admission period is a fixed period determined by DHS at the time a B–1/B–2 visa holder applies for admission to the United States, but in some circumstances, an admission period may be extended by U.S. Citizenship and Immigration Services (USCIS) upon adjudication of an application for an extension of stay or change of nonimmigrant status.

Under the terms of the Program, an alien admitted to the United States for a temporary period as a nonimmigrant will have his or her bond canceled if the visa is expired, there is substantial performance of all the conditions of the bond, including compliance with each

specific nonimmigrant status which he or she is accorded while classified in such status, including the condition that the alien not accept unauthorized employment, and departs from the United States through a commercial airport on or before the date to which he or she is authorized to remain in the United States.

B. Posting Bonds via Treasury's Payment Platform

Applicants will be directed to the Visa Bond Program payment platform, operated by the Treasury. Bond funds will be custodied for the applicant at a U.S. financial institution operating as an agent of the government (financial agent). Payment will only be accepted in U.S. dollars for the total bond amount, and obligors will be responsible for any rate of exchange or fees incurred through their financial institution as a result of such payments. Payments must be made electronically.

The payment platform may offer one or more payment options dependent on country location including but not limited to domestic ACH or wire, international wire, digital wallets, and credit or debit cards. Certain countries' laws may dictate available payment options including transaction limits, and some payment options may not be available to applicants due to various cross-border payment limitations. It is the sole responsibility of the applicant to ensure the required payment can be made in full. The applicant will receive a unique payment confirmation number upon successful completion of the payment.

Upon funds settlement, the financial agent will notify State/DHS that bond funds have been successfully posted for the applicant. Funds settlement varies by payment method and may require multiple business days following the payment initiation request by the applicant.

Applicants who have the option and choose to make payment with credit or debit cards will be responsible for the additional costs related to credit or debit card processing (card acquiring fees).²⁷ These costs are determined by the card acquiring companies and may be variable.

C. B–1/B–2 Visa Applicants Only

Although Section 221(g)(3) of the INA, 8 U.S.C. 1201(g)(3), authorizes consular officers to require visa bonds from applicants for B visas and F (student) visas, the Program is limited to B–1/B–2 visa applicants, because their

authorized period of stay after admission to the United States is fixed by U.S. Customs and Border Protection (CBP) Officers upon admission at the port of entry and typically lasts a matter of months. CBP Officers authorize a maximum of one year for business visitors pursuant to 8 CFR 214.2(b)(1), or tourists, in accordance with 8 CFR 214.2(b)(2). B visas issued to aliens covered by the Program will be annotated to reflect the visa bond requirement. That annotation may be taken into account by CBP Officers who will generally admit the alien and grant the requested admission period.

D. Limited Waiver Process

There will be no bond waiver application process. Under Department regulations in 22 CFR 41.11(c)(3), the Assistant Secretary (A/S) for Consular Affairs, or his or her designate, may waive the bond requirement for an alien, country, or a category of aliens, if the Assistant Secretary assesses that a waiver would not be contrary to the national interest. Because all visa applicants will be presumed to want a waiver of the bond requirement, and because the only information that might be provided by an applicant that would be relevant to a waiver decision is the applicant's purpose of travel and possibly employment, which is already requested from all applicants, there will be no bond waiver application process. However, consular officers will have the authority to request waivers in very limited circumstances, such as travel for U.S. government employees or urgent humanitarian needs, and the Assistant Secretary for Consular Affairs, or his or her designate, has the discretionary authority to grant or deny those recommendations.

E. Bond Amounts

In accordance with the statutory and regulatory framework described above, the Department, through consular officers, has broad authority to require a visa applicant to post a bond in such sum and with such conditions as would help ensure the alien's timely departure from the United States. To promote the efficiency of the Program and avoid arbitrary and inconsistent bond amounts, the Department is setting guidelines for the bond amount. Consular officers will consider each visa applicant's personal circumstances in setting the bond amount. By its reference to the consular officer prescribing a bond's sum and conditions to be sufficient to insure “such alien will depart from the United States” in a timely manner, the Department is providing consular officers with three

²⁷ See INA sec. 221(g)(3), 8 U.S.C. 1201(g)(3); 22 CFR 41.11(b)(2).

options for bond amounts: \$10,000, \$15,000, and \$20,000. The Department believes these three levels will provide consular officers discretion to require a bond in an amount that is sufficient to ensure the alien does not overstay, while taking into account the visa applicant's circumstances. These amounts were determined based on the immigration enforcement lifecycle cost analysis and will more fully cover the cost of removing an alien should he or she overstay.

Consular officers are expected to set the bond amount at \$15,000, unless the officer has reason to believe the visa applicant's circumstances would render the applicant unable to pay that amount (yet remain sufficiently financed to pay all travel expenses through the period of intended stay in the United States), in which case the bond would be set at \$10,000, or unless the Department provides guidance for a different amount. Alternatively, if the alien's circumstances, including the nature and extent of the alien's contacts in the United States, would suggest a \$15,000 bond would not be sufficient to ensure the alien would timely depart the United States, the officer would require a \$20,000 bond as a condition of visa issuance. In making such determinations, consular officers will take into account the totality of the circumstances, including any information provided by the visa applicant on the visa application or in the visa interview regarding the alien's purpose of travel, current employment, income, skills, and education.

The three options for bond amounts were set following consultations with Treasury and DHS. In setting the amounts, the Department took into consideration costs associated with removal, including the full Immigration Enforcement Lifecycle cost (including direct costs, indirect costs, and overhead costs) ending with removal, as computed by DHS at approximately \$18,042 per alien.²⁸ The Department

viewed these costs as relevant, because an alien who overstays his or her authorized period of stay and who must be placed into removal proceedings requires the U.S. government to incur immigration enforcement-related costs that otherwise would not be incurred. Guidance instructing consular officers on the instructed amounts may be adjusted in accordance with bond amount changes prescribed in Section IV. An alien who breaches a bond would generally forfeit the bond amount, which could be used, in part, to reimburse the U.S. government for expenses incurred in the administration and determination of breached bonds and for expenses associated with the detention of illegal aliens, necessitated by the alien overstaying his or her authorized period of stay.²⁹

V. Visa Bond Procedures Under the Program

A. Applying for a Visa

All applicants from covered countries as listed on <https://www.travel.state.gov> will apply for nonimmigrant visas by following the standard procedures including scheduling an appointment at the consular section at a U.S. embassy or consulate and paying all associated machine-readable visa fees.

B. Setting the Bond

During the course of the visa interview, a consular officer will determine if an applicant is otherwise eligible for a visa, and if the applicant falls within the scope of the Program. If the applicant falls within the scope of the Program, the consular officer will inform the applicant of the bond requirement and the amount of the required bond, whether \$10,000, \$15,000, or \$20,000. The consular officer will advise the applicant that he or she must post a bond and the consular officer will deny the visa under INA Section 221(g), 8 U.S.C. 1201(g), to provide further information about posting the bond. That denial may be overcome if a bond in the required amount is duly posted by the visa applicant or on the visa applicant's behalf. The officer will provide the applicant a notice explaining the bond requirement and procedures for posting a cash bond and the web link for posting

the bond will be sent to the applicant. DHS regulations at 8 CFR 103.6 currently provide for the posting, processing, and cancellation of such visa bonds.

C. Paying the Bond

The applicant will receive written or electronic notification, based on the contact information provided by the applicant on the visa application, providing him or her a link to the Visa Bond Program payment platform to post the bond. Through this link, the applicant will also submit the appropriate DHS form for the bond. The obligor will receive a copy of the form, using the obligor's contact information provided at the time of signing. All terms and conditions set out on appropriate DHS forms applicable to bonds shall apply. The obligor on the bond, regardless of whether the visa applicant or a person who posts a cash bond on behalf of the visa applicant, will be notified if the visa applicant fails to substantially comply with the terms and conditions of the bond and, consequently, that the bond has been breached. The procedures for determining and enforcing a breach are set out on the appropriate forms and in DHS regulations, including 8 CFR 103.6. However, as stated above, the Secretary of Homeland Security delegated the authority to the employees of the Department, as designated by the Secretary of State, to perform duties related to the acceptance and processing of such bonds.³⁰

D. Issuing the Visa

The consular section where the visa applicant applied will rely on contact information provided by the applicant to contact the applicant regarding the final process to issue the visa. If, upon further review, the consular officer determines the applicant is not eligible for the requested visa, the consular officer will deny the visa, and the bond will be cancelled. If the required bond is posted, and the consular officer subsequently determines the applicant remains otherwise eligible for a visa, the officer may issue the visa, valid for three months single entry, three months multiple entry, or up to 12 months multiple entry, depending on visa reciprocity, with an annotation indicating the posting of a visa bond.

- As a condition of the bond, the visa holder may only enter and depart the United States through commercial airports of entry, including CBP Preclearance locations, and may not use land or sea ports of entry. A traveler

²⁸ Immigration Enforcement Lifecycle (IEL) cost represents a fully burdened managerial cost accounting for the average cost burden to perform each aspect of the lifecycle, yielding a total IEL cost per overstaying alien in the year of budget execution. The cost is developed and published by the ICE Office of the CFO (CFO)/Office of Budget Program and Performance (OBPP)/Performance Analysis & Evaluation (PA&E) at the end of each fiscal year. In Fiscal Year (FY) 2024, the Enforcement and Removal Operations (ERO) Policy Planning and Administration (PPA) was given an appropriation of \$5.082 billion across its five (5) sub-PPAs to enforce immigration law and remove illegal aliens from the United States. The lifecycle calculation includes the baseline direct cost expenditures of the ERO PPA, which are the personnel and general expenditures required for operational enforcement on a daily basis. The

indirect management and administrative (M&A) costs of ICE personnel who assist the ERO Program in accomplishing its mission are added to this amount. This includes support from such components as acquisition (OAQ), information technology (OCIO), asset management (OAFM), human resources (OHC), budget (CFO/OBPP), and legal advisory (OPLA). For FY 2024, the total IEL cost is approximately \$18,042 per illegal alien.

²⁹ 8 U.S.C. 1356(r)(3).

³⁰ See 8 U.S.C. 1103(a)(6); 8 CFR 2.1.

may be permitted to travel to contiguous territories after his or her initial entry if such travel and readmission from contiguous territory is in accordance with the automatic revalidation provisions in 22 CFR 41.122(d). However, the traveler's ultimate departure abroad must occur at a commercial U.S. airport of entry.

- A visa annotation will alert CBP Officers at these ports of entry that the applicant has posted a visa bond under the Program.

- Periods of lawful admissions or status in the United States are determined by DHS, including CBP at the port of entry and USCIS on requests for extensions of stay or change of status; nothing in this rule affects DHS's authorities regarding the period of authorized stay for B-1/B-2 nonimmigrants.

E. Cancellation of the Bond—Return

Pursuant to 8 CFR 103.6(c)(3), the bond should be canceled when there has been "substantial performance of all conditions imposed by the terms of the bond."³¹ Bond proceeds will be returned to any obligor when a visa holder complies with the terms and conditions of the bond, based on information provided by a DHS system in the following circumstances:

- Upon expiration of the visa, if the visa holder did not travel to the United States, as captured by a DHS system.

- Upon expiration of the visa, if the visa holder is not in the United States as captured by a DHS system, departed through a commercial airport of entry/exit, and complied with all terms of the visa.

- Following the timely departure from the United States of a visa holder through a commercial airport of entry/exit, if the visa expired during the lawful stay, as captured by a DHS system, and the visa holder complied with all terms of the visa.

- Following CBP deeming the visa holder inadmissible and cancellation of the visa by CBP at the port of entry, as captured by a DHS system.

- Following timely departure from the United States through a commercial airport of entry/exit, before the extended date (if any) to which he or she is authorized to remain in the United States pursuant to an approved request for extension of stay or change of status, as captured by a DHS system, and the visa holder complied with all terms of the visa and any other relevant nonimmigrant classifications obtained.

The obligor on any canceled bond will be entitled to a return of bond principal, subject to potential offset and levy through the Treasury Offset Program (TOP) or other mechanisms.³² Upon receiving confirmation from DHS/State that the terms and conditions of the bond have been met, the financial agent will return the proceeds in U.S. dollars to the original form of payment unless otherwise noted in the payment system. The obligor is responsible for ensuring that the original form of payment can receive returned bond amounts. The bond payor will be responsible for any exchange fees applied to his or her payment by the receiving institution.

There will be no interest accrued on visa bonds that are issued and canceled as part of this Program.

The Department or DHS also will provide the applicant with an Immigration Bond Cancellation Notice, which confirms compliance with the conditions of the bond.

F. Cancellation of the Bond—Manual Request

A visa holder may pursue cancellation of the bond by requesting an appointment with consular officials outside the United States if a visa holder has not traveled and wishes to cancel the bond before the visa expires. A consular officer will only approve this appointment if the consular officer confirms that the visa holder did not travel. The consular officer must physically cancel the visa after confirming the visa holder did not travel.

G. Bond Breach

For countries subject to visa bond requirements, a nonimmigrant visa shall only be issued upon the alien agreeing to the specific terms and conditions of the visa bond and the submission of the entire amount of the visa bond. The entire amount of the visa bond shall be forfeited, and not returned to the obligor, if the alien substantially violates any of the terms and conditions of the bond for which the nonimmigrant visa has been issued. The following actions will result in a violation of the terms and conditions of the visa bond:

- Substantial violation of any condition of his or her status as specified on the visa bond form;

- Filing an untimely request for change of status under Section 248 of the INA, 8 U.S.C. 1258;

- Remaining in the United States after expiration of the temporary period of admission or, if the alien timely and properly files a request for extension of stay or change of status of her/his lawful temporary stay, the alien does not depart the United States within 10 days after denial of such request;

- Filing an untimely request for extension of stay to extend nonimmigrant status under 8 CFR 214.1; or

- Filing for asylum or any other form of humanitarian protection that is submitted on Form I-589, Application for Asylum and for Withholding of Removal.

While filing a timely request for extension of stay or change of status may not be considered a violation of the terms and conditions of the bond, USCIS may consider the existence of a visa bond as a negative discretionary factor when adjudicating the request for extension of stay or change of status.

If the visa holder did not substantially comply with the terms and conditions set forth in DHS forms and in this final rule, the bond will be considered breached, and the bond deposit will be forfeited. If through an automated review, there is the preliminary finding that a visa holder has not complied with the terms and conditions of the bond, this case will be forwarded to DHS, which is responsible for making the final determination pursuant to 8 CFR 103.6(c)(3) and notifying the obligor of the breach determination via written notification. A visa bond will be forfeited when there has been a substantial violation of the terms and conditions set forth in the appropriate forms and this final rule.

H. Appeal of a Bond Breach Determination

The rights relating to the appeal of a DHS determination of a bond breach, including which rights would accrue after DHS makes a bond breach determination, are detailed in the instructions on associated forms and in 8 CFR 103.3.

VI. Benefits and Costs

The benefit of this Program is to enhance compliance with U.S. immigration law by reducing nonimmigrant visa overstay, while providing a structured mechanism for posting, processing, and discharging visa bonds. In coordination with Treasury and DHS, the Department assessed the operational feasibility and administrative burden of visa bonds

³¹ Conditions of the bond as set forth in the appropriate DHS Form.

³² The federal government, through TOP and other mechanisms, collects past-due debts that are owed to federal and state agencies. TOP matches individuals and entities who owe delinquent debts with money that federal agencies are paying (for example, a tax refund). To the extent allowed by law, when a match happens, TOP withholds (offsets or levies) money to pay the delinquent debt.

through the 12 month Pilot Program conducted from August 20, 2025, to August 5, 2026. Based on that experience, the Department has determined that a permanent Visa Bond Program is operationally feasible and can be implemented in support of national security and foreign policy objectives, including serving as a critical diplomatic tool to encourage foreign governments to reduce overstays by their nationals and strengthen identity verification and related screening practices.

The number of visa applicants who will be required to post a visa bond in any given year will depend on the countries identified for coverage and the demand for B-1/B-2 visas from those countries and may vary over time as the list of covered countries is adjusted. The Department initially anticipated that approximately 2,000 B-1/B-2 visa applicants would be required to pay a bond to travel to the United States during the one-year Pilot Program. However, travelers from 50 countries were ultimately subject to the Pilot Program, and approximately 20,000 visa applications were determined to require a visa bond payment. To date, close to half of those applications have resulted in a bond payment, for a total temporary monetary cost to the public of about \$115 million. The Department expects that, as under the pilot, the number of aliens required to post a bond will be limited relative to overall worldwide B-1/B-2 visa issuances. Regardless of the total number of aliens subject to the Program, the bond amount is a temporary transfer of resources that will be refunded upon an alien's departure from the United States, which means members of the public who comply with the terms and conditions of the bond do not ultimately incur the total bond amount as a monetary cost. However, the Department recognizes that the Visa Bond Pilot Program has led to reduced B1/B2 visa demand in pilot program countries. As discussed above, nearly half of the 20,000 applicants subject to the bond in the pilot ultimately chose not to pay the bond, while the Department observed an 83% reduction in B1/B2 visa issuance for pilot program countries in the first 10 months of the pilot. The Department expects that this final rule will contribute to the continued reduction of demand for B1/B2 visa applications from nationals of countries subject to the program.

The estimated amount of time needed for an average respondent to complete the DHS Form is thirty minutes (.50

hours) per response.³³ The estimated additional time burden associated with this final rule, which will include arranging for the posting of a bond and any necessary follow-up interactions with a consular section to confirm compliance with the terms and conditions of the bond, is estimated to be two hours.³⁴ The 2025 Bureau of Labor Statistics estimate for the median U.S. hourly wage for all occupations is \$24.51,³⁵ thus the Department estimates that this will cost each alien \$49.02.

The total cost to the government associated with this Program will be determined by the number of visa applicants that will fall within the scope of the Program. The collection and processing of each form takes an average of 6 hours and will be conducted by a government employee with an average hourly wage plus overhead, estimated to be \$28.02. The estimated additional time a consular officer with an average hourly wage of \$135 will expend for each case subject to a bond is 30 minutes. If a traveler breaches a bond posted pursuant to this final rule, DHS will incur some cost in collecting on the bond. Because DHS has no reliable basis for estimating the number of travelers or the percentage of travelers posting bonds who will breach the terms and conditions of the bond, the Department is unable to estimate the cost associated with enforcing bond breaches.

VII. Regulatory Findings

Administrative Procedure Act (APA)

The Administrative Procedure Act (APA), 5 U.S.C. 553, generally requires agencies to publish a notice of proposed rulemaking and provide an opportunity for public comment prior to issuing a final rule. The APA further requires that a rule take effect not less than 30 days after publication or service. 5 U.S.C. 553(d). However, the APA provides an exception from these requirements for rules "involving a foreign affairs function of the United States." 5 U.S.C. 553(a)(1).

The Secretary of State has determined that all policy related to visa operations and issuance, among other matters, constitutes a foreign affairs function of the United States under the

Administrative Procedure Act (5 U.S.C. 553(a)(1)).³⁶ More specifically, this final rule involves a foreign affairs function as its impact on visa policy directly implicates relationships between the United States and the specific countries whose nationals may be subject to the Program. Visa overstays often lead to removals and deportations, which are a continual cause of bilateral friction between the United States and other countries. The Pilot Program has demonstrated the feasibility of using nonimmigrant visa bonds as a diplomatic tool to encourage foreign governments to take immediate action to ensure that their nationals timely depart the United States after making temporary visits. Countries subject to the Pilot Program significantly reduced the number of their visa overstays. As designed, the Pilot Program also encouraged these countries to take proactive measures to improve screening and vetting and cooperate with the United States on information sharing. Therefore, this final rule clearly and directly impacts the foreign affairs functions of the United States and "implicat[es] matters of diplomacy directly." *City of N.Y. v. Permanent Mission of India to the U.N.*, 618 F.3d 172, 202 (2d Cir. 2010). Consistent with the Secretary's determination regarding rules that involve a foreign affairs function, the Program is a fundamental tool of diplomacy and national security, serving as a primary mechanism to manage bilateral relations and incentivize foreign governments whose nationals are subject to the Program to cooperate with the United States in ensuring the timely departure of their citizens/nationals from the United States and engage in improved information sharing, also signaling to other countries that the United States takes overstays seriously. While the Visa Bond Program is not a product of an agreement between the United States and another country, this final rule is properly viewed as one that "clearly and directly involve[s] activities or actions characteristic of the conduct of international relations." *Capital Area Immigrants' Rights Coal. v. Trump*, 471 F. Supp. 3d 25, 53 (D.D.C. 2020). Subjecting this regulatory mechanism to public notice and comment would trigger premature international speculation, disrupt ongoing sensitive diplomatic dialogues regarding migration management, and compromise the Executive Branch's authority to respond dynamically to changing conditions and immigration

³³ DHS has requested approval for a new information collection and OMB control number for a form focusing on these respondents. 1601-NEW, Immigration Bond (Visa), DHS Form I-352 BICR Reference No: 202607-1601-004, View Information Collection Request (ICR) Package.

³⁴ If the alien is determined to be eligible for the visa, the alien will be required to pay the bond via www.pay.gov and return to the Consular Section to complete processing and issuance. The Department estimates that for most aliens this will take no more than two hours.

³⁵ <https://data.bls.gov/oes/#/industry/000000>.

³⁶ See Determination: Foreign Affairs Function of the United States, 90 FR 12200 (Mar. 14, 2025).

risks. Because these visa bond measures are inextricably linked to U.S. foreign policy, invoking the foreign affairs exemption is necessary to ensure the U.S. government maintains an uncompromised, unified voice in international affairs.

Regulatory Flexibility Act/Executive Order 13272: Small Business

This final rule would not regulate “small entities” as that term is defined in 5 U.S.C. 601(6) and as such would not have a significant economic impact on a substantial number of small entities. This final rule only regulates individual visa applicants. The Department affirms that this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by state, local, or tribal governments, or by the private sector. This final rule does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or directly affect small governments, including state, local, or tribal governments, or the private sector. This final rule involves visas for aliens, and does not directly or substantially affect state, local, or tribal governments, or businesses.

Congressional Review Act of 1996

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule as defined in 5 U.S.C. 804(2), for purposes of congressional review of agency rulemaking. This final rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of companies based in the United States to compete with foreign based companies in domestic and import markets.

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is a significant regulatory action under Section 3(f) of Executive Order 12866.

Executive Orders 12372 and 13132—Federalism

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor will the final rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Executive Order 12988—Civil Justice Reform

The Department has reviewed this final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 14192—Unleashing Prosperity Through Deregulation

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to foreign affairs and immigration related functions of the United States. The rule’s primary direct purpose is to implement or interpret the immigration laws of the United States (as described in Section 101(a)(17) of the INA; 8 U.S.C. 1101(a)(17)) or any other function performed by the Federal Government with respect to aliens.

Paperwork Reduction Act

This final rule does not directly impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. However, the Department

will rely on a new DHS form (1601–NEW, Immigration Bond (Visa), DHS Form I–352 B, ICR Reference No: 202607–1601–004, View Information Collection Request (ICR) Package) that is an updated version of the I–352 currently in use for the pilot program. Consistent with 5 CFR 1320.13, DHS has submitted and OMB has approved a request for emergency approval of the I–352B for a period of 6 months, as a new collection of information. DHS is requesting comments on this information collection in a separate **Federal Register** notice. When submitting comments on the information collection, your comments should include OMB Control Number 1615–NEW and address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

DHS estimates the total responses at 300,000 and the amount of time needed for an average respondent to complete the I–352B is thirty minutes (.50 hours) with no cost burden (\$0) per response so that the total time burden is 150,000. In addition, for PRA purposes, the estimated total annual opportunity cost of responding to this collection is \$3,676,500 for completing the Form I–352B.

List of Subjects in 22 CFR Part 41

Administrative practice and procedure, Aliens, Passports and Visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 41 to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for Part 41 is revised to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1103, 1104; 1182; 1184; 1185 note (Section 7209 of Pub. L. 108–458, as amended by Section 546 of Pub. L. 109–295); 1201; 1258; 1323; 1361; 2651a.

■ 2. Revise § 41.11(c) to read as follows:

* * * * *

(c) *Visa Bond Program.*—(1) *Summary.* This paragraph (c) establishes a program (Visa Bond Program) implementing INA § 221(g)(3). Under the Visa Bond Program, consular officers will require a Bond to be posted via the Visa Bond Program payment platform as a condition of visa issuance, for nationals of certain countries.

(2) *Visa Bond Program Parameters.* Under the program, consular officers will require Visa Bonds to be posted by visa applicants who are applying for visas as temporary visitors for business or pleasure (B–1/B–2) who are nationals of countries with high overstay rates, deficient information sharing, insufficient identity verification and criminal records, and/or that need improvement in the area of screening and vetting and the security of travel and civil documents, including in the granting of citizenship. Countries deemed to meet these criteria are identified on the Department's website at <http://www.travel.state.gov>. Additional countries may be identified on this website no less than 15 days prior to the initiation of the program for that country, and countries may be modified on a rolling basis. Consular officers will set the Visa Bond amount at \$10,000, \$15,000, or \$20,000, based on a consular officer's assessment of which amount is sufficient to ensure the alien will maintain the status under which he or she was admitted or any status subsequently acquired under Section 248 of the INA and will not remain in the United States beyond the end of the alien's authorized period of stay. Visas issued under the Visa Bond Program will be valid for a single entry or multiple entries to the United States within three or up to 12 months of the date of visa issuance.

(3) *Bond Waiver Authority.* The Assistant Secretary for Consular Affairs, or his or her designate, may waive the bond requirement, for an alien, country, or a category of aliens, if the Assistant Secretary, or designate, assesses that such a waiver is not contrary to the national interest. A waiver of the bond requirement may be recommended to the Assistant Secretary for Consular Affairs by a consular officer where the consular officer has reason to believe the waiver would advance a national or humanitarian interest. There will be no procedure for visa applicants to apply for a waiver of the bond requirement.

Consular officers will determine whether a waiver would advance a significant national or humanitarian interest based on the applicant's purpose of travel and employment, as described in the visa application and during the visa interview.

(4) *Bond Procedures.* A Visa Bond required under paragraph (c) of this section must be posted after notification from a consular officer of the visa bond requirement. Upon the posting of such bond, the Department will receive notification that the bond has been posted. Under this Visa Bond Program, Visa Bonds will be administered by the Department, the Department of the Treasury, and DHS in accordance with regulations, procedures, and instructions promulgated by DHS for immigration bonds.

(i) *Visa Bond Cancellation.* A Visa Bond will be canceled when the associated visa expires or is canceled, if the visa holder is not in the United States, or the visa holder departs the United States after visa expiry, so long as the visa holder substantially performs with respect to the terms and conditions of the Visa Bond as set forth in the appropriate DHS form and under paragraph (c) of this section. To comply with the bond requirements, aliens must enter and depart the United States through commercial airports of entry—entry through CBP Preclearance locations is also permitted. Aliens who timely file a request for extension of stay or change of status and whose request for extension of stay or change of status is granted are not deemed to be in breach of bond as long as the alien complies with all the conditions of each specific nonimmigrant status which s/he is accorded while classified in such status. Such conditions include not accepting unauthorized employment and departing from the United States on or before the extended date (if any) to which s/he is authorized to remain in the United States.

(ii) *Visa Bond Breach.* A Visa Bond is breached when there has been a substantial violation of any of the terms and conditions of the bond for which the nonimmigrant visa has been issued, including any terms that may be set forth in the appropriate DHS forms and regulations. The following actions are considered to be violations under this paragraph:

(A) Remaining in the United States after expiration of the temporary period of admission;

(B) Filing an untimely request for a change of status;

(C) Not departing the United States within 10 days after denial of a timely

and properly filed request for extension of stay or change of status;

(D) Filing an untimely request for an extension of stay of nonimmigrant status; or

(E) Filing for asylum or any other form of humanitarian protection that is submitted on Form I–589, Application for Asylum and for Withholding of Removal.

(5) *Appeal of Bond Breach Determination.* A determination of a bond breach may be appealed in accordance with instructions provided by DHS.

(6) *Effect on other law.* Nothing in this paragraph shall be construed as altering or affecting any other authority, process, or regulation provided by or established under any other provision of federal law.

Morvared Namdarkhan,

Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.

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DEPARTMENT OF THE TREASURY

31 CFR Part 22

RIN 1505–AC91

Rescinding Portions of Department of the Treasury Title VI Regulations To Conform More Closely With the Statutory Text and To Implement an Executive Order

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: By this rule, the Department of the Treasury (“Department”) amends its regulations implementing Title VI of the Civil Rights Act of 1964 (“Title VI”) to eliminate disparate-impact liability. These amendments align the Department's regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions implement changes directed in the Executive order, *Restoring Equality of Opportunity and Meritocracy*.

DATES: This rule is effective on August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Tina Lancaster, Acting Director, Office of Civil Rights and Equal Employment Opportunity, Department of the Treasury, (202) 622–1079 (voice), by mail to Tina Lancaster, Acting Director, U.S. Department of the Treasury, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania

Avenue NW, Washington, DC 20220, by email at OCRE.comments@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

The Department is rescinding portions of its regulations promulgated under Title VI, 42 U.S.C. 2000d–1, to more closely align them to the language that Congress enacted, which prohibits intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. This rule rescinds those portions of the regulations that prohibit conduct having a disparate impact. First, this rule rescinds the full text of 31 CFR 22.4(b)(2), which currently prohibits the utilization of “criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” Second, this rule removes the two uses of the phrase “or effect” from 31 CFR 22.4(b)(3). Third, this rule rescinds the full text of 31 CFR 22.4(b)(6). Fourth, this rule rescinds the full text of 31 CFR 22.4(c)(2), which addresses employment practices subject to Federal financial assistance.

The rule’s revisions also conform to Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy*, 90 FR 17537 (Apr. 23, 2025). That Order states that “[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” *Id.* at 17537. The Order directed the Attorney General to, among other things, initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability. *Id.* at 17538.

This rule makes clear that the Department’s Title VI regulations prohibit only intentional discrimination, not conduct or activities that have a disparate impact. The Department thus will not pursue Title VI disparate-impact liability against its Federal-funding recipients.

II. Regulatory Amendments

This rule’s regulatory changes address the concerns regarding the statutory authority that the Supreme Court questioned in *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001), and the other legal and policy concerns discussed below. This rule also narrows the implementing regulations’ scope to the conduct that Congress intended Title VI to prohibit, promotes consistent enforcement among private plaintiffs and Federal departments and agencies,

and provides much needed clarity to the courts and Federal-funding recipients and beneficiaries. The Department is also amending its regulation to conform with the recent changes to the Department of Justice’s Title VI regulations, published on December 10, 2025 (90 FR 57141), and agrees with the rationale contained therein.

1. Serious Legal Concerns

There are serious statutory concerns as to whether Title VI authorizes the disparate-impact provisions of the current regulations. As the Supreme Court has made clear, Title VI prohibits “only intentional discrimination” and “permits” facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval*, 532 U.S. at 280, 286 n.6. That is the “single, best meaning” of Title VI. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). *Sandoval* calls into serious doubt the legality of the Department’s “disparate-impact regulations.” *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that the Department of Justice’s regulations were in “considerable tension” with the Supreme Court’s Title VI precedents); *see also id.* at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”).

Although *Sandoval* resolved only the question of private enforceability, subsequent cases such as *Loper Bright* have made clear that agencies cannot extend Title VI beyond its original public meaning. *See* 603 U.S. at 412–13 (holding that “courts must . . . ensur[e] that [an] agency acts within” its statutory authority). And even in the absence of Supreme Court precedent, the Department would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

Title VI authorizes agencies to promulgate regulations “to effectuate” the statute’s prohibition of intentional discrimination. 42 U.S.C. 2000d–1. The current regulations’ extension of prohibited conduct to include conduct with an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval*, 532 U.S. at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”). Thus, the disparate-impact regulations do not “effectuate” Title VI. 42 U.S.C. 2000d–1.

There are also serious concerns about whether the Department’s Title VI regulations pass constitutional muster under the Equal Protection Clause. As

the Supreme Court recently held in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, “the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application,” and the “guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.” 600 U.S. 181, 206 (2023) (*SFFA*) (internal quotation marks omitted) (first quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)); and then quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 289–90 (1978) (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient’s risk of disparate-impact liability under the Department’s regulations is triggered by unintentional disparate outcomes, which the recipient may not even know about without investigation. To evaluate and avoid this risk, the funding recipient must incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin and potentially use it to change the unintended disparate outcomes.

In short, disparate-impact liability encourages and, in some cases, requires covered entities to engage in the intentional use of race and racial balancing to eliminate those disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection Clause forbids. *See id.* The serious constitutional concerns raised by encouraging or requiring the intentional use of race further confirm that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize the Department to impose disparate-impact liability. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” (citing *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499–501, 504 (1979))).

This encouraged or coerced use of race, color, or national origin violates the Equal Protection Clause unless it survives review under the “daunting” strict-scrutiny standard. *SFFA*, 600 U.S. at 206; *see also Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025) (“Strict scrutiny—which requires a restriction to be the least restrictive

means of achieving a compelling governmental interest—is ‘the most demanding test known to constitutional law.’” (quoting *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997)). The use of race, color, or national origin necessitated by the disparate-impact provisions runs into serious issues with the requirement of narrow tailoring to achieve a compelling interest. *SFFA*, 600 U.S. at 206–07.

Similarly, the “affirmative action” provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing “to overcome the consequences of” unintended racial disparities. 31 CFR 22.5(b)(6). Thus, for substantially the same reasons as above, the “affirmative action” provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Department’s disparate-impact regulations. But even if the regulations were consistent with the statute, the Department finds that the potential constitutional concerns addressed above would independently justify the amendment of the regulations. *Cf. U.S. Tel. Ass’n v. FCC*, 188 F.3d 521, 528 (D.C. Cir. 1999) (concluding it was not “arbitrary and capricious” to adopt a certain policy in order to “avoid[] raising a non-trivial constitutional question”). And even if the regulations did not raise serious constitutional concerns, the Department finds that eliminating the costs and confusion caused by the mismatch between the statute and the disparate-impact regulations would independently justify the repeal of the regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the imposition of disparate-impact liability. While the Department expresses its policy concerns with disparate-impact liability independent of Executive Order 14281, that Order sets forth many valid policy concerns with disparate-impact liability. Moreover, the legal concerns identified above have caused uncertainty and confusion for Federal-funding recipients as to whether and when they need to comply with the disparate-impact regulations and when they can or must consider race, color, and national origin. As explained above, *Sandoval* casts substantial doubt on the validity of the disparate-impact regulations that many Federal departments and agencies have

promulgated pursuant to Title VI. 532 U.S. at 280–82.

Additionally in practice, and as explained above, disparate-impact liability leads covered entities to engage in racial balancing even as Title VI forbids intentional racial discrimination. This tension tends to create confusion and undermine public confidence in the nation’s civil rights laws and in the rule of law itself, as the law seems to both forbid and require the same conduct.

These problems are amplified by the arbitrary nature of the racial and ethnic categories typically used to measure disparate effects, which, by virtue of their arbitrariness, typically lack a meaningful connection to a compelling interest. *See, e.g., SFFA*, 600 U.S. at 216–17 (explaining that the “[racial] categories” utilized by Harvard and University of North Carolina were “themselves imprecise in many ways” and “the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals”). This confusion undermines the law’s ability to teach principles of nondiscrimination. The Department believes these policy concerns independently justify repealing certain parts of its regulation to cure this confusion, remove the incentive for covered entities to engage in racial balancing, and maintain clarity and public confidence in the nation’s civil rights laws.

The Department has considered the view that looking at disparate effects can sometimes be useful in uncovering or deterring subtle intentional discrimination or intentional indifference to unnecessary and arbitrary barriers. But that view’s alleged benefits are outweighed by the other issues and factors the Department has considered. And in any event, the concern is mitigated by the fact that eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. Both the Department and private litigants rely on such data as a potential indicator of intentional discrimination. This use of statistical disparity to help establish, as an evidentiary matter, liability for *intentional* discrimination materially differs from using it to impose liability for an unintentional disparate impact.

The Department has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to remedy unintentional discrimination for only certain types of cases where services are being provided in an economically

disadvantaged area. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI’s original public meaning.

Regardless, even a modified version of disparate-impact liability would not eliminate the Department’s serious legal and policy concerns. The Department determines that any benefits from adopting alternative versions of disparate-impact liability are outweighed by the Department’s legal and policy concerns. And even if possible, developing such a rule would not solve the confusion or rule-of-law concerns expressed above, nor reduce the compliance and litigation costs that covered entities face. The Department believes that the better course is to avoid the complexities, costs, and litigation associated with this alternative, even if eliminating disparate-impact liability would ultimately leave some problems unaddressed and others inadequately addressed.

The Department has additionally considered the potential reliance interests of funding recipients and others on the disparate-impact regulations. *Sandoval*, however, cast serious doubt on the continuing viability of the regulations more than 20 years ago. At least since *Sandoval*, the Department’s enforcement of its Title VI disparate-impact regulations has been minimal and sporadic. And Executive Order 14281 also directed all agencies to “deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,” including specifically the Department’s Title VI disparate-impact regulations. 90 FR at 17538. The Department accordingly believes that any reliance interests should be minimal and do not outweigh the Department’s legal and other policy concerns. Further, each of the Department’s concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Department notes that *Sandoval* has also led to a divergence between Title VI enforcement by private plaintiffs and enforcement by Federal departments and agencies. After *Sandoval*, private plaintiffs can enforce only Title VI’s statutory prohibition on intentional discrimination, while the Department could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations eliminates this incongruent enforcement.

Overall, after considering the relevant issues and factors and weighing the relevant considerations, the Department finds that, regardless of the legality of the Department’s disparate-impact regulations, the above summarized

policy concerns, when viewed separately or cumulatively, independently justify the repeal of its disparate-impact regulations.

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing

regulation that explain the particular types of discrimination prohibited, located at 31 CFR 22.4.

Table Summarizing Amendments

The table below indicates the exact wording changes. For each section

indicated in the left column, the text shown in the middle column is removed and the text shown in the right column is added:

Section	Remove	Add
22.4(b)(2)	Full text of paragraph: “(2) A recipient . . . or national origin.”	“[Removed]”.
22.4(b)(3)	“or effect” from both places	
22.4(b)(6)	Full text of paragraph (6)	
22.4(c)(1)	“(1)” from “(c) Employment practice. (1) Whenever a primary objective of the”; “Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin.”; and last sentence citing Executive Order 11246, which has been rescinded.	
22.4(c)(2)	Full text of paragraph: “(2) In regard to . . . of beneficiaries.”	

III. Section-by-Section Analysis

Section 22.4(b)(2)

Section 22.4(b)(2) is the current regulation’s general prohibition of conduct with an unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to impose liability on Federal funding recipients who “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination.” Because section 22.4(b)(2)’s only purpose is to extend the scope of Title VI to reach unintentional disparate-impact discrimination, this rule deletes this paragraph in its entirety. It thus amends the Department’s Title VI implementing regulations to conform to what Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document. The rule replaces paragraph (b)(2) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 22.4(b)(3)

Section 22.4(b)(3) addresses a Federal-funding recipient’s or applicant’s selection of the site or location of facilities. It provides that a funding recipient may not make selections with the “purpose or effect” of discriminating or “with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of” Title VI or the Department’s implementing regulations. The paragraph’s two references to “effect” extend its scope to unintentional disparate impacts. This rule deletes both “or effect” references to conform paragraph (b)(3) more closely to what Congress intended when it enacted Title VI and to address the legal and policy considerations and

determinations described in this document.

Section 22.4(b)(6)

Section 22.4(b)(6) deals with “affirmative action.” Paragraph (b)(6) authorizes affirmative action even in the absence of a finding of prior discrimination in a program “if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.” This provision points not to intentional discrimination, but rather to the unintentional “consequences of practices or impediments.” It consequently encourages intentional racial classifications, racial preferences, and other race-based actions without requiring the compelling governmental interest and narrow tailoring that the Equal Protection Clause demands.

Paragraph (b)(6) also requires that a recipient “must take affirmative action to overcome the effects of the prior discriminatory practice or usage” “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies.” This provision goes beyond the Equal Protection Clause, which permits in limited circumstances, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g., Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (Powell, J.). Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring to address identified

past discrimination, but rather simply “affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.” This provision accordingly promotes potentially illegal race, color, and national origin discrimination. Moreover, in some instances, it may even coerce recipients to consider and use race preferences when the recipient does not want to. This is contrary to the Department’s goal of promoting and defending a culture of nondiscrimination and is destructive to the public’s understanding of and faith in the nation’s civil rights laws. This rule, therefore, removes paragraph (b)(6).

Section 22.4(c)

Section 22.4(c) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. This paragraph also includes one sentence regarding “affirmative action” that recipients must take: “Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin.” Although this use of “affirmative action” language may not raise the same legal concerns given its focus on equal “treat[ment] . . . without regard to . . . race, color, or national origin,” this rule removes this sentence to avoid potential confusion. This rule also removes a reference to Executive Order 11246, which has been rescinded.

Paragraph (c)(2) extends the prohibition on discrimination to employment practices of the funding recipient even when “[w]here a primary

objective of the federal financial assistance is not to provide employment” if discrimination in the non-funded “employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program to which this regulation applies.” This paragraph prohibits not only intentional discrimination but rather extends the prohibition to conduct that “tends” to have a discriminatory effect.

Moreover, the Department notes that paragraph (c)(2)’s extension to employment practices where the Federal funding’s primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d–3. That section states that “[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.” 42 U.S.C. 2000d–3; *see also Johnson v. Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616, 627–28 n.6 (1987) (citing the statutory limitation and noting Congress’s intent that Title VI not “impinge” on Title VII, which prohibits discriminatory employment practices). The rule deletes paragraph (c)(2) so that the regulation more closely adheres to Title VI, which addresses the legal and policy considerations and determinations described in this document.

IV. Severability

The Department’s position is that each of the amendments serve a vital, related, but distinct purpose. The Department also confirms that each of the amendments is intended to operate independently of each other and that the potential invalidity of one amendment should not affect the other amendments. The Department would adopt any of the amendments independently of the invalidity of a separate amendment.

V. Procedural Requirements

Administrative Procedure Act

The Department issues this final rule without prior public notice and comment or a delayed effective date pursuant to the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans,

grants, benefits, or contracts.” 5 U.S.C. 553(a)(2).

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly to the receipt of Federal “[g]rants and loans,” “property,” “personnel” and “[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.” 31 CFR 22.3; *see also* 31 CFR 22.5 (requiring funding recipient sign contractual assurance of compliance with Title VI); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217–18 (2022) (observing that Congress enacted Title VI “[p]ursuant to its authority to ‘fix the terms on which it shall disburse federal money’ ” (internal citation omitted)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance*, 82 FR 46655, 46655 (Oct. 6, 2017) (invoking the section 553(a)(2) exception to amend Title IX regulations to “promote consistency in the enforcement of Title IX for [the Department of Agriculture] financial assistance recipients”); *Preserving Community and Neighborhood Choice*, 85 FR 47899 (Aug. 7, 2020) (invoking the exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs*, 53 FR 18285 (May 23, 1988) (invoking the exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration’s airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs—Suspension of Guidelines with Respect to Mass Transportation*, 46 FR 40687 (Aug. 11, 1981) (invoking the exception to suspend Department of Justice guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Indeed, invoking 5 U.S.C. 553(a)(2) is consistent with the Office for Management and Budget’s (OMB) definition for “Federal financial assistance” under 2 CFR 200.1, which defines “Federal financial assistance” with the same categories as the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts,” 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the

Department administers would fall under the “public property, loans, grants, benefits, or contracts” exception. Thus, the Department issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

Executive Orders 12866 and 13563 (Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not “economically significant,” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Data limitations make the costs and benefits of the rule difficult to quantify. This deregulatory action should, however, decrease the Department’s enforcement costs. It should also have the benefit, albeit difficult to quantify, of bringing the Department’s conduct in line with the law. The Department is also unable to quantify how funding recipients will respond to the regulatory changes. But the deregulatory action is anticipated to result in greater flexibility and lower compliance costs for recipients.

Other than the time needed to read and understand the final rule, this deregulatory action does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulations, it eliminates a source of regulatory confusion, narrows the conduct prohibited, and thus lessens the costs of compliance and potential liability. Moreover, recipients who receive funds for the same program or activity from more than one Federal entity already enter into separate contractual assurances with each funding entity, *see, e.g.*, 31 CFR 22.5. These contractual assurances already impose varying requirements that each Federal funding source deems necessary. Funding recipients will continue to be held to the most stringent contractual assurance and regulation.

Based on the analysis of the practical qualitative costs and benefits noted

above, the Department believes that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, the Department adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits. *See* 58 FR at 51735; 76 FR at 3821.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (“UMRA”), 2 U.S.C. 1501 *et seq.*, requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by state, local, or tribal governments, or the private sector. 2 U.S.C. 1532(a). The UMRA also, however, excludes from its coverage any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” 2 U.S.C. 1503(2). Accordingly, this rulemaking is not subject to the provisions of the UMRA.

The Regulatory Flexibility Act

This rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 603, 604, because, for the reasons described above, no notice of proposed rulemaking is required under 5 U.S.C. 553. *See Or. Trollers Ass’n v. Gutierrez*, 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553). Further, the Department, in accordance with 5 U.S.C. 605(b), has reviewed these regulations and certifies that the rule’s changes will not have a significant economic impact on a substantial number of small entities, in large part because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings the Department into compliance with the Equal Protection Clause and harmonizes the scope of its regulations with the scope of Title VI, which does not prohibit conduct having an unintentional disparate impact. All Federal-funding recipients have been bound by the existing standards that will remain in place after this rule since their initial promulgation.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2).

Executive Order 13132

These Title VI regulations will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These Title VI regulations do not subject recipients of Federal funding to any new substantive obligations because all recipients of Federal funding have been bound by Title VI’s nondiscrimination provision since 1964. Moreover, these Title VI regulations are required by statute; Congress specifically directed Federal agencies to adopt implementing regulations when Title VI was enacted. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. No further action is required.

Executive Order 12250

Pursuant to Executive Order 12250, the Department of Justice has the responsibility to “review . . . proposed rules . . . of the Executive agencies” implementing nondiscrimination statutes such as Title VI in order to identify those which are inadequate, unclear or unnecessarily inconsistent.” Additionally, Executive Order 12250 delegated the President’s responsibility to approve Title VI regulations to the Attorney General. *See* 42 U.S.C. 2000d–1. The Attorney General has reviewed and approved this rule.

Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 14192 (Unleashing Prosperity Through Deregulation)

The Department expects this rule to be a deregulatory action under Executive Order 14192.

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to “explicitly describe the conduct subject

to criminal enforcement, the authorizing statutes, and the *mens rea* standard applicable to” each element of those offenses. 90 FR 20363, 20363 (May 9, 2025). This rule does not impose a criminal regulatory penalty and is thus exempt from Executive Order 14294 requirements.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order 12988 to specify provisions in clear language. *See* 61 FR 4729, 4731–32 (Feb. 5, 1996). Pursuant to section 3(b)(1)(I) of the Executive Order, *id.* at 4731, nothing in this proposed or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

List of Subjects in 31 CFR Part 22

Administrative practice and procedure, Civil rights, Claims, Disability benefits, Government contracts.

For the reasons discussed in the preamble, the Department amends 31 CFR part 22 as follows:

PART 22—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF THE TREASURY

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 42 U.S.C. 2000d, 2000d–1, 2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 14281, 90 FR 17537.

■ 2. In § 22.4:

- a. Remove and reserve paragraph (b)(2);
- b. Revise paragraph (b)(3);
- c. Remove paragraph (b)(6); and
- d. Revise paragraph (c).

The revisions read as follows:

§ 22.4 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the ground of race, color, or national origin; or with the purpose of defeating or substantially impairing the

accomplishment of the objectives of Title VI or this part.

* * * * *

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, and use of facilities).

Rachel Miller,

Executive Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2025-0071; FRL-13395-01-OCSPP]

Permethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of permethrin (CASRN 52645-53-1) in or on the food and feed commodity of black pepper at 0.1 parts per million (ppm). Under the Federal Food, Drug, and Cosmetic Act (FFDCA), the American Spice Trade Association, Inc., submitted a petition to EPA requesting that EPA establish a maximum permissible level for residues of this pesticide in or on the identified commodity.

DATES: This regulation is effective August 3, 2026. Objections and requests for hearings must be received on or before October 2, 2026 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2025-0071, is available at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the

docket in person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDfRNNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is EPA's authority for taking this action?

EPA is issuing this rulemaking under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." FFDCA section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . ."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. If you fail to file an objection to the final rule within the time period specified in the final rule, you will have waived the right to raise any issues resolved in the final rule. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2025-0071 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 2, 2026.

The EPA's Office of Administrative Law Judges (OALJ), in which the Hearing Clerk is housed, urges parties to file and serve documents by electronic means only, notwithstanding any other particular requirements set forth in other procedural rules governing those proceedings. See "Revised Order Urging Electronic Filing and Service," dated June 22, 2023, which can be found at <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>. Although the EPA's regulations require submission via U.S. Mail or hand delivery, the EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, the EPA believes the preference for submission via electronic means will not be prejudicial. When submitting documents to the OALJ electronically, a person should utilize the OALJ e-filing system at https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. If you wish to include CBI in your request, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. Information not marked confidential pursuant to 40 CFR part 2

may be disclosed publicly by EPA without prior notice.

II. Petitioned-For Tolerance

In the **Federal Register** of July 3, 2025 (90 FR 29515 (FRL-12474-05-OCSP)), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F9157) by the American Spice Trade Association, Inc. 1101 17th Street NW, Suite 700, Washington, DC 20036. The petition requests to amend 40 CFR 180.378 by establishing a tolerance for residues of the insecticide permethrin, measured as the sum of its *cis*- and *trans*-permethrin isomers [*cis*-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [*trans*-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate], in or on the raw agricultural commodity black pepper at 0.1 ppm. That document referenced a summary of the petition prepared by the American Spice Trade Association, Inc., the petitioner, which is available in the docket (ID number EPA-HQ-OPP-2025-0071) at <https://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the proposed tolerance.

III. Final Tolerance Action

A. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for permethrin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with permethrin are summarized in this unit.

B. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

For a discussion of the toxicological profile of permethrin and specific information on the risk assessment conducted in support of this action, including on the studies received and the nature of the adverse effects caused by permethrin, refer to the document titled "Permethrin. Human Health Risk Assessment for Tolerance without U.S. Registration in/on Imported Black Pepper" (hereinafter "Permethrin Human Health Risk Assessment"), which is available in the docket for this action.

C. Toxicological Points of Departure/Levels of Concern

For a summary of the Toxicological Points of Departure (POD)/Levels of Concern for permethrin used for human health risk assessment, see "Permethrin Human Health Risk Assessment," available in the docket for this action.

D. Exposure Assessment

EPA's dietary exposure assessments have been updated to include the additional exposure from the new use of permethrin on imported black pepper and do not change the prior exposure estimates. Acute and average (chronic) aggregate dietary (food and drinking water) exposure and risk assessments were conducted for permethrin using the Dietary Exposure Evaluation Model software using the Food Commodity Intake Database (DEEM-FCID; Version 4.02), which uses the 2005–2010 food consumption data from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America. Permethrin residue estimates used in the assessment are calculated as the sum of *cis*- and *trans*-permethrin, along with percent crop treated estimates reported by the Biological and Economic Analysis Division, USDA Pesticide Data Program monitoring data, both empirical and EPA's default processing factors, and a modeled estimated drinking water concentration. Risk estimates do not exceed EPA's level of concern (less than 100% of the acute population-adjusted dose (aPAD)) at the 99.9th exposure percentile for the general U.S. population (2.2% of the aPAD) and all population subgroups. The most highly exposed population subgroup is children 3–5 years old with a risk estimate of 4.3% of the aPAD at the 99.9th exposure percentile.

A chronic dietary endpoint has not been selected for permethrin because repeated exposures do not result in a POD lower than that resulting from acute exposure; therefore, the acute dietary risk assessment is protective of chronic dietary risk. However, since

there are residential uses of permethrin, a dietary exposure assessment was conducted to calculate average dietary (food and drinking water) exposure estimates to support the permethrin aggregate risk assessment. The population subgroup with the highest chronic dietary (food and drinking water) exposure estimate is children 1–2 years old (0.000780 mg/kg/day). Permethrin is classified as "suggestive evidence of carcinogenic potential" based upon lung adenomas in female mice. The Agency has determined that quantification of risk using a non-linear approach (*i.e.*, reference dose (RfD)) will adequately account for all toxicity, including carcinogenicity, that could result from exposure to permethrin. A separate cancer dietary exposure and risk assessment is not required.

1. *Drinking water exposure.* Although the proposed use will not affect drinking water, acute and average (chronic) aggregate dietary (which includes both food and drinking water) exposure and risk assessments were conducted using the DEEM-FCID; Version 4.02 as noted above.

2. *Non-occupational exposure.* There are no new residential uses of permethrin being proposed at this time. However, residential handler and post-application exposures are anticipated from the currently registered uses of permethrin and the recommended residential exposures to be included in the permethrin aggregate assessment remain unchanged; see "Permethrin Human Health Risk Assessment," available in the docket for this action.

3. *Cumulative exposure.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency has determined that the pyrethroids and pyrethrins share a common mechanism of toxicity (<https://www.regulations.gov>; EPA-HQ-OPP-2008-0489-0006). In 2011, after establishing a common mechanism grouping for the pyrethroids and pyrethrins, the Agency conducted a cumulative risk assessment (CRA) which is available at <https://www.regulations.gov>; EPA-HQ-OPP-2011-0746. In that document, the Agency concluded that cumulative exposures to pyrethroids (based on pesticidal uses registered at the time the assessment was conducted) did not present risks of concern. The recommended tolerance for permethrin on black pepper will not significantly

impact the results of the 2011 CRA because dietary exposures make a minor contribution to total pyrethroid exposure relative to residential exposures. Therefore, the results of the 2011 CRA are still valid and there are no cumulative risks of concern for the pyrethroids/pyrethrins.

E. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor. EPA continues to conclude that there is reliable data to support the reduction of the FQPA SF from 10X to 1X. See "Permethrin Human Health Risk Assessment," available in the docket for this action for a discussion of the Agency's rationale for that determination.

F. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the aPAD and chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate PODs to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD. They are 4.3% of the aPAD for children 3 to 5 years old, the population subgroup with the highest exposure estimate. A chronic dietary endpoint has not been selected for permethrin because repeated exposure does not result in a POD lower than that resulting from acute exposure. Therefore, the acute dietary risk assessment is protective of chronic dietary risk. However, since there are residential uses of permethrin, a highly refined chronic dietary (food and drinking water) exposure assessment was conducted to calculate chronic dietary exposure estimates to support the permethrin aggregate risk

assessment. The population subgroup with the highest chronic dietary (food and drinking water) exposure estimate is children 1–2 years old (0.000780 mg/kg/day).

The short-term aggregate risk assessment combines exposures to permethrin from the registered residential uses and the dietary (food and drinking water) risk assessment. An aggregate risk index (ARI) approach was used for the short-term aggregate risk assessment since the oral and inhalation endpoints have different levels of concern. ARIs that are greater than or equal to 1 are not of concern. The short-term aggregate assessment for children 1 to less than 2 years old was conducted using the ARI approach for consistency purposes, even though only oral post-application exposures are anticipated for the selected residential scenario. The short-term aggregate assessment for adults resulted in an ARI of 76 and, for children 1 to less than 2 years old, the result is an ARI of 3.0. Since the ARIs are greater than 1, there are no short-term aggregate risks of concern for permethrin.

A chronic aggregate assessment was not conducted since single dose and repeat dosing permethrin studies show that repeat exposures do not result in lower PODs (*i.e.*, there is no evidence of increasing toxicity with an increased duration of exposure). Therefore, only acute and short-term aggregate risk assessments need to be conducted for permethrin, and these are protective of all other durations of exposure.

A cancer aggregate risk assessment was not necessary for permethrin since the quantification of risk using a non-linear RfD was determined to adequately account for all chronic toxicity, including carcinogenicity, that could result from exposures to permethrin.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to permethrin residues. More detailed information about the Agency's analysis can be found at <https://www.regulations.gov> in "Permethrin Human Health Risk Assessment" in docket ID number EPA-HQ-OPP-2025-0071.

IV. Other Conclusions

A. Analytical Enforcement Methodology

Adequate gas chromatography electron capture detection (GC/ECD) methods are available for enforcing tolerances of permethrin and are listed

in Pesticide Analytical Manual (PAM) Vol. II (Section 180.378). Method I is a GC/ECD method for determining permethrin in plant matrices and has a limit of quantitation (LOQ) of 0.05 ppm for each isomer. Method II is a GC/ECD method for determining permethrin in livestock matrices that has a LOQ of 0.01 ppm for each isomer. In addition, permethrin is completely recovered using FDA Multiresidue Methods (PAM Vol. I Sections 302 and 304).

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards and agricultural practices. EPA considers the international maximum residue limits (MRL) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

Codex (0.05 ppm on pepper-spices), Canada (0.1 ppm on pepper-spices) and the European Union (0.1 ppm on peppercorn) have established MRLs for residues of permethrin in/on pepper, black. The EPA's proposed tolerance would harmonize the U.S. tolerance with the European Union tolerance at 0.1 ppm, which will promote global harmonization and facilitate trade. Based on the available residue data, harmonization with the Codex MRL was not possible.

V. Conclusion

Therefore, a tolerance is established for residues of permethrin (CASRN 52645–53–1) in/on black pepper at 0.1 ppm.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review

This action is exempt from review under Executive Order 12866 (58 FR 51735, October 4, 1993), because it establishes or modifies a pesticide tolerance or a tolerance exemption under FFDCA section 408 in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 (90 FR 9065, February 6, 2025) does not apply because actions that establish a tolerance under FFDCA section 408 are

exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA 44 U.S.C. 3501 *et seq.*, because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

Since tolerance actions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the RFA, 5 U.S.C. 601 *et seq.*, do not apply to this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more (in 1995 dollars and adjusted annually for inflation) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or on the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because tolerance actions like this one are exempt from review under Executive Order 12866. However, EPA's 2026 Policy on Children's Health applies to this action. This rule finalizes

tolerance actions under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .” (FFDCA 408(b)(2)(C)). The Agency's consideration is summarized in Unit III.E.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355) (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and 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).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

For the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.378 by:

■ a. In Table 1 to Paragraph (a):

■ i. Adding in alphabetical order the entry “Pepper, black”;² and

■ ii. Adding footnote 2.

The additions read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Pepper, black ²	0.1
* * * * *	
* * * * *	

²There are no United States registrations for use of permethrin on pepper, black as of August 3, 2026.

* * * * *

[FR Doc. 2026–15634 Filed 7–31–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1370

RIN 0970–AD42

Reducing Bureaucracy and Burden in Family Violence and Prevention Services

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule removes duplicative and unnecessary sections from the Family Violence Prevention and Services Program regulations. These amendments will streamline the Family Violence Prevention and Services regulations and make them more accessible to the public.

DATES: Effective date October 2, 2026.

FOR FURTHER INFORMATION CONTACT: Adam N. Jones, Deputy Chief of Staff, Immediate Office of the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services, Washington, DC, 202–417–0115, or Deregulation@acf.hhs.gov. A plain language summary of the final rule is posted at <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is issued under the authority granted to the Secretary of Health and Human Services by the Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. 10401

et seq. 42 U.S.C. 10404(a)(4) specifically authorizes rulemaking.

II. Background

45 CFR part 1370, “Family Violence Prevention and Services Programs” is a regulatory package established under FVPSA, as amended (42 U.S.C. 10401 *et seq.*), that governs the administration of multiple federal grants implemented for the purposes of increasing public awareness about and preventing family violence, domestic violence, and dating violence; providing immediate shelter and supportive services for victims of family violence, domestic violence, and dating violence and their dependents; providing for technical assistance and training relating to family violence, domestic violence, and dating violence programs; providing for State Domestic Violence Coalitions; providing specialized services for abused parents and their children; and operating a national domestic violence hotline.

The FVPSA regulations were initially published on February 22, 1996 (Family Violence Prevention and Services Programs, 61 FR 6791 (Feb. 22, 1996) (codified at 45 CFR pt. 1370)). They were amended on November 2, 2016. Family Violence and Prevention Services Program, 81 FR 76446 (Nov. 2, 2016) (codified at 45 CFR pt. 1370). The amended regulations reflected FVPSA’s most recent reauthorization under the Child Abuse Prevention and Treatment (CAPTA) Reauthorization Act of 2010 (Pub. L. 111–320). *See* 81 FR 76446, 76446. FVPSA has not been amended since 2010 and the FVPSA regulations have not been amended since 2016.

On April 6, 2026, HHS published a notice of proposed rulemaking (NPRM) titled “Reducing Bureaucracy and Burden in Family Violence and Prevention Services,” 91 FR 17239, Docket No. ACF–2026–0430, RIN 0970–AD42. The NPRM proposed to remove the following sections: the purposes of FVPSA programs (§ 1370.1); government-wide and HHS-wide regulations applicable to FVPSA grants (§ 1370.3); reporting and evaluation requirements, including a Territorial clarification (§ 1370.6); National Resource Center and training and technical assistance grants (§ 1370.30); grants for specialized services for abused parents and their children (§ 1370.31); and National Domestic Violence Hotline grants (§ 1370.32). The comment period closed on May 6, 2026.

III. Executive Summary

This final rule removes several sections of the FVPSA regulations. The regulation sections to be removed and reserved can be designated into two

categories: those that are duplicative and those that are unnecessary because they are better suited for a different format.

The duplicative regulation sections are those that carry no legal weight because their requirements are listed elsewhere in applicable law, such as in statute. Duplicative regulations impose no new obligations and offer no new guidance because the authority and requirements are pulled directly from other statutes and regulations. In many cases, the language in the regulation is identical to the language in the FVPSA statute. Sections removed because they are duplicative are 45 CFR 1370.3, 45 CFR 1370.30 (duplicative in part), 45 CFR 1370.31 (duplicative in part), and 45 CFR 1370.32 (duplicative in part).

Several of the regulation sections are better suited to a different format, such as a Notice of Funding Opportunity (NOFO). These sections either include summaries of program goals or objectives that do not impose any requirements beyond the language in the authorizing statute or they include information generally found in grant documents such as NOFOs. In some cases, the sections merely direct grant applicants and recipients to follow instructions in NOFOs and provide no additional information. These sections are being removed to allow them to be published in the more appropriate format. Sections removed because they are unnecessary include 45 CFR 1370.1, 45 CFR 1370.6, 45 CFR 1370.30, 45 CFR 1370.31, and 45 CFR 1370.32.

Effective Date

This final rule will become effective 60 days from the date of its publication.

Severability

The purpose of this section is to clarify ACF’s intent with respect to the severability of the provisions of this NPRM. As explained above, ACF is removing sections of the RHY regulations because we determined that doing so would make the regulations clearer, less burdensome, and more accessible to the public. To the extent that any portion of the removals are declared invalid by a court, ACF intends for all other provisions of this final rule to remain in effect to the greatest extent possible to ensure that the FVPSA regulations remain as concise and accessible as possible. The changes address a variety of issues relevant to the Office of Family Violence Prevention and Services, the ACF office responsible for implementing FVPSA. None of the provisions contained herein are central to an overall intent of the proposed rule, nor are any provisions

being removed in this final rule dependent on the validity of other, separate provisions.

IV. Summary of Public Comments

HHS published an NPRM in the **Federal Register** on April 6, 2026, (91 FR 17239) proposing revisions to 45 CFR part 1370. HHS provided a 30-day comment period during which interested parties could submit comments in writing electronically through *Regulations.gov* or via email to the Immediate Office of the Assistant Secretary.

During the 30-day comment period, HHS received 56 comments posted on *www.regulations.gov* and 4 comments via email, totaling 60 comments. Of those comments, 57 were unique and 3 comments were duplicate comments. HHS received comments from 10 State Domestic Violence Coalitions; 1 state; 4 tribes and tribal organizations; resource centers; national and local organizations; and 10 individuals. Some organizations submitted more than one unique comment.

Public comments reflected a range of perspectives, with some commenters expressing general or mixed support for the proposed rescissions and most commenters opposing the proposed rescissions. All comments were reviewed and informed our development of the final rule.

To support the analysis of public comments, HHS used a large language model, a type of artificial intelligence (AI), as a tool to conduct an initial scan of comment content, sentiment, and language. The AI output was thoroughly analyzed and refined by content experts. All comments were reviewed by OFVPS staff to determine each commenter’s support or opposition toward the policies proposed in the NPRM.

The preamble in this final rule discusses the changes to current regulations. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules are also retained, unless specifically modified in the preamble to this rule.

V. General Comments and Cross-Cutting Issues

Four comments expressed overall support for the proposed rescissions in the NPRM but did not generally discuss specific provisions or make any suggestions for change. Some commenters raised concerns about removing sections of the FVPSA regulation that were not included in the NPRM, such as 45 CFR 1370.4. ACF intends to remove only the sections

included in the NPRM and will not address comments that raise concerns about other sections that will remain in regulation. Some comments expressed opposition to the proposed changes but made no specific suggestions for change. We address the general concerns raised in those comments in this section, as well as general themes raised by commenters opposing the changes who also cited to specific regulation sections. Comments addressing specific sections of the regulation proposed for removal are discussed in the section-by-section analysis later in this final rule.

First, several commenters argued that the provisions proposed for removal that we flagged as duplicative do more than restate statute. Commenters stated that the existing regulatory text provides interpretive clarity, cross-cycle stability, and transparency, particularly where the regulation reflects longstanding program practice or explains how statutory provisions operate in practice.

We acknowledge the necessity of providing stakeholders with clarity beyond the statutory language but contend that this clarifying language is better suited for formats other than regulation, such as in NOFOs or Supplemental Terms and Conditions. As such, this concern does not justify a change in ACF's proposed rescissions.

Second, many commenters argued that moving significant material from regulation to notices of funding opportunity, terms and conditions, or other guidance documents would increase rather than reduce burden. This concern was raised mainly by smaller organizations, culturally specific organizations, Tribal organizations, and other entities without dedicated compliance staff.

We recognize that shifting explanatory language from FVPSA regulations to grant and guidance documents represents a change in ACF practice and may present questions for organizations with fewer resources. We maintain that the proposed rescissions will ultimately decrease compliance burdens and costs and make FVPSA program requirements easier to understand. Nonetheless, in recognition of the challenges associated with moving guidance language out of regulation, ACF will offer additional training and technical assistance on program compliance to grant recipients, with a special emphasis on smaller organizations, culturally specific organizations, Tribal organizations, and other entities without dedicated compliance staff, if requested and to the extent necessary.

Third, several commenters raised legal concerns, asserting that regulatory

text has legal force and public accountability that sub-regulatory guidance and grant documents lack. These commenters urged ACF to preserve in regulation any provision that has substantive interpretive significance or affects grant recipient expectations across funding cycles.

Commenters correctly pointed out that regulations that have undergone notice and comment carry more legal weight than sub-regulatory guidance. We disagree, however, that removing these sections from the FVPSA regulations will decrease public accountability or impact grant recipient expectations. Three of the sections proposed for removal, 45 CFR 1370.30–32, discuss requirements for FVPSA discretionary grants. All discretionary grants are announced via NOFOs, which include all relevant program requirements. While NOFOs do not carry the weight of regulation, they explain program requirements in a clear, concise way. NOFOs are not only publicly available for all interested stakeholders to review (*see grants.gov*), but all grant applicants must fully review them to understand requirements of and apply for federal discretionary grants. Including all relevant interpretations of FVPSA statute in NOFOs rather than in regulation ensures that applicants and recipients can easily access and understand ACF's approach.

Many FVPSA grants are non-discretionary and may not post NOFOs. Nonetheless, the sections of regulation slated for removal that impact non-discretionary grants, 45 CFR 1370.1, 1370.3, and 1370.6, do not include content that goes beyond statutory language in a meaningful way. They do not provide substantive interpretive significance or provide insight that significantly informs grant recipient expectations. Commenter concerns about the legal weight of the content in these regulations are therefore unfounded, and we decline to make changes to ACF's proposed rescissions on this basis.

Fourth, Tribal commenters and Tribal-serving commenters emphasized that removal of the targeted provisions could have practical implications for Tribal communities. For example, one comment from an organization representing Tribal members and other organizations expressed concern that the proposed rescissions, particularly of 45 CFR 1370.32 (addressing requirements for the National Domestic Violence Hotline), could negatively impact Tribal members' ability to access domestic violence services in their native languages. Specific concerns

about the removal of each section will be discussed further below. Multiple Tribal organizational commenters also requested tribal consultations to address concerns related to the proposed rescissions.

We acknowledge that Tribes and Tribal organizations face unique challenges in responding to domestic violence, family violence, and dating violence and understand the importance of clear, consistent guidance for FVPSA grant recipients serving Tribes. Nonetheless, ACF maintains that the proposed rescissions will not impact these organizations' ability to effectively carry out FVPSA grants. As discussed above and in further detail below, all discretionary grant obligations will be included in NOFOs, leaving grant applicants and recipients with no confusion about program requirements. Discretionary program requirements in 45 CFR 1370.30–32 that particularly impact Tribes are all rooted in statute, so moving the relevant language from regulation to NOFO is unlikely to limit enforceability. *Compare, e.g.*, 45 CFR 1370.32(c)(v) (requiring a plan for providing services to Limited English Proficient callers to the National Domestic Violence Hotline) with 42 U.S.C. 10413(e)(2)(E) (requiring the Hotline provider to “provide assistance and referrals to meet the needs of underserved populations and individuals with disabilities,” with “underserved populations” defined to include populations with language barriers). ACF also commits to increasing training and technical assistance to Tribes and Tribal organizations as needed to ensure that the proposed rescissions do not cause confusion about FVPSA program requirements among Tribes.

We also acknowledge Tribal commenter requests for tribal consultations but disagree that tribal consultation is necessary in this circumstance. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian Tribes when regulations have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.” *Consultation and Coordination With Indian Tribal Governments*, 65 FR 67249. Similarly, ACF's Tribal Consultation Policy says that consultation is triggered for any legislative proposal, new rule adoption, or other policy change that significantly affects Tribes, meaning there exists a

reasonable presumption that it has or many have substantial direct effects on one on more Indian tribes, on the relationship between the Federal Government and Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. See Administration for Children and Families, Tribal Consultation Policy 9–10 (Aug. 18, 2011), https://acf.gov/sites/default/files/documents/ana/final_acf_tcp_8_18_11.pdf. Based on the limited impact that this rescission will have on Tribes, while we welcome input from Tribal partners and will incorporate it into ACF's implementation of this rule, we decline to make any changes to the proposed rule based on these comments.

VI. Section-by-Section Analysis and Response to Comments

Most comments received included specific concerns about removing particular sections of the FVPSA regulations. Below, we identify each section, summarize the comments, and respond to them accordingly.

Subpart A—General Application Procedures

§ 1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?

The final rule removes this section because it is unnecessary. This regulation section articulates the general purpose of FVPSA grants but merely summarizes the programs funded by the Act. It imposes no obligations on grant recipients or applicants, nor does it give any guidance on how to interpret relevant statutory language. We will remove this section because its content could assist grant applicants and recipients more effectively in the introduction to a NOFO or in sub-regulatory guidance distributed by ACF.

ACF received 22 comments about the proposed removal of this section. Three commenters supported removal, noting that the section repeats information already covered in funding announcements or other guidance. One comment supported the removal in part and opposed in part, agreeing that duplicate provisions should be removed but urging that replacement guidance must be easy to find. The remainder of the commenters opposed the removal.

Comment: Several commenters, including State Domestic Violence Coalitions (SDVCs), national nonprofit organizations, and culturally specific organizations, opposed removal of

§ 1370.1 noting that the section provides a concise statement of the overall purposes of FVPSA and helps readers understand the structure of the program. These commenters stated that the section gives useful visibility to program components such as State Domestic Violence Coalitions and specialized services for abused parents and their children (SSAPC), programs that are not explicitly discussed in the “purpose” section of the FVPSA statute. See 42 U.S.C. 10401. Multiple commenters argued that purpose statements are important for understanding and interpreting regulations. Some commenters further stated that removing the section could make information about FVPSA's intent less accessible to members of the public, prospective applicants, and newer grant recipients.

Response: ACF appreciates the comments asserting the informational value of § 1370.1. We agree that a clear summary of FVPSA's purposes assists grant applicants, recipients, subrecipients, and the public. However, the overview of FVPSA purposes at § 1370.1 is not necessary to establish binding regulatory standards because it does not create independent rights or obligations and largely summarizes statutory purposes. The Secretary's authority under 42 U.S.C. 10404(a)(4) includes determining what regulatory provisions are reasonably necessary to carry out FVPSA. After consideration of the comments, ACF has determined that the general program-purpose statement is better maintained outside regulations in public-facing materials, including grant documents such as NOFOs and programmatic guidance documents.

Comment: Several commenters expressed concern that removing this section would increase administrative burdens on grant applicants, recipients, and members of the public by dispersing basic information across multiple sources. These commenters argued that removing this section will require stakeholders to consult multiple documents to identify basic program purposes and structure. These commenters recommended retaining the section or ensuring that the same information remains readily available.

Response: We appreciate commenters' concerns about transparency and navigability. Basic information about FVPSA's purpose remains readily available to the public, including to grant applicants and recipients, on ACF's website, NOFOs, and current guidance documents. See Office of Family Violence Prevention and Services, <https://acf.gov/ofvps>. As explained above, 45 CFR 1370.1

imposes no requirements on grant recipients and serves only to summarize FVPSA's goals. Stakeholders are not burdened by the removal of this section. Additionally, much of § 1370.1 is included in FVPSA's statutory purpose section, 42 U.S.C. 10401. We decline to make changes to the proposed rescissions based on this comment.

Comment: Several commenters, including SDVCs, raised distinctions between the FVPSA statute's purpose section at 42 U.S.C. 10401 and the purpose section in the FVPSA regulations at 45 CFR 1370.1. Specifically, these commenters noted that the statute does not list SDVCs and SSAPC as part of the program's purposes. These commenters emphasized the importance role that SDVCs and SSAPC play in fulfilling FVPSA's goals and expressed concern that removing this section from regulation would minimize their importance.

Response: We acknowledge the distinction between the statutory and regulatory purpose sections and agree that SDVCs and SSAPC represent crucial elements of FVPSA. ACF considers these programs to be integral to FVPSA even though they are not explicitly mentioned in 42 U.S.C. 10401. Nonetheless, we decline to make changes to the proposed plan for removal of this section because the FVPSA statute and the remaining sections of the FVPSA regulations sufficiently communicate these programs' importance. Both programs are required by statute. See 42 U.S.C. 10411 (SDVCs), 10412 (SSAPC). The FVPSA regulations further explain the importance of SDVCs at 45 CFR 1370.20(a), a section that remains unaffected by this rescission. We disagree that removing § 1370.1 erodes the importance of these programs.

Comment: Some Tribal organization commenters noted that Tribal programs use the regulation, with emphasis on the purpose section, as a statement of federal policy to explain their federal mandate to Tribal governments and to request support. They emphasized that funding announcements (NOFOs) do not serve the same function or carry the same weight as official regulations.

Response: We acknowledge commenters' concern and appreciate efforts to educate Tribal governments about Federal obligations under FVPSA. However, because this section does not introduce any concrete requirements, removing this section will not result in any decrease in authority. Tribal organizations and other advocacy organizations can rely on other publicly available information about FVPSA, as

well as the purpose section of the FVPSA statute (42 U.S.C. 10401) to educate the public, including Tribal governments, about obligations under FVPSA. The content in this section can be—and already is—readily available outside of regulation. Accordingly, we maintain our decision to remove § 1370.1 from regulation.

Comment: One commenter highlighted the importance that purpose sections serve in regulations because of the context that they provide for the rest of the regulation. This commenter argued that purpose sections are required under the Administrative Procedure Act (APA) at 5 U.S.C. 553(c), citing *Halo v. Yale Health Plan, Dir. of Benefits & Records Yale Univ.*, 819 F.3d 42, 52 (2d Cir. 2016).

Response: While we recognize that purpose sections can be useful to orient readers to the goals and context in regulations, we disagree that they are necessary. We also disagree that they are required under the APA and maintain that the commenter has misinterpreted the statute and the cited case law. 5 U.S.C. 553(c) requires agencies to “incorporate in the rules adopted a concise general statement of their basis and purpose.” Yet, this requirement refers not to a literal purpose section of regulation but broadly to the regulation’s preamble upon publication. See *Halo*, 819 F.3d at 52. Courts turn to the preamble to determine the agency’s intent in drafting the regulation. See *id.*; *Udall v. Tallman*, 380 U.S. 1, 16 (1965). Because this rescission includes a preamble and because the 2016 Final Rule’s preamble remains instructive for the remaining sections (see Family Violence Prevention and Services Programs, 81 FR 76,446 (Nov. 2, 2016)), this rescission aligns with APA requirements.

§ 1370.3 What Government-wide and HHS-wide regulations apply to these programs?

45 CFR 1370.3 is removed because it is duplicative. It imposes no new obligations and offers no new guidance because the authority and requirements are pulled directly from other statutes and regulations. 45 CFR 1370.3 lists Government-wide and HHS-wide regulations that apply to FVPSA grant recipients and subrecipients. The cited regulations apply to grant recipients and subrecipients regardless of whether they are listed in the FVPSA regulations, so their inclusion in the FVPSA regulations creates no additional authority. We remove this section because it serves no purpose other than to repeat requirements that are available elsewhere. Further, the list of

authorities included at 45 CFR 1370.3 is not an exhaustive list of all Federal regulations that apply to grant recipients and subrecipients, making its inclusion in the FVPSA regulations not merely duplicative but potentially confusing. See Family Violence Prevention and Services Program, 80 FR 61890, 61896 (proposed Oct. 14, 2015).

ACF received more than 40 comments about removing the section with most comments opposing the change and two comments supporting removal. One supportive comment agreed that the section repeats information from other documents and may cause confusion because it only lists some applicable regulations, not all of them.

Comment: Several commenters, including SDVCs and national advocacy organizations, opposed removal of § 1370.3 because they asserted that it functions as a centralized roadmap to commonly applicable federal requirements. These commenters stated that the section is especially useful to small organizations, first-time grant recipients, rural organizations, culturally specific organizations, and Tribal entities that may lack dedicated grants management staff.

Response: We agree that grant recipients and subrecipients benefit from a clear and centralized explanation of generally applicable federal requirements. We do not agree, however, that those authorities must remain in Federal regulation in order to remain binding or enforceable. The authorities listed in § 1370.3 apply by their own force whether or not they are reproduced in the FVPSA regulations. We also note, as stated above, that the list of relevant Federal requirements at § 1370.3 is not exhaustive and may create confusion if readers assume omitted authorities do not apply. Accordingly, the final rule removes and reserves § 1370.3.

Comment: Some commenters argue that removing this section from regulation increases compliance burdens for FVPSA grant recipients. Several commenters argued that, although § 1370.3 may not create independent obligations, it reduces burden by consolidating frequently applicable requirements in one place. These commenters stated that removing the section would increase the time and expertise required to identify applicable requirements and could increase audit or monitoring risk. Commenters were concerned about compliance risks, saying the removal increases the chance that organizations will accidentally break rules, face audit problems, have costs rejected, and need to create corrective action plans, especially

organizations with limited resources. One SDVC commenter said that State and Territorial administrators often reference § 1370.3 in their agreements with local programs to cover all applicable government-wide and HHS-wide regulations instead of listing each one separately.

Response: We acknowledge this concern and agree that the underlying information should remain easy to locate. Recipients of Federal Financial Awards are already required to ensure their compliance with preexisting obligations, like nondiscrimination laws or the requirement to not work with prohibited vendors. These requirements are outlined in NOFOs, ACF Terms and Conditions applicable to discretionary grant recipients, and Supplemental Terms and Conditions applicable to FVPSA formula grant recipients. See Award Terms and Conditions, <https://acf.gov/grants/manage-grant/grant-award/award-terms>. ACF will continue to offer technical assistance for FVPSA applicants, recipients, and subrecipients to ensure that all grant recipients and subrecipients can effectively comply with relevant law. We conclude that this approach better addresses commenter concerns than retaining a non-exhaustive regulatory list.

Comment: Several commenters argued that regulatory text has greater legal transparency and accountability than guidance documents and expressed concern that moving this content outside regulation would reduce public visibility into compliance expectations.

Response: We recognize the distinction between binding regulations and nonbinding guidance. ACF is not shifting any independently binding requirement from regulation to guidance through this action. Rather, the final rule removes a list of authorities that continue to apply to all FVPSA grant recipients and subrecipients. ACF will continue to identify these authorities in public guidance materials for transparency and ease of access. Accordingly, the final rule removes and reserves § 1370.3.

§ 1370.6 What requirements for reports and evaluations apply to these programs?

45 CFR 1370.6 is removed because it is unnecessary and better suited to a different format such as sub-regulatory guidance or inclusion in a NOFO. 45 CFR 1370.6 addresses requirements for reports and evaluations for FVPSA formula grants. The first part of the regulation merely restates the reporting requirement listed in the FVPSA statute at 42 U.S.C. 10406(d). The rest of the regulation does not impose an

obligation on grant recipients, but rather, clarifies that Territorial governments must also submit a performance report unless they consolidate FVPSA funds with other HHS funds in a Consolidated Block Grant under 45 CFR part 97, in which case they do not need to submit a performance report. ACF initially added this clarifying language to address earlier questions about reporting requirements for Territorial grant recipients. *See* Family Violence Prevention and Services Program, 80 FR 61890, 61899 (proposed Oct. 14, 2015). Territories that have consolidated FVPSA funds with other HHS funds in a Consolidated Block Grant are bound by 48 U.S.C. 1469a and 45 CFR part 97 and are already on notice that they do not need to submit a separate performance report for FVPSA compliance.

This section of the regulation is unnecessary because grant recipients and subrecipients are already informed about reporting requirements through existing NOFOs, the FVPSA statute, and other applicable law and regulations. Grant documents and sub-regulatory guidance are better suited than regulation to answer questions from grant applicants, recipients, and subrecipients, including Territories, about reporting obligations. Any remaining questions about FVPSA performance reports for grant applicants, recipients, and subrecipients are best addressed in sub-regulatory guidance which would also allow for more detail than the regulatory language includes. ACF received 23 comments on removing this section, most opposing its removal from regulation.

Comment: Some commenters acknowledged that the general reporting language in § 1370.6 duplicates reporting language in the FVPSA statute but opposed complete removal of this section because they maintained that the clarification about reporting for Territorial governments consolidating FVPSA funds under 45 CFR part 97 should be retained. These commenters asserted that the clarification reduces uncertainty and promotes consistent grant administration.

Response: We agree that FVPSA reporting requirements are sufficiently articulated in statute and need not be repeated in full detail in regulation. *See* 42 U.S.C. 10406(d) (State and Tribal formula grant reporting requirements), 10410(d) (National Resource Center and Training and Technical Assistance Center reporting requirements), 10411(g) (SDVC reporting requirements), 10412(e) (SSAPC reporting requirements), and 10413(f) (National

Domestic Violence Hotline reporting requirements). While the Consolidated Block Grant language is not included in the FVPSA statute, it is also rooted in statutory language at 48 U.S.C. 1469a. It is also included in Block Grant regulations at 45 CFR 97.16. While we acknowledge that § 1370.6 provided useful clarification for Territorial grant recipients when it was initially published, these grant recipients should now clearly understand their reporting requirements and expectations. As with other sections of regulation slated for removal, ACF is committed to increasing training and technical assistance as necessary to ensure that Territories that opt to consolidate their FVPSA funds with other HHS funds understand reporting requirements. Accordingly, the final rule removes and reserves § 1370.6.

Comment: Several commenters stated that even a short regulatory clarification can prevent confusion for Territorial administrators and other stakeholders, and that relying exclusively on annual guidance would make expectations less stable over time. Commenters expressed concern that removing § 1370.6 entirely will increase compliance burden and confusion.

Response: Grant recipients are already obligated to ensure compliance with requirements for receipt of federal funds, and training and technical assistance is available to address any confusion about reporting requirements. Reporting requirements are entirely based in statute, and concerns about inconsistency are therefore unfounded. We decline to leave a portion of this section in regulation and instead will remove and reserve § 1370.6 in its entirety.

Comment: Commenters wrote that this section was previously added to clarify reporting requirements and provided language needed to ensure consistency for State and Territorial administrators when they collect performance reports from local domestic violence programs. Several commenters noted that this section provides helpful guidance for Territorial governments trying to understand their reporting obligations. State Domestic Violence Coalition commenters argued that reporting can be challenging for grant recipients and that this regulatory language provides needed clarity and guidance, especially for smaller programs. Commenters were concerned that removal would create more confusion for both grant recipients and administrators, potentially creating more administrative work rather than less.

Response: We acknowledge the concern that the underlying information should remain easy to locate. Reporting requirements remain easy to locate in grant documents, including NOFOs, and in sub-regulatory guidance. Additionally, ACF remains committed to offering technical assistance for FVPSA applicants, recipients, and subrecipients to address any questions about reporting and evaluation requirements. We intend to provide training and technical assistance particularly for FVPSA grant recipients with fewer resources to accommodate concerns that arise from this final rule.

Subpart D—Discretionary Grants and Contracts

§ 1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?

45 CFR 1370.30 addresses requirements for National Resource Center and Training and Technical Assistance grants. It is removed from regulation because it is in part duplicative of statutory language and in part unnecessary. Most of the language in this section repeats requirements articulated clearly in statute and serves no purpose in regulation. *Compare* 42 U.S.C. 10410 with 45 CFR 1370.30.

Although much of § 1370.30 restates statutory language, even language that diverges from statutory requirements is not necessary to include in regulation. Conversely, other sections of the FVPSA regulation restate the authorizing statute in part but also include additional requirements not found in statute that are necessary for program operation. *See, e.g.,* 45 CFR 1370.10 (outlining requirements for State and Indian Tribal grants and describing consultation requirements for Tribes), 45 CFR 1370.20 (describing requirements for State Domestic Violence Coalitions and detailing the process through which ACF designates entities to serve as State Domestic Violence Coalitions). These regulatory sections are not impacted by this rulemaking and remain intact. In 45 CFR 1370.30, however, where regulatory language expands on or diverges from statutory language, such content can be shifted from regulatory text to NOFOs and other grant documents without impact. Indeed, all NOFOs must include all application requirements already, and agency expectations that differ from those listed in the statute are especially important to explain via grant application documents regardless of whether they are already located in regulation. In some cases, differences

between statutory and regulatory language are merely semantic. For example, the term “Culturally-Specific Special Issue Resource Centers” appears in the regulation at 45 CFR 1370.30(a)(4) but not in statute, but using this term rather than the corresponding statutory language at 42 U.S.C. 10410(b)(2)(E) has no impact on grant applicants or recipients because the regulatory term is effectively a summary of the statutory obligation to fund Resource Centers serving specific populations. Where the regulation section provides a more detailed description of program requirements than the statute, such description should be relocated to NOFOs. Indeed, this section already directs grant applicants and recipients to refer to the NOFO (here called a “Funding Opportunity Announcement”) for more information about application requirements, making any guidance provided by this section incomplete. *See* 45 CFR 1370.30(b).

HHS received 50 comments on removing this section. A few comments supported removal and most comments opposed removal.

Comment: Several commenters contended that this section provides important structure and framing for discretionary grant programs. Many commenters, including national advocacy organizations, culturally specific resource centers, service providers, and SDVCs, opposed removal of § 1370.30 because it provides a stable regulatory framework for National Resource Center and Training and Technical Assistance grants. These commenters stated that the section identifies major grant categories and signals enduring ACF expectations beyond a single grant cycle.

Response: ACF appreciates the concerns raised by commenters. We maintain, however, that the level of detail in this section is not necessary for inclusion in regulation and is better suited for NOFOs. The FVPSA statute already provides sufficient framework for understanding the structure and general requirements of these discretionary grants at 42 U.S.C. 10410, and the additional context in this section of the regulation can be moved to NOFOs without consequence.

Comment: Some Tribal commenters urged retention of this section in part because it includes provisions relevant to grants impacting Tribes. Tribal commenters and Tribal-serving commenters placed particular emphasis on retaining provisions relating to the National Indian Resource Center and State resource centers serving Native American, Alaska Native, and Native Hawaiian communities. These

commenters stated that removal of those provisions could diminish the visibility and stability of Tribal-focused resource centers and coordination expectations.

Response: ACF understands the concerns expressed by these comments and agrees that Tribal-focused resource centers must remain visible and well-supported. Yet, any differences in language between 42 U.S.C. 10410 and 45 CFR 1370.30 concerning services for Native American, Alaska Native, and Native Hawaiian communities are largely technical and semantic. The proposed rescission of this section has no substantive effect on these programs, nor does it impact the ability of Tribal populations to receive grants or services. We do not anticipate removal of § 1370.30 to negatively impact FVPSA services to Tribes. Accordingly, the final rule removes and reserves § 1370.30 in full.

Comment: Some commenters stated that removing this section would shift too much information to annual notices of funding opportunity. Several commenters argued that shifting all information from § 1370.30 to NOFOs would require applicants to track potentially changing terminology and requirements from cycle to cycle and would impose disproportionate burden on smaller applicants. Commenters also warned that relying only on NOFOs to explain statutory requirements for these programs would allow culturally specific resource center funding to be re-defined, combined with other programs, or made less of a priority in future years without public input.

Response: We acknowledge concerns about increased reliance on NOFOs for FVPSA discretionary program guidance but disagree that eliminating § 1370.30 and ensuring that its language is included in NOFOs will result in the purported harms. All FVPSA discretionary grant applicants must already thoroughly review annual NOFOs; removing this guidance from regulation does not create any additional burden. NOFO language already changes annually, and grant applicants are expected to carefully review NOFOs for any changes; removing § 1370.30 from regulation will not increase this responsibility. ACF also posts FVPSA program guidance on its website (*see* Office of Family Violence Prevention and Services, <https://acf.gov/ofvps>), so grant applicants can readily identify current requirements.

Additionally, commenter concerns about the erosion of culturally specific resource centers are unfounded. Although the statute does not include the term “culturally specific,” it

requires that ACF fund “3 specific resource centers, enhancing domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.” 42 U.S.C. 10410(b)(2)(E). Moreover, despite some commenter explanations that culturally specific special issue resource centers are distinct from the special issue resource centers enumerated in statute, ACF has made no such distinctions in the 2016 FVPSA final rule or elsewhere; indeed, the FVPSA statute is so specific that ACF lacks the authority to create a new category of resource centers beyond those listed in the statute. As such, ACF clarifies that the culturally specific resource centers referenced in § 1370.30 are the same as the special issue resource centers referenced in statute at 42 U.S.C. 10410(b)(2)(E). ACF has no discretion to deprioritize or eliminate these grants, and removing this section from the FVPSA regulations will not change the statutory obligation to fund the grants. Accordingly, we will proceed with removing this section.

Comment: A number of commenters noted that certain terms used in the regulation, including references to culturally specific resource centers, reflect longstanding field usage and provide helpful clarity to the public even when the statutory language differs and includes less recognizable terms.

Response: ACF acknowledges the importance of using commonly understood terms in program guidance, but maintains that NOFOs present an appropriate substitute for this section for the purpose of ensuring that grant applicants and recipients understand the statutory language at 42 U.S.C. 10410(b)(2)(E) concerning specific issue resource centers delivering culturally and linguistically relevant services refers to “culturally specific” services. Placing additional terms in NOFOs, grant documents, and sub-regulatory guidance documents is practical because applicants must already review these documents when they apply for discretionary FVPSA grants. Any additional explanatory terminology needed for specific funding cycles may also be addressed through NOFOs and guidance. Accordingly, the final rule removes and reserves § 1370.30 in full.

Comment: Some commenters argued that this section is not duplicative of statute because there are requirements for expertise, capacity, and quality assurance that are only in the regulation

and not in the FVPSA statute. They asserted that removing this section would eliminate the only requirement that organizations must have the right qualifications and experience to run funded programs.

Response: We appreciate commenter concerns about ensuring that FVPSA grant recipients have sufficient experience and qualifications to implement these grants but maintain that the FVPSA statute includes eligibility requirements sufficiently similar to regulatory requirements to uphold quality assurance. For example, under 42 U.S.C. 10410(c)(3), applicants for “special issue resource centers concerned with racial and ethnic minority groups” must demonstrate, in part, “documented experience in the areas of domestic violence prevention and services, and experience relevant to the specific racial or ethnic population to which information, training, technical assistance, and outreach would be provided under the grant” and have “a record of demonstrated effectiveness in enhancing the cultural and linguistic relevancy of service delivery.” 42 U.S.C. 10410 lists similar eligibility requirements for the other grants funded under this section. Eliminating § 1370.30 therefore will not impact ACF’s commitment to ensuring that grant recipients are sufficiently qualified; the FVPSA statute demands such qualifications.

Comment: Many commenter focused on “culturally specific special issue resource centers.” Commenters explained that these organizations have deep expertise built through years of working directly with specific communities, citing research showing that survivors from these communities do better when they get help from providers who share their language and culture and have relationships in their community. Commenters stressed that mainstream providers cannot replace the understanding, trust, and community connections that culturally specific organizations have built.

Response: As explained above, removing § 1370.30 from regulation does not impact ACF’s statutory obligation to fund culturally specific special issue resource centers even if the statute uses a different term for these programs. ACF does not intend to alter its commitment to funding these programs, nor does it intend on diverting from its statutory obligations. Accordingly, the final rule removes and reserves § 1370.30 in full.

§ 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?

Like 45 CFR 1370.30, 45 CFR 1370.31 is removed from FVPSA regulation because it is in part duplicative of statutory language and in part unnecessary. This section addresses requirements for specialized services for abused parents and their children (SSAPC) grants. Most of the language in this section repeats requirements articulated clearly in statute and serves no purpose in regulation. *Compare* 42 U.S.C. 10412 *with* 45 CFR 1370.31.

As in § 1370.30, much of this section restates statutory language from 42 U.S.C. 10412, and even language that diverges from statutory requirements is not necessary to include in regulation. Where the section provides a more detailed description of program requirements than the statute, such descriptions can be seamlessly relocated to NOFOs, other grant documents, and sub-regulatory guidance without negatively impacting stakeholders.

ACF received 43 comments on the removal of § 1370.31 from regulation. Some comments supported removal and most comments opposed the change.

Comment: Several commenters, including State coalitions, national organizations, service providers, and government commenters, opposed removing § 1370.31 because they stated that it contains regulatory safeguards and clarifications not found in identical form in the statute. Commenters emphasized provisions concerning confidentiality, developmentally appropriate and culturally and linguistically appropriate services, training for professionals working with children, unnecessary referrals to child protective services, precautions to avoid discouraging victims from seeking help, and avoidance of practices that place inappropriate burdens on non-abusive parents. Commenters representing Tribal communities emphasized the importance of these regulatory requirements for American Indian and Alaska Native families, which have a history of higher rates of forced removal of children from their homes. Commenters were concerned that removing this section could bring back the problem of penalizing non-abusing parents for family violence and could lead to service delays or unmet needs for families.

Response: We acknowledge commenter concerns and recognize that some of the language in § 1370.31 is unique to the FVPSA regulation and does not explicitly appear in the

corresponding statutory section at 42 U.S.C. 10412. Nonetheless, we maintain that all regulatory language that differs from statutory language is either addressed sufficiently elsewhere in statute or regulation or may reasonably be moved to NOFOs without impacting program effectiveness. For example, § 1370.31(b)(1)(iv) requires grant recipients and subrecipients to demonstrate that they will respond appropriately to abused parents who choose to or must engage with abusive partners/parents. This requirement does not appear in statute or elsewhere in regulation, but because it derives squarely from the statutory requirement “to provide services for nonabusing parents to support those parents’ roles as caregivers” (*see* 42 U.S.C. 10412(d)(1)(B)), moving the language to NOFOs is appropriate. Accordingly, the final rule removes and reserves § 1370.31.

Comment: Some commenters acknowledged that some provisions in § 1370.31 are duplicative of statutory language and need not remain in regulation and suggested that some application-format requirements or funding-threshold details could be addressed through notices of funding opportunity. Some of these commenters believed that other provisions of § 1370.31 were still necessary to keep in regulation.

Response: We agree that lists of application components, such as the list that appears at 45 CFR 1370.31(b), are better suited to NOFOs than to regulation. These requirements are also generally already articulated in statute at 42 U.S.C. 10412. We disagree that any of the provisions in § 1370.31 must remain in regulation for the reasons articulated above and further below. Accordingly, the final rule removes and reserves § 1370.31.

Comment: Commenters highlighted § 1370.31(b)(2), which requires applicants to show they can provide or partner with organizations that provide direct counseling, services, and advocacy for victims and their children. This includes coordination with child welfare, schools, healthcare providers, home visitors, family courts, and other systems that serve children. Commenters noted that the 2016 final rule acknowledged that this language is not in statute, but is consistent with the law’s intent and “reflects the realities of multiple systems which support children and their non-abusing parent.” Commenters were concerned that removing this regulation could cause confusion about whether grantees can continue these partnerships. One commenter noted this change would

work against efforts to reduce unnecessary removal of children from homes and placement in foster care.

Response: ACF acknowledges commenters' concerns but disagrees that removing this provision from regulation will limit grant recipient and subrecipient ability to partner with community organizations. Implementation across all FVPSA programs relies heavily on collaboration with other systems, including the child welfare system, courts, schools, and nonprofit organizations. We do not anticipate that removing this section from regulation will cause grant recipients and subrecipients to question whether they can enter partnerships with appropriate entities. Nonetheless, we maintain that placing the highlighted language in NOFOs and sub-regulatory guidance documents will ensure that grant recipients and subrecipients fully understand the availability of partnerships. Additionally, language in statute already requires coordinating child welfare services to navigate family, domestics, and dating violence at 42 U.S.C. 10412(d). To the extent that it is requested, ACF will provide technical assistance to grant recipients concerning this matter. We decline to make any changes to our proposal to rescind this section based on these concerns.

Comment: Commenters stated that removing this section entirely would increase administrative burden. Several commenters argued that smaller organizations rely on the regulation as a stable source of requirements and that removal would force applicants to reconstruct the program's expectations from changing grant materials.

Response: ACF acknowledges the commenters' concern. Yet, as explained above, all grant applicants must fully review NOFOs, so consolidating all grant requirements in one central location will ultimately reduce burden. Because grant applicants must annually review NOFOs and be aware of any changing application requirements, moving this section to NOFOs from regulation imposes no additional burden. Additionally, ACF will make additional training and technical assistance available to any grant applicant with questions about SSAPC requirements, with a special emphasis on smaller grant applicants. Accordingly, the final rule removes and reserves § 1370.31.

§ 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?

Like 45 CFR 1370.30 and § 45 CFR 1370.31, 45 CFR 1370.32 is removed

from regulation because it is in part duplicative of statutory language and in part unnecessary. This section addresses requirements for National Domestic Violence Hotline grants. Nearly all of the language in this section repeats requirements articulated clearly in statute and serves no purpose in regulation. *Compare* 42 U.S.C. 10413 with 45 CFR 1370.32. Where regulatory language expands on or diverges from statutory language, such changes, as explained below, are minor, and content can be shifted from regulatory text to NOFOs and other grant documents without negative consequences. Indeed, discretionary grant NOFOs must include all application requirements already, and agency expectations that differ from those listed in the statute are especially important to explain via grant application documents regardless of whether they are already located in regulation.

Comment: Commenters highlighted that § 1370.32 adds a definition of "telephone" to the regulatory text and asserted that the definition of "telephone" has continuing legal and operational significance. Many commenters opposed removal of § 1370.32 because the definition of "telephone" in § 1370.32(b) confirms that hotline services may be delivered through evolving technologies, including text, chat, video, internet-based platforms, and other communications methods. Commenters stated that this definition remains important to ensure that the hotline grant authority is interpreted consistently with current technology, and access to the hotline remains available where conventional voice-calls may be limited, impracticable, or less safe.

Response: We agree that callers to the National Domestic Violence Hotline must be able to reach service providers in ways that go beyond traditional voice calls and National Domestic Violence Hotline grant NOFOs have long emphasized this stance. As commenters noted, the FVPSA statute does not define "telephone." *See* 42 U.S.C. 10413. While we recognize the justification for including such a definition in the 2016 final rule, ACF maintains that technology has sufficiently evolved to support including the definition from § 1370.32(b) in NOFOs and sub-regulatory guidance without significant concern that lack of a regulatory definition will make inclusion in a NOFO unenforceable. Voice-only lines are no longer sufficient to adequately serve victims of domestic violence and victims of dating violence, particularly

because 42 U.S.C. 10413(e)(2)(F) requires grant recipients to serve youth victims, who may be unlikely to use a voice-only line. Therefore, while the statute does not appear to contemplate text, chat, video, or internet-based platforms, grant recipients and subrecipients must use such technology to effectively implement this grant. Accordingly, the final rule removes and reserves § 1370.32.

Comment: Several commenters emphasized that the regulation should continue to signal the importance of access for Limited English Proficient callers and callers with disabilities, including callers who are deaf or hard of hearing.

Response: Removing § 1370.32 from regulation will not impact the ability of Limited English Proficient callers or callers with disabilities to access National Domestic Violence Hotlines, nor will its removal de-emphasize the importance of access to services for these populations. The FVPSA statute already explicitly requires Hotline grant recipients to develop a plan for serving non-English speaking callers and individuals with disabilities, as well as other underserved populations. *See* 42 U.S.C. 10413(d)(2)(E), (e)(2)(E). Furthermore, the FVPSA nondiscrimination regulations remain intact at 45 CFR 1370.5 and prohibit discrimination against individuals with Limited English Proficiency and individuals with disabilities. 45 CFR 1370.5(e); these provisions are unaltered by this final rule.

Comment: Commenters stated that removal of this section would create uncertainty by shifting all requirements to annual notices of funding opportunity. Several commenters argued that Hotline grant recipients and applicants benefit from stable regulatory expectations and that complete reliance on NOFOs could create uncertainty about enduring baseline requirements.

Response: As explained above, applicants and grant recipients must already rely on annual NOFOs to determine program requirements, so moving this section to NOFOs does not increase stakeholder burden. Here, all requirements listed in § 1370.32 are also included in statute at 42 U.S.C. 10413. Accordingly, the final rule removes and reserves § 1370.32.

VII. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*, as amended) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval

any reporting or recordkeeping requirements inherent in a proposed or final rule. This final rule does not contain any information requiring OMB approval under the PRA and, therefore, will not create any new paperwork burdens or modify existing burdens subject to OMB review.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This final rule would not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule would not pre-empt State law. The sections the final rule is removing are duplicative and unnecessary regulations from the Office of Family Violence Prevention and Services regulations. Therefore, in accordance with Section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS determined it is not necessary to prepare a family policymaking assessment because the actions in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

VIII. Regulatory Impact Analysis

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Rules are “significant” under Executive Order 12866 Section 3(f)(1) if they “have an annual effect on the economy of \$100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.” Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” The Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is not a significant action under Executive Order 12866 Section 3(f).

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their regulatory proposals on small entities. Because this final rule only repeals duplicative and unnecessary language, we certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one year by State, local, and tribal governments, in the aggregate, or by the private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and tribal governments. The current threshold after adjustment for inflation is \$193 million, using the most current (2025) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

IX. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to

consult with Indian Tribes when regulations have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.” *Consultation and Coordination With Indian Tribal Governments*, 65 FR 67249. Similarly, ACF’s Tribal Consultation Policy says that consultation is triggered for any legislative proposal, new rule adoption, or other policy change that significantly affects Tribes, meaning there exists a reasonable presumption that it has or may have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.. ACF is nevertheless committed to consulting with Indian Tribes and Tribal leadership on this action to the extent practicable and permitted by law.

List of Subjects in 45 CFR Part 1370

Administrative practice and procedure, Child welfare, Domestic violence, Grant programs—Indians, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements, Technical assistance.

For the reasons set forth in the preamble, ACF amends 45 CFR part 1370 as follows:

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

- 1. The authority citation for part 1370 continues to read as follows:

Authority: 42 U.S.C. 10401 *et seq.*

§§ 1370.1, 1370.3, 1370.6, 1370.30, 1370.31, and 1370.32 [Removed and Reserved]

- 2. Sections 1370.1, 1370.3, 1370.6, 1370.30, 1370.31, and 1370.32 are removed and reserved.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–15681 Filed 7–31–26; 8:45 am]

BILLING CODE 4184–32–P

Proposed Rules

Federal Register

Vol. 91, No. 147

Monday, August 3, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2559; **Airspace**
Docket No. 24–AEA–11]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Morgantown, WV: Withdrawal

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) that the FAA published in the **Federal Register** on July 8, 2026, proposing to amend Class D and Class E airspace at Morgantown, WV. The FAA has determined that withdrawal of that NPRM is warranted as new airspace data have been received which significantly changed the requirements for the proposed airspace. The FAA expects to publish a new NPRM to amend the Class D and Class E airspace at Morgantown, WV, after assessing the new data.

DATES: The proposed rule published July 8, 2026 (91 FR 42390) is withdrawn as of August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

History

The FAA published an NPRM in the **Federal Register** on July 8, 2026 (91 FR 42390) under Docket No. FAA–2024–2559 to amend 14 CFR part 71 by modifying the Class D and Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Morgantown Municipal Airport-Walter L. Bill Hart Field, Morgantown, WV. Subsequent to

publication, new airspace data was received changing the airspace requirements. Therefore, the FAA is withdrawing the NPRM, and expects to publish a new NPRM after fully evaluating the new data to amend the Class D and Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Morgantown Municipal Airport-Walter L. Bill Hart Field, Morgantown, WV, to support the new instrument procedures being developed.

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Fort Worth, TX, on July 28, 2026.

Courtney E. Johns,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2026–15657 Filed 7–31–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

**21 CFR Parts 10, 56, 106, 201, 251, 310,
312, 314, 329, 600, 803, 862, 866, 870,
882, 1114**

[Docket No. FDA–2026–N–2886]

RIN 0910–AJ26

Modification of Certain Terminology in Title 21; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the proposed rule that appeared in the **Federal Register** of May 6, 2026, to modify certain terminology in Title 21 of the Code of Federal Regulations (CFR) to comply with Executive Order (E.O.) 14168, “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” issued on January 20, 2025. Specifically, this proposed rule, if finalized, will remove the term “gender” wherever it appears and either replace it with the term “sex,” or delete reference to gender, as applicable, along

with other editorial changes to improve readability. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the proposed rule published on May 6, 2026 (91 FR 24380). Submit either electronic or written comments on the proposed rule by October 2, 2026.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 2, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:**

<https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions.”)

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets

Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2026-N-2886 for “Modification of Certain Terminology in Title 21.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Swati Kabaria, Office of Policy, Office of Policy, Legislation, and International Affairs, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 1-888-463-6332.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 2026 (91 FR 24380), FDA published a proposed rule to modify certain terminology in Title 21 of the CFR to comply with E.O. 14168, “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” issued on January 20, 2025. FDA is reopening the comment period for an additional 60 days, until October 2, 2026. The Agency is taking this action to allow interested persons additional time to submit comments.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026-15671 Filed 7-31-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA-1427]

Amendment to 3,4-MDP-2-P Methyl Glycidic Acid, a List I Chemical

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration is proposing to modify the listing of the list I chemical 3,4-MDP-2-P methyl glycidic acid (also known as PMK glycidic acid) to include esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the Controlled Substances Act (CSA), as list I chemicals under the CSA. The current listing of 3,4-MDP-2-P methyl glycidic acid includes its salts, optical and geometric isomers, and salts of isomers. DEA proposes the new listing to read as follows: 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the existence of such is possible.

DATES: Comments must be submitted electronically or postmarked on or before September 2, 2026. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA-1427” on all electronic and written correspondence, including any attachments.

- **Electronic comments:** The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on [Regulations.gov](https://www.regulations.gov). If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

- **Paper comments:** Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- **Paperwork Reduction Act Comments:** All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to Docket No. DEA-1427.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

As required by 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found in the docket for this rulemaking at www.regulations.gov.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

All comments received in response to this docket are considered part of the

public record. The Drug Enforcement Administration (DEA) will make comments available for public inspection online at <https://www.regulations.gov>, unless reasonable cause is given. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked "CONTAINS CONFIDENTIAL INFORMATION" and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked "TO BE PUBLICLY POSTED" and must have all claimed PII and business information already redacted. DEA will post only the redacted comment on <https://www.regulations.gov> for public inspection. DEA generally will not redact additional information contained in the comment marked "TO BE PUBLICLY POSTED." The Freedom of Information Act applies to all comments received.

For easy reference, an electronic copy of this document and a plain language summary of this notice of proposed rulemaking are available at <https://www.regulations.gov>.

Legal Authority

The Controlled Substances Act (CSA) authorizes the Attorney General to specify, by regulation, chemicals as list I chemicals.¹ The Attorney General has delegated her authority to designate list I chemicals to the Administrator of DEA (Administrator).² A "list I chemical" is defined as "a chemical that is used in manufacturing a controlled substance in violation of [the CSA] and is important to the manufacture of the controlled substances."³ The current list of all listed chemicals is published at 21 CFR 1310.02. DEA regulations set forth the process by which DEA may add a chemical as a listed chemical. As set forth in 21 CFR 1310.02(c), the agency may do so by publishing a final rule in the **Federal Register** following a

published notice of proposed rulemaking with at least 30 days for public comments.

In addition, the United States is a party to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention), Dec. 20, 1988, 1582 U.N.T.S. 95. Under Article 12 of the 1988 Convention, when the United States receives notification that a chemical has been added to Table I or Table II of the 1988 Convention, the United States is required to take measures it deems appropriate to monitor the manufacture and distribution of that chemical within the United States and to prevent its diversion, including measures related to international trade. By letter dated June 6, 2024, in accordance with Article 12, paragraph 6 of the 1988 Convention, the Secretary-General of the United Nations informed the United States Government that seven esters of the chemical 3,4-MDP-2-P methyl glycidic acid, including all stereoisomers, were added to Table I of the 1988 Convention as a footnote to 3,4-MDP-2-P methyl glycidic acid.

Background

As the problem of illicit drug production continues to grow, the need for controls on the chemicals used to make illicit drugs, also known as precursor chemicals, continues to gain global attention. International controls on precursors were first established under Article 12 of the 1988 Convention, which established two categories of controlled illicit drug precursor substances: Table I and Table II.⁴ International efforts to prevent the illicit production of amphetamine-type stimulants (including amphetamine and methamphetamine), 3,4-methylenedioxymethamphetamine (MDMA) and "ecstasy"-like substances, and international control of precursors have since made significant progress to help curtail the synthesis of these substances.

Two international entities have played a crucial role in this effort: the Commission on Narcotic Drugs (CND) and the International Narcotics Control Board (INCB). Previously, the CND voted to include methamphetamine, amphetamine, and MDMA precursor chemicals, including *alpha*-phenylacetoacetonitrile (APAA),⁵ 3,4-MDP-2-P methyl glycidate, 3,4-MDP-2-P methyl glycidic acid, *alpha*-

phenylacetoacetamide (APAA),⁶ and methyl *alpha*-phenylacetoacetate (MAPA) to Table I of the 1988 Convention,⁷ and they were added under the 1988 Convention. DEA subsequently controlled these chemicals as list I chemicals under the CSA.⁸

In response to domestic and international controls on MDMA precursors, clandestine laboratory operators have continued to explore alternate methods of making these illicit drugs, including developing techniques to manufacture their own precursors and diverting other chemicals to produce these precursors. Clandestine laboratory operators currently use 3,4-MDP-2-P methyl glycidic acid and its methyl ester to manufacture 3,4-MDP-2-P, which they then convert to MDMA and related substances. Thus, DEA has previously determined that 3,4-MDP-2-P methyl glycidic acid and its methyl ester are used in the manufacture of the controlled substance MDMA (a schedule I substance under the CSA) and other "ecstasy"-like substances and are important to the manufacture of these substances.⁹ On this basis, and on the recommendation for control from the INCB, DEA previously specified that 3,4-MDP-2-P methyl glycidic acid and its methyl ester are list I chemicals.¹⁰

DEA has now found that other esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, may also be used in the illicit manufacture of schedule I controlled substance

⁶ APAA, 3,4-MDP-2-P glycidic acid, and 3,4-MDP-2-P methyl glycidate were added to Table I of the 1988 Convention at the 62nd Session of the CND.

⁷ MAPA was added to Table I of the 1988 Convention at the 63rd Session of the CND.

⁸ *Designation of Alpha-Phenylacetoacetonitrile (APAA), a Precursor Chemical Used in the Illicit Manufacture of Phenylacetone, Methamphetamine, and Amphetamine, as a List I Chemical*, 82 FR 32457–32461 (July 14, 2017); *Designation of Methyl alpha-phenylacetoacetate, a Precursor Chemical Used in the Illicit Manufacture of Phenylacetone, Methamphetamine, and Amphetamine, as a List I Chemical*, 86 FR 64362–64366 (Nov. 18, 2021); *Designation of 3,4-MDP-2-P methyl glycidate (PMK glycidate), 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid), and alpha-phenylacetoacetamide (APAA) as List I Chemicals*, 86 FR 24703–24708 (May 10, 2021); *Designation of 3,4-MDP-2-P Methyl Glycidate (PMK Glycidate), 3,4-MDP-2-P Methyl Glycidic Acid (PMK Glycidic Acid), and Alpha-Phenylacetoacetamide (APAA) as List I Chemicals*, 86 FR 30169 (June 7, 2021).

⁹ *Designation of 3,4-MDP-2-P methyl glycidate (PMK glycidate), 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid), and alpha-phenylacetoacetamide (APAA) as List I Chemicals*, Final Rule, 86 FR 24703–24708 (May 10, 2021); *Designation of 3,4-MDP-2-P Methyl Glycidate (PMK Glycidate), 3,4-MDP-2-P Methyl Glycidic Acid (PMK Glycidic Acid), and Alpha-Phenylacetoacetamide (APAA) as List I Chemicals*, Correction, Final Rule; correction, 86 FR 30169 (June 7, 2021).

¹⁰ *Id.*

¹ 21 U.S.C. 802(34).

² 28 CFR 0.100(b).

³ 21 U.S.C. 802(34).

⁴ Table I and Table II are annexed to the Convention.

⁵ APAA was added to Table I of the 1988 Convention at the 57th Session of the CND.

MDMA and other “ecstasy”-like substances. Additionally, the INCB reported that additional esters of 3,4-MDP-2-P methyl glycidic acid are all suitable for the illicit manufacture of 3,4-MDP-2-P, a precursor already listed in Table I of the 1988 Convention.¹¹

By letter dated June 6, 2024, in accordance with Article 12, paragraph 6 of the 1988 Convention, the Secretary-General of the United Nations informed the United States Government that seven esters of the chemical 3,4-MDP-2-P methyl glycidic acid, including all stereoisomers, were added to Table I of the 1988 Convention as a footnote to 3,4-MDP-2-P methyl glycidic acid. This letter was prompted by a March 19, 2024, decision at the 67th Session of the CND to add the ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl, and tert-butyl esters of 3,4-MDP-2-P methyl glycidic acid to Table I. Separately, following the 68th Session of the CND held on March 12, 2025, a letter dated June, 9, 2025, informed the United States Government that 3,4-MDP-2-P methyl glycidate (PMK glycidate) will be moved from the body of Table I of the 1988 Convention to footnote 1 of that table, as the “methyl ester.” With this revision, the methyl ester will be listed as an ester of PMK glycidic acid, along with the other esters that were controlled from the 67th Session of the CND; its control status remains the same. As discussed above, the United States is a party to the 1988 Convention and has certain obligations pursuant to Article 12. By amending the listing for 3,4-MDP-2-P methyl glycidic acid to include additional esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, as list I chemicals, the United States will fulfill its obligations under the 1988 Convention.

Further, these esters of 3,4-MDP-2-P methyl glycidic acid meet the definition of list I chemicals because they are important to the manufacture of controlled substances.

Accordingly, if finalized, this action would add additional esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, including the ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl, and tert-butyl esters of 3,4-MDP-2-P methyl glycidic acid to the prior listing of 3,4-MDP-2-P methyl glycidic acid, and thereby subject handlers of these esters of 3,4-MDP-2-P methyl glycidic acid to the chemical regulatory provisions of the CSA and its implementing regulations.

¹¹ Statement by Professor Jallal Toufiq, President, International Narcotics Control Board, 67th Session of the Commission on Narcotic Drugs, March 19, 2024.

3,4-MDP-2-P Methyl Glycidic Acid and Its Esters

3,4-MDP-2-P methyl glycidic acid is used in the manufacture of the list I precursor chemical 3,4-MDP-2-P, the schedule I substance MDMA, and other “ecstasy”-like substances. 3,4-MDP-2-P methyl glycidic acid is a close chemical relative of controlled list I precursor 3,4-methylenedioxyphenyl-2-propanone (3,4-MDP-2-P) and has been made specifically to circumvent existing precursor chemical controls (e.g., list I chemicals). DEA has not identified any known legitimate uses for this chemical, other than possible research purposes. Internationally, 3,4-MDP-2-P is also listed in Table I of the 1988 Convention.

3,4-MDP-2-P methyl glycidic acid is also known as PMK glycidic acid. Since 2011, there have been 29 reports of the sodium and potassium salts of 3,4-MDP-2-P methyl glycidic acid, including over 16 metric tons of 3,4-MDP-2-P methyl glycidic acid salts reported in the Precursors Incident Communication System (PICS).¹² China was reported as the alleged origin country for 17 of the incidents (e.g., seizures, stopped shipments, diversions, etc.) out of the 20 reports where origin country was reported. The majority of the incidents were reported in the Netherlands.

The methyl ester of 3,4-MDP-2-P methyl glycidic acid has been reported in PICS for several years. Since 2013, there have been 79 reports through PICS of the methyl ester of 3,4-MDP-2-P methyl glycidic acid totaling over 28 metric tons.¹³ China was reported as the alleged origin country for 37 of the incidents out of the 53 reports where origin country was reported. The majority of the incidents were reported in the Netherlands.

In recent years, incidents involving the ethyl ester of 3,4-MDP-2-P methyl glycidic acid have been reported in PICS. Since 2021, there have been 154 reports through PICS of the ethyl ester of 3,4-MDP-2-P methyl glycidic acid totaling more than 104 metric tons of the ethyl ester of 3,4-MDP-2-P methyl glycidic acid.¹⁴ China was reported as the alleged origin country for 77 of the incidents out of the 86 reports where origin country was reported. The

¹² PICS is a worldwide, real-time, on-line tool for communication and information sharing between national authorities on precursor incidents to include seizures, stopped shipments, diversion and diversion attempts, illicit laboratories and associated equipment. Queried March 24, 2026, <https://pics.incb.org/>.

¹³ PICS system queried March 24, 2026, <https://pics.incb.org/>.

¹⁴ PICS system queried March 24, 2026, <https://pics.incb.org/>.

majority of the incidents were reported in the Netherlands.

The INCB issued a statement with additional information on their recommendation for the international control of ethyl, propyl, isopropyl, butyl, isobutyl, sec-butyl, and tert-butyl esters of 3,4-MDP-2-P methyl glycidic.¹⁵ It is noted that these esters are closely related to 3,4-MDP-2-P methyl glycidic acid and its methyl ester, and they can be used interchangeably in the illicit manufacture of 3,4-MDP-2-P. Further, incidents of illicit manufacturing and trafficking involving the ethyl ester of 3,4-MDP-2-P methyl glycidic acid have been reported since 2021, with a major increase in frequency and amounts since the end of 2022.¹⁶ These seven esters of 3,4-MDP-2-P methyl glycidic acid do not have any legitimate use and have not been widely traded through legitimate channels. DEA has not identified any known legitimate uses for esters of 3,4-MDP-2-P methyl glycidic acid, other than in small amounts for research, development, and laboratory analytical purposes. Due to the lack of industrial uses of esters of 3,4-MDP-2-P methyl glycidic acid, the chemicals have not been widely available from legitimate chemical suppliers. Since 2013, however, there have been numerous international seizures of esters of 3,4-MDP-2-P methyl glycidic acid, primarily in Europe, which suggest there is a ready supply of esters of 3,4-MDP-2-P methyl glycidic acid from international chemical manufacturers. The only use for a large quantity of esters of 3,4-MDP-2-P methyl glycidic acid of which DEA is aware is as a primary precursor for conversion to 3,4-MDP-2-P, and subsequent conversion to MDMA and other “ecstasy”-like substances.

DEA has determined that the ethyl ester of 3,4-MDP-2-P methyl glycidic acid is now readily available from commercial chemical suppliers and has identified potential suppliers in the United States, China, France, the United Kingdom, and Hong Kong.

DEA is concerned about the ease with which esters of 3,4-MDP-2-P methyl glycidic acid serve as precursor chemicals for illicit controlled substance production and with the international trafficking in these chemicals. The international community shares this concern. The

¹⁵ Statement by Professor Jallal Toufiq, President, International Narcotics Control Board, 67th Session of the Commission on Narcotic Drugs, March 19, 2024, at 2b.

¹⁶ Statement by Professor Jallal Toufiq, President, International Narcotics Control Board, 67th Session of the Commission on Narcotic Drugs, March 19, 2024.

INCB found that, in addition to the methyl ester of 3,4-MDP-2-P methyl glycidic acid, seven additional esters are “highly suitable for the illicit manufacture of 3,4-MDP-2-P.”¹⁷ Based in part on the findings of the INCB, and as noted above, the CND has updated the scope of control of 3,4-MDP-2-P methyl glycidic acid to include seven additional esters of 3,4-MDP-2-P methyl glycidic acid in Table I of the 1988 Convention. Therefore, DEA is proposing to modify the listing for control of 3,4-MDP-2-P methyl glycidic acid to include its esters, not listed elsewhere in the CSA, as list I chemicals.

Proposed Regulation of 3,4-MDP-2-P Methyl Glycidic Acid and Esters, Not Already Listed in the CSA, as List I Chemicals

The CSA, specifically 21 U.S.C. 802(34), and its implementing regulations at 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional precursor or essential chemicals as listed chemicals if they are used in the manufacture of controlled substances in violation of the CSA. Recent law enforcement encounters indicate the ethyl ester of 3,4-MDP-2-P methyl glycidic acid is being used in the illicit manufacture of schedule I substances MDMA and “ecstasy”-like substances, and the propyl, isopropyl, butyl, isobutyl, sec-butyl, and tert-butyl esters are direct substitutes for the ethyl ester and can be readily converted to the list I chemical 3,4-MDP-2-P, using the same processes.¹⁸ This proposed rule would modify the current regulations for 3,4-MDP-2-P methyl glycidic acid including its salts, optical and geometric isomers, and salts of isomers to include esters, not listed elsewhere in the CSA. DEA finds that esters of 3,4-MDP-2-P methyl glycidic acid, not already listed in the CSA, are used in, and are important to, the illicit manufacture of controlled substances such as MDMA and “ecstasy”-like substances. These substances can be used interchangeably with each other in the illicit manufacture of MDMA and “ecstasy”-like substances. This proposed rule would not affect current handlers of 3,4-MDP-2-P methyl glycidic acid, including its salts, optical and geometric isomers, and salts of isomers, as they

would already be registered to handle 3,4-MDP-2-P methyl glycidic acid. Additionally, this rulemaking does not establish a threshold for domestic and international transactions of esters of 3,4-MDP-2-P glycidic acid, not listed elsewhere in the CSA. As such, all transactions of esters of 3,4-MDP-2-P glycidic acid, not listed elsewhere in the CSA, regardless of size, will be regulated in accordance with 21 CFR 1310.04(g).

Chemical Mixtures of Esters of 3,4-MDP-2-P Methyl Glycidic Acid, Not Listed Elsewhere in the CSA

This proposed rulemaking, if finalized, would modify the current regulations for 3,4-MDP-2-P methyl glycidic acid including its salts, optical and geometric isomers, and salts of isomers to include esters, not listed elsewhere in the CSA. The regulation would specify that chemical mixtures containing esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would not be exempt from regulatory requirements at any concentration, unless a manufacturer submits to DEA an application for exemption of such chemical mixture, and DEA accepts the application for filing, and DEA exempts the chemical mixture in accordance with 21 CFR 1310.13. Because there are no legitimate industrial uses for the esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, regulation of chemical mixtures containing any amount of these substances is necessary to prevent the illicit extraction, isolation, and use of these esters. As such, this rule also proposes the modification of the “Table of Concentration Limits” in 21 CFR 1310.12(c) to reflect the fact that chemical mixtures containing any amount of the esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, are subject to CSA chemical control provisions.

Application Process for Exemption of Chemical Mixtures

DEA has implemented an application process to exempt certain chemical mixtures from the requirements of the CSA and its implementing regulations.¹⁹ Manufacturers may apply for an automatic exemption for those mixtures that do not meet the criteria set forth in 21 CFR 1310.12(d). Pursuant to 21 CFR 1310.13(a), DEA may grant an exemption of a chemical mixture, by

publishing a final rule in the **Federal Register**, if DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance, and that the listed chemical or chemicals cannot be readily recovered.²⁰

Requirements for Handling List I Chemicals

On May 10, 2021, DEA designated 3,4-MDP-2-P methyl glycidic acid, including its salts, optical and geometric isomers, and salts of isomers, as a list I chemical under the CSA. This proposed rule would expand the definitions of 3,4-MDP-2-P methyl glycidic acid to include esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. Esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would become subject to the regulatory provisions of the CSA upon publication of a final rule. Chemicals that meet the current definition of 3,4-MDP-2-P methyl glycidic acid²¹ have been, and continue to be, subject to the regulatory provisions of the CSA since May 10, 2021.

If finalized as proposed, handlers of the esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, will be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of a list I chemical. Upon publication of a final rule, persons potentially handling the esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, including regulated chemical mixtures containing the esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would be required to comply with the following list I chemical regulations, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, or exports), or proposes to engage in such handling of, esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, or a chemical mixture containing esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, must obtain a registration pursuant to 21 U.S.C. 822, 823, 957, and 958. Regulations describing registration for list I chemical handlers are set forth in 21 CFR part 1309. DEA regulations require separate

²⁰ 21 U.S.C. 802(39)(A)(vi).

²¹ Designation of 3,4-MDP-2-P methyl glycidate (PMK glycidate), 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid), and alpha-phenylacetacetamide (APAA) as List I Chemicals, 86 FR 24703–24708 (May 10, 2021).

¹⁷ Statement by Professor Jallal Toufiq, President, International Narcotics Control Board, 67th Session of the Commission on Narcotic Drugs, March 19, 2024.

¹⁸ Statement by Professor Jallal Toufiq, President, International Narcotics Control Board, 67th Session of the Commission on Narcotic Drugs, March 19, 2024.

¹⁹ 21 CFR 1310.13 specifies that this chemical mixture is a chemical mixture consisting of two or more chemical components, at least one of which is a list I or list II chemical.

registrations for manufacturing, distributing, importing, and exporting of list I chemicals.²² Further, a separate registration is required for each principal place of business at one general physical location where list I chemicals are manufactured, distributed, imported, or exported by a person.²³

DEA notes that under the CSA, “warehousemen” are not required to register and may lawfully possess list I chemicals, if the possession of those chemicals is in the usual course of business or employment.²⁴ Under DEA implementing regulations, the warehouse in question must receive the list I chemical from a DEA registrant and shall only distribute the list I chemical back to the DEA registrant and registered location from which it was received.²⁵ A warehouse that distributes list I chemicals to persons other than the registrant and registered location from which they were obtained is conducting distribution activities and is required to register as such.

Upon publication of a final rule, any person manufacturing, distributing, importing, or exporting esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, or a chemical mixture containing esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who are subject to the registration requirements to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, to allow any continued legitimate commerce in esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, DEA is proposing to establish in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to engage in activities with esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, provided that DEA receives a properly completed application for registration on or before 30 days after publication of a final rule implementing regulations regarding esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. The temporary exemption for such persons would remain in effect until DEA takes final action on their

application for registration or application for exemption of a chemical mixture.

The temporary exemption would apply solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, would become effective on the effective date of the final rule. This is necessary because a delay in regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption for registration does not suspend applicable Federal criminal laws relating to esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, nor does it supersede State or local laws or regulations. All handlers of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, must comply with applicable State and local requirements in addition to the CSA regulatory controls.

2. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports to DEA with respect to esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, pursuant to 21 U.S.C. 830, and in accordance with 21 CFR 1310.04 and 1310.05. Pursuant to 21 CFR 1310.04, a record must be made and maintained for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a listed chemical would be required to submit manufacturing, inventory, and use data on an annual basis.²⁶ Existing standard industry reports containing the required information would be acceptable, provided the information is separate or readily retrievable from the report.

The CSA and its implementing regulations require that each regulated person must report to DEA any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of subchapter I of the CSA. In addition, regulated persons must report any proposed regulated transaction with a person whose description or other identifying characteristics DEA has previously furnished to the regulated person, any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated

person, and any in-transit loss in which the regulated person is the supplier.²⁷

3. *Importation and Exportation.* All importation and exportation of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would need to be done in compliance with 21 U.S.C. 957, 958, and 971, and in accordance with 21 CFR part 1313.

4. *Security.* All applicants and registrants would be required to provide effective controls against theft and diversion of list I chemicals in accordance with 21 CFR 1309.71–1309.73.

5. *Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where registrants or other regulated persons may lawfully hold, manufacture, distribute, or otherwise dispose of a list I chemical or where records relating to those activities are maintained, are controlled premises as defined in 21 U.S.C. 880(a) and 21 CFR 1316.02(c). The CSA allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316, subpart A.²⁸

6. *Liability.* Any activity involving esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, not authorized by, or in violation of, the CSA would be unlawful, and would subject the person to administrative, civil, and/or criminal action.

Regulatory Analyses

Executive Orders 12866, 13563, 14192, and 14294 (Regulatory Review)

DEA has determined that this rulemaking is not a “significant regulatory action” under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review. This proposed rule has been drafted and reviewed in accordance with E.O. 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation and E.O. 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation.” DEA scheduling actions are not subject to either E.O. 14192, Unleashing Prosperity Through Deregulation, or E.O. 14294, Fighting Overcriminalization in Federal Regulations.

DEA is proposing the control of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, as list I chemicals under the CSA. DEA finds that esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA are used in the illicit manufacture

²² 21 CFR 1309.21.

²³ 21 CFR 1309.23(a). See also 21 U.S.C. 822(e)(1) with separate registration requirements pertaining to manufacturing or distributing a list I chemical.

²⁴ 21 U.S.C. 822(c)(2) and 957(b)(1)(B).

²⁵ See 21 CFR 1309.23(b)(1).

²⁶ 21 CFR 1310.05(d).

²⁷ 21 U.S.C. 830(b); 21 CFR 1310.05(a) and (b).

²⁸ 21 U.S.C. 880.

of the controlled substances MDMA and “ecstasy”-like substances. Further, the esters of 3,4-MDP-2-P methyl glycidic acid may be used as replacements for each other in synthetic pathways to make MDMA and “ecstasy”-like substances. If finalized as proposed, esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. This proposed rulemaking does not establish a threshold for domestic and international transactions of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. As such, all transactions of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, regardless of size, shall be regulated. In addition, chemical mixtures containing esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA are not exempt from regulatory requirements at any concentration. Therefore, all transactions of chemical mixtures containing any quantity of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA shall be regulated pursuant to the CSA. If finalized as proposed, esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA will be subject to all of the regulatory control and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals.

Esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, are used in, and are important to, the illicit manufacture of the list I chemical 3,4-MDP-2-P, and schedule I controlled substance MDMA and other “ecstasy”-like substances.

DEA has searched information in the public domain for any legitimate uses of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. Other than the small amounts potentially used for research, development, and laboratory analytical purposes, DEA has not documented any industrial use for esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA.

DEA cannot rule out the possibility that minimal quantities of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA are used for the manufacturing of legitimate 3,4-MDP-2-P. However, if there are any quantities of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, used for the manufacturing of legitimate 3,4-MDP-2-P, the quantities are believed

to be minimal. DEA welcomes any public comment on these quantities and their economic significance.

DEA evaluated the costs and benefits of this proposed action.

Costs

DEA believes the market for esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, for the legitimate manufacturing of pharmaceutical MDMA and other “ecstasy”-like substances is minimal. As stated above, the only use for esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, of which DEA is aware is as a chemical intermediate for the manufacture of 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances. Any manufacturer, distributor, importer, or exporter of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, for the production of legitimate 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances, if they exist at all, would incur costs if this proposed rule were finalized. The primary costs associated with this proposed rule would be the annual registration fees associated with list I chemicals (\$3,699 for manufacturers and \$1,850 for distributors, importers, and exporters). However, any manufacturer that uses esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, for legitimate 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances production would already be registered with DEA and have all security and other handling processes established because of the controls already in place on 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances, resulting in minimal cost to those entities. As there are different forms of handling the scheduled substances versus the list I chemical (distribution of MDMA and other “ecstasy”-like substances versus exporting esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA), this could require a separate registration for the different handling of the substances. If an entity is already registered to handle, manufacture, import, or export a scheduled substance, the entity would not need an additional registration for the list I chemical, provided it is handling the list I chemical in the same manner that it is registered for with the scheduled substance, or as a coincident activity permitted by 21 CFR 1309.21. Even with the possibility of these additional registrations, DEA believes that the cost would be minimal.

DEA has identified 14 domestic suppliers of one ester of 3,4-MDP-2-P methyl glycidic acid, not listed

elsewhere in the CSA. It is difficult to estimate the quantity of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, these suppliers distribute. Chemical distributors often have items in their catalog while not actually having any material level of sales. If this proposed rule is finalized, suppliers for the legitimate use of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, if any, are expected to choose the least-cost option, and stop selling the minimal quantities of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, rather than incur the registration cost. Because DEA believes the quantities of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, supplied for the legitimate manufacturing of 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances are minimal, DEA estimates that the cost of foregone sales is minimal; and thus, the cost of this proposed rule is minimal. DEA welcomes any public comment regarding this estimate.

This analysis excludes consideration of any economic impact to those businesses that facilitate the manufacture and distribution of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, for the production of manufacturing illicit 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances. As a law enforcement organization and as a matter of principle, DEA believes considering the economic utility of facilitating the manufacture of illicit 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances would be improper.

Benefits

Controlling esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, is expected to prevent, curtail, and limit the unlawful manufacture and distribution of the controlled substances 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances. As a list I chemical, handling of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would require registration with DEA, various controls, and monitoring as required by the CSA. This proposed rule is also expected to assist in preventing the possible theft or diversion of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, from any legitimate firms. DEA also believes control is necessary to prevent unscrupulous chemists from synthesizing esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, and selling them

(as unregulated material) through the internet and other channels, to individuals who may wish to acquire unregulated chemical intermediates for the purpose of manufacturing illicit 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances.

In summary, DEA conducted a qualitative analysis of costs and benefits of this proposed rule. DEA believes this proposed action, if finalized, will minimize the diversion of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. DEA believes the market for esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, for the legitimate manufacturing of 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances is minimal. Therefore, any potential cost as a result of this regulation is minimal.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act

(RFA),²⁹ has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

As discussed above, if finalized as proposed, esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, would be subject to all the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importation, and exportation of list I chemicals. Esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, are used in, and are important to, the illicit manufacture of the list I chemical 3,4-MDP-2-P, the schedule I controlled substance MDMA, and other “ecstasy”-like substances. DEA has not identified any legitimate industrial use for esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, other than their role as chemical intermediates in the production of 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances. Therefore, DEA believes the vast majority, if not all, of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, are used for the illicit manufacturing of 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances.

The primary costs associated with this proposed rule are the annual registration fees (\$3,699 for manufacturers and \$1,850 for distributors, importers, and exporters). Additionally, any manufacturer that uses 3,4-MDP-2-P methyl glycidic acid for legitimate 3,4-MDP-2-P, MDMA and other “ecstasy”-like substances production would already be registered with DEA and have all security and other handling processes in place, resulting in minimal cost.

DEA has identified 14 domestic suppliers of one ester of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA. It is difficult to estimate the quantity of esters of 3,4-MDP-2-P methyl glycidic acid, not listed elsewhere in the CSA, these suppliers distribute. Chemical distributors often have items in their catalog while not actually having any material level of sales. Therefore, DEA estimates the cost of this rule on any affected small entity is minimal. DEA welcomes any public comment regarding this estimate. Based

on these factors, DEA projects that this rule, if promulgated, will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the RFA section above, DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.” Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act of 1995

This rule requires compliance with the following existing OMB collections: 1117–0023 and 1117–0029. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1310

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, DEA proposes to amend 21 CFR part 1310 as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES; IMPORTATION AND EXPORTATION OF CERTAIN MACHINES

■ 1. The authority citation for 21 CFR Part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. In § 1310.02 amend paragraph (a) (35) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(35) 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the existence of such is possible, including the following:

²⁹ 5 U.S.C. 601–612.

- (i) Ethyl ester of 3,4-MDP-2-P methyl glycidic acid (ethyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P ethyl glycidate; PMK ethyl glycidate)
- (ii) Propyl ester of 3,4-MDP-2-P methyl glycidic acid (propyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P propyl glycidate; PMK propyl glycidate)
- (iii) Isopropyl ester of 3,4-MDP-2-P methyl glycidic acid (isopropyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P isopropyl glycidate; PMK isopropyl glycidate)
- (iv) Butyl ester of 3,4-MDP-2-P methyl glycidic acid (butyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P butyl glycidate; PMK butyl glycidate)
- (v) Isobutyl ester of 3,4-MDP-2-P methyl glycidic acid (isobutyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P isobutyl glycidate; PMK isobutyl glycidate)
- (vi) sec-Butyl ester of 3,4-MDP-2-P methyl glycidic acid (sec-butyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P sec-butyl glycidate; PMK sec-butyl glycidate)
- (vii) tert-Butyl ester of 3,4-MDP-2-P methyl glycidic acid (tert-Butyl 3-(benzo[d][1,3]dioxol-5-yl)-2-methyloxirane-2-carboxylate; 3,4-MDP-2-P tert-butyl glycidate; PMK tert-butyl glycidate, as list I chemicals under the CSA.

* * * * *

■ 3. In § 1310.04:

■ a. Amend paragraph (g)(1)(xi) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *
(1) * * * (xi) 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the existence of such is possible

* * * * *

■ 4. In § 1310.09 amend (q) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(q)(1) Each person required under 21 U.S.C. 822 and 957 to obtain a registration to manufacture, distribute, import, or export regulated forms of 3,4-MDP-2-P methyl glycidate (PMK glycidate); 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the

existence of such is possible; and *alpha*-phenylacetacetamide (APAA), including regulated chemical mixtures pursuant to section 1310.12, is temporarily exempted from the registration requirement, provided that DEA receives a properly completed application for registration or application for exemption for a chemical mixture containing regulated forms of 3,4-MDP-2-P methyl glycidate (PMK glycidate); 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, optical and geometric isomers, salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA; or *alpha*-phenylacetacetamide (APAA), pursuant to section 1310.13 on or before 30 days after the publication of a rule finalizing this action. The exemption would remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture containing regulated forms of 3,4-MDP-2-P methyl glycidate (PMK glycidate); 3,4-MDP-2-P methyl

glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the existence of such is possible; or *alpha*-phenylacetacetamide (APAA), whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement would also be provided for those persons whose application for exemption is denied, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons would remain in effect until DEA takes final action on their registration application.

■ 5. In § 1310.12, the Table of Concentration Limits in paragraph (c) is amended by modifying the listing for 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its salts, optical and geometric isomers, and salts of isomers to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code No.	Concentration	Special conditions
* * * * *			
3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, its optical and geometric isomers, its salts, salts of its optical and geometric isomers, and salts of its esters, not listed elsewhere in the CSA, and any combination thereof, whenever the existence of such is possible.	8525	Not exempt at any concentration.	Chemical mixtures containing any amount of 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) and its esters, not listed elsewhere in the CSA, are not exempt.
* * * * *			

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on July 28, 2026, by DEA Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–15624 Filed 7–31–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG–115145–25]

RIN 1545–BR76

Section 898(c) Transition Rule for Allocating Foreign Taxes and Section 960(d)(4) Foreign Tax Credit Disallowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that relate to allocating foreign taxes of foreign corporations affected by the repeal of the one-month deferral election and to the disallowance of foreign tax credits on certain distributions of previously taxed earnings and profits. The proposed regulations would affect taxpayers that operate in foreign countries through certain foreign corporations and taxpayers that claim the foreign tax credit.

DATES: Written or electronic comments and requests for a public hearing must be received by September 17, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–115145–25) by following the online instructions for submitting

comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–115145–25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations related to section 898(c), Hayley Rassuchine at (202) 317–6936; concerning the proposed regulations related to section 960(d)(4), Le Chen at (202) 317–6936; and concerning submissions of comments and requests for a public hearing, Publications and Regulations at (202) 317–6901 (not toll-free numbers) or by sending an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains proposed additions and amendments to 26 CFR part 1 (proposed regulations) under sections 898(c) and 960(d)(4) and certain other provisions of the Internal Revenue Code (Code). The proposed regulations are issued pursuant to the express delegation of authority under section 70352(c) of Public Law 119–21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBA), which provides that the Secretary of the Treasury or the Secretary’s delegate (Secretary) shall issue regulations providing for the allocation of foreign taxes of foreign corporations affected by the repeal of section 898(c)(2). The proposed regulations are also issued pursuant to the express delegation of authority under section 960(f), which provides the Secretary with authority to prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 960. Additionally, the proposed regulations are issued pursuant to the express delegation of authority under section 7805(a).

Background**I. Repeal of Section 898(c)(2)**

Section 898 provides rules for determining the required taxable year of any specified foreign corporation. A foreign corporation is a specified foreign corporation if it is treated as a controlled foreign corporation (CFC) for any purpose under subpart F of

subchapter N of chapter 1 of subtitle A of the Code, and if any United States shareholder (as defined in section 951(b)) (U.S. shareholder) owns (determined by applying the ownership rules of section 958) more than 50 percent of the stock of the CFC by vote or value on each testing day¹ (majority U.S. shareholder).

Section 898(c)(1) generally requires a specified foreign corporation to have the same taxable year as the taxable year of its majority U.S. shareholder (the majority U.S. shareholder year). However, prior to the enactment of the OBBA, section 898(c)(2) generally permitted a specified foreign corporation to elect a taxable year beginning one month earlier than the majority U.S. shareholder year (one-month deferral election), subject to the consent of the Secretary. Section 70352 of the OBBA repealed the one-month deferral election for taxable years of specified foreign corporations beginning after November 30, 2025. Section 70352(c) of the OBBA provides that if a corporation is a specified foreign corporation as of November 30, 2025, its first taxable year beginning after November 30, 2025, will end at the same time as the first required year (within the meaning of section 898(c)(1)) ending after such date (first required year). Thus, a specified foreign corporation with a one-month deferral election in place will have a one-month taxable year as its first required year.

Section 70352(c) of the OBBA provides a transition rule for specified foreign corporations required to change their taxable years due to the repeal of the one-month deferral election (the transition rule). Under the transition rule, the change to the specified foreign corporation’s taxable year will be treated as initiated by the corporation and as having been made with the consent of the Secretary. The transition rule also directs the Secretary to issue regulations or other guidance allocating foreign taxes paid or accrued in the specified foreign corporation’s first required year and its succeeding taxable year among those taxable years in the manner the Secretary determines appropriate to carry out the purposes of section 70352 of the OBBA.

On November 25, 2025, the Treasury Department and the IRS issued Notice 2025–72, 2025–51 I.R.B. 840, describing rules expected to be included in

¹ Section 898(c)(3)(B) (redesignated by section 70352(a) of the OBBA as section 898(c)(2)(B)) defines the testing days as the first day of the corporation’s taxable year, or the days during a representative period that the Secretary may prescribe. No final regulations have been issued that prescribe such a representative period.

forthcoming proposed regulations under: (1) section 70352 of the OBBBA regarding the transition rule, and (2) section 987 regarding the election to recognize pretransition section 987 gain or loss ratably over a transition period. The proposed regulations would contain the rules described in Notice 2025–72 related to the transition rule, with certain modifications discussed in this preamble, and other guidance but would not include the rules related to pretransition section 987 gain or loss. The Treasury Department and the IRS intend to issue a separate notice of proposed rulemaking in the near future relating to section 987 that includes proposed rules relating to the recognition of pretransition section 987 gain or loss.

II. Section 960(d)(4)

Section 901 generally provides that a taxpayer choosing to credit foreign income taxes is allowed a credit for certain foreign income taxes paid or accrued by the taxpayer plus, in the case of a domestic corporation, the taxes deemed to have been paid by the domestic corporation under section 960. Section 960(d) provides that, if any amount is includible in the gross income of a domestic corporation under section 951A (section 951A inclusion), the domestic corporation is deemed to have paid foreign income taxes with respect to the section 951A inclusion. Prior to the OBBBA, section 960(d)(1) provided that a domestic corporation that is a U.S. shareholder is deemed to have paid foreign income taxes in an amount equal to 80 percent of the product of the U.S. shareholder's inclusion percentage and the aggregate of the tested foreign income taxes paid or accrued by its CFCs. Thus, section 960(d)(1) (prior to the OBBBA) effectively reduced the amount of foreign income taxes deemed paid with respect to a section 951A inclusion by 20 percent.

Section 70312(a)(1) of the OBBBA increased the percentage in section 960(d)(1) from 80 percent to 90 percent, thereby decreasing the reduction in foreign income taxes deemed paid from 20 percent to 10 percent. Section 70312(b) of the OBBBA added section 960(d)(4) to the Code, which correspondingly disallows a foreign tax credit for 10 percent of the foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to a distribution of previously taxed earnings and profits (PTEP) resulting from a section 951A inclusion. Section 70312(c)(2) of the OBBBA provides that section 960(d)(4) applies to foreign income taxes paid or

accrued (or deemed paid under section 960(b)(1)) with respect to any amount excluded from gross income under section 959(a) by reason of a section 951A inclusion after June 28, 2025.

On December 4, 2025, the Treasury Department and the IRS issued Notice 2025–77, 2025–52 I.R.B. 872, announcing the intent to issue proposed regulations regarding section 960(d)(4), including the application of the effective date of section 960(d)(4). Notice 2025–77 provides guidance for determining the amount of foreign income taxes paid or accrued (or deemed paid) with respect to PTEP distributions resulting from a section 951A inclusion that are subject to the foreign tax credit disallowance under section 960(d)(4). The proposed regulations contain the rules described in Notice 2025–77.

Explanation of Provisions

I. Proposed Regulations Implementing the Section 898(c) Transition Rule

A. Relevant Foreign Tax Credit Framework

In general, under section 951(a)(1),² a U.S. shareholder of a CFC must include in gross income its pro rata share of the CFC's subpart F income for the year. Similarly, a U.S. shareholder's section 951A inclusion is based, in part, on its pro rata share of its CFC's tested income or tested loss for the taxable year. *See* § 1.951A–1(c). In computing a CFC's items of subpart F income and its tested income or tested loss, deductions (including taxes) properly allocable to such income are taken into account. *See, e.g.,* sections 954(b)(5) and 951A(b)(2)(A)(ii). A CFC's items of subpart F income and its tested income or tested loss are computed in the functional currency of the CFC and translated into U.S. dollars as net amounts using the average exchange rate for the CFC's taxable year. *See* sections 986(b) and 989(b)(3) and § 1.951A–1(d)(1).

Generally, an income item of a CFC that would otherwise be subpart F income may be excluded, pursuant to an election, under the high-tax exception from foreign base company income (high-tax exception) if the item is subject to an effective rate of foreign tax that is greater than 90 percent of the

maximum rate of tax specified in section 11. *See* § 1.954–1(d). A similar election excludes from tested income an item that would otherwise be tested income (high-tax exclusion) if the item is subject to an effective rate of foreign tax greater than 90 percent of the maximum rate of tax specified in section 11. *See* § 1.951A–2(c)(7).

Section 960(a) provides that when a domestic corporation includes in gross income any item of income under section 951(a)(1) with respect to a CFC, the domestic corporation is deemed to have paid so much of the CFC's foreign income taxes as are properly attributable to the item of income. Section 960(d)(1) provides that when a domestic corporation has a section 951A inclusion, the domestic corporation is deemed to have paid 90 percent of the product of such domestic corporation's inclusion percentage multiplied by the aggregate tested foreign income taxes paid or accrued by its CFCs. Section 960(d)(3) defines tested foreign income taxes as the foreign income taxes paid or accrued by a CFC which are properly attributable to the tested income of the CFC taken into account by the domestic corporation under section 951A. Therefore, in order for foreign income taxes paid or accrued by a CFC in a taxable year to be deemed paid by a U.S. shareholder, the related subpart F income of the CFC must be included in gross income by the U.S. shareholder under section 951(a)(1), or the related tested income of the CFC must be taken into account in the U.S. shareholder's section 951A inclusion. Section 960(b)(1) provides that a U.S. shareholder of a CFC is deemed to have paid the CFC's foreign income taxes that the U.S. shareholder has not been previously deemed to pay and that are properly attributable to a distribution from the CFC that the U.S. shareholder excludes from its gross income under section 959(a) (a section 959(a) distribution).

Section 1.861–20 provides rules for allocating and apportioning foreign income taxes to statutory and residual groupings for an operative Code section, except as modified under the rules for the operative section. *See also* § 1.861–8(f). These rules apply to attribute foreign income taxes paid or accrued by a CFC to items of income of the CFC in order to determine a CFC's net items of subpart F income and tested income, the effective rate of foreign tax for purposes of the high-tax exception and the high-tax exclusion, and the taxes attributable to the CFC's income groups and PTEP groups (as defined in § 1.960–1(b)). *See* §§ 1.960–1(d), 1.960–2(b)(2) and (c)(4), and 1.960–3(d).

² The statutory citations in part I of this Explanation of Provisions section are to the Code as in effect following the amendments made by the OBBBA. While some of these amendments may not be applicable to a specified foreign corporation's first required year (depending on when that first required year begins), the amendments generally do not affect the proposed regulations implementing the section 898(c) transition rule.

The foreign income taxes taken into account by a CFC in a taxable year are determined under the CFC's method of accounting. For CFCs that use an accrual method of accounting, foreign income taxes accrue in the taxable year in which all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy. *See* §§ 1.446-1(c)(1)(ii)(A) and 1.461-4(g)(6)(iii)(B). A foreign income tax determined on the basis of items of income, gain, deduction, and loss that arise in a foreign taxable year (a foreign net income tax) becomes fixed and determinable at the close of the foreign taxable year. *See* § 1.905-1(d)(1)(i). For CFCs that use the cash method of accounting, foreign income taxes are taken into account when paid. *See* §§ 1.905-1(c)(1) and 1.446-1(c)(1)(i). Foreign income taxes are generally considered paid in the taxable year in which the taxes are remitted to the foreign country.

Section 1.901-2(f) provides rules for determining the person considered to have paid or accrued a foreign income tax for foreign tax credit purposes (the section 901 taxpayer). For instance, a partnership is considered the section 901 taxpayer of a foreign income tax imposed at the entity level on the income of the partnership. *See* § 1.901-2(f)(4)(i). Additionally, the person who is treated as owning the assets of a disregarded entity (as described in § 301.7701-2(c)(2)(i)) for Federal income tax purposes is considered the section 901 taxpayer of any foreign income tax imposed at the entity level on the income of the disregarded entity. *See* § 1.901-2(f)(4)(ii). If a partnership, disregarded entity, or corporation undergoes one or more covered events during its foreign taxable year that do not close the foreign taxable year, a foreign income tax, other than a withholding tax described in section 901(k)(1)(B), imposed with respect to that continuing foreign taxable year is allocated to and among the predecessor entities or prior owners under § 1.901-2(f)(5). Section 1.901-2(f)(5)(ii) defines a covered event as a partnership termination under section 708(b)(1), a transfer of a disregarded entity, or a change in entity classification of a disregarded entity or a corporation.

For purposes of determining the amount of the foreign tax credit, foreign income taxes are translated at the rate provided under section 986(a). If the section 901 taxpayer of the foreign income tax takes foreign income taxes into account when accrued, taxes are generally translated using the average exchange rate for the taxable year to

which the taxes relate. *See* section 986(a)(1)(A). Section 986(a) provides certain exceptions to the general rule, including for foreign income taxes that are not paid within two years of the close of the U.S. taxable year to which they relate. *See* section 986(a)(1)(B). Section 905(c) provides that, among other things, a change in the amount of foreign income tax accrued and claimed as a credit requires a redetermination of the U.S. tax liability for the year or years affected.

B. Foreign Taxes Subject to Allocation

1. Specified Foreign Income Taxes

Section 3.03 of Notice 2025-72 provides that only specified foreign income taxes would be allocated between the first required year and the succeeding taxable year of a specified foreign corporation. Section 3.02(4) of Notice 2025-72 defines a "specified foreign income tax" as a foreign net income tax accrued by an affected corporation in its first required year for which the affected corporation is the section 901 taxpayer. Section 3.02 of Notice 2025-72 defines an affected corporation as a specified foreign corporation (as defined in section 898(b)) that takes into account foreign income taxes under an accrual method of accounting and that, pursuant to section 70352(c) of the OBBBA, is required to change its first taxable year beginning after November 30, 2025. No comments were received on these definitions, and, except as discussed in this part I.B of this Explanation of Provisions section, the proposed regulations would apply to specified foreign income taxes and would define a "specified foreign income tax" and an "affected corporation" consistently with Notice 2025-72. *See* proposed § 1.898(c)-1(b) (clarifying the definition of an affected corporation to require that the specified foreign corporation's first required year end pursuant to section 70352(c)(1) of the OBBBA on the date prescribed by that section) and § 1.898(c)-1(c) (expanding the definition of a specified foreign income tax to include specified distributive shares of creditable foreign tax expenditures if an election is made). Thus, except as discussed in this part I.B of this Explanation of Provisions section, any other foreign tax that is taken into account by a specified foreign corporation in its first required year or its succeeding taxable year would continue to be taken into account in that respective taxable year.

The proposed regulations would allocate specified foreign income taxes between an affected corporation's first

required year and its succeeding taxable year to carry out the purposes of section 70352 of the OBBBA. Specified foreign income taxes would generally include foreign net income taxes, which accrue on the last day of a foreign taxable year. As a result of section 70352(c) of the OBBBA, a specified foreign corporation's foreign taxable year may close with or within the specified foreign corporation's first required year. In that case, the foreign net income tax, likely imposed with respect to a full taxable year of foreign law income, accrues in the first required year while only one month of income accrues in that year for Federal income tax purposes. Depending on the amount of the foreign net income tax imposed, this could result in the specified foreign corporation having a loss with respect to a particular income group for the first required year, resulting in foreign income taxes not being deemed paid by the affected corporation's U.S. shareholders under section 960(a) or (d). *See* part I.A of this Explanation of Provisions section.

As under Notice 2025-72, the definition of specified foreign income tax would exclude taxes that are likely to accrue close in time to the related income since any allocation of such tax between the first required year and the succeeding taxable year would create a needless separation of income and tax. For instance, a specified foreign income tax would not include a foreign withholding tax because such a tax accrues close in time to the income to which it relates. Similarly, a specified foreign corporation that uses the cash method of accounting would not be an affected corporation, and foreign net income taxes taken into account by such a specified foreign corporation would not be specified foreign income taxes. A cash-basis specified foreign corporation will generally be required to make monthly or quarterly estimated payments of its foreign income tax liability and, therefore, is unlikely to make a single payment of foreign income tax in its first required year that would result in a loss with respect to a particular income group.

2. Specified Distributive Shares of Creditable Foreign Tax Expenditures

Section 3.03(1) of Notice 2025-72 provides that an affected corporation's distributive share of foreign income taxes paid or accrued by a partnership (creditable foreign tax expenditures or CFTEs, as defined in § 1.704-1(b)(4)(viii)) are not specified foreign income taxes, and therefore, would not be allocated between the affected corporation's first required year and its

succeeding taxable year. Section 6 of Notice 2025–72 requested comments on whether an affected corporation's distributive share of CFTEs should be allocated between its first required year and succeeding taxable year when an affected corporation owns an interest in a partnership that is required to change its taxable year because the affected corporation changes its taxable year pursuant to section 70352 of the OBBBA. See section 706(b) and § 1.706–1(b). Several comments recommended that distributive shares of CFTEs of such partnerships be allocated between the affected corporation's first required year and succeeding taxable year.

As under Notice 2025–72, the proposed regulations would generally define a specified foreign income tax to exclude an affected corporation's distributive share of CFTEs. This exclusion prevents the separation of income and foreign income tax because the affected corporation will take into account its distributive share of other partnership items based on the partnership's full taxable year at the same time it takes into account its distributive share of CFTEs. See section 706(a) and § 1.706–1(a). However, when a partnership is required to change its taxable year because an affected corporation owning an interest in the partnership changes its taxable year pursuant to section 70352 of the OBBBA, the partnership would have a one-month taxable year with outcomes similar to those described in part I.B.1 of this Explanation of Provisions section. Accordingly, the proposed regulations would provide an election to treat all of an affected corporation's distributive shares of certain CFTEs of affected partnerships (specified distributive shares of CFTEs) as specified foreign income taxes. See proposed § 1.898(c)–1(c)(2); see also part I.E.2 of this Explanation of Provisions section regarding the procedural requirements for making the election.

3. Relevant Succeeding Year Taxes

Section 3.03(1) of Notice 2025–72 provides that foreign income taxes accrued by an affected corporation in its succeeding taxable year are not specified foreign income taxes and, therefore, would not be allocated between the affected corporation's first required year and its succeeding taxable year. Notice 2025–72 explains that while a foreign net income tax accrued in the succeeding taxable year may relate to income accrued in the first required year, the Treasury Department and the IRS expect that the administrative and compliance burdens

of allocating a portion of the succeeding year tax to the first required year would exceed the benefits of allocation.

A comment noted that the repeal of section 898(c)(2) could result in a loss of foreign tax credits if the income accrued by an affected corporation in its first required year is different in type than the income accrued by the affected corporation in its succeeding taxable year. For instance, an affected corporation may have a first required year that ends December 31, 2025, and be subject to a foreign income tax with respect to a foreign taxable year that ends on March 31, 2026. The foreign income tax that accrues on March 31, 2026, could be imposed in part on the income that accrued for Federal income tax purposes in the affected corporation's first required year. If the affected corporation does not earn the same type of income in the succeeding taxable year, then a portion of the foreign income tax would not be deemed paid because the affected corporation will not have income in the relevant income group in the succeeding taxable year. The comment also noted that, in some cases, a taxpayer may have the necessary information to allocate the succeeding year taxes before the extended due date of the majority U.S. shareholder's Federal income tax return for the taxable year with which the affected corporation's first required year ends.

The Treasury Department and the IRS continue to be of the view that, in general, the administrative and compliance burdens of allocating a portion of the succeeding year tax to the first required year would exceed the benefits of allocation. Further, maintaining the full amount of foreign income taxes in the succeeding taxable year is appropriate because a full year's worth of foreign income taxes accrue with a full year of income. Accordingly, the proposed regulations would generally provide that foreign income taxes accrued by an affected corporation in its succeeding taxable year are not specified foreign income taxes.

However, the Treasury Department and the IRS agree with the comment that, in some cases, when an affected corporation's foreign taxable year (for example, a March 31 year end) does not align with its succeeding taxable year (for example, a December 31 year end), an allocation of an affected corporation's foreign income taxes accrued in the succeeding taxable year between its first required year and its succeeding taxable year is appropriate to address the concerns described in this part I.B.3 of this Explanation of Provisions section. Accordingly, to

address these circumstances, the proposed regulations would provide an irrevocable election to allocate the affected corporation's relevant succeeding year taxes between the affected corporation's first required year and its succeeding taxable year. See proposed § 1.898(c)–1(f); see also part I.E.2 of this Explanation of Provisions section regarding the procedural requirements for making the election.

C. Ordering Rules

Section 3.04 of Notice 2025–72 provides that a specified foreign income tax would be allocated between the affected corporation's first required year and its succeeding taxable year and then taken into account in each respective taxable year under certain ordering rules. These ordering rules would coordinate statutory and regulatory provisions related to the computation of an affected corporation's income items under sections 951(a) and 951A and the computation of the foreign taxes deemed paid under section 960(a) and (d) with the allocation of foreign income taxes between the affected corporation's first required year and succeeding taxable year. No comments were received on these ordering rules, and the rules, therefore, are included in the proposed regulations. See proposed § 1.898(c)–1(d).

D. Allocation Method

1. Allocation Percentage

Section 3.05 of Notice 2025–72 provides that a specified foreign income tax would be allocated between an affected corporation's first required year and its succeeding taxable year by determining an allocation percentage for each specified foreign income tax. The allocation percentage would be equal to the portion of an affected corporation's taxable income, as determined under foreign law, that is attributable under the principles of § 1.1502–76(b) to the first required year, divided by the total taxable income, as determined under foreign law, for the foreign taxable year with respect to which the specified foreign income tax is imposed. A comment requested that the proposed regulations allow taxpayers to use any reasonable allocation method that aligns foreign taxes with the income to which those taxes relate, including an allocation of an affected corporation's foreign taxes to its taxable year preceding its first required year.

For the reasons described below, the proposed regulations would require the use of a single prescriptive allocation method to implement the transition rule. See proposed § 1.898(c)–1(e). The

allocation method would reduce the likelihood that foreign income taxes of a specified foreign corporation in the first required year would not be deemed paid as a consequence of the repeal of section 898(c)(2). Additionally, the allocation method would leverage an existing methodology that is familiar to taxpayers for allocating foreign income taxes, *see, e.g.*, §§ 1.245A–5(e)(3)(i), 1.336–2(g)(3)(ii), 1.338–9(d), and 1.901–2(f)(5), and would use taxable income as determined under foreign law, which is an amount that taxpayers are already required to consider in applying § 1.861–20. Further, the allocation method would better accommodate affected corporations that may earn uneven amounts of income in the first required year, as compared to an allocation method that is based on a set ratio such as months or days. The allocation method would provide flexibility to taxpayers because the principles of § 1.1502–76(b) allow for either a closing of the books method or a ratable allocation method for purposes of determining the portion of taxable income attributable to the first required year. Finally, the method suggested by the comment would not comply with the requirement in section 70352(c) of the OBBBA to allocate foreign taxes between a specified foreign corporation's first taxable year and its succeeding taxable year, and not to an earlier taxable year.

2. Income Group Specific Allocation Percentage

Section 3.05 of Notice 2025–72 provides that a single allocation percentage based on an affected corporation's total taxable income, as determined under foreign law, for the foreign taxable year with respect to which the specified foreign income tax is imposed would apply to the amount of a specified foreign income tax assigned to each income group of the affected corporation. A comment stated that taxpayers generally have the information needed to compute a different allocation percentage for each income group, which may better match the tax allocated to the first required year to the income accrued in that year. By way of example, the comment described a situation in which an affected corporation (AC) with its first required year ending on December 31, 2025, and a foreign taxable year that ends on December 31, 2026, recognizes gain from the sale of stock on December 15, 2025. The gain is foreign personal holding company income described in section 954(c)(1)(B) within the passive category. Under § 1.861–20, as applied in the first required year, the Country X

income tax attributable to the stock gain is allocated and apportioned to AC's relevant subpart F income group within the passive category. In its succeeding taxable year, however, AC does not recognize subpart F income in the relevant subpart F income group within the passive category. Any portion of Country X income tax assigned to that income group allocated to the succeeding taxable year under a single allocation percentage would not be deemed paid under section 960(a).

The Treasury Department and the IRS are of the view that, in most cases, determining a different allocation percentage for each income group would require taxpayers to undertake potentially burdensome analyses without providing benefits, and therefore, the proposed regulations would provide, as a general rule, a single allocation percentage that is used for all income groups. However, the Treasury Department and the IRS agree with the comment that in some cases a different allocation percentage for each income group may be appropriate. Accordingly, the proposed regulations would provide an election to apply a specific allocation percentage to the amount of a specified foreign income tax assigned to each income group of an affected corporation. *See* proposed § 1.898(c)–1(e)(3); *see also* part I.E.2 of this Explanation of Provisions section regarding the procedural requirements of the election. The proposed regulations would also provide that the income group specific allocation method is required for allocating a relevant succeeding year tax between an affected corporation's first required year and its succeeding taxable year. *See* proposed § 1.898(c)–1(f)(3). An income group specific allocation percentage is computed by applying the principles of § 1.1502–76(b), using the closing of the books method, separately for each income group to which foreign law income is assigned under § 1.861–20.

3. Election to Not Allocate

Section 3.04 of Notice 2025–72 provides that a specified foreign income tax would be allocated between an affected corporation's first required year and its succeeding taxable year and then would be taken into account in each respective taxable year. A comment requested an election to forgo the allocation rule set forth in the notice and instead apply current accrual rules to specified foreign income taxes in order to allow an affected corporation's controlling domestic shareholders to determine whether these existing rules better serve their interests.

The proposed regulations adopt this comment because the Treasury Department and the IRS believe it would reduce compliance burdens. The proposed regulations would provide an election to not allocate an affected corporation's specified foreign income taxes. If the election is made, the specified foreign income taxes would be taken into account in the affected corporation's first required year. *See* proposed § 1.898(c)–1(e)(4); *see also* part I.E of this Explanation of Provisions section regarding other procedural requirements for making the election. This election would apply to all specified foreign income taxes of an affected corporation. If the election is made, the affected corporation's relevant succeeding year taxes may not be allocated between its first required year and its succeeding taxable year.

E. Other Issues

1. Sections 905(c) and 986(a)

Section 3.06 of Notice 2025–72 provides that, for purposes of sections 905(c) and 986(a), a specified foreign income tax would accrue in the first required year, regardless of whether a portion of the specified foreign income tax is allocated to the succeeding taxable year. No comments were received on the application of these provisions to specified foreign income taxes, and the proposed regulations would provide that, for purposes of sections 905(c) and 986(a), the first required year is the year to which a specified foreign income tax relates. The proposed regulations would provide similar treatment to relevant succeeding year taxes for purposes of sections 905(c) and 986(a). *See* proposed § 1.898(c)–1(g).

2. Election Procedures

In general, the proposed regulations would provide that the elections described in parts I.B.2 (specified distributive shares of CFTes), I.B.3 (relevant succeeding year taxes), I.D.2 (income group specific allocation percentage), and I.D.3 (election to not allocate) of this Explanation of Provisions section would be made by an affected corporation's controlling domestic shareholders for its first required year by attaching a statement to their timely filed (including extensions) Federal income tax returns for the years in which or with which the first required year and the succeeding taxable year end. *See* proposed § 1.898(c)–1(h). The election to allocate relevant succeeding year taxes would be irrevocable. *See* proposed § 1.898(c)–1(h)(1).

The proposed regulations would provide that the elections to treat specified distributive shares as specified foreign income taxes and to use the income group specific allocation percentage may be made on an amended Federal income tax return, and except for the election for allocating relevant succeeding year taxes, all of the elections may be revoked on an amended Federal income tax return. An amended Federal income tax return containing an election or revocation must be duly filed within 24 months of the due date (without regard to extensions) of the original Federal income tax return for the year in which or with which the first required year ends. An amended Federal income tax return for the taxable year in which or with which the affected corporation's succeeding taxable year ends must also be filed if needed to reflect a change in election. Permitting a change in election outside of this period could result in changes in amounts of tax due for taxable years that are no longer open for assessment under section 6501 and would increase the administrative burden of the elections. The Treasury Department and the IRS request comments on these election procedures, including the application of this 24-month limitation.

3. Covered Events

Section 3.05(3) of Notice 2025–72 provides rules that would coordinate the allocation of a specified foreign income tax with the covered event rules in § 1.901–2(f)(5) when an affected corporation is the section 901 taxpayer of a portion of the tax due to the application of those rules. *See* part I.A of this Explanation of Provisions section for a description of the covered event rules. A comment requested additional guidance coordinating the covered event rules with the allocation of specified foreign income taxes. Specifically, the comment recommended that the portion of a specified foreign income tax allocated to the succeeding taxable year be further allocated among persons based on the principles of the covered event rules. The comment suggested that the principles of the covered event rules would apply by treating the income earned in the succeeding taxable year as the income to which the specified foreign income tax relates. The comment described cases with respect to which its recommendation would apply.

The Treasury Department and the IRS are of the view that some of the cases discussed in the comment do not involve specified foreign corporations subject to the transition rule and

therefore would exceed the authority granted under section 70352(c) of the OBBBA. In other cases, the mismatch of income and foreign income tax was not caused by the repeal of section 898(c)(2) and would likewise be beyond the scope of the transition rule. Finally, the Treasury Department and the IRS do not consider it appropriate to allocate a section 901 taxpayer's foreign income tax to another person. Thus, the proposed regulations do not adopt this comment and would clarify that a specified foreign corporation is an affected corporation if its first taxable year beginning after November 30, 2025, ends pursuant to section 70352(c) of the OBBBA on the date prescribed by that section, which is the last day of the first required year (within the meaning of section 898(c)(1)) ending after November 30, 2025. *See* proposed § 1.898(c)–1(b) (defining affected corporation).

4. Conforming Amendments

The proposed regulations would include conforming amendments to Treasury regulations that refer to the availability of the one-month deferral election or provide special rules when the one-month deferral election is in effect. *See* proposed §§ 1.163(j)–7(k)(29)(i)(B), 1.441–1(b)(2)(ii)(C), 1.442–2(b)(1)(i), and 1.987–11(c)(3)(ii).

II. Proposed Regulations Implementing the Section 960(d)(4) Foreign Tax Credit Disallowance

Section 3.01(2) of Notice 2025–77 provides that section 960(d)(4) would apply to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to a section 959(a) distribution to the extent the PTEP results from a section 951A inclusion of a U.S. shareholder in a taxable year ending after June 28, 2025. Section 3.01(3) of Notice 2025–77 provides that the “section 951A PTEP” group set forth in § 1.960–3(c)(2)(viii) would be divided into two groups: (1) PTEP resulting from section 951A inclusions in taxable years of a U.S. shareholder ending on or before June 28, 2025 (pre-06/29/25 section 951A PTEP), and (2) PTEP resulting from section 951A inclusions in taxable years of a U.S. shareholder ending after June 28, 2025 (post-06/28/25 section 951A PTEP). Section 3.01(4) of Notice 2025–77 provides that no credit under section 901 would be allowed for 10 percent of any foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to a section 959(a) distribution of post-06/28/25 section 951A PTEP, and those taxes would be allocated and apportioned to

post-06/28/25 section 951A PTEP under § 1.861–20. Section 3.01(5) of Notice 2025–77 provides that similar rules would apply to the “reclassified section 951A PTEP” group set forth in § 1.960–3(c)(2)(iv).

No comments were received on Notice 2025–77, and accordingly, the proposed regulations would include these rules. *See* proposed § 1.960–3(b)(6), (c)(2)(iv) and (v), and (c)(2)(ix) and (x). The Treasury Department and the IRS intend to modify the proposed regulations related to PTEP that were published in the **Federal Register** on December 2, 2024, (89 FR 95362) to be consistent with these proposed regulations.

III. Applicability Dates and Reliance

The Treasury Department and the IRS expect to finalize the proposed regulations by January 4, 2027. Under section 7805(b)(2), proposed § 1.898(c)–1 is proposed to apply to taxable years of specified foreign corporations beginning after November 30, 2025. *See* proposed § 1.898(c)–1(j). A taxpayer may rely on the proposed regulations regarding section 898(c) for foreign taxes paid or accrued before the date the proposed regulations are published as final regulations in the **Federal Register**, provided the taxpayer applies the proposed regulations regarding section 898(c) in their entirety and in a consistent manner to the first required year and succeeding taxable year of a specified foreign corporation.

Under section 7805(b)(2), proposed § 1.960–3(b)(6) is proposed to apply to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to an amount excluded from gross income under section 959(a) by reason of a section 951A inclusion, to the extent the inclusion occurs in a taxable year of a U.S. shareholder ending after June 28, 2025. The corresponding updates to PTEP groups made by proposed § 1.960–3(c)(2) are proposed to apply to taxable years of foreign corporations ending with or within taxable years of U.S. shareholders ending after June 28, 2025. *See* proposed § 1.960–7(c). A taxpayer may rely on the proposed regulations regarding section 960(d)(4) for taxable years of U.S. shareholders beginning before the date the proposed regulations are published as final regulations in the **Federal Register**, provided the taxpayer follows the proposed regulations regarding section 960(d)(4) in their entirety and in a consistent manner for all applicable taxable years.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

The Office of Management and Budget's Office of Information and Regulatory Analysis has determined that this proposed regulation is not significant and is not subject to review under section 6(b) of Executive Order 12866. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA), generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The collections of information in the proposed regulations include reporting, third-party disclosures, and recordkeeping requirements that are necessary for certain individuals and corporations to determine their foreign tax credit under section 901 and related provisions. These collections will be used by IRS for tax compliance purposes.

With respect to section 898(c), the collections in proposed § 1.898(c)–1(h) would provide procedures for making the elections described in parts I.B.2 (specified distributive shares of CFTes), I.B.3 (relevant succeeding year taxes), I.D.2 (income group specific allocation percentage), and I.D.3 (election to not allocate) of this Explanation of Provisions section. The respondents would be persons who are controlling domestic shareholders of an affected corporation. Pursuant to proposed § 1.898(c)–1(h), respondents would be required to: (1) attach an election statement to an original or amended Federal income tax return (a reporting requirement), and (2) provide any notices required under § 1.964–1(c)(3)(iii) to the persons known to be domestic shareholders of the affected corporation in its first required year and succeeding taxable year (third-party disclosure and recordkeeping requirements).

For purposes of the PRA, the reporting burden associated with proposed § 1.898(c)–1(h) collection requirements will be reflected in the instructions for Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign

Corporations.” This revision will be included within the OMB Control Number 1545–0123 for business filers and will be approved by OMB in accordance with the PRA procedures under 5 CFR 1320.10.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. In general, the proposed regulations would affect U.S. shareholders of foreign corporations, and with respect to proposed § 1.898(c)–1, would affect only U.S. shareholders of foreign corporations that have made the one-month deferral election. The Treasury Department and the IRS do not have adequate data readily available to assess the number of small entities potentially affected by the proposed regulations.

The Treasury Department and the IRS have determined that the proposed regulations will not have a significant economic impact on domestic small business entities. Proposed § 1.898(c)–1 would allow taxpayers to not allocate taxes (*see* part I.D.3 of this Explanation of Provisions section), and therefore, generally would impose neither new requirements nor additional costs on small entities. The only additional costs imposed on a small business entity making an election under proposed § 1.898(c)–1(c)(4) are those associated with the collection of information requirements imposed under proposed § 1.898(c)–1(h). The Treasury Department and the IRS have estimated that the average burden of this collection of information is 1.5 hours per response. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for taxpayers with less than \$25,000,000 in total positive income is between \$113.16 and \$58.60. Thus, the annual burden from each collection of information requirement for small business entities is at most \$169.74, which is a de minimis amount. The proposed regulations regarding section 960(d)(4) would not impose new requirements on small entities but rather would implement the statute by specifying the foreign income taxes with respect to which the foreign tax credit disallowance applies. Accordingly, the proposed regulations are not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the

impact of the proposed regulations on small entities, including the number of small entities that may be impacted and whether that impact would be economically significant.

IV. Submission to the Small Business Administration

Pursuant to section 7805(f), the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** heading. In addition to the comments specifically requested in the Explanation of Provisions section, the Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who

submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

Any IRS Revenue Procedures, Revenue Rulings, Notices, or other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Le Chen and Hayley Rassuchine, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.898(c)–1 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.898(c)–1 also issued under Sec. 70352(c), Pub. L. 119–21, 139 Stat. 72.

* * * * *

■ **Par. 2.** Section 1.163(j)–7 is amended by revising paragraph (k)(29)(i)(B) to read as follows:

§ 1.163(j)–7 Application of the section 163(j) limitation to foreign corporations and United States shareholders.

* * * * *

(k) * * *
(29) * * *
(i) * * *

(B) If the specified group parent is an applicable CFC, the period ending on the last day of the specified group parent's required year described in section 898(c)(1) and beginning on the first day after the last day of the

specified group's immediately preceding specified period.

* * * * *

■ **Par. 3.** Section 1.441–1 is amended by revising paragraph (b)(2)(ii)(C) to read as follows:

§ 1.441–1 Period for computation of taxable income.

* * * * *

(b) * * *
(2) * * *
(ii) * * *

(C) *Specified foreign corporations.* A specified foreign corporation (as defined in section 898(b)) may use a taxable year other than its required taxable year if it elects a 52–53-week taxable year that ends with reference to its required taxable year as provided in paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ **Par. 4.** Section 1.441–2 is amended by revising the fourth sentence of paragraph (b)(1)(i) to read as follows:

§ 1.441–2 Election of taxable year consisting of 52–53 weeks.

* * * * *

(b) * * *
(1) * * *
(i) * * *

Similarly, a newly-formed specified foreign corporation (as defined in section 898(b)) may adopt a 52–53-week taxable year if such year ends with reference to the taxpayer's required taxable year. * * *

* * * * *

■ **Par. 5.** Add § 1.898(c)–1 under the undesignated center heading “*Miscellaneous Provisions*” to read as follows:

§ 1.898(c)–1 Allocation of foreign income taxes of specified foreign corporations affected by the repeal of section 898(c)(2).

(a) *Overview.* This section provides rules for allocating certain foreign taxes paid or accrued by a specified foreign corporation that is required to change its first taxable year beginning after November 30, 2025, pursuant to section 70352(c)(1)(C) of Public Law 119–21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA). Paragraph (b) of this section provides definitions for purposes of this section. Paragraph (c) of this section generally identifies which foreign taxes of an affected corporation are allocated between the affected corporation's first required year and its succeeding taxable year. Paragraph (d) of this section provides ordering rules for allocating a specified foreign income tax under this section. Paragraph (e) of this section provides allocation methods for purposes of determining the amount of a specified foreign income tax

allocated to the first required year and the succeeding taxable year and an election to not allocate specified foreign income taxes. Paragraph (f) of this section provides an election to allocate relevant succeeding year taxes between an affected corporation's first required year and its succeeding taxable year. Paragraph (g) of this section provides rules for the treatment of specified foreign income taxes and relevant succeeding year taxes under sections 905(c) and 986(a). Paragraph (h) of this section provides procedures for making the elections provided under paragraphs (c)(2), (e)(3) and (4), and (f) of this section. Paragraph (i) of this section provides examples illustrating the application of this section. Paragraph (j) of this section provides the applicability date.

(b) *Definitions.* The following definitions apply for purposes of this section.

Affected corporation means a specified foreign corporation (as defined in section 898(b)) that takes into account foreign income taxes under an accrual method of accounting and whose first taxable year beginning after November 30, 2025, ends pursuant to section 70352(c) of the OBBBA on the date prescribed by that section.

Affected partnership means a partnership that takes into account foreign income taxes under an accrual method of accounting and whose first taxable year beginning after November 30, 2025, is required to change due to one or more of its partners changing their first taxable year as required by section 70352(c) of the OBBBA.

Allocation percentage has the meaning set forth in paragraph (e)(1) of this section.

Creditable foreign tax expenditure (CFTE) has the meaning set forth in § 1.704–1(b)(4)(viii).

First required year means, with respect to an affected corporation or affected partnership, the first taxable year beginning after November 30, 2025.

Foreign net income tax means a foreign income tax (as defined in § 1.901–2(a)) that is computed based on items of income, gain, deduction, and loss that arise in a foreign taxable year.

Income group specific allocation percentage has the meaning set forth in paragraph (e)(3) of this section.

Relevant succeeding year tax has the meaning set forth in paragraph (f)(1) of this section.

Section 901 taxpayer means the taxpayer described § 1.901–2(f).

Specified distributive share of a CFTE has the meaning set forth in paragraph (c)(2) of this section.

Specified foreign income tax has the meaning set forth in paragraph (c)(1) of this section.

Succeeding taxable year means, with respect to an affected corporation or affected partnership, the taxable year immediately following the first required year.

United States shareholder has the meaning provided in section 951(b).

(c) *Specified foreign income taxes*—

(1) *In general.* Except as provided in paragraph (e)(4) of this section, specified foreign income taxes are allocated between an affected corporation's first required year and its succeeding taxable year under this section. A specified foreign income tax is a foreign net income tax accrued without regard to this section by an affected corporation in its first required year for which the affected corporation is the section 901 taxpayer.

(2) *Election to allocate specified distributive shares of CFTEs.* An election may be made under this paragraph (c)(2) pursuant to the procedures of paragraph (h) of this section. If an election is in effect under this paragraph (c)(2), all specified distributive shares of CFTEs of an affected corporation are treated as specified foreign income taxes. A specified distributive share of a CFTE is an affected corporation's distributive share of a CFTE of an affected partnership if—

(i) The affected corporation takes into account its distributive share of the CFTE in its first required year;

(ii) The CFTE is a foreign net income tax; and

(iii) The affected partnership's first required year ends at the same time as the affected corporation's first required year.

(d) *Ordering rules.* The following ordering rules apply for allocating an affected corporation's specified foreign income taxes between the affected corporation's first required year and its succeeding taxable year.

(1) First, specified foreign income taxes are determined.

(2) Second, each specified foreign income tax is allocated and apportioned to income groups pursuant to the rules in this paragraph (d)(2). Section 1.861–20, as modified by § 1.960–1(d)(3)(ii)(B), is applied in the first required year to allocate and apportion the specified foreign income tax to the income groups described in § 1.960–1(d)(2) and the PTEP groups treated as income groups under § 1.960–1(d)(3)(ii)(B) in that year, except that the tentative gross tested income items described in § 1.951A–2(c)(7)(ii) are treated as income groups described in § 1.960–1(d)(2)(ii)(C).

Whether any item meets the high-tax exception to foreign base company income in § 1.954–1(d) (high-tax exception) or the high-tax exclusion from tested income in § 1.951A–2(c)(7) (high-tax exclusion) in either the first required year or the succeeding taxable year is determined under paragraph (d)(4) of this section.

(3) Third, the allocation method provided in paragraph (e) of this section is applied to determine the amount of specified foreign income tax in each income group that is allocated to the first required year and the succeeding taxable year.

(4) Fourth, for all purposes of the Internal Revenue Code, except for sections 905(c) and 986(a), the amounts of a specified foreign income tax (assigned to the income groups determined under paragraph (d)(2) of this section) that are allocated to the first required year and the succeeding taxable year under paragraph (d)(3) of this section are treated as accruing in each respective year. Thus, for example, the amounts of a specified foreign income tax allocated to the first required year and the succeeding taxable year accrue in each respective year for purposes of computing the affected corporation's items of subpart F income and tested income under sections 952 and 951A (including whether any item meets the high-tax exception or the high-tax exclusion), earnings and profits, and taxes deemed paid under section 960(a), (b), or (d). The amount of a specified foreign income tax allocated to the succeeding taxable year is treated as accruing on the first day of the succeeding taxable year and is not allocated among, and considered paid by, two or more persons under § 1.901–2(f) by reason of events that occur in the succeeding taxable year.

(e) *Allocation method*—(1) *In general.* Subject to the special rules provided in paragraph (e)(2) of this section and the elections described in paragraphs (e)(3) and (4) of this section, the amount of a specified foreign income tax assigned to each income group allocated to the first required year is the specified foreign income tax assigned to that income group multiplied by a fraction (the allocation percentage), the numerator of which is the portion of taxable income, as determined under foreign law, that is attributable to the first required year under the principles of § 1.1502–76(b), and the denominator of which is the total taxable income, as determined under foreign law, for the foreign taxable year with respect to which the specified foreign income tax is imposed. The amount of a specified foreign income tax assigned to each income

group remaining after the application of the preceding sentence is allocated to the succeeding taxable year.

(2) *Special rules*—(i) *Allocation method for PTEP groups.* The amount of a specified foreign income tax assigned to a PTEP group under paragraph (d)(2) of this section is allocated to the first required year. The numerator and the denominator of the allocation percentage is adjusted to exclude the foreign law taxable income on which that amount of specified foreign income tax is imposed.

(ii) *Allocation method in the case of certain covered events.* If an affected corporation is the section 901 taxpayer of a portion of a specified foreign income tax by reason of the application of § 1.901–2(f)(5), then the allocation percentage is adjusted as follows—

(A) In the case of an affected corporation whose period of existence or ownership (as determined under § 1.901–2(f)(5)) begins on or before the start of the first required year, the denominator of the allocation percentage is the total foreign law taxable income attributable to the affected corporation's period of existence or ownership (as determined under § 1.901–2(f)(5)).

(B) In the case of an affected corporation whose period of ownership (as determined under § 1.901–2(f)(5)) begins after the start of the first required year, the allocation percentage is deemed to be 100 percent.

(3) *Election to apply income group specific allocation method.* An election may be made under this paragraph (e)(3) pursuant to the procedures of paragraph (h) of this section. If an election is in effect under this paragraph (e)(3), the amount of a specified foreign income tax assigned to each income group allocated to the affected corporation's first required year is the amount of specified foreign income tax assigned to that income group multiplied by a fraction (the income group specific allocation percentage), the numerator of which is the portion of foreign taxable income assigned under § 1.861–20 to the income group that is attributable to the first required year under the principles of § 1.1502–76(b) (using the closing of the books method described in § 1.1502–76(b)(2)(i)), and the denominator of which is the total foreign taxable income assigned under § 1.861–20 to the income group. Adjustments similar to the adjustments provided by paragraph (e)(2) of this section are made in the computation of the income group specific allocation percentage. The amount of specified foreign income tax assigned to each income group remaining after the

application of the preceding sentences is allocated to the succeeding taxable year.

(4) *Election to not allocate specified foreign income taxes.* An election may be made under this paragraph (e)(4) pursuant to the procedures of paragraph (h) of this section. If an election is in effect under this paragraph (e)(4), the specified foreign income taxes of an affected corporation are taken into account in the affected corporation's first required year, and the affected corporation's relevant succeeding year taxes cannot be allocated under paragraph (f) of this section.

(f) *Election to allocate relevant succeeding year taxes—*(1) *In general.* An election may be made under this paragraph (f) pursuant to the procedures of paragraph (h) of this section. If an election is in effect under this paragraph (f), the relevant succeeding year taxes of an affected corporation are allocated between the affected corporation's first required year and its succeeding taxable year under this paragraph (f). A relevant succeeding year tax is a foreign net income tax accrued without regard to this section by the affected corporation in its succeeding taxable year for which the affected corporation is the section 901 taxpayer but only if the foreign taxable year with respect to which the tax is imposed begins before the first day of the affected corporation's succeeding taxable year. If the affected corporation is the section 901 taxpayer of a portion of a foreign net income tax by reason of the application of § 1.901–2(f)(5), then the foreign net income tax is a relevant succeeding year tax only if the affected corporation's period of ownership begins before the beginning of its succeeding taxable year. A relevant succeeding year tax includes an affected corporation's distributive share of a CFTE from an affected partnership that the affected corporation takes into account in its succeeding taxable year if the requirements of paragraphs (c)(2)(ii) and (iii) of this section are met and the foreign taxable year with respect to which the CFTE is imposed begins before the last day of the partnership's succeeding taxable year.

(2) *Ordering rules.* The ordering rules described in paragraph (d) of this section apply for allocating a relevant succeeding year tax between an affected corporation's first required year and its succeeding taxable year, except that in applying paragraph (d)(2) of this section, a relevant succeeding year tax is allocated and apportioned to income groups in the succeeding taxable year. A relevant succeeding year tax assigned to a PTEP group under paragraph (d)(2) of this section is allocated to the

succeeding taxable year. The amount of a relevant succeeding year tax allocated to the first required year is treated as accruing on the last day of the affected corporation's first required year and is not allocated to and among, and therefore, not considered paid by, two or more persons under § 1.901–2(f) by reason of events that occur in the first required year.

(3) *Allocation method.* The income group specific allocation method described in paragraph (e)(3) of this section applies to determine the amount of a relevant succeeding year tax assigned to each income group allocated between an affected corporation's first required year and its succeeding taxable year.

(g) *Application of sections 905(c) and 986(a).* For purposes of sections 905(c) and 986(a), a specified foreign income tax accrues in the first required year, and a relevant succeeding year tax accrues in the succeeding taxable year, regardless of the allocation of the tax under this section. Therefore, for purposes of sections 905(c) and 986(a), the first required year is the year to which a specified foreign income tax relates, and the succeeding taxable year is the year to which a relevant succeeding year tax relates. Thus, for example, any change in the liability for a specified foreign income tax results in the following. First, the amount of the specified foreign income tax accrued (without regard to the application of this section) in the first required year is adjusted to reflect the change in liability. Second, the ordering rules of paragraphs (d)(1) through (3) of this section are applied based upon the adjusted amount of the specified foreign income tax. Third, paragraph (d)(4) of this section applies to the adjusted amounts of specified foreign income tax that are treated as accruing in the first required year and the succeeding taxable year by reason of the reapplication of paragraphs (d)(1) through (3) of this section.

(h) *Election procedures.* This paragraph (h) provides rules for making and revoking the elections described in paragraphs (c)(2), (e)(3) and (4), and (f) of this section.

(1) *Persons making the election.* An election is made by the controlling domestic shareholders (as defined in § 1.964–1(c)(5)) of the affected corporation for its first required year. An election made under paragraph (f) of this section is irrevocable.

(2) *Consistency requirement.* If an election is made with respect to an affected corporation, then the election applies to all United States shareholders of the affected corporation for its first

required year and its succeeding taxable year.

(3) *Manner—*(i) *In general.* An election under paragraph (c)(2), (e)(3) or (4), or (f) of this section must be made in accordance with this paragraph (h)(3), and as the Secretary of the Treasury or the Secretary's delegate may provide in forms, instructions, publications, or other guidance.

(A) *Election statement requirement.* The controlling domestic shareholders must file the statement required under § 1.964–1(c)(3)(ii) with their timely filed (including extensions) original Federal income tax returns, or in the case of an election under paragraph (c)(2) or (e)(3) of this section, with their amended Federal income tax returns in accordance with paragraph (h)(3)(ii) of this section, for the taxable years of the controlling domestic shareholders in which or with which the affected corporation's first required year and succeeding taxable year end. The statement must be attached to the Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, filed with respect to the affected corporation and titled as follows:

(1) “Section 898 Specified Distributive Shares of CFTEs Election Statement” for an election under paragraph (c)(2) of this section;

(2) “Section 898 Income Group Specific Election Statement” for an election under paragraph (e)(3) of this section;

(3) “Section 898 Non-Allocation Election Statement” for an election under paragraph (e)(4) of this section; and

(4) “Section 898 Relevant Succeeding Year Tax Election Statement” for an election made under paragraph (f) of this section.

(B) *Notice requirement.* The controlling domestic shareholders making an election must provide any notices required under § 1.964–1(c)(3)(iii). For this purpose, a domestic shareholder under § 1.964–1(c)(3)(iii) includes any person known to be a domestic shareholder in the succeeding taxable year.

(ii) *Election (or revocation) with an amended Federal income tax return.* In the case of an election under paragraph (c)(2) or (e)(3) of this section, or a revocation of an election under paragraph (c)(2), (e)(3) or (4) of this section, made with an amended Federal income tax return—

(A) The election (or revocation) must be made on an amended Federal income tax return duly filed within 24 months of the due date (without regard to extensions) of the original Federal

income tax return for the taxable year of each controlling domestic shareholder with or within which the affected corporation's first required year ends; and

(B) If a Federal income tax return for the taxable year of any controlling domestic shareholder with or within which the affected corporation's succeeding taxable year ends has already been filed, an amended Federal income tax return for that year must be filed consistent with the election or revocation of the election.

(i) *Examples.* The following examples illustrate the application of this section.

(1) *Assumed facts.* For purposes of the examples in this paragraph (i), unless otherwise indicated, the following facts are assumed:

(i) CFCX is a specified foreign corporation.

(ii) CFCX's first required year is from December 1, 2025, to December 31, 2025.

(iii) CFCX's succeeding taxable year is from January 1, 2026, to December 31, 2026.

(iv) CFCX takes into account foreign income taxes under an accrual method of accounting.

(v) The functional currency of all qualified business units is the u, and all foreign income taxes are denominated in the u.

(2) *Example 1: Specified foreign income taxes—(i) Facts.* CFCX is subject to tax in Country X on the basis of its items of income, gain, deduction, and loss for its Country X taxable year, and the Country X tax is a foreign income tax within the meaning of § 1.901–2(a). CFCX's Country X taxable year is the calendar year. CFCX accrues Country X tax of 7,200u in its first required year. An election under paragraph (e)(4) of this section is not in effect.

(ii) *Analysis.* The 7,200u of Country X tax is a specified foreign income tax under paragraph (c)(1) of this section because it is a foreign net income tax that is accrued by CFCX, an affected corporation, in CFCX's first required year, and CFCX is the section 901 taxpayer of the tax. Accordingly, the 7,200u of Country X tax is allocated between CFCX's first required year and its succeeding taxable year under this section.

(3) *Example 2: Specified distributive share of CFTEs—(i) Facts—(A) Partnership W and Partnership Y.* CFCX owns 40 percent and 60 percent interests, respectively, in the profits and capital of two foreign business entities: Partnership W, an entity classified as a partnership for Federal income tax purposes that is organized and operates in Country W, and Partnership Y, an

entity classified as a partnership for Federal income tax purposes that is organized and operates in Country Y. The remaining interests (60 percent and 40 percent, respectively) in the profits and capital of Partnership W and Partnership Y are owned by persons unrelated to CFCX. Partnership W and Partnership Y each take into account foreign income taxes under an accrual method of accounting. Partnership W and Partnership Y are subject to tax in their countries on the basis of their items of income, gain, deduction, and loss for their foreign taxable year. The Country W tax and the Country Y tax are foreign income taxes within the meaning of § 1.901–2(a). Each partnership's foreign taxable year is the calendar year. Partnership W's U.S. taxable year has always been the calendar year.

(B) *Distributive shares of CFTEs.* For its U.S. taxable year beginning on January 1, 2025, and ending on December 31, 2025, Partnership W accrues Country W tax of 10,000u. For its first required year ending on December 31, 2025, CFCX's distributive share of the Country W tax is 4,000u. For its taxable years beginning before November 30, 2025, Partnership Y's U.S. taxable year ended on November 30. Under section 706(b), Partnership Y is required to change its first taxable year beginning after November 30, 2025, due to CFCX changing its first taxable year beginning after November 30, 2025, by reason of the repeal of section 898(c)(2). For its U.S. taxable year ending on December 31, 2025, Partnership Y accrues Country Y tax of 10,000u. For its first required year ending on December 31, 2025, CFCX's distributive share of the Country Y tax is 6,000u. An election under paragraph (c)(2) of this section is in effect.

(ii) *Analysis—(A) Country W tax.* CFCX's 4,000u distributive share of Country W tax is not allocated between CFCX's first required year and its succeeding taxable year under this section. CFCX's 4,000u distributive share of Country W tax is not a specified distributive share of a CFTE because Partnership W is not an affected partnership as defined in paragraph (b) of this section. Partnership W is not an affected partnership because Partnership W was not required to change its taxable year under section 706(b) due to one or more of its partners changing their first taxable year beginning after November 30, 2025, by reason of the repeal of section 898(c)(2). Accordingly, even though an election is in effect under paragraph (c)(2) of this section, CFCX's 4,000u distributive share of the Country W tax is not treated

as a specified foreign income tax. Therefore, CFCX's 4,000u distributive share of the Country W tax is not allocated under this section and continues to be taken into account in CFCX's first required year.

(B) *Country Y tax.* CFCX's 6,000u distributive share of Country Y tax is allocated between CFCX's first required year and its succeeding taxable year under the rules of this section because it is a specified distributive share of a CFTE, and an election is in effect under paragraph (c)(2) of this section. Partnership Y is an affected partnership under paragraph (b) of this section because it takes into account foreign income taxes under an accrual method of accounting and is required to change its taxable year under section 706(b) due to its partners changing their first taxable year beginning after November 30, 2025, by reason of the repeal of section 898(c)(2). Further, the Country Y tax is a foreign net income tax, CFCX takes into account its distributive share of the Country Y tax in its first required year, and Partnership Y's first required year ends at the same time (December 31, 2025) as CFCX's first required year.

(4) *Example 3: Allocation of relevant succeeding year taxes—(i) Facts.* The facts are the same as in paragraph (i)(2)(i) of this section (*Example 1*), except as follows. CFCX accrues 6,000u of Country X tax in its Country X taxable year beginning on January 1, 2026, and ending on December 31, 2026. CFCX also wholly owns DEZ, a disregarded entity that is organized and operated in Country Z. DEZ is subject to tax in Country Z on the basis of its items of income, gain, deduction, and loss for its Country Z taxable year, and the Country Z tax is a foreign income tax within the meaning of § 1.901–2(a). DEZ's Country Z taxable year begins on April 1, 2025, and ends on March 31, 2026. CFCX accrues 5,000u of Country Z tax in its succeeding taxable year. An election is in effect under paragraph (f) of this section.

(ii) *Analysis.* Because an election is in effect under paragraph (f) of this section, the relevant succeeding year taxes of CFCX are allocated between its first required year and its succeeding taxable year. The 6,000u of Country X tax is not a relevant succeeding year tax under paragraph (f)(1) of this section because the Country X taxable year with respect to which the tax is imposed did not begin before January 1, 2026. The 5,000u of Country Z tax is a relevant succeeding year tax under paragraph (f)(1) of this section because it is a foreign net income tax accrued in CFCX's succeeding taxable year, for which CFCX is the section 901 taxpayer,

and the Country Z taxable year with respect to which the 5,000u of Country Z tax is imposed began before January 1, 2026. Accordingly, the 5,000u of Country Z tax is allocated between CFCX's first required year and its succeeding taxable year under paragraph (f) of this section.

(5) *Example 4: § 1.901–2(f)(5) and relevant succeeding year taxes—(i) Facts.* The facts are the same as in paragraph (i)(4)(i) of this section (*Example 3*) except as follows. CFCX acquires the interests in DEZ on February 1, 2026. Applying the principles of § 1.1502–76(b), and using the ratable allocation method under § 1.1502–76(b), CFCX is allocated and is treated as paying under § 1.901–2(f)(5), 833u (5,000u x (2 months of foreign law taxable income over 12 months of foreign law taxable income)) of the Country Z tax that accrues on March 31, 2026.

(ii) *Analysis.* The 833u of Country Z tax is not a relevant succeeding year tax. While the Country Z taxable year began before January 1, 2026, CFCX's period of ownership of DEZ did not begin before January 1, 2026. Therefore, no portion of the 833u of Country Z tax is allocated to CFCX's first required year.

(6) *Example 5: Application of § 1.861–20 and allocation of specified foreign income tax—(i) Facts.* The facts are the same as in paragraph (i)(2)(i) of this section (*Example 1*). In addition, CFCX's total taxable income under Country X law for the Country X taxable year ending on December 31, 2025, is 45,000u. Applying the principles of § 1.1502–76(b), 3,750u of this income is attributable to CFCX's first required year. Under § 1.861–20, the 7,200u of Country X tax is allocated and apportioned to the income groups under paragraph (d)(2) of this section as follows: 5,400u to general category tentative gross tested income attributable to the CFC tested unit (CFC income group) and 1,800u to the general category foreign base company services income group (FBCServ income group).

(ii) *Analysis.* Pursuant to the ordering rules in paragraph (d) of this section, the 7,200u of Country X tax is allocated and apportioned to the income groups under paragraph (d)(2) of this section before applying the allocation method under paragraph (e)(1) of this section to determine the amount of the Country X tax that is allocated to CFCX's first required year and succeeding taxable year under paragraph (d)(3) of this section. The allocation method applies as follows. The amount of CFCX's taxable income under Country X law that is attributable to the first required year (3,750u) is divided by the total

taxable income for the Country X taxable year (45,000u), which results in an allocation percentage of 8.33 percent. The amount of Country X tax in each income group that is allocated to the first required year is determined by applying the allocation percentage to the amount of the specified foreign income tax in each income group. Therefore, the following amounts of the Country X tax are allocated to the first required year: 450u, which is assigned to the CFC income group (8.33 percent of 5,400u); and 150u, which is assigned to the FBCServ income group (8.33 percent of 1,800u). The remaining amount of Country X tax in each income group is allocated to CFCX's succeeding taxable year as follows: 4,950u, assigned to the CFC income group (5,400u–450u) and 1,650u, assigned to the FBCServ income group (1,800u–150u).

(7) *Example 6: Income group specific allocation method—(i) Facts.* The facts are the same as in paragraph (i)(6)(i) of this section (*Example 5*), except as follows. An election is made under paragraph (e)(3) of this section to use the income group specific allocation method. In applying § 1.861–20 under paragraph (d)(2) of this section, 33,750u of CFCX's taxable income under Country X law is assigned to the CFC income group, and 11,250u of CFCX's taxable income under Country X law is assigned to the FBCServ income group. Applying the principles of § 1.1502–76(b) and using a closing of the books method under § 1.1502–76(b) to the items of Country X income, gain, deduction, and loss assigned to each income group, 2,250u of CFCX's Country X taxable income assigned to the CFC income group is attributable to the first required year, and 1,125u of CFCX's Country X taxable income assigned to the FBCServ income group is attributable to the first required year.

(ii) *Analysis—(A) Tax assigned to the CFC income group.* The income group specific allocation method applies as follows. Under § 1.861–20, 5,400u of the Country X tax is assigned to the CFC income group. The amount of CFCX's Country X taxable income assigned to the CFC income group that is attributable to the first required year (2,250u) is divided by CFCX's total Country X taxable income assigned to that income group for the Country X taxable year (33,750u), which results in a specific income group allocation percentage of 6.66 percent. Therefore, 360u of Country X tax assigned to the CFC income group is allocated to the first required year. The remaining amount of Country X tax assigned to the CFC income group (5,040u) is allocated to the succeeding taxable year.

(B) *Tax assigned to the FBCServ income group.* Under § 1.861–20, 1,800u of Country X tax is assigned to the FBCServ income group. The amount of CFCX's Country X taxable income assigned to this income group that is attributed to the first required year (1,125u) is divided by CFCX's total Country X taxable income assigned to that income group for the Country X taxable year (11,250u), which results in a specific income group allocation percentage of 10 percent. Therefore, 180u of Country X tax assigned to the FBCServ income group is allocated to the first required year. The remaining amount of Country X tax assigned to the FBCServ income group (1,620u) is allocated to the succeeding taxable year.

(8) *Example 7: Application of the high-tax exclusion—(i) Facts.* The facts are the same as in paragraph (i)(7)(i) of this section (*Example 6*), except as follows. An election under § 1.951A–2(c)(7)(viii) is in effect with respect to CFCX for the first required year. Under § 1.951A–2(c)(7)(ii), CFCX has two tentative gross tested income items: 3,000u in the CFC income group and 2,000u of general category tentative gross tested income attributable to the DEZ tested unit. CFCX accrues no expenses in its first required year other than the specified foreign income tax.

(ii) *Analysis.* Under paragraph (g) of this section, the portion of the Country X tax allocated to the first required year is treated as the amount of Country X tax accrued in that taxable year for all purposes of the Code except sections 905(c) and 986(a). Therefore, in determining whether any of CFCX's tentative gross tested income items meet the high-tax exclusion, 360u of Country X tax is treated as accrued in the first required year and allocated and apportioned to the CFC income group, the statutory grouping to which 3,000u of gross income is assigned. If an election under § 1.951A–2(c)(7)(viii) is in effect with respect to CFCX for the succeeding taxable year, the 5,040u of Country X tax assigned to the CFC income group would be taken into account in the same manner in that year.

(j) *Applicability date.* This section applies to taxable years of specified foreign corporations beginning after November 30, 2025.

■ **Par. 6.** Section 1.901–1 is amended by revising paragraph (b) to read as follows:

§ 1.901–1 Allowance of credit for foreign income taxes.

* * * * *

(b) *Limitations.* Certain Code sections, including sections 245A(d) and (e)(3), 814, 901(e) through (m), 904, 906

through 909, 911, 960(d)(4), 965(g), 999, and 6038, reduce, defer, or otherwise limit the credit against the tax imposed by chapter 1 of the Code for certain amounts of foreign income taxes.

* * * * *

■ **Par. 7.** Section 1.960–3 is amended by:

- 1. Revising the section heading;
 - 2. Revising the first sentence of paragraph (a);
 - 3. Revising the heading of paragraph (b) and the second sentence of paragraph (b)(1);
 - 4. Adding paragraph (b)(6);
 - 5. In paragraph (c)(2)(iii)(B), removing the language “paragraphs (c)(2)(vi) through (ix)” and adding “paragraphs (c)(2)(vii) through (xi)” in its place;
 - 6. Revising paragraph (c)(2)(iv);
 - 7. Redesignating paragraphs (c)(2)(v), (c)(2)(vi), (c)(2)(vii), (c)(2)(viii), (c)(2)(ix), and (c)(2)(x) as paragraphs (c)(2)(vi), (c)(2)(vii), (c)(2)(viii), (c)(2)(ix), (c)(2)(xi), and (c)(2)(xii), respectively, and adding new paragraph (c)(2)(v);
 - 8. In newly redesignated paragraph (c)(2)(vi), removing the language “paragraphs (c)(2)(v)(A)” and adding “paragraphs (c)(2)(vi)(A)” in its place;
 - 9. Revising newly redesignated paragraph (c)(2)(ix);
 - 10. Adding new paragraph (c)(2)(x);
 - 11. In newly redesignated paragraph (c)(2)(xi), removing the language “paragraphs (c)(2)(ix)(A)” and adding “paragraphs (c)(2)(xi)(A)” in its place;
 - 12. In newly redesignated paragraph (c)(2)(xii), removing the language “paragraph (c)(2)(vi) through (ix)” and adding “paragraph (c)(2)(vii) through (xi)” in its place;
 - 13. In paragraph (e)(2), removing the language “section 951A PTEP” wherever it appears and adding “pre-06/29/25 section 951A PTEP” in its place; and
 - 14. Adding paragraphs (e)(3) and (4).
- The revisions and additions read as follows:

§ 1.960–3 Foreign income taxes deemed paid under section 960(b) and foreign tax credits disallowed under section 960(d)(4).

(a) * * * Paragraph (b) of this section provides rules for computing the amount of foreign income taxes deemed paid by a domestic corporation that is a United States shareholder of a controlled foreign corporation, or by a controlled foreign corporation, under section 960(b), and for determining the foreign income taxes subject to the credit disallowance under section 960(d)(4). * * *

(b) *Foreign income taxes deemed paid under section 960(b) and foreign tax credits disallowed under section*

960(d)(4)—(1) * * * See paragraph (b)(6) of this section for rules disallowing credits in relation to a distribution of certain previously taxed earnings and profits resulting from the application of section 960(d)(4), and § 1.965–5(c)(1)(iii) for rules disallowing credits in relation to a distribution of certain previously taxed earnings and profits resulting from the application of section 965. * * *

* * * * *

(6) *Foreign tax credits disallowed under section 960(d)(4)*—(i) *In general.* No credit under section 901 is allowed for 10 percent of—

(A) Foreign income taxes attributable to a section 959(a) distribution of post-06/28/25 section 951A PTEP (as defined in paragraph (c)(2)(ix) of this section) or reclassified post-06/28/25 section 951A PTEP (as defined in paragraph (c)(2)(iv) of this section); and

(B) Foreign income taxes deemed paid under paragraph (b)(1) of this section with respect to a section 959(a) distribution of post-06/28/25 section 951A PTEP (as defined in paragraph (c)(2)(ix) of this section) or reclassified post-06/28/25 section 951A PTEP (as defined in paragraph (c)(2)(iv) of this section).

(ii) *Attribution of foreign income taxes.* For purposes of paragraph (b)(6)(i)(A) of this section, foreign income taxes are attributable to a section 959(a) distribution of post-06/28/25 section 951A PTEP or reclassified post-06/28/25 section 951A PTEP if those taxes would be allocated and apportioned to a distribution of those previously taxed earnings and profits under the rules of § 1.861–20, applied by treating the portion of the distribution that is attributable to post-06/28/25 section 951A PTEP and reclassified post-06/28/25 section 951A PTEP as the statutory groupings, and the portion of the distribution that is attributable to other earnings and profits as the residual grouping.

(c) * * *

(2) * * *

(iv) Earnings and profits described in section 959(c)(1)(A) that were initially described in paragraph (c)(2)(ix) of this section (“reclassified post-06/28/25 section 951A PTEP”);

(v) Earnings and profits described in section 959(c)(1)(A) that were initially described in paragraph (c)(2)(x) of this section (“reclassified pre-06/29/25 section 951A PTEP”);

* * * * *

(ix) Earnings and profits described in section 959(c)(2) by reason of section 951A, to the extent that the inclusion under section 951A occurs in a taxable

year of a United States shareholder ending after June 28, 2025 (“post-06/28/25 section 951A PTEP”);

(x) Earnings and profits described in section 959(c)(2) by reason of section 951A, to the extent not described in paragraph (c)(2)(ix) of this section (“pre-06/29/25 section 951A PTEP”);

* * * * *

(e) * * *

(3) *Example 3: Foreign tax credits disallowed under section 960(d)(4)*—(i) *Facts.* USP, a domestic corporation, owns all of the stock of a single foreign corporation (FC1). FC1, a Country X entity that is a controlled foreign corporation, has the U.S. dollar as its functional currency. Both FC1 and USP use the calendar year as their taxable year. FC1 does not have any accumulated earnings and profits as of the beginning of its 2024 taxable year. FC1 earns tested income of \$100x for each of its 2024 and 2025 taxable years, and USP has an inclusion under section 951A (section 951A inclusion) of \$100x in each of its 2024 and 2025 taxable years. FC1 has no items of income, gain, deduction, or loss in any of its subsequent taxable years. On January 1, 2026, FC1 distributes \$150x to USP, which is a section 959(a) distribution and is treated as a distribution of property for both Country X law and Federal income tax purposes. Country X imposes a withholding tax (as defined in section 901(k)(1)(B)) of \$30x with respect to the section 959(a) distribution. For its 2026 taxable year, USP claims the foreign tax credit under section 901.

(ii) *Analysis*—(A) *PTEP groups.* FC1 has earnings and profits of \$100x within the annual PTEP account in the section 951A category for its 2024 taxable year. Under paragraph (c)(2)(x) of this section, the \$100x of previously taxed earnings and profits, which results from a section 951A inclusion of USP in a taxable year of USP ending on or before June 28, 2025, constitutes pre-06/29/25 section 951A PTEP. FC1 also has earnings and profits of \$100x within the annual PTEP account in the section 951A category for its 2025 taxable year. Under paragraph (c)(2)(ix) of this section, the \$100x of previously taxed earnings and profits, which results from a section 951A inclusion of USP in a taxable year of USP ending after June 28, 2025, constitutes post-06/28/25 section 951A PTEP.

(B) *Attribution of foreign income taxes.* Under section 959(c) and § 1.959–3(b), FC1’s \$150x distribution on January 1, 2026, constitutes a distribution of \$100x of FC1’s previously taxed earnings and profits for its 2025

taxable year and \$50x of FC's previously taxed earnings and profits for its 2024 taxable year. Under paragraph (b)(6)(ii) of this section and § 1.861–20(d)(3)(i)(B), \$100x of the foreign gross income related to the \$150x distribution is assigned to the statutory grouping for the portion of the distribution attributable to post-06/28/25 section 951A PTEP, and \$50x is assigned to the residual grouping for the portion of the distribution attributable to other earnings and profits. Under paragraph (b)(6)(ii) of this section and § 1.861–20(f), \$20x of the \$30x of Country X withholding tax (\$30x × \$100x/\$150x) is allocated and apportioned to the statutory grouping, and the remaining \$10x (\$30x × \$50x/\$150x) is allocated and apportioned to the residual grouping.

(C) *Disallowance of foreign tax credits.* Under section 960(d)(4) and paragraph (b)(6)(i)(A) of this section, \$2x (that is, 10 percent) of the \$20x of foreign tax credits otherwise allowable to USP under section 901 with respect to the \$20x of Country X withholding tax allocated and apportioned to the statutory grouping is disallowed.

(iii) *Alternative facts—Distribution before June 28, 2025.* The facts are the same as in paragraph (e)(3)(i) of this section, except that the \$150x distribution occurs on February 1, 2025. The result is the same as in paragraph (e)(3)(ii) of this section.

(4) *Example 4: Foreign tax credit disallowance under section 960(d)(4) for foreign income taxes deemed paid under section 960(b)—(i) Facts.* The facts are the same as in paragraph (e)(3)(i) of this section (*Example 3*), except as follows. FC1 owns all the stock of FC2, a Country Y entity that is a controlled foreign corporation and uses the U.S. dollar as its functional currency. FC2 uses the calendar year as its taxable year. As of January 1, 2027, FC1 does not have any accumulated earnings and profits and FC2's accumulated earnings and profits are entirely comprised of \$100x of post-06/28/25 section 951A PTEP within the annual PTEP account in the section 951A category for its 2026 taxable year. On January 1, 2027, FC2 distributes \$100x to FC1 (distribution 1), which is treated as a distribution of property for both Country Y law and Federal income tax purposes. Country Y imposes a withholding tax (as defined in section 901(k)(1)(B)) of \$20x with respect to distribution 1. FC1 subsequently distributes \$80x to USP (distribution 2), which is a section 959(a) distribution. Country X does not impose any withholding tax with respect to distribution 2. Neither FC1 nor FC2 has

items of income, gain, deduction, or loss for its 2027 taxable year. For its 2027 taxable year, USP claims the foreign tax credit under section 901.

(ii) *Analysis—(A) Distribution 1.* Under section 959(c) and § 1.959–3(b), distribution 1 constitutes a distribution of \$100x of FC2's previously taxed earnings and profits. Under paragraph (c)(3) of this section, FC1's post-06/28/25 section 951A PTEP within the annual PTEP account in the section 951A category for its 2026 taxable year is increased by \$100x but reduced by the \$20x of Country Y withholding tax that is allocated and apportioned to the post-06/28/25 section 951A PTEP under § 1.960–1(d)(3)(ii). FC1's PTEP group taxes with respect to its post-06/28/25 section 951A PTEP within the annual PTEP account in the section 951A category for its 2026 taxable year are increased by \$20x under paragraph (d) of this section.

(B) *Distribution 2.* Under section 959(c) and § 1.959–3(b), distribution 2 constitutes a distribution of \$80x of FC1's previously taxed earnings and profits. Under paragraph (b)(4) of this section, USP's proportionate share of FC1's PTEP group taxes is \$20x. Under section 960(d)(4) and paragraph (b)(6)(i)(B) of this section, \$2x (that is, 10 percent) of the \$20x of foreign tax credits otherwise allowable to USP under section 901 with respect to FC1's \$20x of PTEP group taxes deemed paid by USP under section 960(b)(1) is disallowed.

■ **Par. 8.** Section 1.960–7 is amended by:

■ 1. In paragraph (a), removing the language “paragraph (b)” and adding “paragraphs (b) and (c)” in its place; and

■ 2. Adding paragraph (c).

The addition reads as follows:

§ 1.960–7 Applicability dates.

* * * * *

(c) Section 1.960–3(b)(6) applies to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to an amount excluded from gross income under section 959(a) by reason of an inclusion in gross income under section 951A(a), to the extent the inclusion occurs in a taxable year of a United States shareholder ending after June 28, 2025. Section 1.960–3(c)(2) applies to taxable years of foreign corporations ending with or within taxable years of United States shareholders ending after June 28, 2025. For taxable years of foreign corporations ending on or after December 4, 2018, and beginning before the taxable year described in the preceding sentence, see

§ 1.960–3(c)(2) as contained in 26 CFR part 1 revised as of April 1, 2026.

■ **Par. 9.** Section 1.987–11 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 1.987–11 Suspended section 987 loss relating to certain elections; loss-to-the-extent-of-gain rule.

* * * * *

(c) * * *
(3) * * *

(ii) *Owner is a CFC.* For purposes of applying paragraph (c)(2) of this section with respect to an owner that is a CFC, suspended section 987 loss and gross income of a member of the owner's controlled group is determined by reference to the member's suspended section 987 loss and gross income for its taxable year ending with or within the owner's required year described in section 898(c)(1).

* * * * *

Frank J. Bisignano,

Chief Executive Officer.

[FR Doc. 2026–15614 Filed 7–31–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

[Docket No. MSHA–2025–0084]

RIN 1219–AC21

Ventilation Plan Approval Criteria

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: In response to a public request, the Mine Safety and Health Administration (MSHA) is reopening the rulemaking record and is scheduling a virtual public hearing on the Agency's proposed rule published on July 1, 2025, titled, “*Ventilation Plan Approval Criteria*.”

DATES:

Reopening of the comment period: MSHA is reopening the comment period for the proposed rule published on July 1, 2025 (90 FR 28443) for additional public comments. All new comments must be received or postmarked by 11:59 p.m. Eastern Time on September 30, 2026.

Public Hearing: The virtual public hearing will be held on September 16, 2026. Information on how to participate is listed below under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2025–0084, electronically at <https://www.regulations.gov>. Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as “business confidential” information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information. Interested parties may present verbal testimony at the virtual public hearing. For more information on the public hearing, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances, MSHA at 202–693–9440 (voice). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2025, MSHA published the proposed rule, “*Ventilation Plan Approval Criteria*” (90 FR 28443). The proposal would eliminate the authority given to the District Manager in 30 CFR 75.371 to require additional provisions in ventilation control plans. The proposed rule opened a 30-day public comment period, that was extended an additional 30 days, until September 2, 2025 (90 FR 34406). During the comment period, MSHA received a

request for a public hearing on the proposed rule. MSHA is reopening the comment period on the proposal and announcing a virtual public hearing to allow industry, labor, and other interested parties an additional opportunity to present oral statements, written comments, and other information on the proposed rule.

II. Virtual Public Hearing

MSHA will hold a fully virtual public hearing to accept comments from the public on the proposed rule, “*Ventilation Plan Approval Criteria*” (90 FR 28443), on September 16, 2026. The event will begin at 9:00 a.m. Eastern Time and will end after the last presenter speaks.

Date and time	Virtual meeting access	Contact number
September 16, 2026, 9:00 a.m. Eastern Time.	Virtual meeting accessible online at: https://msha.gov/regulations/rulemaking/roof-control-and-ventilation-public-hearings .	202–693–9440

The virtual public hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply.

Those who wish to speak during the virtual public hearing are asked to register at: <https://msha.gov/regulations/rulemaking/roof-control-and-ventilation-public-hearings>. Speakers should register by 11:59 p.m. Eastern Time on September 11, 2026. If you do not register in advance and you wish to speak, you will be called after all those who registered have spoken.

A verbatim transcript of the hearing will be prepared and made a part of the rulemaking record. A copy of the transcript will be available to the public. MSHA will make the transcript available at <https://www.regulations.gov>.

III. Request for Comments

MSHA is interested in receiving comments from all members of the mining community and all interested stakeholders. MSHA will accept comments from any interested party, including those not presenting oral statements during the virtual public hearing. Where possible, specific examples to support a commenter’s rationale are strongly encouraged.

MSHA will accept post-hearing written comments and other appropriate information for the rulemaking record from any interested party, including those not presenting oral statements, received by 11:59 p.m. Eastern Time on September 30, 2026. Comments previously submitted on the proposed rule do not need to be resubmitted and will be fully considered in development of the final rule.

(Authority: 30 U.S.C. 811)

Wayne D. Palmer,
Assistant Secretary of Labor for Mine Safety and Health Administration.

[FR Doc. 2026–15717 Filed 7–31–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

[Docket No. MSHA–2025–0072]

RIN 1219–AC18

Roof Control Plan Approval Criteria

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: In response to a public request, the Mine Safety and Health Administration (MSHA) is reopening the rulemaking record and is scheduling a virtual public hearing on the Agency’s

proposed rule published on July 1, 2025, titled, “*Roof Control Plan Approval Criteria*.”

DATES:

Reopening of the comment period: MSHA is reopening the comment period for the proposed rule published on July 1, 2025, (90 FR 28432) for additional public comments. All new comments must be received or postmarked by 11:59 p.m. Eastern Time on September 30, 2026.

Public Hearing: The virtual public hearing will be held on September 15, 2026. Information on how to participate is listed below under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2025–0072, electronically at <https://www.regulations.gov>. Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as “business confidential” information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information. Interested parties may present verbal testimony at the virtual public hearing. For more information on the public hearing, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting

Director, Office of Standards, Regulations, and Variances, MSHA at 202–693–9440 (voice). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2025, MSHA published the proposed rule, “*Roof Control Plan Approval Criteria*” (90 FR 28432). The proposal would eliminate the provision in 30 CFR 75.222(a) that allows the District Manager to require additional

measures to be included in roof control plans. The proposed rule opened a 30-day public comment period, that was extended an additional 30 days, until September 2, 2025 (90 FR 34406). During the comment period, MSHA received a request for a public hearing on the proposed rule. MSHA is reopening the comment period on the proposal and announcing a virtual public hearing to allow industry, labor, and other interested parties an additional opportunity to present oral

statements, written comments, and other information on the proposed rule.

II. Virtual Public Hearing

MSHA will hold a fully virtual public hearing to accept comments from the public on the proposed rule, “*Roof Control Plan Approval Criteria*” (90 FR 28432), on September 15, 2026. The event will begin at 9:00 a.m. Eastern Time and will end after the last presenter speaks.

Date and time	Virtual meeting access	Contact number
September 15, 2026, 9:00 a.m. Eastern Time.	Virtual meeting accessible online at: https://msha.gov/regulations/rulemaking/roof-control-and-ventilation-public-hearings .	202–693–9440

The virtual public hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply.

Those who wish to speak during the virtual public hearing are asked to register at: <https://msha.gov/regulations/rulemaking/roof-control-and-ventilation-public-hearings>. Speakers should register by 11:59 p.m. Eastern Time on September 11, 2026. If you do not register in advance and you wish to speak, you will be called after all those who registered have spoken.

A verbatim transcript of the hearing will be prepared and made a part of the rulemaking record. A copy of the transcript will be available to the public. MSHA will make the transcript available at <https://www.regulations.gov>.

III. Request for Comments

MSHA is interested in receiving comments from all members of the mining community and all interested stakeholders. MSHA will accept comments from any interested party, including those not presenting oral statements during the virtual public hearing. Where possible, specific examples to support a commenter's rationale are strongly encouraged.

MSHA will accept post-hearing written comments and other appropriate information for the rulemaking record from any interested party, including those not presenting oral statements, received by 11:59 p.m. Eastern Time on September 30, 2026. Comments previously submitted on the proposed rule do not need to be resubmitted and

will be fully considered in development of the final rule.

(Authority: 30 U.S.C. 811)

Wayne D. Palmer,

Assistant Secretary of Labor for Mine Safety and Health Administration.

[FR Doc. 2026–15670 Filed 7–31–26; 8:45 am]

BILLING CODE 4520–43–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 26–191; DA 26–769; FR ID 359891]

Auction of Flexible-Use Licenses in the Upper C-Band for Next-Generation Wireless Services Scheduled for April 27, 2027; Comment Sought on Competitive Bidding Procedures for Auction 115

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Federal Communications Commission (the Commission or FCC) announces an auction of 3,248 new flexible-use licenses in the 3.98–4.14 GHz band. The Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) seek comment on the competitive bidding procedures and auction design to be used for this auction, which is designated as Auction 115.

DATES: Comments are due on or before August 24, 2026, and reply comments are due on or before September 8, 2026.

ADDRESSES: Interested parties may submit comments, identified by AU Docket No. 26–191, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Servicemail. *All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.*

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8 a.m. and 4 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier mail (any not sent by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Express, and Priority mail must be sent to 45 L Street NE, Washington, DC 20554.

- **Email:** Commenters are requested to also submit a copy of their comments and reply comments electronically to the following address: auction115@fcc.gov.

- **People With Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT:

Auction legal questions: Kathryn Hinton, (202) 418–0660, Kathryn.Hinton@fcc.gov, Yasiman

Montgomery, (202) 418–0660,
Yasiman.Montgomery@fcc.gov.

General auction questions: Auctions Hotline at (717) 338–2868 or
auction115@fcc.gov.

3.98–4.14 GHz legal questions:
Andrew McArdell, (202) 418–1576,
Andrew.McArdell@fcc.gov.

3.98–4.14 GHz technical questions:
Janet Young, (202) 418–0837,
Janet.Young@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the document in AU Docket No. 26–191, DA 26–769, released on July 24, 2026 (*Auction 115 Comment Public Notice*). The *Auction 115 Comment Public Notice* includes the following attachment: Attachment A, Auction 115 License Inventory; Proposed Bidding Units, Upfront Payments, and Minimum Opening Bid Amounts. The complete text of the *Auction 115 Comment Public Notice*, including its attachment, is available on the Commission's website at www.fcc.gov/auction/115 or by using the search function for AU Docket No. 26–191 on the Commission's ECFS web page at www.fcc.gov/ecfs.

Paperwork Reduction Act of 1995 Analysis. The *Auction 115 Comment Public Notice* seeks comment on proposed requirements that may result in new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, specific comment is sought on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act. The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the *Auction 115 Comment Public Notice* is available at <https://www.fcc.gov/proposed-rulemakings>.

Ex Parte Requirements. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the ECFS available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

I. Introduction

1. In the *Auction 115 Comment Public Notice*, the Commission announces an auction of 3,248 new flexible-use licenses in the 3.98–4.14 GHz band and seeks comment on the procedures to be used for the auction, which is designated as Auction 115. Auction 115 responds to both the surging demand for

mid-band spectrum critical for the most advanced wireless services and the congressional direction in sec. 40002(b)(2), Public Law 119–21, 139 Stat. 72, to the Commission to grant licenses for spectrum in the 3.98–4.2 GHz band (Upper C-band) through a system of competitive bidding that is completed not later than two years after July 4, 2025.

2. In the *Auction 115 Comment Public Notice*, which builds upon the framework established by the Commission in the *Upper C-band Report and Order*, FCC 26–46 (rel. July 24, 2026) (publication pending in the **Federal Register**), the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) seek comment on the competitive bidding procedures and auction design to be used for bidding to acquire licenses in Auction 115. OEA and WTB propose an auction with an ascending clock phase for bidding on the generic license blocks and then an assignment phase to determine frequency-specific license assignments. Bidding for licenses in Auction 115 is tentatively scheduled to commence on April 27, 2027.

II. Licenses To Be Offered in Auction 115

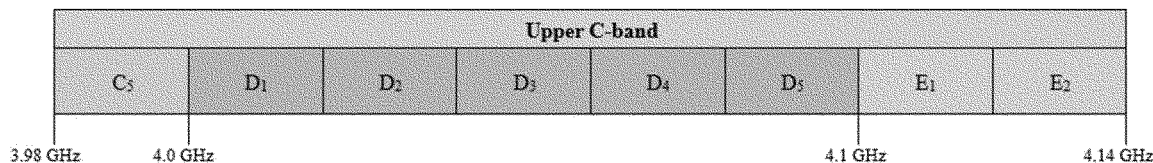
3. A list of markets in which licenses will be offered in Auction 115, including proposed upfront payment and minimum opening bid amounts, is available in the Attachment A file on the Auction 115 website at www.fcc.gov/auction/115.

A. Description of Licenses

4. Auction 115 will offer 3,248 new flexible-use licenses for spectrum in the 3.98–4.14 GHz portion of the Upper C-band throughout the contiguous United States subject to clearing requirements. OEA and WTB will offer 160 megahertz of spectrum licensed on an unpaired basis in eight 20-megahertz blocks by partial economic area (PEA) in the contiguous states and the District of Columbia (PEAs 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411). The 20 megahertz in the 4.14–4.16 GHz portion of the Upper C-band will be a guard band and not available for auction.

5. Figure 1 shows the band plan for the 3.98–4.14 GHz band.

**Figure 1: 3.98–4.14 GHz Band
Allocations in the Contiguous United
States**



6. All 3.98–4.14 GHz band licenses will be issued for 15-year, renewable license terms. A licensee in the 3.98–4.14 GHz portion of the Upper C-band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in 47 CFR 2.106, as modified by the *Upper C-band Report and Order*.

7. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 115. In addition to the typical due diligence considerations that the Commission encourages of bidders in all auctions, OEA and WTB call particular attention in Auction 115 to the clearing process and license conditions described in the *Upper C-band Report and Order*. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the Upper C-band. The Commission makes no representations or warranties about the use of this spectrum for particular services, or about the information in Commission databases that is furnished by outside parties. Each applicant should be aware that a Commission spectrum license auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

B. Transition of Incumbent Operations

8. Prior to the Commission's adoption of the *Upper C-Band Report and Order*, the 4.0–4.2 GHz portion of the Upper C-band was allocated for non-Federal use

on a primary basis for Fixed Satellite Service (FSS) and Fixed Service (FS) links throughout the United States, although FS operations were sunset in the contiguous United States across the entire C-band as part of the Lower C-band transition. In addition, the 3.98–4.0 GHz portion of the Upper C-band in the contiguous United States was reserved as a guard band to protect operations in the Upper C-band from potential harmful interference. In the *Upper C-band Report and Order*, the Commission modified the licenses and market access authorizations of incumbent FSS operators to clear the Upper C-band for new flexible-use terrestrial wireless operations in the contiguous United States. For additional information about clearing and conditions on the licenses to be offered in Auction 115, including licensees' responsibility for the costs of clearing, potential bidders should carefully review the *Upper C-band Report and Order*.

III. Implementation of Part 1 Competitive Bidding Rules and Requirements

9. The Commission's part 1 rules require each applicant seeking to participate in competitive bidding to provide certain information, including ownership details and numerous certifications, in a short-form application (FCC Form 175). Pursuant to the Commission's competitive bidding rules under 47 CFR 1.2105, each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a Commission license. The competitive bidding rules in 47 CFR part 1, subpart Q also contain a framework for the implementation of a competitive bidding design, application and certification procedures, payment procedures, reporting requirements, and the prohibition of certain communications.

A. Certification of Notice of Auction 115 Requirements and Procedures

10. In addition to certifications already required under 47 CFR 1.2105, OEA and WTB propose to require any applicant seeking to participate in Auction 115 to certify in its short-form application, under penalty of perjury, that it has read the public notice(s) adopting procedures for Auction 115, as appropriate, and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.98–4.14 GHz portion of the Upper C-band. OEA and WTB believe that this certification would help ensure that the applicant has reviewed the procedures for participation in the auction process and has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any license won at auction. Consequently, OEA and WTB believe this requirement will promote an applicant's successful participation in the auction and reduce its risk of defaulting on its auction obligations. As with other required certifications, an auction applicant's failure to make the required certifications in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice. OEA and WTB seek comment on this proposal. OEA and WTB also seek comment on whether there are additional steps the Commission should take with respect to the filing of short-form applications to further ensure auction integrity.

B. Bidding Credit Caps

11. In general, the Commission's bidding credit program promotes small business and rural service provider participation in auctions and in the provision of spectrum-based services. Consistent with the framework established by the Commission in the *Updating Part 1 Report and Order*, 80 FR 56764, September 18, 2015, OEA and WTB seek comment on establishing a reasonable monetary limit or cap on the

total dollar amount of the discount from bidding credits that an eligible small business or rural service provider may be awarded for Auction 115.

12. Eligibility for the small business bidding credit, as well as the size of the bidding credit, is determined according to a tiered schedule of small business size definitions that are based on an applicant's average attributable annual gross revenues for the relevant preceding period. In the *Upper C-band Report and Order*, the Commission determined that eligibility for the small business bidding credit in the auction of licenses in the Upper C-band would be defined using the two higher gross revenue thresholds of \$55 million and \$20 million that are in the standardized schedule of small business sizes in 47 CFR part 1, subpart Q. Specifically, the Commission determined that an entity with average annual gross revenues for the preceding five years not exceeding \$55 million would be designated as a "small business" eligible for a 15% bidding credit, and that an entity with average annual gross revenues for the preceding five years not exceeding \$20 million would be designated as a "very small business" eligible for a 25% bidding credit. The Commission determines eligibility for the rural service provider bidding credit on a service-by-service basis, and determined in the *Upper C-band Report and Order* that it would offer a 15% rural service provider bidding credit to any eligible rural service provider, as defined in 47 CFR 1.2110(f)(4)(i), that is not also claiming a small business bidding credit. Under 47 CFR 1.2110(f)(4)(i), entities providing commercial communications services to an attributable customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas will be eligible for the 15% rural service provider bidding credit. In the *Updating Part 1 Report and Order*, the Commission defined "rural area" as a county with a population density of 100 persons or fewer per square mile.

13. To protect the integrity of the bidding credit program and to mitigate the incentives for abuse, the Commission, in the *Updating Part 1 Report and Order*, established a process to implement a reasonable cap on the total bidding credit amount that an eligible small business or rural service provider may be awarded in any auction where such credits are available. This process is based on an evaluation of the expected capital requirements presented by the particular service and inventory of licenses being auctioned. The Commission determined that bidding

credit caps would be implemented on an auction-by-auction basis, but resolved that, for any particular auction, the total amount of the bidding credit cap for small businesses would not be less than \$25 million, and the bidding credit cap for rural service providers would not be less than \$10 million. For all auctions conducted in the last decade for licenses likely to be used for 5G services, the Commission adopted a \$25 million cap on the total bidding credit amount that may be awarded to an eligible small business in each auction and a \$10 million cap on rural service provider bidding credits in each auction.

14. OEA and WTB propose to adopt the same bidding credit caps for Auction 115. Auction data suggest that a \$25 million cap on small business bidding credits will allow the substantial majority of eligible small businesses in the auction to take advantage of the bidding credit program. No bidder seeking a small business bidding credit exceeded the \$25 million cap in Auctions 101, 102, 103, 105, 108, or 113. Only one bidder in Auction 107 and three bidders in Auction 110 seeking a small business bidding credit exceeded the \$25 million cap in their respective auctions. OEA and WTB therefore believe that this proposed cap will not conflict with the statutory goals of providing meaningful opportunities for bona fide small businesses to compete in auctions and in the provision of spectrum-based services, while preventing unjust enrichment and ensuring efficient and intensive use of spectrum.

15. Similarly, OEA and WTB propose to adopt a \$10 million cap on the total bidding credit amounts that may be awarded to an eligible rural service provider in Auction 115. Based on OEA's and WTB's experience with other auctions for spectrum licenses, OEA and WTB anticipate that a \$10 million cap on rural service provider bidding credits will allow any rural service provider to participate fully and fairly in Auction 115. No rural service provider has exceeded the \$10 million cap in any auction for wireless spectrum licenses since the Commission adopted the bidding credit. The capped rural service provider bidding credit will be "significant enough to assist eligible entities to have the opportunity to compete at auction, but reasonable enough to ensure that ineligible entities are not encouraged to undercut [the Commission's] rules," and thereby serve the "dual statutory goals of benefitting [designated entities] and at the same time preventing unjust enrichment."

16. In addition, to create parity in Auction 115 among eligible small businesses and rural service providers competing against each other in smaller markets, OEA and WTB propose a \$10 million cap on the overall amount of bidding credits that any winning designated entity bidder may apply to licenses won in markets with a population of 500,000 or less (small market bidding credit cap). This proposal is consistent with the approach adopted by the Commission for the forward portion of the Broadcast Incentive Auction (Auction 1002) and in every auction for wireless spectrum licenses since.

17. OEA and WTB seek comment on these proposed caps. Specifically, do the expected capital requirements associated with operating in the Upper C-band, the potential number and value of Upper C-band licenses, past auction data, or any other considerations justify a higher or lower cap for either type of bidding credit in this auction? Commenters are encouraged to identify circumstances and characteristics of Auction 115 and/or the spectrum licenses to be made available in the auction that should guide us in establishing bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

18. OEA and WTB remind applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants regardless of whether they are seeking bidding credits, starting at the short-form application filing deadline, against changes in ownership of the applicant that would constitute an assignment or transfer of control. Under 47 CFR 1.2107(c), the winning bidder must be the entity that files the post-auction long-form application. Pursuant to 47 CFR 1.929(a)(2), any substantial change in ownership or control is classified as a major amendment. Applicants should not expect to receive an opportunity to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the start of bidding in this auction, which

will involve competing bids from those who do and do not seek bidding credits, and thus preserves the integrity of the auction process. In furtherance of this policy, applicants will not be permitted to change their bidding credit type selection (*i.e.*, from small business to rural service provider, or vice versa) after the short-form application deadline. OEA and WTB also believe that this will meet the Commission's objectives in awarding licenses through the competitive bidding process.

C. Upfront Payments and Bidding Eligibility

19. In keeping with the Commission's usual practice in spectrum auctions, OEA and WTB propose that each applicant be required to submit an upfront payment as a prerequisite to becoming qualified to bid. An upfront payment is a refundable deposit made by an applicant that would establish its eligibility to bid on licenses, as described herein. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. OEA and WTB note that under 47 CFR 1.2106, any auction applicant that, pursuant to 47 CFR 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50% more than the amount that otherwise would be required. With these considerations in mind, OEA and WTB propose upfront payments for a generic 20-megahertz block in a PEA based on \$0.015 per MHz-pop for PEAs 1–50, \$0.003 per MHz-pop for PEAs 51–100, and \$0.0015 per MHz-pop for all other PEAs, subject to a minimum of \$500 per block. The results of these calculations will be rounded using the Commission's standard rounding procedures for auctions: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. The proposed upfront payments equal approximately half the proposed minimum opening bids, which are established as described herein.

20. OEA and WTB seek comment on these upfront payment amounts, which are specified in the Attachment A file on the Auction 115 website at www.fcc.gov/auction/115. If commenters believe that these upfront payment amounts are not reasonable amounts, they should explain their reasoning and suggest an alternative approach.

21. OEA and WTB further propose that the amount of the upfront payment

submitted by a bidder determine the bidder's initial bidding eligibility in bidding units. The upfront payment does not limit the dollar amounts of the bids that a bidder may submit. Bidder eligibility and bidding activity are measured in bidding units. OEA and WTB propose to assign each generic spectrum block in a given PEA a specific number of bidding units, equal to one bidding unit per \$10 of the upfront payment listed in the Attachment A file available on the Auction 115 website at www.fcc.gov/auction/115. Thus, a bidder's initial bidding eligibility in bidding units would be equal to a bidding unit for each \$10 of the bidder's upfront payment. The number of bidding units for one block in a given PEA is fixed and does not change during the auction as prices change. The number of bidding units per 20-megahertz block in each PEA is specified in Attachment A to the *Auction 115 Comment Public Notice*.

22. An applicant that plans to bid on multiple generic blocks simultaneously, whether within the same PEA or in different PEAs, would need to select the appropriate PEA(s) in its FCC Form 175 and submit an upfront payment that provides sufficient initial eligibility to cover the bidding units associated with those blocks. A bidder cannot increase its eligibility during the auction; it can only maintain or decrease its eligibility. Thus, in calculating its upfront payment amount, and hence its initial bidding eligibility, an applicant in Auction 115 must determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount covering that total number of bidding units. OEA and WTB seek comment on these proposals.

D. Auction Delay, Suspension, or Cancellation

23. For Auction 115, OEA and WTB propose that at any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such case, OEA would notify participants by public notice and/or through the announcement function in the FCC auction bidding system (referred to as the "bidding system" throughout the *Auction 115 Comment Public Notice*). If the bidding is delayed or suspended, OEA, in its sole discretion, may elect to

resume the auction starting from the beginning of the current round or from some previous round, or it may cancel the auction in its entirety. OEA and WTB would exercise this authority to delay, suspend, or cancel bidding in Auction 115 solely at their discretion. OEA and WTB seek comment on this proposal.

E. Deficiency Payments and Additional Default Payment Percentage

24. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, if it fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) would be liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Because final auction payments are calculated on an aggregate basis, taking into account both assignment phase winning bids and any capped bidding credit discounts, the bidding system will calculate individual per-license prices in case they are needed for post-auction administrative purposes, including for calculating default payments. The bidding system will apportion to individual licenses any assignment phase payments and any capped bidding credit discounts, since in both cases, a single amount may apply to multiple licenses. This per-license price will be used as the amount of a bidder's winning bid for a particular license when calculating a default payment with respect to that license.

25. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

26. As noted in the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% will be more effective in deterring defaults than the 3% used in some earlier auctions. In most recent auctions of spectrum suitable for 5G and other

advanced wireless services, an additional default payment of 15% was adopted, except in Auctions 105 and 113 which had a 20% additional default payment due to specific circumstances for those auctions. For Auction 115, OEA and WTB do not believe any such special circumstances exist, and therefore, propose to establish an additional default payment of 15%. OEA and WTB seek comment on this proposal.

IV. Information Procedures and Prohibited Communications

A. Information Procedures During the Auction Process

27. As an additional safeguard to prevent the communication of information about applicants' bids and bidding strategies and to discourage anti-competitive strategic behavior, OEA and WTB propose to limit information available in Auction 115 so that bidders placing particular bids will not be identified until after the bidding has closed. While the Commission generally makes available to the public information provided in each applicant's short-form application following the initial review by Commission staff, OEA and WTB propose to not make public until after bidding has closed: (1) the PEAs that an applicant has selected for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) an applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of a bidder.

28. As in past Commission auctions, OEA and WTB would not make public during a bidding round any real-time information on bidding activity. OEA and WTB propose that the bidding system would publicly disclose, after each round of Auction 115, for each PEA: the aggregate demand; the posted price of the last completed round; and the clock price for the next round. The identities of bidders demanding blocks in a PEA would not be disclosed until after bidding is closed and Auction 115 concludes.

29. Both during and after a round, each bidder would have access to additional information related to its own bidding activity and bid eligibility through the bidding system. Specifically, after the bids of a round have been processed, the bidding system would inform each bidder of the number of blocks it holds in processed demand in every PEA and its eligibility for the next round.

30. After the close of bidding, bidders' PEA selections, upfront payment

amounts, bidding eligibility, bids, and other bidding-related information would be made publicly available. Proxy instructions would not be publicly released either during or after the auction.

31. OEA and WTB seek comment on the foregoing details of their proposal for implementing limited information procedures (also referred to as anonymous bidding) in Auction 115. Commenters opposing the use of anonymous bidding in Auction 115 should explain their reasoning and propose alternative information procedures.

B. Prohibition of Certain Communications

32. 47 CFR 1.2105(c)(1) provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline. 47 CFR 1.2105(c)(5)(i) includes in the definition of "applicant" all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10% or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

33. The operation of the rule prohibiting certain communications requires that the identification of each "nationwide provider" for purposes of 47 CFR 1.2105(c)(1) in connection with each auction. Because the applicable service rules for the 3.98–4.14 GHz band will allow a licensee to provide flexible terrestrial wireless services, the Commission's identification of three nationwide providers in its most recent *Communications Marketplace Report*, 39 FCC Rcd 14116 (2024), suggests that OEA and WTB should also identify those same entities as nationwide providers for purposes of 3.98–4.14 GHz band licenses and Auction 115. Identifying "nationwide providers" in this manner for the purpose of implementing the Commission's

competitive bidding rules is consistent with the approach used in several recent spectrum license auctions. Accordingly, consistent with the procedures adopted for prior auctions of flexible-use licenses for advanced wireless services, OEA and WTB propose to identify AT&T, T-Mobile, and Verizon as "nationwide providers" for the purpose of implementing the Commission's competitive bidding rules in Auction 115, including 47 CFR 1.2105(c), the rule prohibiting certain communications. OEA and WTB seek comment on this proposal. Commenters that disagree with this proposed designation of nationwide providers are encouraged to articulate alternative methodologies by which OEA and WTB should identify nationwide providers for purposes of the prohibited communications rule.

34. Pursuant to the requirements of the OBBB Act and the Commission's strategic objective to lead in next-generation wireless technologies, the Commission is likely to conduct multiple spectrum auctions over the next few years in addition to Auction 115. This could lead to successive or overlapping prohibited communications periods. As the Commission has previously explained, the rule prohibiting certain communications is "limited in scope and only prohibit[s] disclosure of information that affects, or has the potential to affect, bids and bidding strategies." Because "business discussions and negotiations that are unrelated to bids and bidding strategies or to post-auction market structure are not prohibited by the rule," we do not believe that the rule impedes normal business operations. Moreover, it is not unusual for the Commission to hold multiple auctions in quick succession—from late 2018 to early 2021, the Commission conducted six auctions, with four taking place within a single twelve-month span. Nevertheless, OEA and WTB seek comment on whether previous successive or overlapping prohibited communications periods have, in practice, had a negative effect on business operations or auction participation.

V. Proposed Bidding Procedures

35. OEA and WTB propose to conduct Auction 115 using an ascending clock auction format. Under the proposed auction format, bidding would take place in two phases. The first phase of the auction—the clock phase—would consist of successive clock bidding rounds in which qualified bidders indicate their demands for generic license blocks (referred to as "generic blocks" throughout the *Auction 115*

Comment Public Notice) in specific PEAs, followed by a second phase—the assignment phase—with bidding for frequency-specific license assignments. OEA and WTB seek comment in the *Auction 115 Comment Public Notice* on bidding procedures for Auction 115.

36. OEA and WTB are releasing two technical guides concurrently with the *Auction 115 Comment Public Notice*—the Auction 115 Clock Phase Technical Guide and the Auction 115 Assignment Phase Technical Guide. The technical guides supplement the information in the *Auction 115 Comment Public Notice* and provide the mathematical details and algorithms of the proposed auction format. Both technical guides will be available in the Education section on the Auction 115 website at www.fcc.gov/auction/115.

A. Clock Phase

1. Clock Auction Design

37. Under the proposed clock format, the clock phase of Auction 115 would consist of multiple, sequential bidding rounds, with bidding being conducted simultaneously for all available spectrum blocks in all PEAs in the auction. During each round, bidders would indicate their demands for generic blocks in specific PEAs, and round results would be released after each round. In the first bidding round of Auction 115, a bidder would indicate for each product—the generic blocks in a PEA—the quantity of generic blocks it demands at the product's opening per-block clock price. During each subsequent bidding round, the bidding system would announce a per-block start-of-round price and clock price for each product, and qualified bidders would indicate, for each product for which they wish to bid, the number of blocks they request at the prices associated with the current round. Bidding rounds would be open for predetermined periods of time, announced well in advance of the start of each round. Bidders would be subject to activity and eligibility rules that govern the pace of the auction.

38. Under the OEA and WTB proposal, for each product, the clock price for a generic block would increase from round to round if bidders' total demand for blocks in that product exceeds the supply of blocks available. The bidding rounds would continue until, for all products, the total number of blocks that bidders demand does not exceed the supply of available blocks. Once bidding rounds stop, the bidders with processed demand for a product at the product's final price would become winning bidders. Bidding in the clock

phase would determine a uniform price for all the generic blocks in a product.

39. Following the clock phase, the assignment phase would offer clock phase winners the opportunity to bid an additional amount for licenses with specific frequencies. All winning bidders, regardless of whether they bid in the assignment phase, would be assigned licenses for contiguous blocks in a PEA.

40. OEA and WTB seek comment on specific procedures to implement this ascending clock auction and on alternative procedures for conducting, in a timely manner, an auction of licenses in the 3.98–4.14 GHz band.

2. Generic License Blocks

41. The Commission determined in the *Upper C-band Report and Order* that 160 megahertz of the reconfigured Upper C-band from 3.98–4.14 GHz will be available to auction, and licensed in eight uniform 20-megahertz blocks in each PEA within the contiguous United States. In PEAs 1–41 and 43–76, the incumbent FSS operations have a Transition Deadline of December 30, 2030. In PEAs 77–211, 213–263, 265–297, 299–359, and 361–411, the incumbent FSS operations have a Transition Deadline of June 30, 2031. Consequently, in each of these PEAs, all eight 20-megahertz blocks are the same and would be considered as generic blocks in the same category.

3. Bidding Rounds

42. OEA and WTB propose that, as with any Commission spectrum license auction, the initial bidding schedule for Auction 115 would be announced in a public notice to be released at least one week before the start of bidding, and OEA would retain the discretion to adjust the bidding schedule to maintain an auction pace that reasonably balances bidders' need to study round results and adjust their bidding strategies with the need to conduct the clock auction at an efficient speed. Any adjustments to the bidding schedule could include changes in the amount of time for bidding rounds, the amount of time between rounds, and/or the number of rounds per day, and would depend upon bidding activity and other factors. OEA and WTB seek comment on this proposal. Commenters should address the role of the bidding schedule in managing the pace of the auction and should specifically discuss the tradeoffs in managing the auction pace by changes to the bidding schedule, the activity requirement percentage, or the clock price increment percentage, or by using other means.

43. OEA and WTB propose to conduct Auction 115 over the internet. Under the ascending clock format, a bidder would submit its bids either by using the bidding system's upload function, which allows bid files in a comma-separated values (CSV) text format to be uploaded, or through the user interface in the bidding system. The bidding system would allow a bidder to submit bids only for PEAs that the bidder selected on its FCC Form 175 and for which the bidder has sufficient bidding eligibility.

44. During each open bidding round, a bidder would be able to modify any existing bids placed in the round through the user interface or by uploading a new bid file, which would replace all bids previously submitted in the round.

45. As in other Commission auctions, OEA and WTB propose to facilitate auction participation by providing qualified bidders with a toll-free telephone number for an auction bidder line prior to the start of bidding. Under this proposal, bidders, in addition to submitting bids through the bidding system, would have the option of placing bids by telephone through this dedicated auction bidder line. OEA and WTB seek comment on this proposal.

4. Stopping Rule

46. As in previous FCC clock auctions, OEA and WTB propose to use a simultaneous stopping rule for Auction 115, under which all products would remain available for bidding until the bidding stops simultaneously on every product. Specifically, bidding would close for all products after the first round in which no product has any excess demand. Consequently, under this approach, it is not possible to determine in advance the duration of Auction 115. OEA and WTB seek comment on this proposal.

5. Activity Rule

47. In order to ensure that the auction closes within a reasonable period of time, OEA and WTB propose an activity rule that would require bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. This is an approach that is routinely used in multiple-round auctions. In the proposed ascending clock auction, a bidder's activity in a round for purposes of the activity rule would be the sum of the bidding units associated with the bidder's processed demands as applied by the bidding system during bid processing after the round has closed. A bidder would be required to be active on a specific percentage (the activity requirement

percentage) of its current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level would result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in subsequent rounds of the auction.

48. Under this auction format, a bidder would be required to maintain a fixed, high level of activity in each round of Auction 115 in order to maintain bidding eligibility. Specifically, in each round of Auction 115, a bidder would be required to be active on between 90% and 100% of its current bidding eligibility to maintain its bidding eligibility, with the specific percentage within this range to be set for each round. OEA and WTB propose to set the activity requirement percentage for Auction 115 initially at 95%. Thus, the activity rule would be satisfied when a bidder has processed demand on blocks with bidding units that total at least 95% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility would not change for the next round. If the activity rule is not met in a round, the bidder's eligibility would be reduced such that the activity rule is satisfied. Bidding activity would be based on the bids that are submitted and applied by the bidding system. That is, if a bidder bids to reduce its demand for a product, but the bidding system cannot apply the request because demand would fall below the available supply, then the bidder's activity would reflect its unreduced demand. OEA and WTB seek comment on this proposal.

49. Pursuant to this proposal, OEA would retain the discretion to change the activity requirement percentage during the auction to help manage the pace of bidding to ensure that the auction closes within a reasonable period of time. The bidding system would announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

50. Under these proposed activity rule procedures, a bidder would be allowed to submit bids with bidding units totaling up to the bidder's eligibility for the round.

51. OEA and WTB also seek comment on potentially including contingent bidding procedures by which, after Round 1, a bidder may submit bids with associated activity totaling up to a contingent bidding limit greater than or equal to the bidder's current bidding eligibility for the round. In Round 1, a bidder would be allowed to submit bids with bidding units totaling up to the

bidder's initial bidding eligibility. If OEA and WTB adopt the contingent bidding procedures, a bidder's contingent bidding limit would be calculated as its current eligibility times a contingent bidding percentage equal to or greater than 100%. The Commission has previously referred to the contingent bidding limit as the activity upper limit, and similarly, to the contingent bidding percentage as the activity limit percentage. If adopted, a bidder's use of the contingent bidding limit would be optional.

52. Allowing a bidder to submit bids with associated bidding activity greater than its current bidding eligibility would potentially help a bidder, in some circumstances, avoid having its eligibility reduced as a result of submitted bids that could not be applied during bid processing. However, even under these additional procedures, the bidder's activity as applied by the bidding system during bid processing would not exceed the bidder's current bidding eligibility. That is, if a bidder were allowed to submit bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity would never exceed the bidder's current bidding eligibility.

53. Contingent bidding procedures were used in four recent FCC clock auctions (Auctions 105, 107, 108, and 110), but OEA and WTB tentatively conclude that including the contingent bidding limit in Auction 115 would add unnecessary complexity and the potential for misuse with little to no benefit for most Auction 115 bidders. OEA and WTB seek comment on this tentative conclusion. The bidding system would post a bidder's contingent bidding limit in addition to the bidder's current eligibility and required bidding activity. Effective use of the contingent bidding limit would necessarily involve submitting additional bids such that the total submitted activity exceeds current eligibility. Because not all of these bids could be applied by the bidding system, effective use of the contingent bidding limit could also involve selecting particular price points for bids to change demand so that the bids (which are processed in order of ascending price point) are processed in a particular order and applied during bid processing as available eligibility permits. If OEA and WTB do adopt contingent bidding procedures, OEA and WTB propose to set the initial contingent bidding percentage at 120%, which would apply starting in Round 2, subject to change in subsequent rounds within a range of 100% to 140%.

6. Acceptable Bids

a. Minimum Opening Bids

54. As part of the pre-bidding process for each auction, 47 U.S.C. 309(j), as amended, mandates that OEA and WTB prescribe methods for establishing a reasonable reserve price or reasonable minimum bid amounts for licenses subject to auction unless such bid amounts are not in the public interest. A reserve price is an absolute minimum price below which a license will not be sold in a given auction. An opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is also possible for a reserve price and an opening bid to be the same amount.

55. OEA and WTB propose to establish minimum opening bids for Auction 115. Minimum opening bids would serve as the initial clock prices in the proposed clock auction format. In Round 1 of the proposed clock auction, a bidder would indicate, for each product, how many generic blocks it demands at the product's minimum opening bid. The bidding system will not accept bids lower than these amounts. Based on their experience in past auctions, OEA and WTB have found that setting appropriate minimum opening bids is an effective tool to prevent an excessive number of bidding rounds at very low prices. Appropriate minimum opening bids have less bearing on final prices than they do on the number of rounds required to reach the final prices.

56. OEA and WTB do not propose to establish an aggregate reserve price in Auction 115. At this time, OEA and WTB are not aware of any circumstances that would warrant establishing an aggregate reserve price in the public interest for the auction of spectrum licenses in the 3.98–4.14 GHz band. Therefore, OEA and WTB propose only the per-product minimum opening bids discussed here. OEA and WTB seek comment on this issue.

57. For Auction 115, OEA and WTB propose to calculate minimum opening bid amounts for each 20-megahertz block on a PEA basis using a formula based on bandwidth, PEA population, and PEA population tiers, which is similar to the approach OEA and WTB have taken in many previous auctions for spectrum licenses. OEA and WTB would calculate minimum opening bid amounts for each 20-megahertz block based on \$0.03 per MHz-pop for PEAs 1–50; \$0.006 per MHz-pop for PEAs 51–100; and \$0.003 per MHz-pop for all other PEAs. For all blocks in all PEAs,

minimum opening bids would be subject to a minimum of \$1,000 per 20-megahertz block. The results of these calculations will be rounded using the Commission's standard rounding procedures for auctions: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. OEA and WTB seek comment on these amounts, which are specified in the Attachment A file on the Auction 115 website at www.fcc.gov/auction/115. If commenters believe that these minimum opening bid amounts would result in many unsold licenses, an excessive number of rounds at very low prices, or otherwise are not reasonable, they should explain why and propose alternative amounts.

58. In establishing minimum opening bid amounts, OEA and WTB particularly seek comment on factors that reasonably could have an impact on bidders' valuation of the spectrum, including the type of service offered, measures of market size, population covered by a provider's network plan, prices of comparable spectrum, and any other relevant factors. Commenters should support their claims with valuation analyses and suggested amounts or formulas for opening prices. Further, if commenters believe that the minimum opening bids are too high, they should address appropriate measures to manage the pace of the auction so that there would not be an excessive number of bidding rounds at very low prices.

b. Clock Price Increments

59. Under the proposed clock phase procedures for Auction 115, after bidding in the first round and before each subsequent round, the bidding system would announce, for each product, the start-of-round price and the clock price for the upcoming round—that is, the lowest per block price and the highest per block price at which bidders can specify the number of blocks they demand during the round. After Round 1, the bidding system can accept bids for a round at prices that are between the start-of-round price and the round's clock price, as described further herein.

60. A product's start-of-round price would depend upon aggregate demand for the product in the previous round. If aggregate demand for blocks in a product exceeded the supply of blocks in the previous round, then the start-of-round price for the upcoming round would be equal to the clock price of the previous round. If aggregate demand for a product equaled supply at a price in

the previous round, then the start-of-round price for the upcoming round would be equal to the price at which demand equaled supply. If aggregate demand for a product was less than supply in the previous round, then the start-of-round price for the upcoming round would be equal to the start-of-round price of the previous round.

61. A product's clock price for a round would be set by adding a percentage increment to the start-of-round price. As in most previous FCC clock auctions, OEA and WTB propose that OEA would set the initial increment percentage at 10%, and potentially would adjust the increment percentage within a range of 5% to 30% inclusive as rounds continue. OEA would retain the discretion to cap the increment if the total dollar amount of the increment (the difference between the clock price and the start-of-round price) would exceed a certain amount. OEA and WTB propose to set this cap on the increment at \$50 million initially. The proposed 5% to 30% increment range and cap would allow us to set a percentage that manages the auction pace and take into account bidders' needs to evaluate round results and their bidding strategies. OEA and WTB seek comment on this proposal.

c. Bid Types

62. Under the clock auction format proposed for Auction 115, a bidder would be able to make only "simple" bids since there is only one category of generic blocks in each PEA. A bid for a product specifies a quantity of a product at a price associated with the round. A bidder that is willing to maintain its previous round's processed demand for a product at the new clock price would bid for that quantity at the current clock price, indicating that it is willing to pay up to the clock price, if necessary, for the specified quantity. Such a bid to maintain demand must be at the current round's clock price. A bidder with processed demand for a product that wishes to reduce its demand for that product would place a bid that specifies a lower quantity at a price associated with the round at which it wishes to reduce its demand. A bidder that wishes to increase its demand for a product would place a bid that specifies a quantity and a price associated with the round, which indicates that the bidder is willing to pay up to the clock price, if necessary, for the specified quantity (regardless of the price specified in the bid).

63. Bids to maintain demand would always be applied by the bidding system during bid processing. Bids to increase or decrease demand would be treated as

requests that are not necessarily applied during bid processing. OEA and WTB seek comment on this proposal.

d. Intra-Round Bids

64. OEA and WTB propose that in this clock auction, in a round after the first round, a bidder would be permitted to make intra-round bids by indicating a price between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid for a product, a bidder would indicate a specific price and the changed quantity of blocks it demands if the price for blocks should increase beyond that price. For example, if a bidder has processed demand of three blocks at the start-of-round price of \$200, but wishes to hold only two blocks if the price increases by more than \$10, the bidder will indicate a bid quantity of two at a price of \$210 (\$200+\$10). Similarly, if the bidder wishes to reduce its demand to zero if the price increases above \$200, the bidder will indicate a bid quantity of zero at the start-of-round price of \$200.

65. Intra-round bid amounts would be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000. Limiting intra-round bid amounts to certain multiples may deter some types of anticompetitive bidding behavior.

66. Intra-round bids would be optional; a bidder may choose to express its demands only at the start-of-round price or the clock price. Using intra-round bidding allows the bidding system to use relatively large clock price increments because bidders would be permitted to submit bids at prices lower than the clock prices. This may reduce the number of rounds in the auction without increasing the risk that a large clock price increment for a product would prevent the auction from accurately determining the market clearing price of the product, at which demand for blocks equals the supply. OEA and WTB seek comment on this proposal.

e. Proxy Bids

67. Under the clock format, OEA and WTB propose to allow bidders to submit proxy instructions to the bidding system that, in subsequent rounds, instruct the bidding system to automatically submit proxy bids based on the proxy instructions. With proxy bidding, a bidder could submit a proxy instruction to the bidding system to reduce its demand for a product at a price higher than the current round's clock price—i.e., at a price in a future round. Proxy

instructions to increase a bidder's demand for a product at a given price would not be permitted.

68. Under these proposed procedures, if a proxy instruction has been submitted, the bidding system would automatically submit a proxy bid to maintain the bidder's demand for the product in every subsequent round as long as the clock price for the round is less than the proxy instruction price. In the first round in which the clock price is greater than or equal to the proxy instruction price, the bidding system would submit a proxy bid on behalf of the bidder to reduce the bidder's demand for that product to the quantity specified in the proxy instruction at the price specified in the proxy instruction. For example, if a bidder has a processed demand of three blocks for a product with a start-of-round price of \$900 and a clock price of \$1,000, and the bidder is willing to purchase three blocks of the product for a price up to \$1,800 per block but is not willing to purchase any blocks when the price per block exceeds \$1,800, the bidder could submit a proxy instruction to reduce its demand for the product to zero blocks at \$1,800. In that case, the bidding system would submit proxy bids to maintain the bidder's demand for three blocks of the product in each subsequent round as long as the clock price is less than \$1,800. Proxy bids would be processed by the bidding system in the same way as bids submitted by the bidder in the round.

69. A bidder may submit more than one proxy instruction for a given product as long as one of those proxy instructions is for a quantity of zero blocks. For example, if a bidder has a processed demand of four blocks for a product with a start-of-round price of \$900 and a clock price of \$1,000, and the bidder is willing to purchase four blocks of the product for a price up to \$3,000 per block and two blocks of the product for a price of up to \$4,000 per block, the bidder could submit a proxy instruction to reduce its demand for the product to two blocks at \$3,000 and another proxy instruction to further reduce its demand to zero blocks at \$4,000.

70. In the case of a product for which the bidder either submitted a bid to reduce demand to zero or a proxy instruction, for any bid to reduce demand for the product that is not applied in full during bid processing, the bidding system will automatically generate a proxy instruction at the bid price and, in the following rounds, submit proxy bids on behalf of the bidder according to that proxy instruction. For example, suppose that the start-of-round price for a product is

\$10,000, the clock price is \$12,000, and a bidder with processed demand of two for the product submits a bid to reduce its demand to zero at price \$11,500. If the bid is not applied during bid processing (e.g., because there was no excess demand and no other bids for the product in the round), in the following round the bidding system would submit a proxy bid on behalf of the bidder to reduce its demand for the product to zero at price \$11,500. The purpose of this system-created proxy instruction is to preserve in the bidding system the bidder's interest in reducing its demand for the product to zero at a price of \$11,500, which may help avoid having blocks of the product sold later in the auction to another bidder at a price less than the \$11,500 that the initial bidder was willing to pay.

71. In any round, a bidder can remove or modify any existing proxy instructions or proxy bids for the round by resubmitting its bids (through the user interface or file upload), including the modifications, which would replace any bids and proxy instructions previously submitted. The bidding system would take the last bid submission as that bidder's bids and proxy instructions.

72. As is the case for intra-round bid amounts, proxy instruction prices would be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000. Proxy instructions would not be publicly released either during or after the auction.

73. OEA and WTB seek comment on the proposed procedures for proxy bids.

f. Missing Bids

74. Under the proposed clock auction format, for every product for which a bidder has processed demand at the end of a round, a bidder would be required to submit a bid in the next round or have a proxy instruction in place, even if its demands at the new round's prices are unchanged. If a bidder does not submit bids in the current round for all of the products for which it had processed demand in the previous round and does not have proxy instructions in place, the bidding system would consider those products to have missing bids.

75. Missing bids would be treated by the bidding system as requests to reduce the bidder's demand to zero at the start-of-round prices for the products with missing bids. If these requests are applied, even if applied partially, then a bidder's activity, and its bidding eligibility for the next round, may be

reduced. A bidder can avoid having missing bids by either indicating its demand in every round or by entering appropriate proxy instructions. OEA and WTB seek comment on this proposal.

7. Bid Processing

76. OEA and WTB propose that after each bidding round under the proposed clock auction format, bids would be processed according to the bid processing procedures described herein to determine the processed demand of each bidder for each product and the posted price for each product. The posted price would serve as the start-of-round price for the next round. OEA and WTB seek comment on the full bid processing procedures for Auction 115 proposed in detail herein.

a. No Excess Supply Rule for Bids To Reduce Demand

77. Bidding would be subject to a "no excess supply" rule, wherein the bidding system would not allow a bidder to reduce the quantity of blocks it demands for a product if the reduction would cause aggregate demand to fall below, or be less than, the supply of blocks in the product, which would create excess supply. Therefore, if a bidder has processed demand for a product in the previous round, and submits a bid to reduce the number of blocks if the price should increase above the price in its bid, the bidding system would treat the bid as a request to reduce demand that would be applied only if applying the bid would not result in, or further increase, excess supply. However, if a bid to reduce demand is not applied, the bidder will not be asked to pay more for the block than the highest price it agreed to pay.

b. Eligibility Rule for Bids To Increase Demand

78. The bidding system would not allow a bidder in Auction 115 to increase the quantity of blocks it demands for a product if the total number of bidding units associated with the bidder's demand would exceed the bidder's bidding eligibility for the round. Therefore, if a bidder submits a bid to increase the number of blocks for which it has processed demand as of the previous round, the bidding system would treat the bid as a request to increase demand that would be applied only if that would not cause the bidder's processed activity to exceed its eligibility.

c. Partial Application of Bids

79. A bid that involves a reduction from the bidder's previous demands

could be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. Accordingly, the bidding system would apply a bidder's request to reduce demand as much as possible consistent with the no excess supply rule. A bid to increase a bidder's demand could be applied partially if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, the bidding system would accommodate a bidder's request to increase demand as much as possible as long as the bidder's activity does not exceed its eligibility.

d. Processed Demand

80. After a round ends, the bidding system would first consider and apply all bids to maintain processed demand at the clock price. Bids to maintain a bidder's processed demand at the clock price would always be applied. Then the bidding system would process bids to change demand in order of price point, and by pseudo-random number in the case of tied price points, where the price point represents the percentage of the bidding interval for the round. For example, if the start-of-round price is \$1,200 and the clock price is \$1,300, a bid at \$1,230 is at the 30% price point (30% of the \$100 bidding interval for the round).

81. To process bids to change demand, the bidding system would consider bids at the lowest price point across all products, then look at bids at the next price point across all products, and continue in ascending order up to bids to change demand at the clock price. To determine whether a bidder's request to reduce demand for a product can be applied, the bidding system would determine whether there is excess demand for that product at that point in the processing. To determine whether a request to increase demand can be applied, the bidding system would evaluate the activity associated with the bidder's processed demands at that point in the bid processing. If a bid for a product can be applied fully or partially at that point in the processing, the bidding system would recalculate the number of blocks that the bidder holds in processed demand, the aggregate demand for the product, and the bidder's processed activity.

82. If a bid to change demand could not be applied in full at the price point indicated in the bid, *e.g.*, because demand would fall below supply or because the bidder's processed activity would exceed its eligibility, the unfulfilled bid, or portion thereof,

would be held in a queue and reconsidered, again in price point order, if later in the processing (after other bids are processed) there should be excess demand for that product or if the bidder's processed activity is sufficiently reduced below its eligibility. This process of reconsidering unfulfilled bids held in the queue in ascending order of original price point repeats iteratively, with the reconsidered bids being applied (fully, partially, or not at all) and then products' aggregate demand and bidders' processed demand and activity being recalculated. The bid processing ends when no further bids remaining in the queue can be applied. The bidding system would not carry over unfulfilled bid requests to the next round, except for generating proxy instructions as described above. The bidding system would advise bidders of the status of their bids when round results are released.

e. Price Determination

83. During bid processing, the bidding system also would determine, based on aggregate demand, the posted per-block price for each product for the round, which would serve as the start-of-round price for the next round. The start-of-round price for a block in a product would increase across rounds if there is excess demand for blocks in the product.

84. Specifically, if, at the end of a round, the aggregate demand for blocks in a product exceeds the supply of blocks, the posted price for the round would equal the clock price. If a reduction in demand was applied during the round that caused demand for the product to equal supply, the posted price would be the price at which the reduction was applied. If aggregate demand is less than or equal to supply and no bid to reduce demand was applied for the product, then the posted price would equal the start-of-round price for the round. The range of acceptable bid amounts for the next round would be set by adding the percentage increment to the posted price.

85. Under these procedures, when a bid to reduce demand cannot be fully applied, the bidder would not face a price that is higher than its bid price. Specifically, if a bid to reduce demand cannot be fully applied, it must be the case that there is no excess demand for the product at the bid price and, therefore, the posted price would not be higher than that price.

86. After each round of bid processing, each bidder would be informed of its processed demands, its

processed activity, and the aggregate demand for each product. If the stopping rule has not been met, the bidding system would announce clock prices to determine the range of acceptable bids for the next round.

f. Winning Bids in the Clock Phase

87. A bidder with processed demand for a product at the time the stopping rule is met would become the winning bidder of licenses corresponding to that number of blocks and would be assigned specific frequencies in the assignment phase. The final clock phase price for a generic block in a product would be the posted price of the final round.

B. Assignment Phase

88. Following the conclusion of the clock phase, OEA and WTB propose to conduct an assignment phase that determines specific frequency assignments for the generic blocks won in the clock phase. The assignment phase would proceed in a series of single-round sealed-bid bidding rounds, where clock phase winning bidders may submit bids to indicate their preferences for specific frequency licenses corresponding to the generic blocks they won in the clock phase. A clock phase bidder that won multiple blocks in a PEA would be assigned contiguous blocks in that PEA regardless of whether it participates in the assignment phase. Therefore, in the assignment phase, winning bidders in the clock phase bid for the specific frequencies they might prefer for the contiguous blocks that they will be assigned.

1. Sequencing and Grouping of PEAs

89. OEA and WTB propose to sequence assignment rounds to make it easier for bidders to incorporate frequency assignments from previously assigned areas into their bid preferences for other areas, recognizing that bidders winning multiple blocks of licenses generally will prefer contiguous blocks across adjacent PEAs. To that end, OEA and WTB propose to conduct rounds for the largest markets first to enable bidders to establish a "footprint" from which to work. Specifically, OEA and WTB propose that the assignment phase begin with a separate assignment round for each of the top 20 PEAs, and to sequentially order these twenty assignment rounds by descending order of PEA population.

90. Once the top 20 PEAs have been assigned, OEA and WTB propose to conduct, for each of the six Regional Economic Area Groupings (REAGs), a series of assignment rounds for the remaining PEAs within each region. The

six REAGs are: Northeast, Southeast, Great Lakes, Mississippi Valley, Central, and West. OEA and WTB propose to conduct the bidding for the six REAGs in parallel in order to reduce the total amount of time required to complete the assignment phase. To help maximize contiguity across PEAs, OEA and WTB further propose that, where feasible, multiple PEAs will be grouped together if they: (1) are located in the same REAG; (2) are outside the top 20 PEAs; and (3) include the same bidders winning the same number of blocks. In addition, all PEAs in the group must either be uniformly subject to, or not subject to, the small market bidding credit cap. OEA and WTB would sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA.

91. OEA and WTB seek comment on these proposals.

2. Acceptable Bids and Bid Processing

92. OEA and WTB propose that, in each assignment round, a bidder will be asked to assign a price to one or more possible frequency assignments for which it wishes to express a preference, consistent with the generic blocks it won in the clock phase. The price will represent a maximum payment that the bidder is willing to pay, in addition to the clock phase price for the generic blocks, for the frequency-specific license or licenses in its bid.

93. OEA and WTB propose to use an optimization approach to determine the winning frequency assignment for each PEA or PEA group. OEA and WTB propose that the bidding system will select the assignment that maximizes the sum of bid amounts among all assignments that satisfy the contiguity requirements, that is, where every winning bidder is assigned contiguous spectrum in the PEA or PEA group. Furthermore, if multiple blocks in a PEA remain unsold, the unsold licenses will be contiguous. OEA and WTB propose that the additional price a bidder will pay for a specific frequency assignment (above the clock phase price) will be calculated consistent with a generalized “second price” approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment that satisfies the contiguity requirements. This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. OEA and WTB propose to determine prices in this way because it

simplifies bidders’ bidding strategies, incentivizing them to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive. OEA and WTB propose to determine prices using the Vickrey-nearest approach, as described in the Auction 115 Assignment Phase Technical Guide, which will be available in the Education section on the Auction 115 website at www.fcc.gov/auction/115.

94. OEA and WTB seek comment on these proposed procedures.

VI. Tutorials and Additional Information for Applicants

95. OEA and WTB intend to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 115 to familiarize themselves with the FCC auction application system and the bidding system. For example, OEA and WTB intend to release online tutorials that will help applicants understand the procedures to be followed in the filing of their auction short-form applications (FCC Form 175) and on the bidding procedures for Auction 115, as well as technical guides that supplement the information in the *Auction 115 Comment Public Notice* and provide the mathematical details and algorithms of the procedures described herein.

VII. Initial Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Upper C-band NPRM*, 90 FR 56076, December 5, 2025, and other Commission notices of proposed rulemaking pursuant to which Auction 115 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Upper C-band Report and Order* and other Commission rulemaking orders pursuant to which Auction 115 will be conducted. OEA and WTB have prepared this IRFA of the procedures proposed in the *Auction 115 Comment Public Notice*, assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the **DATES** section of this document. The Commission will send a copy of the *Auction 115 Comment Public Notice*, including this IRFA, to the Chief

Counsel for the Small Business Administration (SBA) Office of Advocacy.

97. *Need for, and Objectives of, the Proposed Procedures.* If adopted, the proposed procedures for conducting Auction 115 as described in the *Auction 115 Comment Public Notice* would constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR parts 1 and 27, which were adopted by the Commission in multiple notice-and-comment rulemaking proceedings, including the delegation of authority to establish additional procedures to be adopted prior to a spectrum license auction. The *Auction 115 Comment Public Notice* seeks comment on proposed procedures, terms, and conditions governing Auction 115, including the minimum opening bid amounts for the generic blocks in a PEA, and is fully consistent with the underlying rulemaking orders, including the *Upper C-band Report and Order* and other relevant competitive bidding orders.

98. The Commission is offering licenses in Auction 115 pursuant to its statutory mandate to grant spectrum licenses in the Upper C-band through a system of competitive bidding, and to complete competitive bidding for such licenses within two years. Auction 115 will offer 160 megahertz of spectrum in the 3.98–4.14 GHz portion of the Upper C-band licensed on an unpaired basis in eight 20-megahertz blocks by PEA in the contiguous states and the District of Columbia (PEAs 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411).

99. The *Auction 115 Comment Public Notice* also provides notice to Auction 115 applicants, some of which are small entities, of proposed auction procedures and provides adequate time for applicants to comment on proposed procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 115 participants, the *Auction 115 Comment Public Notice* seeks comment on the following proposed procedures:

- A requirement that any applicant seeking to participate in Auction 115 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 115 that will be released in advance of the short-form application deadline, and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 3.98–4.14 GHz portion of the Upper C-band;

- Establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 115;
- A specific upfront payment amount for a generic block of each product available in Auction 115;
- Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block;
- The ability of OEA, in conjunction with WTB, to exercise its discretion to delay, suspend, or cancel bidding in Auction 115 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- Establishment of an additional default payment of 15% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;
- Use of anonymous bidding/limited information procedures under which the Commission will not make public until after the bidding has closed: (1) PEAs that an applicant selects for bidding in its short-form application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 115; (3) any applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- Designation of AT&T, T-Mobile, and Verizon as nationwide providers for the purpose of implementing the Commission's competitive bidding rules in Auction 115;
- Use of a clock auction format for Auction 115, under which each qualified bidder will indicate in successive clock bidding rounds its demands for generic blocks in specific geographic areas at the prices associated with the rounds;
- Retention by OEA of discretion to adjust the bidding schedule in order to manage the pace of Auction 115;
- Use of a simultaneous stopping rule for Auction 115, under which all blocks in all PEAs would remain available for bidding until the bidding stops in every PEA;
- Use of an activity rule that would require bidders to be active on between 90% and 100% of their bidding eligibility in all clock rounds, with the initial activity requirement percentage set at 95% and with OEA retaining discretion to change the activity requirement percentage during the auction;

- A specific minimum opening bid amount for a generic block of each product available in Auction 115;
- Establishment of acceptable bid amounts, including clock price increments and intra-round prices;
- Permitting each bidder to place bids that indicate its desired quantity of blocks for a product at the prices associated with the round;
- Permitting a bidder to submit a proxy instruction to request a reduction in its demand for a product at a price higher than the current round's clock price for Auction 115;
- A requirement that bidders indicate their demands in every round or submit appropriate proxy instructions, even if their demands at the new round's prices are unchanged from the previous round, and the treatment of bids to reduce demand as a request to reduce demand for the product;
- A methodology for processing bids and requests to reduce and increase demand; and
- Establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase.

100. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum license auction under the Communications Act of 1934, as amended (the Act), are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auctions program in 1994 and would conduct Auction 115. The Commission has directed that OEA and WTB, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

101. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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 and policies, 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 which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

102. OEA's and WTB's actions, over time, may affect small entities that are not easily categorized at present. OEA and WTB therefore describe three broad groups of small entities that could be directly affected by their actions. 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 34.75 million businesses. Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and not dominant in their field. While OEA and WTB do not have data regarding the number of non-profits that meet that criteria, over 99% of nonprofits have fewer than 500 employees. Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, OEA and WTB estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

103. The proposed procedures in the *Auction 115 Comment Public Notice* will apply to small entities in the industries identified in the chart in Table 1 by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard and in the chart in Table 2. Based on currently available U.S. Census data regarding the estimated number of small firms in the identified industries, OEA and WTB conclude that the proposed procedures could impact a substantial number of small entities. Where available, OEA and WTB also provide additional information regarding the number of potentially affected entities in the industries identified in Tables 1 and 2.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated industry	NAICS code	SBA size standard	Total firms	Total small firms	Percent small firms
Wireless Telecommunications Carriers (except Satellite).	517112	1,500 employees	1,184	1,081	91.30
Satellite Telecommunications	517410	\$44 million	332	195	58.73

Affected entities in the Wireless Telecommunications Carriers (except Satellite) industry include Wireless Broadband internet Access Service

Providers, Wireless Carriers and Service Providers, Wireless Communications Services, and Wireless Telephony. Affected entities in the Satellite

Telecommunications industry include Fixed Satellite Very Small Aperture Terminal (VSAT) Systems and Mobile Satellite Earth Stations.

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2025 Universal service monitoring report telecommunications service provider data (data as of December 2024)	SBA size standard (1,500 employees)		
Affected entity	Total number FCC Form 499A filers	Small firms	Percent small entities
Wireless Telecommunications Carriers (except Satellite)	608	522	85.86
Wireless Telephony	336	262	77.98

Affected entities in the Wireless Telecommunications Carriers (except Satellite) industry include all reporting wireless carriers and service providers. Affected entities in the Wireless Telephony industry include Cellular/PCS/SMR—Specialized Mobile Radio Licensees and SMR (Dispatch).

104. *Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The RFA directs agencies to describe the economic impact of its proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

105. In the *Auction 115 Comment Public Notice*, OEA and WTB do not propose any new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. Moreover, the auction application process is designed to minimize reporting and compliance requirements for applicants, some of which are small entities. In the first part of the Commission’s two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify their qualifications under penalty of perjury. A party’s eligibility to participate in bidding is based on an applicant’s short-form application and certifications, as well as its upfront payment. In the second

phase of the auction process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder. This approach will particularly benefit small entities that seek to participate in the auction because it avoids imposing on an auction applicant/bidder that does not ultimately become a winning bidder the burden of submitting this additional information.

106. At this time, OEA and WTB do not expect the processes and procedures proposed in the *Auction 115 Comment Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 115 and comply with the procedures OEA and WTB ultimately adopt because of the information, resources, and guidance OEA and WTB make available to potential and actual auction participants at no cost. For example, OEA and WTB intend to release an online tutorial that will help applicants understand the procedures for filing the short-form application (FCC Form 175). OEA and WTB also intend to make information on the bidding system available and offer demonstrations and other educational opportunities for applicants in Auction 115 to familiarize themselves with the FCC auction application system and the bidding system. By providing these resources, as well as the resources discussed herein, OEA and WTB expect

small entities that use the available resources to experience lower participation and compliance costs. Nevertheless, while OEA and WTB cannot quantify the cost of compliance with the rules and proposed procedures, OEA and WTB do not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the proposals for Auction 115 are similar in many respects to the procedures in recent auctions conducted by the Commission.

107. *Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities.* The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities. The discussion is required to include alternatives such as: “(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 and 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.”

108. In the *Auction 115 Comment Public Notice*, OEA and WTB set forth proposals to facilitate participation in Auction 115 that result in both operational and administrative cost savings for small entities and other

auction participants. For example, given the numerous resources that will be made available from the Commission at no cost to potential applicants and bidders, the processes and procedures proposed in the *Auction 115 Comment Public Notice* should result in minimal economic impact on small entities. Prior to the start of bidding, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 115. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures, as well as a telephone technical support hotline to assist with issues such as access to or navigation within the short-form application and use of the FCC's auction system. All auction participants, including small business entities, will also have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. Alternatively, OEA and WTB will continue to consider additional ways to assist small entities, many of which have limited resources, in their efforts to participate more efficiently in Auction 115 and seek comment on such proposals. These steps, coupled with the advanced description of the bidding procedures, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities.

109. Lastly, in the *Auction 115 Comment Public Notice*, OEA and WTB seek to promote opportunities and reduce economic barriers to entry for small entities wishing to grow their businesses through the auction process. In keeping with these objectives, for Auction 115, OEA and WTB propose a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business and a \$10 million cap on the total amount of bidding credits that may be awarded to a rural service provider. In addition, OEA and WTB propose a \$10 million cap on the overall amount of bidding credits that any winning small business

bidder may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the Upper C-band licenses and an analysis of past auction data, OEA and WTB anticipate that the proposed caps will allow the majority of small businesses in each auction to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses. OEA and WTB seek comment on, and will consider alternatives to, the proposed cap levels in an effort to maximize small entity participation in the auction process, while minimizing potential abuse of the bidding credit program, thereby protecting its integrity.

110. To assist with the Commission's evaluation of the economic impact on small entities that may result from the actions and alternatives that have been discussed in this proceeding, the *Auction 115 Comment Public Notice* seeks alternative proposals, and requests information on the potential costs of such alternatives to small entities. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Auction 115 Comment Public Notice*, including costs and benefits information. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact on small entities resulting from the final procedures that are ultimately adopted.

111. *Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

Federal Communications Commission.

Gary Michaels,

*Senior Deputy Chief, Auctions Division,
Office of Economics and Analytics.*

[FR Doc. 2026-15725 Filed 7-31-26; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CG Docket No. 02-6; WC Docket No. 21-455; Report No. 3235; FR ID 360032]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding by Chris Webber on behalf of CRW Consulting LLC and Kristen Corra on behalf of Schools, Health & Libraries Broadband Coalition.

DATES: Oppositions to the Petition must be filed on or before August 18, 2026. Replies to oppositions to the Petition must be filed on or before August 28, 2026.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Mensah, Attorney Advisor, 202-418-1387, or Jennifer.Mensah@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3235, released on July 28, 2026. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at <http://apps.fcc.gov/ecfs/> and downloaded at <https://docs.fcc.gov/public/attachments/DOC-423672A1.pdf>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: In the Matter of Promoting Fair and Open Competitive Bidding in the E-Rate Program Schools and Libraries Universal Service Support Mechanism WC Docket No. 21-455 CC Docket No. 02-6.

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026-15677 Filed 7-31-26; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 210

[Docket No. FRA-2025-0786, Notice No. 1]

RIN 2130-AC83

High-Speed Train Noise Emission Standards

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This NPRM seeks to amend the noise emission regulations to address the unique noise emission characteristics of trains operating at speeds exceeding 160 miles per hour (mph). Specifically, the proposed regulation would provide an alternative standard for noise emissions from train operations exceeding 160 mph, up to 220 mph, and also provide a special approval process for noise emissions from train operations exceeding 220 mph. This alternative noise emission standard and compliance process would effectively remove an existing regulatory barrier to the railroad industry for high-speed rail operations, while continuing to protect public health and welfare. Existing noise emission limits for all train operations at speeds up to 160 mph would continue to apply, and these existing limits would remain available for demonstrating compliance at higher speeds as well.

DATES: Comments on the proposed rule must be received by October 2, 2026. Comments received after that date will be considered to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2025–0786 may be submitted by going to <http://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA–2025–0786), and Regulatory Identification Number (RIN) for this rulemaking (2130–AC83). All comments received will be posted without change to <http://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Frederick Mottley, Systems Engineer, Federal Railroad Administration, telephone: 617–494–3160, email: fred.mottley@dot.gov; or Samuel Gilbert, Senior Attorney, Federal Railroad

Administration, telephone: 202–578–5894, email: samuel.gilbert@dot.gov.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

CFR—Code of Federal Regulations
dB—decibels
dB(A)—A-weighted decibels
DOT—U.S. Department of Transportation
EPA—U.S. Environmental Protection Agency
EU—European Union
FRA—Federal Railroad Administration
ft—feet
HSR—high-speed rail
HVAC—heating, ventilation, and air conditioning
IEC—International Electrotechnical Commission
IIJA—Infrastructure Investment and Jobs Act
IRFA—Initial Regulatory Flexibility Analysis
ISO—International Organization for Standardization
km/h—kilometers per hour
L_{eq}—equivalent sound level
m—meters
mph—miles per hour
NEPA—National Environmental Policy Act
NOI TSI—Noise Technical Specifications for Interoperability
NPRM—notice of proposed rulemaking
OMB—Office of Management and Budget
SBA—U.S. Small Business Administration

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I. Executive Summary

In November 2018, FRA issued a final rule to establish equipment safety standards for passenger high-speed rail (HSR) operations up to 220 mph,¹ complementing a March 2013 final rule addressing track safety standards for

train operations at these same speeds.² Because certain levels of aerodynamic noise are impractical or impossible to avoid for train operations that exceed 160 mph, existing rail noise emission regulations would prevent full utilization of such operations in the United States.³ Congress recognized the need to address high-speed train noise emissions in the Infrastructure Investment and Jobs Act (IIJA).⁴ Using the authority provided in section 22423 of IIJA, this NPRM seeks to amend noise emission regulations at 49 CFR part 210 (part 210) to alleviate this regulatory obstacle for HSR operations.

The proposed regulation would provide an alternative standard for noise emissions from train operations exceeding 160 mph, up to 220 mph. The alternative standard would be optional; a railroad could continue to demonstrate high-speed train noise emission compliance in accordance with the existing standards in 40 CFR part 201. The proposal would also provide a special approval process for train operations exceeding 220 mph that demonstrate a level of protection consistent with these noise emissions limits. This alternative noise emission standard and compliance process would effectively remove an existing regulatory barrier to the railroad industry for high-speed rail operations. The proposed regulation would also continue to provide for noise emission restrictions that protect public health and welfare and would be consistent with international standards.

The cost of the proposed regulation results from railroads and rail equipment manufacturers testing the high-speed trainsets for compliance with the alternative noise emission limits under this NPRM. Performing noise emission compliance testing will require sound level measuring equipment, calibration of such equipment, and personnel to perform the test and operate the train. In return, HSR operators would save costs by potentially not needing to modify their rail equipment to reduce aerodynamic noise to comply with the existing noise emission standard. FRA assessed that the benefits in terms of cost-savings will significantly exceed the costs. The estimated costs and benefits are summarized in the table below.

¹ 83 FR 59182 (Nov. 21, 2018).

² 78 FR 16052 (Mar. 13, 2013). While this proposed rule would also apply to freight train operations exceeding 160 mph, FRA notes that fn. 1 to 49 CFR 213.307 specifies conditions for freight

to be transported at passenger train speeds and applies independently of this proposed rule.

³ See High Speed Rail Noise Standards and Regulations, DOR/FRA/ORD 21/03 (Feb. 2021), at 121. The report is available on FRA's website at

<https://railroads.dot.gov/library/high-speed-rail-noise-standards-and-regulations>.

⁴ Sec. 22423, Public Law 117–58, 135 Stat. 429.

TABLE ES-1—COSTS AND BENEFITS SUMMARY OVER A 30-YEAR PERIOD OF ANALYSIS
[2024 Dollars]

Impact	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Costs	\$105,462	\$178,230	\$8,499	\$9,093
Benefits	65,947,718	100,525,866	5,400,150	5,056,374
Net Benefits	65,842,257	100,347,636	5,391,651	5,047,281

II. Legal Authority

U.S. Environmental Protection Agency (EPA) regulations in 40 CFR part 201 limit the noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad. FRA regulations in 49 CFR part 210 provide for the enforcement of the 40 CFR part 201 limits. EPA and FRA developed this existing regulatory scheme pursuant to the Noise Control Act of 1972 (Noise Control Act),⁵ which found that inadequately controlled noise presented a danger to public health and welfare and that Federal action was essential.⁶ The Noise Control Act provides EPA with regulatory authority and FRA, as delegated by the Secretary of Transportation, with enforcement and inspection authority for noise emissions covered by part 201 (in addition to FRA's general authority under the railroad safety statutes).⁷

On November 15, 2021, IIJA was signed into law. Section 22423 of IIJA amended section 17 of the Noise Control Act⁸ to permit DOT, in consultation with EPA, to prescribe regulations governing railroad-related noise emission standards for trains operating on the general railroad system of transportation at speeds exceeding 160 mph, including noise related to magnetic levitation systems and other new technologies not traditionally associated with railroads.⁹ IIJA suggests three factors that DOT may consider when prescribing new regulations: (1) variances in maximum pass-by noise with respect to the speed of the equipment; (2) current engineering best practices; and (3) encouraging the use of noise mitigation techniques, where reasonable, if the benefits exceed the costs.¹⁰

IIJA makes clear that EPA's existing railroad-related noise standards prescribed under the Noise Control Act shall continue to govern noise emissions

from the operation of trains, including locomotives and rail cars, at speeds not exceeding 160 mph.¹¹ Indeed, compliance with these existing standards may continue at speeds up to and exceeding 160 mph. No railroad would be required to avail itself of the alternatives proposed in this NPRM for noise emission compliance. The rulemaking seeks only to make that flexibility available.

III. Technical Background

Currently, no trains operate in the United States at speeds above 160 mph, and the highest-speed trains now operate at a maximum of 150 mph. However, there are plans for HSR operations at speeds above 160 mph in several regions.¹² The current railroad noise emission standards established under part 201 are based on empirical data from EPA studies of locomotives and railcars operating before 1976.¹³ At the time, the maximum allowable train speed under FRA regulations was 110 mph. EPA observed that locomotive diesel engine noise was dominated by engine exhaust and set noise emission limits at thresholds based upon what was viewed as reasonable and achievable to muffle such noise, specifically 90 dB(A) for locomotives manufactured after Dec. 31, 1979.¹⁴ EPA also studied railcar noise, finding that the upper range for noise emissions from railcar movement at 60 mph was approximately 93 dB(A).¹⁵ This was set as the maximum for all operations.¹⁶ In

the decades since these standards were issued, FRA has examined more modern railroad operations and noise impacts, including data on HSR noise emissions.

For a conventional train with a maximum speed of up to approximately 125 mph, propulsion and mechanical noise dominates the total train noise emitted as the train passes by a wayside location along a railroad.¹⁷ Indeed, for steel-wheeled trains, propulsion and rolling noise combines with limited aerodynamic noise to describe the total noise up to speeds of approximately 160 mph.¹⁸ However, at speeds exceeding 160 mph, the aerodynamic noise resulting from airflow moving over and around the train begins to become the dominant contributor to the overall noise emitted.¹⁹

HSR operations are common in numerous countries throughout the world, including Japan, China, and European Union (EU) member countries. FRA commissioned a global survey of railroad noise standards, codes, regulations, and recommended practices, with a focus on countries that have well-established HSR operations.²⁰ FRA additionally commissioned DOT's Volpe National Transportation Systems Center to prepare a technical report (Technical Report) that researched the needs and requirements for noise emission standards for high-speed trains, considered international and industry standards, and outlined a recommended approach for noise emission standards based on proven methodologies.²¹ The proposed rule adopts this technical report's recommended noise emission standards, and the report is included in the rulemaking docket (<http://>

¹¹ *Id.* at 4916(c)(3).

¹² Some potential HSR routes are the (1) Amtrak NextGen Acela II service from Washington, DC to NY (the Northeast Corridor), see <https://amtraknewera.com/nextgen-acela-fleet/>; (2) Brightline West service from Rancho Cucamonga, CA to Las Vegas, NV, see <https://www.brightlinewest.com/>; and (3) Cascadia service between Portland, OR to Seattle, WA to Vancouver, BC, see <https://wsdot.wa.gov/construction-planning/search-studies/cascadia-high-speed-rail>. This list is non-exhaustive and is intended as examples and not as an endorsement of any project or any guarantee of future Federal funding.

¹³ See 41 FR 2184 (Jan. 14, 1976).

¹⁴ 40 CFR 201.12(b).

¹⁵ See EPA, "Background Document for Railroad Noise Emission Standards" (1975), available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=9101K11M.TXT>.

¹⁶ 40 CFR 201.13.

¹⁷ See *High Speed Ground Transportation Noise and Vibration Impact Assessment*, at 2–8, FRA (2012). The report is available on FRA's website at <https://railroads.dot.gov/library/high-speed-ground-transportation-noise-and-vibration-impact-assessment>.

¹⁸ *Id.* at 2–11.

¹⁹ See *id.* The precise speed at which this occurs depends upon the design of the trainset as well as the level of rolling noise produced by wheel-rail interaction. See also Technical Report, 2.1.

²⁰ See generally High Speed Rail Noise Standards and Regulations.

²¹ Recommended Noise Standards for High-Speed Rail, DOT-VNTSC-FRA-20-08, FRA (April 2020).

⁵ Public Law 92–574, 86 Stat. 1234; 42 U.S.C. 4901, *et seq.*

⁶ *Id.* at 4901(a).

⁷ See 41 FR 49183, 49184 (Nov. 8, 1976).

⁸ 42 U.S.C. 4916.

⁹ *Id.* at (c)(1).

¹⁰ *Id.* at (c)(2).

www.regulations.gov, Docket No. FRA–2025–0786).

Of the countries with well-established HSR operations and that regulate train noise, the EU group of countries uses an emission-based approach for rolling stock in which noise thresholds are based on the sound emitted at the source, distinguished by equipment and operating speed. This approach to train noise is consistent with the existing U.S. noise emission standards framework under the Noise Control Act. In contrast, China and Japan use an immission- or receiver-based approach to train noise in which noise thresholds are based on the location where the sound is received.²² The immission-based approach is aimed at reducing noise levels measured at the receiving location, rather than limiting noise emitted at the source, and encourages the use of mitigation measures such as noise barriers to achieve compliance.²³

As noted above, under section 22423 of IIJA, regulations developed for high-speed trains may encourage the use of noise mitigation techniques to the extent reasonable if the benefits exceed the costs.²⁴ FRA interprets this authorization as allowing FRA to consider HSR immission or receiver standards in the alternative to emission standards not only in a rulemaking, but also in a special approval process (see proposed part 210, subpart D) or other process pursuant to a rulemaking. While an immission-based approach would allow an HSR operation to choose noise mitigation measures that are locally selected, the cost of planning for and implementing such measures will likely exceed the cost of complying with the alternative noise emission standard proposed in the NPRM.²⁵ Nonetheless, FRA does not consider an immission-based approach to be appropriate for general applicability to high-speed train operations in the U.S., especially when an international, emission-based standard exists in the form of the EU regulation, as discussed below. An emission-based approach dovetails with the continued applicability of existing U.S. noise emission requirements and

Congress's finding underlying those requirements that Federal action is essential to deal with major noise sources in commerce, the control of which requires national uniformity of treatment.²⁶

There are several major benefits to adaptation of the EU regulation, currently EU Regulation No. 1304/2014, the Noise Technical Specifications for Interoperability (NOI TSI),²⁷ as the U.S. basis for alternative, high-speed train noise emission standards. In addition to serving as an established noise emission standard, the NOI TSI incorporates significant portions of International Organization for Standardization (ISO) industry standard 3095:2013 (Acoustics—Railway applications—Measurement of noise emitted by railbound vehicles) reflecting international consensus for high-speed train noise emissions. Similar to the 1975 EPA-established rule, and though adjustments are necessary for normalization, EU noise emissions for multiple-unit electric trains at speeds up to 250 kilometers per hour (km/h) (155 mph) are capped at 95 dB(A).²⁸

However, circumstances preclude wholesale adoption of the NOI TSI (though FRA invites comment on its adoption under proposed section 210.55). For instance, while the NOI TSI standards are inclusive of all rolling stock, operating conditions, and speeds, IIJA authorizes adoption of noise standards only for train operations above 160 mph.²⁹ Another element of the NOI TSI that FRA proposes not to adopt is the requirement to conduct testing on reference track as defined in Section 6.2 of ISO 3095:2013. This requirement is designed to meet an EU objective to be able to compare high-speed train noise across both locations and operations in different member Nations, and to separate noise contributions from the infrastructure versus noise contributions from train equipment. Reference track is specified in terms of two parameters: acoustic rail roughness level, related to micro-defects on the surface of the track; and track vibration decay rate, an indicator of the

vibration damping and noise radiation of the track. The parameter limits specified by the ISO Standard ensure that noise due to these effects is minimized. However, measurement of these parameters requires additional testing prior to each noise emission test, placing additional burden on testing entities. In addition, FRA research has indicated that these conditions may be difficult to meet, as there are only three test tracks that meet these requirements in the EU, and these tracks are limited in speed to 200 mph.³⁰ Compliance testing implementing the Noise Control Act ensures that measured noise emission levels are representative of normal operating conditions accounting for both typical track infrastructure and train contributions and does not require reference track testing with minimized noise contribution for comparability.

A notable aspect of the NOI TSI proposed to be adopted is the measurement distance specified: 25 feet (ft) (7.5 meters (m)) from the centerline of the track. To measure noise source emission levels, this relatively short distance is preferred to minimize variation due to physical, environmental, and meteorological differences between locations and repeated measurements. For comparison, existing U.S. standards specify a greater distance: 100 ft (30 m) from the centerline of the track. The measurement heights specified by the NOI TSI are 4 ft (1.2 m) and 12 ft (3.5 m) above top of rail. The 4-ft height is consistent with existing U.S. standards and is needed to capture noise sources lower on the body of the vehicle (rolling noise and engine/exhaust noise), which are prevalent in both lower- and higher-speed operations. The 12-ft measurement height is required for high-speed operations to measure noise sources accurately on the upper vehicle body (e.g., pantograph), where direct line of sight to a 4-ft-high microphone may be blocked or shielded by the train body. An illustration of both the microphone heights and distances relative to the train noise source is provided below.

²² The term “immission” refers to the impact of pollutants on humans and on the ecosystem. Every “emission,” or environmental pollutant emitted by a source, causes an “immission.”

²³ Because noise is generated at the source and perceived by the receiver, the path of the noise is a means to attenuate the noise towards the perception of the receiver. See High Speed Rail Noise Standards and Regulations at 15, Figure 4.

²⁴ 42 U.S.C. 4916(c)(2)(C).

²⁵ See *High Speed Rail: Cost of Compliance for Noise Mitigation Procedures*, FRA, at 1–2 (2022).

The report is available on FRA's website at <https://railroads.dot.gov/sites/fra.dot.gov/files/2022-01/HSR%20Noise%20Mitigation%20Procedures.pdf>. The report presents costs for several noise reduction methods. For methods employed at the source, costs range from \$50 million per track mile to increase the track curve radii (i.e., reduce the amount of track curvature) to \$18,000 per train for pantograph fairings. For methods along the noise path costs range from \$50 million per track mile for increasing the distance from the source to the receiver to \$133,000 per track mile for adding resilient padding to the track. Finally, for methods

at the receiver, costs range from \$1.8 million per track mile for barriers at the receiver's property boundary to \$500 per dwelling for sealing gaps.

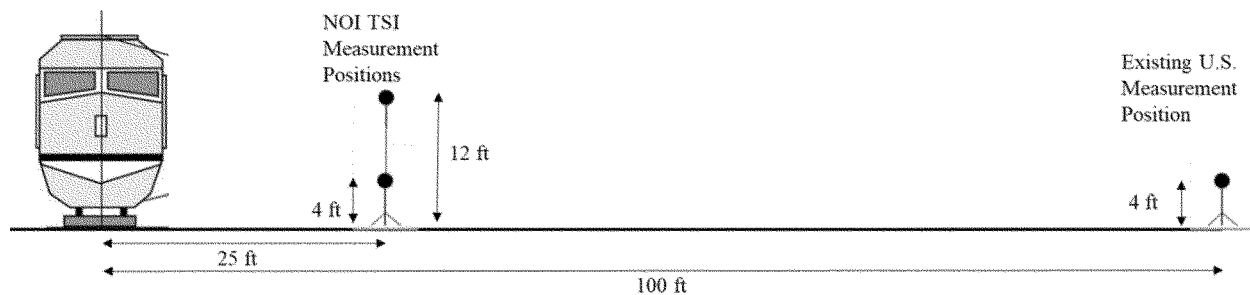
²⁶ 42 U.S.C. 4901(a)(3).

²⁷ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1304>.

²⁸ As adapted and normalized for this rule from the NOI TSI, this value is 96 dB(A). See Technical Report, 4.2.2.

²⁹ 42 U.S.C. 4916(c)(3).

³⁰ See High Speed Rail Noise Standards and Regulations at 138.



Sound dissipates (attenuates) with increasing distance as it travels. As a result, the sound level measured at 100 ft would be seven to nine dB lower in level than the sound measured at 25 ft. This difference has been taken into account in normalizing U.S. standards with those of the EU.³¹

IV. Section-by-Section Analysis

Comments are sought on all proposals made in this NPRM.

Amendments to 49 CFR Part 210, Railroad Noise Emission Compliance Regulations

Subpart A—General Provisions

Section 210.5 Definitions

FRA proposes to establish a definition for “background noise.” The proposed definition captures more generally the definition implicit in 40 CFR 201.23. FRA further proposes additional definitions for “maximum operating speed” and “pass-by time” to describe key measurements in the determination of equivalent sound level to establish alternative compliance. FRA would also define “mph” for clarity.

Subpart C—High-Speed Train Noise Emission Alternative Compliance

Section 210.41 Scope

This subpart would provide an alternative approach available to HSR train manufacturers and railroads to establish noise emission compliance for train operations exceeding 160 mph, up to 220 mph. As authorized by section 22423 of IJA, FRA is proposing to amend its noise emission compliance regulations in 49 CFR part 210 to address noise emissions standards for trains operating at speeds exceeding 160 mph. Consequently, in lieu of the requirements of 40 CFR part 201, FRA is proposing that the total sound level emitted by operation of both rail cars and locomotives at speeds exceeding 160 mph may comply with the requirements in this rulemaking. However, no railroad would be required to avail itself of the alternative processes

for noise emission compliance proposed in this rulemaking. The alternative processes would be optional. A railroad may continue to demonstrate high-speed train noise emission compliance in accordance with the standards in 40 CFR part 201.

The alternative approach in new subpart C utilizes a compliance testing process under specified test conditions. It includes a requirement to notify FRA before conducting the testing and prepare a detailed report of the test results that documents compliance.

Unlike compliance testing under existing subpart B, subpart C does not contemplate FRA conducting random testing to ensure compliance at train speeds exceeding 160 mph. Aerodynamic noise, dominant at high speeds (as covered under subpart C), should be consistent between trains of the same model series and independent of location. Aerodynamic noise is dependent mainly on design features such as pantograph shrouds or recesses, wheel covers, and train nose shape.³² Subpart B will continue to provide for random compliance testing at “any time” or “at any appropriate location”³³ for train operations at or below 160 mph, even when the alternative in subpart C is selected, as nothing in this rulemaking affects compliance with existing requirements for train operations at such speeds. Rolling noise is also dominant at lower speeds and can vary from train to train and location to location due to factors such as track roughness and stiffness, as well as wheel roughness.

Section 210.43 Alternative Compliance Standard

As adapted and normalized from the NOI TSI, the proposed alternative compliance standard establishes a baseline equivalent sound level of 96 dB(A) for the duration of the train pass-

by for a speed of 160 mph. Below this speed, mechanical noise emissions will generally predominate over aerodynamic noise emissions; above 160 mph, aerodynamic noise begins to become the dominant contributor to noise. The equivalent sound level of 96 dB(A), though numerically higher than the prescribed maximum sound level standard in part 201 of 90 dB(A) for locomotives and 93 dB(A) for railcars, reflects measurement from 25 ft rather than the part 201 measurement distance of 100 ft, and differences in the pass-by metric. The baseline equivalent sound level metric represents essentially the average sound level of the high-speed train during its pass-by time at a speed of 160 mph, whereas the current standard uses the maximum sound level during the locomotive or railcar pass-by. To reiterate, sound attenuates with increasing distance, so the measured sound level at 100 ft would be less; factors such as the trainset type, train speed, and terrain all affect the sound level. As noted above, this closer measurement distance and the equivalent sound level noise descriptor are adapted from the NOI TSI, which provides for measurement from a 7.5 m (25 ft) distance from the centerline of the track.

There is the possibility for a high-speed train to expose some locations to noise above the current allowable maximum sound level as speeds exceed 160 mph; however, such exposure is limited by the shorter duration of the high-speed pass-by. A short-duration, high-speed train pass-by nominally exceeding the current maximum sound level standard can be expected to result in lower total noise exposure than a longer duration, conventional-speed train pass-by at the current noise emission standard. This is because prevailing train operating speeds are significantly slower than 160 mph, at times averaging one-half or less of this speed even for passenger trains, resulting in the potential for substantially longer periods of noise exposure at conventional speeds than that of proposed, high-speed

³¹ See Technical Report, 4.4.1.

³² F. Poisson, *Railway Noise Generated by High-Speed Trains*, in 126 Notes on Numerical Fluid Mechanics and Multidisciplinary Design, at 457–80 (Springer, Berlin, Heidelberg, 2015), available in the rulemaking docket (<http://www.regulations.gov>, Docket No. FRA–2025–0786).

³³ See 49 CFR 210.23.

operations.³⁴ Further, this proposed rule does not relieve carriers of the requirement to comply with the current noise emission standards during operations taking place at speeds up to 160 mph.

For trains operating at a maximum speed exceeding 160 mph, the measured noise emission is normalized to the 160-mph baseline speed, through a formula, before comparison to the 96 dB(A) limit. This formula is based upon the process set forth in the NOI TSI, and its incorporated provisions of ISO 3095:2013. Under the proposed alternative standard, the allowable noise emission limit increases with increasing speed. At the maximum operating speed under the proposed standard (220 mph), the limit would be approximately 103 dB(A). FRA is not proposing to extend use of the adjustment formula beyond 220 mph to an unlimited speed, and the NOI TSI's speed-adjustment formula is similarly upper-bounded. Instead, FRA is proposing to provide for alternative compliance through a special approval process in subpart D.

Under the existing EPA standard, a short-duration exceedance of the 90 dB(A) maximum sound level standard during emissions testing will result in a test failure, notwithstanding the amount of total noise energy emitted and related noise exposure of the pass-by. As a result, some high-speed operations may result in lower overall noise exposure than operations at slower operating speeds, even though they would not be permitted under current requirements. In effect, the proposed alternative standard would permit high-speed operations at a sound exposure level similar to the current standard at train speeds up to 160 mph when measured over the entire length of the pass-by.

The NOI TSI generally requires additional pass-by testing at multiple lower speeds, in addition to testing at the maximum operating speed. FRA considered requiring a test for both at 160 mph and testing at the maximum operating speed. However, FRA determined the 160-mph test to be unnecessarily duplicative because operations at speeds of 160 mph or less will continue to require verification

procedures in compliance with the existing EPA standard. The NOI TSI is designed as a comprehensive test for noise emissions, including noise emissions at operating speeds of 160 mph or less for individual locomotives and cars, stationary noise, and startup noise. By contrast, the authorization granted in IIJA sets the focus on the noise emissions of train operations at speeds exceeding 160 mph. FRA seeks comment on the proposal to limit compliance testing under this alternative standard for operations above 160 mph only to the proposed maximum speed of the operation, rather than also to require baseline testing under this alternative standard at 160 mph.

Section 210.45 Measurement Site Conditions

Current U.S. standards for measurement of noise emissions specify a measurement distance of 100 ft from the centerline of the track, and a height of 4 ft from the ground.³⁵ In contrast, NOI TSI Section 4.2.3 (proposed to be adopted here) specifies a measurement distance of 7.5 m (25 ft) at two heights: 1.2 m (4 ft) and 3.5 m (12 ft) from the top of the rail. Sound levels attenuate with distance, even in the absence of sources of sound absorption. A measurement taken from 25 ft would generally measure a source at seven to nine dB higher than a measurement of the same source from 100 ft.³⁶ In addition, as explained above, in most cases the shorter distance of 25 ft provides less opportunity for the sound level measurement to vary because of terrain, weather, and other factors at the test site that can cause sound reflection, absorption, or diffusion.

Usage of the top of the rail provides a common reference point to measure noise sources on the body of the vehicle. The 4-ft measurement height is generally consistent with the current standard for capturing noise on the lower segment of the vehicle body, which is the common source of mechanical noise. The 12-ft measurement height is required for accurate measurement of noise sources on the upper vehicle body, such as a pantograph, by providing a line of sight to those sources. The lower, 4-ft measurement cannot be expected to make an accurate measurement of this aerodynamic noise because the train body may partially block the noise being emitted. Other requirements, including the requirements for flat terrain within a triangular area from the microphone to

the test site and the requirement for a 75-ft radius free of large, sound-reflecting objects, are based upon the NOI TSI.

Section 210.47 Measurement Criteria and Procedures

This section establishes the measurement criteria, instrumentation requirements, calibration requirements, interference-minimizing equipment requirements, measurement durations, minimum background noise thresholds, and averaging criteria for demonstrating alternative compliance.

Paragraph (a) references the sound level meter response specified in 40 CFR 201.21.

The instrumentation requirements of paragraph (b) are based upon the specifications of ISO 3095:2013, Sections 4.1 and 4.2. These are, in turn, specified in International Electrotechnical Commission (IEC) 61672–1:2002, with the requirement that a sound calibrator meeting the requirements of IEC 60942:2003 be used for calibration before and after each series of measurements. FRA has elected not to incorporate these standards by reference, but instead to reference these standards as a current example of an acceptable industry standard. FRA does not intend to take a position at this time on the sufficiency of any current, future, or competing industry standard for sound level meter or sound calibrator instruments, noting that these example standards have been “current” for two decades. FRA seeks comment on this flexible approach to maintaining accuracy in measurement equipment.

The current regulation prescribes the use of mounting and a windscreen according to the microphone manufacturer's recommendations. ISO 3095:2013 provides that a tripod and windscreen must be used during measurement. This suggests that such requirements have become industry standard and should no longer be left to the recommendation of the manufacturer. In addition, sound measurements taken at maximum operating speed can be expected to be associated with significantly higher aerodynamic activity, making the use of an effective mounting and windscreen necessary for a measurement with minimal interference.

Paragraph (c) establishes the pass-by time as the relevant time period for calculation of L_{eq} . Note that L_{eq} is an abbreviation for equivalent sound level and, as defined in 40 CFR 201.1(k), is “the level, in decibels, of the mean-square A-weighted sound pressure during a stated time period, with reference to the square of the standard

³⁴ On a per train basis, FRA expects the NPRM alternative noise standards to result in noise exposure similar to that under the existing noise standards in 40 CFR part 201 due to a combination of factors: (a) the shorter HSR by-pass period, (b) the fact that HSR operations will likely incorporate larger distance buffers between communities and rail lines, (c) the use of site-specific noise mitigations as necessary, and (d) the lack of warning sounds otherwise emitted for highway-rail grade crossings (*i.e.*, the train horn), which will not be present in HSR operations that lack grade crossings.

³⁵ 40 CFR 201.24.

³⁶ See Technical Report, 4.4.1.

reference sound pressure of 20 micropascals.”³⁷

Paragraph (d) provides that care shall be taken to ensure that the noise from other sources does not influence the measurements significantly.

Consistent with current regulations, this section provides that background noise immediately before and after the pass-by test shall be measured. Under paragraph (e), to ensure comparability with the L_{eq} measurement for the test, the sound level measurement shall also be calculated based upon a set time period, which is based upon ISO 3095:2013, Section 6.13. Under these procedures, the sound level meter would generally record for a continuous period between approximately 45 seconds to one minute. Following the test, the measurement duration would be designated based upon the times at which the 10 dB threshold is met before and after train pass-by. A remaining period of at least 20 seconds before and 20 seconds after the measurement duration would constitute the background noise measurement period and would need to remain below the 10 dB threshold throughout the period for the test to be valid.

Paragraph (f) provides for averaging three measurements under each test condition and describes other criteria for determining compliance.

Section 210.49 Operation Standards

This section establishes the operating standards for testing in compliance with this subpart. Compliance shall be demonstrated under pass-by testing at the maximum operating speed for the train. This section allows for variability in the test speed at ± 5 mph. The calibration tolerance for any speed measurement device is also set at ± 5 mph of the stated measurement. This permits a hypothetical, though unlikely, allowance for actual test speeds to be up to 10 mph above or below the required test speed. Some tolerance for variance must be allowed to account for de minimis errors and a small degree of acceptable variability both within the testing environment and among test devices.

FRA proposes a consistent, 5-mph variability allowance primarily for ease of use. ISO 3095:2013, Section 6.6.2 provides for requirements that are less stringent: a ± 5 percent variability in speed, with a maximum permissible measurement error of three percent. At speeds from 160 to 220 mph, the individual allowance for measurement

error ranges from slightly smaller to more than 25 percent larger than the proposed 5-mph allowance, while the five percent variability in speed provides for a consistently larger variance from eight to 11 mph. FRA seeks comment on the selection of standards for test speed variability and speed measurement calibration tolerance.

The requirements for minimum tractive effort and operation of passenger heating, ventilation, and air conditioning (HVAC) systems align the test more closely with normal operating conditions. Each requirement is adapted from ISO 3095:2013, Section 6.3. Minimum tractive effort at a given speed will generally reflect the least amount of energy applied to the mechanical components, which is consistent with safe and efficient operation. Though this is expected to produce a lower sound level than operation at a higher tractive effort, it is generally the state in which a high-speed pass-by will operate. HVAC systems contribute to an overall higher sound level and should be included during any test to reflect normal operations.

ISO 3095:2013, Section 6.3 additionally includes wheel tread conditioning standards, to the effect that the wheels used on the test train should have been run at least 1,000 km (~600 miles). The Technical Report found that this standard was likely included for the portion of the testing protocol at lower speeds (80 km/h) as a means of defining normal operating conditions.³⁸ Based on this determination, FRA has not included a proposal for wheel tread conditioning standards. It is expected that most tests will likely include wheel sets that have met such criteria. FRA invites comment on the inclusion of such a requirement.

Section 210.51 Track Conditions

This section specifies the conditions for track necessary to conduct a noise emission test in accordance with normal operating conditions. Paragraph (a) is derived from the current standards in 40 CFR 201.24, which provide for taking noise measurements on “reasonably well-maintained tracks.” Though the standards do not specify greater detail with respect to track maintenance, in its 1975 Background Document for Railroad Noise Emission Standards, EPA noted that FRA’s standards for track safety allowed for either repair of the track or reduced speeds in certain circumstances to address track

conditions.³⁹ EPA further noted that noise level from the impact between the train wheels and rail increases arithmetically with velocity.⁴⁰

As poorly maintained track contributes to an increase in the noise level of wheel/rail interactions, and higher velocity tends to exacerbate the noise resulting from such interactions, FRA expects that the proposed noise emission standard will serve as the primary factor for concluding appropriate quality of track maintenance under this section. Track that is maintained in accordance with the applicable FRA Track Safety Standards (49 CFR part 213) should meet this requirement.

A limitation on track curvature is provided for in 40 CFR 201.23, with limits to tie-and-ballast track. Paragraph (b) would maintain limits on these elements, based on the standards set forth in ISO 3095:2013 applicable to HSR operations. ISO 3095:2013 also sets forth a standard for track gradient. FRA notes that a consistent track gradient allows the train to more effectively maintain the tractive effort that is most consistent with normal operations. An incline grade would generally result in excessive tractive effort and increased sound level, while a decline grade would result in less effort and a decreased sound level. Similarly, as an excessively narrow radius of curvature reflects an uncommonly curved segment of track in HSR operations, a limitation on the degree of curvature is necessary to maintain testing under normal operating conditions. FRA has accordingly proposed to adopt the international standard.

FRA recognizes that some HSR operations may adopt a track superstructure other than the standard track with ballast bed. For example, the track superstructure may be specially engineered for the tonnage, speed, and other characteristics of the HSR operation, and be integral to the operational, safety, and noise emission performance of the HSR system. In recognition of this, FRA proposes to permit carriers to substitute a different track superstructure, such as slab track, to demonstrate compliance with the proposed standard. In order to facilitate noise mitigation, the alternative superstructure may include rail or track shielding (e.g., low barriers). However, the different track superstructure and any rail or track shielding must be consistently applied throughout the entire HSR system.

³⁷ See also 49 CFR 210.5(b) (incorporating definitions in 40 CFR 201.1 for purposes of part 210).

³⁸ See Technical Report, 4.5.1.

³⁹ See “Background Document for Railroad Noise Emission Standards,” EPA, 509, 513–15 (1975).

⁴⁰ See *id.* at 62, 512–13.

Section 210.53 Test Notification and Compliance Reporting

This section specifies the process for notifying FRA of equipment testing for compliance with this subpart and information to be collected and stored for inspection by FRA. Part 210 authorizes FRA inspectors to examine or inspect railroad equipment for compliance with the noise emission standards, or to request in writing that a railroad carrier do so.⁴¹ The proposed pass-by testing standards, while affording greater flexibility to HSR operations, may tend to increase the time, cost, and complexity of such testing. To aid in the inspection process while reducing the need for such cumulative testing, FRA proposes to require that carriers maintain a detailed record of testing for distribution to FRA inspectors upon request.

In addition, this section would require that FRA be notified 30 days before conducting the testing, to permit the agency to witness the testing. This notification requirement is consistent with existing FRA requirements to provide the agency sufficient time to arrange for observing the conduct of compliance testing in person, such as for passenger rail equipment that has not previously been used in the United States.⁴² Notification may be submitted electronically. FRA seeks comment on these proposed requirements.

Section 210.55 Previously Tested Operations

This section provides that results from a previously tested operation may be used to demonstrate compliance for a proposed operation at any operating speed between 160 mph and the maximum operating speed for which the previously tested operation demonstrated compliance, up to 220 mph. This section also describes the conditions required for use of the results. FRA invites comment on the specifics of this proposal.

In addition, FRA invites comment on whether the rule should more expressly allow reliance on use of alternate, EU operational testing standards and results. Specifically, FRA invites comment on whether testing that meets the requirements of EU Regulation No. 1304/2014, NOI TSI, may be used for purposes of demonstrating compliance with this subpart, either for a proposed operation or as the record of a previously tested operation, and, if so, whether equipment used in such testing must be listed in the European Register

of Authorized Types of Vehicles,⁴³ or a comparable list of approved equipment maintained by the European Union Agency for Railways or its successor agency.

Subpart D—Special Approvals

Section 210.61 Scope of Subpart

This section provides a special approval process for train operations exceeding 220 mph to demonstrate a level of noise emission protection consistent with the requirements of subpart C of this part. The process would include publication of the petition for special approval in the **Federal Register** and an opportunity for comment. The special approval process would likely benefit unique high-speed train operations, such as magnetic levitation train systems or systems wholly operating in an enclosed right-of-way, for which noise emission limits of particular, rather than general, application may be necessary or appropriate, or both. In this regard, the special approval process would be able to consider use of noise mitigation techniques, to the extent reasonable if the benefits exceed the costs, to provide protection against train noise emission, as provided under 42 U.S.C. 4916(c)(2)(C). FRA would encourage HSR operators and manufacturers to approach FRA should they have any questions or concerns about demonstrating compliance with the requirements for special approval under this subpart. FRA invites comment on this proposed subpart D.

Section 210.63 Petition for Special Approval

This section describes the special approval process. This section would require a petition to include a detailed description of the proposed noise emission standard, including any alternative testing methodologies or procedures, as well as measurement criteria. This section would also require a petition to include a description of the operating environment and its features, as relevant to the petition. The petition must also include, to the extent practical, all testing and analysis information required by section 210.53 showing that the proposed standard provides a level of protection consistent with the noise emission limits under subpart C of this part. FRA would accept alternate analysis that explains the lack of information required by section 210.53, such as identification of variances with the proposed testing conditions under subpart C. Consistent

with special approval petition processes in other FRA regulations, FRA would publish notice of the petition in the **Federal Register** summarizing the information provided in the petition.

Note that, unlike the emission standard proposed in subpart C, a testing method utilizing an immission- or receiver-based approach, including the use of cost-effective noise mitigation techniques, could be proposed as part of a special approval petition under subpart D. FRA would consider whether such a petition demonstrated that the alternative approach provides a level of noise emission protection consistent with the requirements of subpart C.

Section 210.65 Disposition

This section describes the process for determining whether to grant a petition for special approval and related procedures. FRA invites comments on whether an expected timeline for a decision on a petition should be specified in the rule.

V. Regulatory Impact and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

E.O. 12866, *Regulatory Planning and Review*,⁴⁴ as implemented by DOT Order 2100.6B, *Policies and Procedures for Rulemaking*,⁴⁵ requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” DOT Order 2100.6B specifies that regulations generally should “not be issued unless their benefits are expected to exceed their costs.” In arriving at those conclusions, E.O. 12866 requires that agencies should consider “both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify” and “maximize net benefits . . . unless a statute requires another regulatory approach.” E.O. 12866 also requires that “agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” DOT Order 2100.6B directs FRA and other Operating Administrations generally to choose the “least costly regulatory alternative that achieves the relevant objectives” unless

⁴⁴ 58 FR 51735 (Oct. 4, 1993).

⁴⁵ DOT–2100.6B—Policies and Procedures for Rulemakings, available at <https://www.transportation.gov/regulations/dot-order-21006b-rulemaking-and-guidance-procedures>.

⁴¹ See 49 CFR 210.23.

⁴² See 49 CFR 238.111(b)(2).

⁴³ Available at https://www.era.europa.eu/domains/registers/eratv_en.

required by law or compelling safety need.

E.O. 12866 and DOT Order 2100.6B also require that FRA submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President’s Office of Management and Budget (OMB) for review. This rule is a significant regulatory action pursuant to E.O. 12866; however, it has not been designated as a “major rule” as defined by the Congressional Review Act (5 U.S.C. 801, *et seq.*).

FRA analyzed the potential costs and benefits of this proposed rule. In this analysis, FRA expects the most likely scenario for HSR operations will be HSR trainset service operating on shared track in urban environments at conventional speeds (up to about 125 mph), and on dedicated track outside of urban areas at high speeds (*i.e.*, over 160 mph). This scenario is consistent with the earlier FRA rulemakings on safety standards for track⁴⁶ and passenger equipment⁴⁷ at operating speeds up to 220 mph. When operating at conventional speeds, HSR trainsets will continue to fall under the existing noise emission standards in 40 CFR part 201. FRA assessed that this proposed rule would result in cost savings for the industry over a 30-year period, while protecting public health and safety. The proposed rulemaking would alleviate a regulatory obstacle to high-speed train operations, making these operations more implementable, while promoting greater harmonization with global markets for high-speed train technology and equipment. Also see the assessment under section F, International Trade Impact Assessment, below.

Costs

FRA estimated the marginal costs and benefits likely to occur over the first 30 years of this proposed rule. Without this NPRM, both conventional-speed and high-speed trains would fall under the existing noise standards in 40 CFR part 201 and incur costs for noise emission testing. Under this NPRM, high-speed trains could instead be tested using an alternative standard. While the sound level measurement equipment and test procedures are generally similar for conducting noise emission testing either under the existing noise standard or under the NPRM, some additional equipment (*i.e.*, another sound level meter) and labor time may be needed for testing high-speed trainsets under the NPRM. For example, it may take additional time to arrange testing of the high-speed trainset, find a suitable test site for high-speed trains, and set up another sound level meter to conduct a test at a 12-ft height (whereas the existing regulation requires a test at only a 4-ft height). In addition, under the NPRM, the economic analysis accounted for purchase of an additional sound level meter, reasoning that a risk-averse entity would not want to delay noise emission testing because of a faulty sound level meter when the high-speed train and testing personnel are gathered and ready at the test site. Because these changes are incremental for noise emission testing under the NPRM, the cost estimates are small in scale. The estimated annualized costs are about \$8,500 using a seven percent discount rate. In present value terms, the estimated costs are \$105,462 (in 2024 dollars, discounted at seven percent). In terms of public health and safety, FRA expects no increase in noise impacts because of the shorter duration

of a high-speed trainset pass-by of a wayside location at 160 mph.

This analysis estimated a range of four to six HSR operations, or an average of five HSR operations would be affected by this rulemaking over a 30-year period. For railroads that follow the proposed rule, noise testing would be required initially and when there are material differences in train equipment that would affect the level of emitted noise (approximately every 15 years).

Benefits

At the present time there are no high-speed rail operations between 160 mph and 220 mph in the U.S. which could have yielded data to estimate benefits. In an attempt to quantify benefits, FRA used as a proxy the final rule on Passenger Equipment Safety Standards; Standards for Alternative Compliance and High-Speed Trainsets⁴⁸ (Tier III rule). Similar to that rulemaking, FRA reasoned high-speed rail equipment in international operation would require modification to comply with the existing baseline noise emission standards—a cost that could then be saved by complying with the alternative standard in the NPRM. FRA “borrowed” these benefits from the Tier III rule as a general estimation method and not a specific benefit estimate of a specific project or projects. FRA estimated annualized benefits (in terms of avoided costs) at about \$5 million using a seven percent discount rate, or about \$66 million in present value terms (in 2024 dollars, discounted at seven percent).

With low costs, the estimated net benefits are about the same at about \$5 million in annualized terms or \$66 million in present value terms, both using a seven percent discount rate. The costs and benefits are presented in the table below.

TABLE V–1—COSTS AND BENEFITS OVER A 30-YEAR PERIOD OF ANALYSIS
[2024 Dollars]

Cost impact	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Equipment (under section 210.47, Measurements and Criteria & Procedures) ...	\$62,091	\$98,195	\$5,004	\$5,010
Factory Calibration (under section 210.47)	5,916	9,356	476	477
Labor (under section 210.43, Alternative Compliance Std., section 210.47, section 210.53, Test Notification and Compliance Reporting).	16,745	26,482	1,350	1,351
Petition for Special Approval (under section 210.63)	20,709	44,196	1,669	2,255

Qualitative Cost, Public Health and Safety: No expected increase in noise impacts because of the shorter duration of a high-speed trainset’s pass-by at 160 mph. Also, no contributing impacts associated with warning sounds otherwise emitted for highway-rail grade crossings (not present in HSR operations).

Total NPRM Costs	105,462	178,230	8,499	9,093
Total NPRM Benefits	65,947,718 ...	100,525,866	5,400,150	5,056,374
Disposition of Special Approval, Government Cost (under section 210.65)	<i>de minimis</i> ...	<i>de minimis</i> ...	<i>de minimis</i> ...	<i>de minimis</i>

⁴⁶ 78 FR 16052 (Mar. 13, 2013).

⁴⁷ 83 FR 59182 (Nov. 21, 2018).

⁴⁸ *Id.*

TABLE V–1—COSTS AND BENEFITS OVER A 30-YEAR PERIOD OF ANALYSIS—Continued
[2024 Dollars]

Cost impact	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Net Benefits	65,842,257 ...	100,347,636	5,391,651	5,047,281

* Proxy benefit adapted from November 2018 Tier III rule.
Note: Figures may not sum due to rounding.

Alternatives

One of the alternatives to a regulatory action is not to regulate at all. As mentioned above, E.O. 12866 directs agencies to consider the costs and benefits of a scenario without the regulation, which in this case would consist of a scenario without the proposed alternative noise emission standards for HSR operations.⁴⁹ Given the existing 1970s-era noise emission standard did not account for the noise emission characteristics of HSR, and there are several potential HSR routes planned, FRA reasons HSR operations would still need an updated noise standard to enable most trainsets to operate at high speed.⁵⁰ Absent this proposed regulation, railroads may operate their trainsets at conventional speeds only (below 160 mph) to comply feasibly with the existing noise standard.

When developing this NPRM, FRA considered two broad approaches to regulating HSR noise emissions: an immission-based approach and an emission-based approach. As described above in the Technical Background section, an immission-based approach is sensitive to noise mitigation where the noise is received, whereas the emission-based approach is sensitive to noise mitigation at the source.

In terms of benefits and costs, the immissions approach offers the possibility of tailoring an HSR trainset and related infrastructure to its local environment, which potentially could offer greater utility. That is, the HSR operation would be site-specific and, in theory, better able to match the needs of the local population in terms of mitigating noise.⁵¹ The immissions approach would likely encourage noise mitigation measures such as sound barriers, acoustic windows, and larger

buffer zones between the trainset and impacted areas. Local land use planning would decide the appropriate mix of mitigations. As the mitigations would vary by site, it is difficult to estimate a precise overall cost for this approach, but FRA expects the mitigation (and associated planning) could be costly and time-consuming. As noted earlier, a study of several types of mitigations applied at the source, along the pathway to the receiver, or at the receiver (of which the two latter categories would represent an immission-based approach) found costs greater than those estimated in this analysis for the emission-based approach.⁵² These costs are per mile or per dwelling; costs would rise depending on the length of the HSR route and affected structures. To highlight one potential mitigation measure, FRA presents the cost of noise barriers. The same study found the most effective noise barriers are those located at the edge of the railroad right-of-way, designed proportional to the length of the train, and constructed at least 6.6 feet high (or 2 meters). The cost to construct such a barrier is about \$1.84 million per mile of track, or about \$3.7 million per mile for both sides of the track.⁵³ Other mitigations may be needed or desired by the local population.

In contrast, the emission-based approach sets a uniform standard for noise emissions. Under this approach, similar trainsets could be used in different locations and still meet the standard. (Any potential intercity corridor considering HSR operations would still assess its noise impact and consider appropriate mitigations through other processes before starting operations.) By using trainsets that all meet the same noise standard, they may be similar in design and operation (given technology at this point in time). The overall national costs for maintenance, repair, and training could

be reduced as there would be fewer types of equipment to manage. There also may be economies of scale if multiple HSR corridors order the same or similar equipment. (Unique HSR operations could always file for approval under the proposed Special Approval process.) From a policy perspective, the emissions approach provides for an interoperable system, while the immissions approach would likely not.

As an alternative to testing HSR trainsets in the U.S., FRA is considering allowing compliance tests performed under EU regulations to demonstrate compliance with the NPRM’s alternative noise emission standard. (See proposed section 210.55, Previously Tested Operations, and corresponding discussion in the Section-by-Section Analysis.) Thus, if a manufacturer is adapting a trainset from Europe for use in a U.S. HSR operation, the manufacturer may already have similar compliance test results from Europe to draw upon. If the final rule allows EU compliance testing to be used to demonstrate U.S. compliance, that would represent another, less strict alternative, and costs would decrease. However, some of the cost savings would be offset by the administrative cost to prepare data and analysis demonstrating that the EU compliance test offers the same level of protection against noise as the NPRM.

Conclusion

Overall, this is an enabling rule. Under the proposed rule, stakeholders can avoid the costs of meeting the current noise standards. The costs of meeting the current standards will be very high, or even infeasible given the different nature of noise at high speeds, where aerodynamic noise predominates over mechanical and propulsion noises. Stakeholders may need to make significant changes to the equipment under current noise standards.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, *Unleashing Prosperity Through Deregulation*, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior

⁴⁹ This analysis does not consider a scenario without the Noise Control Act, which would require Congressional action to repeal.
⁵⁰ *High Speed Ground Transportation Noise and Vibration Impact Assessment*, FRA (2012), see especially Appendix D.
⁵¹ Charles M. Tiebout, “A Pure Theory of Local Expenditures” (Oct. 1956), available at https://fbaum.unc.edu/teaching/PLSC541_Fall08/tiebout_1956.pdf. The concept of HSR operations reflecting the preferences of the local population draws generally on Tiebout’s paper.

⁵² *High Speed Rail: Cost of Compliance for Noise Mitigation Procedures* (2022). See especially Tables 53 to 55. The authors note that the costs are not estimates of the true cost of applying noise mitigation measures to existing or planned HSR operations, but estimate costs for two potential operations at a macro level (p. 77).
⁵³ *Id.* at 95, 111, and 147.

regulations be identified for elimination.”⁵⁴ Implementation guidance for E.O. 14192 issued by OMB (Memorandum M–25–20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.⁵⁵

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This proposed rulemaking is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action upon issuance of a final rule. FRA estimates the alternative standard for noise emissions offered in the NPRM could result in about \$5 million in annualized cost savings at a seven percent discount rate over a 30-year time period.

C. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980⁵⁶ and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking*,⁵⁷ require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities and has therefore prepared this IRFA. FRA seeks public comment from small entities on the economic impacts of this proposed rule.

1. Reasons for Considering Agency Action

FRA seeks to amend long-standing noise emission regulations to address the needs of HSR train operators while protecting public health and safety and promoting greater harmonization with international practice. Currently, regulations in part 201 and part 210 effectively limit train speeds to 160 mph and act as a regulatory obstacle to HSR implementation. This NPRM proposes both an alternative noise emission

standard to help enable trains to operate at speeds exceeding 160 mph, up to 220 mph, and also a special approval process for noise emissions from train operations at speeds greater than 220 mph. FRA expects the proposed regulatory framework to result in similar, total noise exposure to people living along HSR rights-of-way as from the existing noise emission requirements. Were this proposed approach not pursued, the existing requirements would continue to act to prevent the benefits of interoperable HSR service from being fully realized in the United States.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As authorized by section 22423 of IIJA, this proposed rule would amend the noise emission regulations to address the unique noise emission characteristics of trains operating at speeds exceeding 160 mph, up to 220 mph. A special approval process would be required for HSR operations at speeds greater than 220 mph. The NPRM seeks to remove a regulatory barrier to HSR operations and protect public health and safety by limiting noise exposure to levels consistent with current law while promoting greater harmonization with international practice.

3. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a “small entity” in the railroad industry includes a for-profit “line-haul railroad” that has fewer than 1,500 employees and a “short line railroad” with fewer than 1,500 employees.⁵⁸

⁵⁸ “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. NAICS Codes 482111 and 482112 indicate “Line Haul” and “Short Line” railroads respectively. Per SBA, any firm under NAICS Code 482112 that employs more than 1,500 employees cannot qualify as a small business. See U.S. Small Business Size Standards by NAICS Industry, available at <https://www.ecfr.gov/current/title-13/chapter-I/part-121#121.201>.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$40.4 million or less after applying the revenue deflator to adjust annual revenues for inflation;⁵⁹ and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.⁶⁰ FRA is using this definition for the NPRM.

Class III Railroads: HSR operators that can avail themselves of the NPRM’s alternative noise emission standard are likely to operate Tier III⁶¹ passenger equipment on shared track when in urban areas with high population densities, at speeds not exceeding 125 mph. All trainsets operating on shared track are governed by the maximum operating speed for that segment of track, which ranges from 15 mph to 125 mph for passenger trains on track Classes 1 through 7.⁶² Most Class III railroads own and operate track supporting Class 3 speeds or lower, and the maximum operating speed for passenger trains on Class 3 is 60 mph.⁶³ Accordingly, even if a Class III railroad invested in the highest class of track feasible to support shared operations, HSR trainset operations over such track would still be subject to the existing baseline noise emission requirements. Further, under FRA’s Tier III standards, HSR trainsets traveling at speeds exceeding 125 mph up to 220 mph would be required to operate in an exclusive right-of-way, most likely in rural areas with low population density. Given Class III railroads do not own and operate track that could support HSR trains operating between 160 mph to 220 mph, no HSR operations would likely be conducted on Class III railroad tracks and Class III railroads would not be impacted by this NPRM.

Small Governmental Jurisdictions: Likewise, the NPRM’s proposed

⁵⁴ Executive Office of the President. *Executive Order 14192 of January 31, 2025. Unleashing Prosperity Through Deregulation*. 90 FR 9065–9067 (Feb. 6, 2025).

⁵⁵ Executive Office of the President. Office of Management and Budget. Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.” Memorandum M–25–20. Mar. 26, 2025.

⁵⁶ 5 U.S.C. 601, *et seq.*

⁵⁷ 67 FR 53461 (Aug. 16, 2002).

⁵⁹ 49 CFR 1201.1–1 (10–1–2024 edition). Available at <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-C/part-1201>.

⁶⁰ 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

⁶¹ Tier III operations are passenger train operations “in a shared right-of-way at speeds not exceeding 125 mph and in an exclusive right-of-way without grade crossings at speeds exceeding 125 mph but not exceeding 220 mph.” See 49 CFR 238.5.

⁶² 49 CFR 213.9(a), 213.307(a).

⁶³ 49 CFR 213.9(a).

alternative noise emission standard should result in no more total noise exposure to small governmental jurisdictions with a population of 50,000 or less, on a per train basis, than the existing noise emission standard in 40 CFR part 201.

FRA reviewed potential HSR operations in regions throughout the United States. These potential HSR operations are expected to comply with the NPRM's alternative noise emission standard when providing HSR service to connect large urban areas. Further, while the HSR operators would go through rural areas and small governmental jurisdictions such as cities or towns with a population of 50,000 or less (as well as large urban areas), FRA expects that the overall noise exposure under the proposed standard for operations at high speed would be similar to that experienced under current requirements. In addition, operation through small governmental jurisdictions would be considered in any noise analysis (*e.g.*, under NEPA) to evaluate a specific proposed project's potential effects and apply mitigation as appropriate to avoid negative impacts, when the proposed project is a major Federal action taken by a Federal agency, such as providing financial assistance.⁶⁴ See discussion under Section V.G (National Environmental Policy Act Compliance) below. Therefore, FRA assesses these small governmental jurisdictions would not be negatively impacted by the rule.

Manufacturers: FRA has identified six HSR trainset manufacturers⁶⁵ that would be positively affected by the proposed rule from the increased demand for specialized high-speed equipment.⁶⁶ All six firms employ more than the 1,500 employees required to exceed the SBA size standards requirements and therefore are not considered small entities. FRA has confirmed there are no small businesses manufacturing HSR trainsets as the prime contractors. FRA expects the impact of the proposed rule would be to benefit passenger railroad operators and HSR trainset manufacturers by providing the opportunity to cost-effectively advance interoperable HSR service.

Either the HSR trainset manufacturers or passenger HSR operators would perform the noise emission test to comply with the alternative noise

emission standard under the NPRM. As mentioned, none of the HSR trainset manufacturers are small entities. FRA is also not aware of any small potential passenger HSR operators.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

FRA expects all projected reporting, recordkeeping, and other costs of compliance with this NPRM would fall solely on large entities: HSR trainset manufacturers and HSR operators that provide the service. These entities would bear the short-term costs required for demonstrating compliance with the alternative noise emission standard and the long-term costs associated with ensuring such compliance for future HSR equipment design changes. These large entities would bear the cost of certifying the HSR trainset meets the NPRM alternative noise emission standard. See Table V–1 in Section V.A, above. The procedure to measure the noise emitted from the HSR trainset requires equipment to measure the sound level of emitted noise, personnel to perform the measurements, and process the data, and employees to operate the HSR trainset.

HSR trainset manufacturers and/or the railroads that operate the HSR service would be required to perform the noise compliance tests. Tests would be repeated whenever there are material differences in the HSR equipment that would affect the level of emitted noise, such as exterior design changes. FRA estimates such changes occur about every 15 years on average. FRA estimates that long-term costs of the proposed rule would be approximately \$8,000, annualized at seven percent discount rate over a 30-year period of analysis, and that about \$5 million in annualized benefits would accrue, using the same rate and analysis period. The estimated benefits, in terms of costs savings, are much greater than costs because using the alternative noise emission standard could avoid costly modifications to HSR trainsets. See Table V–1, above and in the regulatory analysis supporting this rulemaking, for

more information on the estimated costs and benefits.

Small entities that fall below the SBA size standards, including Class III railroads, equipment manufacturers, and small governmental jurisdictions with a population of 50,000 or less, would not bear any short- or long-term costs.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed rule, other than the existing noise emission standards, which would continue to apply. The proposed rule provides an alternative, noise emissions framework for HSR operations at speeds exceeding 160 mph.

6. A Description of Significant Alternatives to the Rule

FRA is proposing this rulemaking to relieve a regulatory obstacle for HSR operations by amending current noise emission requirements to help enable HSR trainsets to operate at speeds greater than 160 mph on the U.S. general railroad system of transportation. The proposed rulemaking would maintain public health and safety by continuing to limit overall public noise exposure while facilitating HSR service.

In the absence of this proposed rule, passenger rail operators may not be able to provide cost-effective, interoperable HSR service to compete with other modes of transportation. HSR manufacturers would have limited ability to deploy their technology in the United States. If this proposed rule were not promulgated, the potential benefits of HSR may not be fully realized in the United States.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).⁶⁷ The sections that contain the new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

⁶⁴ See 42 U.S.C. ch. 55.

⁶⁵ At the present time, these are Alstom SA, Hitachi Rail, Kawasaki Railcar Manufacturing Co., Siemens Mobility GmbH, Stadler Rail AG, and Talgo SA.

⁶⁶ North American Industry Classification System (NAICS) Code 336510 signifies the Railroad Rolling Stock Manufacturing firms that would be affected by this proposed rule. Per SBA, any firm under NAICS code 336510 that employs more than 1,500 employees cannot qualify as a small business. U.S.

SBA, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Jan. 2022). Available: <https://www.sba.gov/document/support-table-size-standards>.

⁶⁷ 44 U.S.C. 3501, *et seq.*

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Wage rate (D) ⁶⁸	Total cost equivalent (E) = C * D
210.11 Waivers: —Petition to Administrator for waiver of compliance.	FRA anticipates zero waivers over the three-year collection period.					
210.27 New locomotive certification: —(a) and (b) Request to manufacturer for certification.	6 locomotive manufacturers.	5 requests	30 minutes	2.50	\$90.19	\$225.48
210.31 Operation standards (stationary locomotives at 30 meters): —(b) Recorded locomotive noise emission test under the “Remarks” section on the reverse side of Form F 6180.49.	The estimated paperwork burden for this regulatory requirement is covered under OMB control number 2130–0004. In addition, FRA found the associated burdens related to train equipment inspection and testing were addressed when FRA calculated the economic costs of the regulatory requirements arising from the rulemaking and, therefore, have not been included as burdens under the PRA.					
210.53 Test notification compliance: —Notification to FRA 30 days before pass-by testing and copy of compliance report to be made available to FRA upon request (<i>New requirement</i>).	6 railroads	0.67 reports	88 hours	59	90.19	5,321.21
210.55 Previously tested operations: —(d) A report of the previously tested operation to be maintained in compliance with 49 CFR 210.53 (<i>New requirement</i>). —(e) Report of previously tested operations to include certification and analysis to demonstrate no material differences (<i>New requirement</i>).	The proposed paperwork burden for this requirement is covered under section 210.53.					
210.63 Petition for special approval: —Procedures for obtaining special approval for operations exceeding 220 mph (<i>New requirement</i>).	FRA anticipates zero previously tested reports over the three-year-collection period.					
Total ⁶⁹	6 railroads; 6 locomotive manufacturers.	6 responses	N/A	62	N/A	5,546.69

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA’s estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information on, or a copy of, the paperwork package submitted to OMB, contact Ms. Joanne Swafford,

Information Collection Clearance Officer, at 757–897–9908. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Swafford at joanne.swafford@dot.gov.

OMB is required to decide concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection

⁶⁸ Throughout the table, the dollar equivalent cost is derived from the 2024 STB’s Full Year Wage A & B data series using the appropriate employee group to calculate the average hourly rate that includes 75 percent overhead.

⁶⁹ Totals may not add due to rounding.

requirements that do not display a current OMB control number, if required. FRA intends to use the existing 2130–0527 OMB control number for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule.

E. Federalism Implications

E.O. 13132, *Federalism*,⁷⁰ requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in E.O. 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

⁷⁰ 64 FR 43255 (Aug. 10, 1999).

power and responsibilities among the various levels of government.” Under E.O. 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption under 49 U.S.C. 20106 of State laws addressing HSR noise emissions. FRA is not aware of any current such State laws, and therefore concludes that this proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the consultation and funding requirements of E.O. 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

F. International Trade Impact Assessment

The Trade Agreements Act of 1979⁷¹ prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as the protection of “health or safety,”⁷² are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and determined that its proposed requirements are consistent with the Trade Agreements Act. The proposed requirements are standards intended to protect “health or safety,” which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state

the proposed requirements in terms of the performance desired, rather than in terms restricted to a particular design or system.

FRA also notes that the NPRM proposal to adapt an international standard—the EU’s NOI TSI—is consistent with the Act’s encouragement to consider international standards. Indeed, this adaptation may increase trade opportunities for U.S. firms doing business in foreign countries and make it easier for foreign firms doing business in the U.S., by further harmonizing the global market for high-speed train technology and equipment. It would permit any domestic manufacturers to market their HSR trainsets to global markets because they would meet a similar standard. Note that there are not many domestic manufacturers of HSR equipment at this time (most of the domestic market consists of freight equipment). The domestic HSR market consists of international companies that have or will set up plants in the U.S. and partner with U.S. rail operators and suppliers.

G. National Environmental Policy Act Compliance

FRA has evaluated this proposed rule consistent with NEPA and FRA’s NEPA implementing regulations.⁷³ FRA has determined that this proposed rule is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.⁷⁴ Specifically, FRA has determined that this proposed rule issued under section 17 of the Noise Control Act, 42 U.S.C. 4916, as amended by section 22423 of IJIA, falls within the description of FRA’s categorical exclusion at 23 CFR 771.116(c)(6) and is categorically excluded from detailed environmental review.⁷⁵

The main purpose of this rulemaking is to establish an alternative standard for noise emissions from train operations exceeding 160 mph, up to 220 mph. It would also provide a special approval process for noise emissions from train operations exceeding 220 mph. FRA has concluded that no unusual

circumstances exist with respect to this proposed rule that would warrant a more detailed environmental review.⁷⁶ This determination applies only to the proposed rule itself. This determination does not exempt individual HSR projects from the requirements under NEPA to evaluate and disclose the proposed project’s potential environmental effects, including the requirement to conduct appropriate noise impact analyses and to consider incorporating appropriate noise mitigation.

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.⁷⁷ FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by section 4(f).⁷⁸

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,⁷⁹ each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act⁸⁰ further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and Tribal governments and the private sector. This proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*,

⁷⁶ See 23 CFR 771.116(b).

⁷⁷ See 16 U.S.C. 470.

⁷⁸ See Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

⁷⁹ Public Law 104–4, 2 U.S.C. 1531.

⁸⁰ 2 U.S.C. 1532.

⁷¹ 19 U.S.C. ch. 13.

⁷² 19 U.S.C. 2531(b).

⁷³ 23 CFR part 771.

⁷⁴ 40 CFR 1508.1.

⁷⁵ See 23 CFR 771.116(c)(6) (categorically excluding “[r]ulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916”).

requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”⁸¹ FRA evaluated this proposed rule under E.O. 13211 and determined that this regulatory action is not a “significant energy action” within the meaning of E.O. 13211.

J. Tribal Consultation

FRA has evaluated this NPRM in accordance with the principles and criteria contained in E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*.⁸² The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian Tribal Governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

K. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform better its rulemaking process. DOT posts these comments, without edit, to <http://www.regulations.gov>, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through <http://www.dot.gov/privacy>. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

L. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at [regulations.gov](http://www.regulations.gov), Docket No. FRA-2025-0786, in the **SUMMARY** section of this proposed rule.

List of Subjects in 49 CFR Part 210

Noise control, Railroads.

The Proposed Rule

For the reasons discussed in the preamble, the Federal Railroad Administration proposes to amend 49 CFR part 210 as follows:

PART 210—RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS

- 1. Revise the authority for 49 CFR Part 210 to read as follows:

Authority: 42 U.S.C. 4916; Pub. L. 117–58, 135 Stat. 752; 49 CFR 1.89.

Subpart A—General Provisions

- 2. Section 210.5 is amended by republishing paragraph (c) introductory text and adding in alphabetical order the definitions of “background noise,” “maximum operating speed,” “mph,” and “pass-by time” in paragraph (c) to read as follows:

§ 210.5 Definitions.

* * * * *

(c) Additional definitions. As used in this part—

* * * * *

Background noise means the total acoustical and electrical noise, from all sources in a measurement system, that may interfere with the production, transmission, time averaging, measurement, or recording of an acoustical signal.

* * * * *

Maximum operating speed means the maximum speed at which the train will operate under this rule. It is abbreviated V_{max} .

Mph means miles per hour.

* * * * *

Pass-by time means the time, in seconds, it takes the entire length of the train (from nose to tail) to pass by the measurement position. It is abbreviated T_p .

* * * * *

- 3. Add subpart C to read as follows:

Subpart C—High-Speed Train Noise Emission Alternative Compliance

Sec.

- 210.41 Scope of subpart.
210.43 Alternative compliance standard.
210.45 Measurement site conditions.
210.47 Measurement criteria and procedures.
210.49 Operation standards.
210.51 Track conditions.
210.53 Test notification and compliance reporting.

210.55 Previously tested operations.

Subpart C—High-Speed Train Noise Emission Alternative Compliance

§ 210.41 Scope of subpart.

This subpart provides compliance standard and testing criteria for noise emissions from train operations exceeding 160 mph, up to 220 mph, in the alternative to those in the Standards (40 CFR part 201) and subpart B of this part.

§ 210.43 Alternative compliance standard.

In accordance with this subpart C, the total sound emitted by moving rail cars and locomotives for all operations exceeding 160 mph, but not more than 220 mph, may comply with the limits specified in this section.

(a) L_{eq} during pass-by at the maximum operating speed, when measured in accordance with the criteria specified in this subpart and normalized to 160 mph according to the equation in paragraph (b) of this section, shall not exceed 96 dB(A).

(b) $L_{eq}(160 \text{ mph}) = L_{eq}(V_{max}) - 50 \cdot \log(V_{max}/160 \text{ mph})$.

Where—

$L_{eq}(V_{max})$ is the A-weighted equivalent sound level at speed V_{max} .

§ 210.45 Measurement site conditions.

Measurement shall take place 25 feet (ft) from the centerline of the track, at heights of both 4 ft and 12 ft above top of rail. To ensure minimal interference with measurements, a circular area around the microphones having a radius of at least 75 ft shall be free of large reflecting objects like barriers, hills, rocks, bridges, or buildings. The test site shall be such that free sound propagation exists in the triangular area between the track and the microphone extending along the track 50 ft to either side. See Figure 1 to this subpart. To achieve this result:

(a) The level of the ground surface over this area shall be within 0 ft to –10 ft, relative to the top of rail.

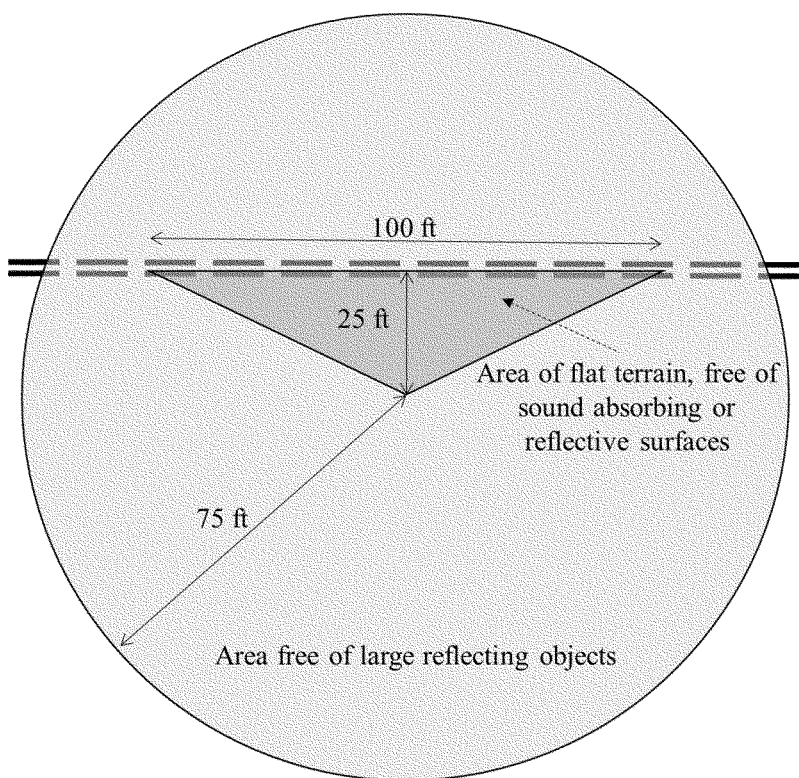
(b) This area shall be free of other tracks, of sound-absorbing matter such as snow or tall vegetation, and free of reflective covering such as water, ice, or pavement. No absorptive material shall be added to the area for the purpose of the test.

(c) No person shall be present in this area.

⁸¹ 66 FR 28355 (May 22, 2001).

⁸² 65 FR 67249 (Nov. 9, 2000).

Figure 1 to Subpart C of Part 210—Test Site Conditions



§ 210.47 Measurement criteria and procedures.

(a) Quantities measured are defined in 40 CFR 201.21.

(b)

(1) A sound level meter or alternate system that meets industry standards, such as the requirements for a class 1 instrument specified in International Electrotechnical Commission (IEC) 61672-1:2002, must be used. Before and after each series of measurements, the measurement system shall be calibrated appropriately. The sound calibrator also must meet industry standards, such as the requirements for a class 1 instrument according to IEC 60942:2003. If the difference between the two consecutive calibrations is more

than 0.5 dB, the measurement results in between shall be rejected.

(2) The compliance of the calibrator with industry standards shall have been verified within one year of use for calibration of the instrumentation system used for the measurement. The compliance of the instrumentation system with industry standards shall have been verified within two years of use for the measurement. The date of the last verification of compliance with the relevant standards shall be recorded in the test report.

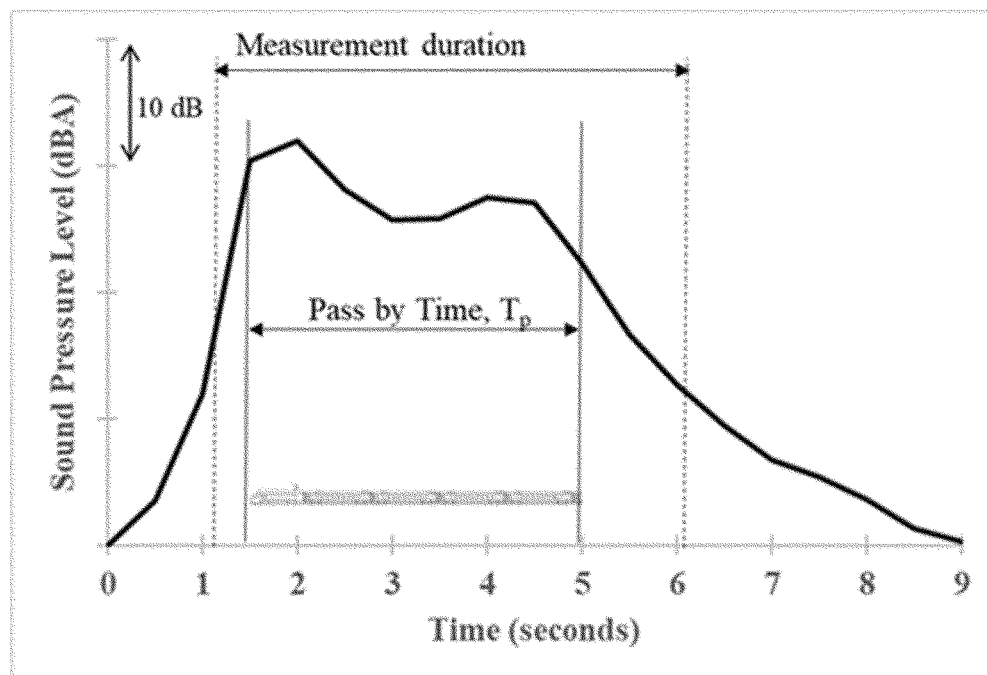
(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory re-calibration shall be followed.

(4) A suitable microphone windscreen shall be used, and there shall be no winds in excess of 12 mph during the test.

(5) A tripod or similar microphone mounting shall be used to minimize interference with the sound being measured.

(c) The measurement duration shall be such that the entirety of the train pass-by is recorded. Specifically, starting when the A-weighted sound pressure level is at least 10 dB lower than found when the front of the train is opposite the microphone position, and ending after the A-weighted sound pressure level is at least 10 dB lower than found when the rear of the train is opposite the microphone position, see Figure 2 to this subpart.

**Figure 2 to Subpart C of Part 210—
Measurement Duration**



(d) Care shall be taken to ensure that the noise from other sources does not influence the measurements significantly.

(e) L_{eq} for the background noise shall be measured for a time period of at least 20 seconds both before and after each set of measurements. The equivalent sound level of the background noise during this period shall be at least 10 dB below the measured L_{eq} of the train.

(f) The arithmetic average of three measurements under each test condition shall be used to determine compliance. The spread of the measurement samples at a single speed and measurement height must be less than 3 dB for the measurement to be considered valid. Compliance must be met for each test condition specified at the maximum operating speed pass-by for a microphone height of:

- (1) 4 ft above top of rail; and
- (2) 12 ft above top of rail.

§ 210.49 Operation standards.

(a) Compliance with this subpart shall be demonstrated under pass-by at the maximum operating speed.

(b) During the test, the speed of the train shall be stabilized to within ± 5 mph of the test speed. The speed shall be measured by a device with a maximum permissible measurement error of 5 mph. The speedometer of the train may be used, provided a calibration with a target measurement uncertainty of no more than 5 mph.

(c) During the test, the train shall be operating at a minimum tractive effort to maintain a constant speed. To ensure a steady operating condition, it may be necessary to operate the train for a period of time in advance of the test.

(d) During the test, the HVAC systems conditioning passenger areas and working places shall be operating at settings consistent with customary passenger service.

§ 210.51 Track conditions.

(a) Measurements shall be taken on reasonably well-maintained tracks.

(b) The track shall have a consistent superstructure over a minimum distance of 50 ft to each side of the measurement location. The level gradient at the track shall be 5:1,000 at the most. The radius of curvature of the track should be greater than 16,400 ft.

(c) (1) The standard superstructure for the test is a track with ballast bed and shall not include any type of rail or track shielding (e.g., low barriers or berms). The ballast shall be loose, *i.e.*, not bound together by ice or glue and not blocked by debris.

(2) If a different track superstructure than that specified in paragraph (c)(1) of this section is used under normal operating conditions and consistently applied throughout the system, that track superstructure may be used for the test to demonstrate compliance with this subpart. The different track

superstructure shall be described in the test report.

§ 210.53 Test notification and compliance reporting.

(a) FRA shall be notified in writing 30 days before pass-by testing of equipment for compliance with this subpart. The notification shall include the time(s), date(s), and place(s) of such testing to permit FRA observation of the testing and be submitted to FRA's Associate Administrator for Railroad Safety and Chief Safety Officer either by hard copy or electronically.

(b) A report of the pass-by testing required for compliance with this subpart shall—

(1) Be maintained electronically or in paper; be certified or signed by the person who performs the test; be retained by the carrier at a location of its choice; and be made available to FRA for review and copying in a readily usable format upon request; and

(2) Include the train type and description; the date, place, and operating speeds tested; all required sound level measurements (including background noise); wind speed; track superstructure; and sound level meter, microphone, and calibrator and instrumentation calibration dates.

§ 210.55 Previously tested operations.

(a) Results from a previously tested operation may be used to demonstrate compliance with this subpart for a

proposed operation at any operating speed between 160 mph and the maximum operating speed for which the previously tested operation demonstrated compliance, up to 220 mph.

(b) A proposed operation using the results from a previously tested operation must be shown to have no material differences affecting noise emission between the equipment used in the proposed operation and the equipment used in the tested operation.

(c) If the previous operation was tested in accordance with 49 CFR 210.51(c)(2), then the track superstructure of the proposed operation must be the same as that described for the previously tested operation.

(d) A report of the previously tested operation will be maintained for the proposed operation in compliance with 49 CFR 210.53.

(e) A report for the proposed operation must additionally include:

(1) A certification that the equipment used in the proposed operation demonstrates no material differences affecting noise emission when compared with the tested equipment and that the proposed operation utilizes the same track superstructure as the previously tested operation.

(2) The basis for the certification in this paragraph (e)(1), including an analysis of any changes to systems,

designs, or components that may contribute to additional noise emission.

■ 4. Add subpart D to read as follows:

Subpart D—Special Approvals

Sec.

§ 210.61 Scope of subpart.

§ 210.63 Petition for special approval.

§ 210.65 Disposition.

Subpart D—Special Approvals

§ 210.61 Scope of subpart.

This subpart prescribes the procedures for obtaining special approval for operations exceeding 220 mph that demonstrate a level of noise emission protection consistent with the requirements of subpart C of this part.

§ 210.63 Petition for special approval.

(a) Each petition for special approval shall contain—

(1) The proposed noise emission standard, in detail, including:

(i) Any alternative testing methodologies or procedures and measurement criteria; and

(ii) A description of the operating environment and its features, as relevant to the petition, including the use of any cost-effective noise mitigation techniques;

(2) Appropriate data and analysis establishing that the proposed standard will provide a level of protection consistent with the requirements of subpart C of this part, including to the extent practical all testing information and analysis required by § 210.53; and

(3) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition.

(b) FRA will publish a notice in the **Federal Register** concerning each petition for special approval under this section.

§ 210.65 Disposition.

(a) If the Administrator finds it necessary or desirable, FRA will conduct a hearing on a petition in accordance with the procedures provided in 49 CFR part 211.

(b) If FRA finds that a petition complies with the requirements of § 210.63 and demonstrates a level of noise emission protection consistent with the requirements of subpart C of this part, the petition will be granted. Otherwise, the petition will be denied. FRA may attach conditions to the approval of the petition.

(c) FRA may reopen consideration of the petition for cause stated.

(d) FRA will provide written notice to the petitioner and other interested parties when the petition is granted, denied, or reopened for consideration.

Issued in Washington, DC, under authority provided by 42 U.S.C. 4916 and delegated in 49 CFR 1.89.

David A. Fink,
Administrator.

[FR Doc. 2026–15724 Filed 7–31–26; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 91, No. 147

Monday, August 3, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-TB-26-1057]

Tobacco Report: Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension and revision of the currently approved information collection, "Tobacco Report" (OMB No. 0581-0004).

DATES: Comments received by October 2, 2026 will be considered.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments will be posted on the internet and can be retrieved by most internet search engines. Comments may be submitted anonymously. Comments, identified by AMS-TB-26-1057, may be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery* to Market News Division, Cotton and Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Comments should be submitted in triplicate. All comments received will

be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. A copy of this document may be found at: www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Paul Slinsky, Director, Market News Division, Cotton and Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133; telephone: (901) 384-3303; or email at CottonMN@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Report.

OMB Number: 0581-0004.

Expiration Date of Approval:

September 30, 2026.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501-508) provides for the collection and publication of tobacco statistics by USDA with regard to quantities of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, and others, with the exception of the original growers of the tobacco.

Inventory information about different tobacco products is reported on a quarterly basis, as of January 1, April 1, July 1, and October 1 of each year, and is due within 15 days of those dates.

The information furnished under the provisions of this Act is used only for the statistical purposes for which it is supplied. No publication shall be made by USDA whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of USDA be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7 CFR part 30) issued under the Tobacco Statistics Act (7 U.S.C. 501-508) specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether it is stemmed or unstemmed. Tobacco in sheet form is segregated as to whether it is to be used for cigar wrappers, cigar binders, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and

to calculate the amount consumed in manufactured tobacco products. The Quarterly Report of Manufacture and Sales of Snuff, Smoking and Chewing Tobacco is voluntary. Information on the manufacture and sale of snuff, smoking and chewing tobacco products is available from Treasury Department publications based on the collection of taxes but not in the detail desired by the industry. All major tobacco manufacturers agreed to furnish information to AMS for this report.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) directs and authorizes USDA to collect, tabulate and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality, condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.88 hours per response.

Respondents: Primarily tobacco dealers and manufacturers, including small businesses or organizations.

Estimated Number of Respondents: 44.

Estimated Total Annual Responses: 176.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 156.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Dr. Stephen Paul Slinsky, Director, Market News Division, Cotton and Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133, telephone (901)

384–3303, or email at *CottonMN@usda.gov*. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2026–15718 Filed 7–31–26; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by September 2, 2026. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Livestock Slaughter.

OMB Control Number: 0535–0005.

Summary of Collection: The primary functions of the National Agricultural Statistics Service (NASS) are to prepare and issue State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. Crop and livestock statistics help maintain a stable economic atmosphere and reduce risk for production, marketing, and distribution operations. The agricultural industry increasingly calls upon NASS to supply reliable, timely, and detailed information in its commodity estimation program. General authority for data collection activities is granted under U.S. Code title 7, section 2204(a). This statute specifies the “The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists”. Information from federally and non-federally inspected slaughter plants are used to estimate total red meat production. NASS will use a Federally and non-Federally inspected livestock slaughter survey to collect data.

Need and Use of the Information: plants are combined to estimate total red meat production, consisting of the number of head slaughtered and live weights of cattle, calves, hogs, sheep/lambs, goats, and buffalo/bison. Knowing total red meat production, the number of head slaughtered, and live weights allows the industry to prepare and address issues related to supply and pricing. The data are also used at the end of the year to confirm production and disposition information for NASS livestock estimates made during the year.

Description of Respondents: Business or other for-profit.

Number of Respondents: 700.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 1,701.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–15606 Filed 7–31–26; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–387–2026]

Foreign-Trade Zone 222; Application for Subzone; Vulcaflex Inc.; Auburn, Alabama

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Montgomery Area Chamber of Commerce, grantee of FTZ 222, requesting subzone status for the facility of Vulcaflex Inc., located in Auburn, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 30, 2026.

The proposed subzone (26.64 acres) is located at 3111 Haygood Court, Auburn, Alabama. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 222.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is September 14, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through September 28, 2026.

A copy of the application will be available for public inspection in the “Online FTZ Information Section” section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Juanita Chen at *juanita.chen@trade.gov*.

Dated: July 30, 2026.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2026–15687 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[B–23–2026]****Foreign-Trade Zone (FTZ) 18; Authorization of Production Activity; Tesla, Inc.; (Battery Storage Products and Components); Fremont, Livermore, and Lathrop, California**

On February 11, 2026, Tesla, Inc., submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 18G, in Fremont, Livermore, and Lathrop, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (91 FR 10369, March 3, 2026). On July 30, 2026, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized on a limited basis, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14, and further subject to a one-year time period.

Dated: July 30, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026–15661 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[B–94–2026]****Foreign-Trade Zone 75; Application for Subzone Expansion; Intel Corporation; Chandler, Arizona**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Phoenix, grantee of FTZ 75, requesting an expansion of Subzone 75C on behalf of Intel Corporation. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 30, 2026.

The applicant is now requesting to expand Subzone 75C to include an additional three sites: Site 7 (3.1 acres)—6615 W Frye Road, Chandler, Arizona; Site 8 (0.34 acres)—6760 W Chicago Street, Chandler, Arizona; and, Site 9 (4.5 acres)—555 E Queen Creek

Road, Building B, Suite 90 and 100, Chandler, Arizona.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 14, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through September 28, 2026.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Qahira El-Amin at Qahira.El-Amin@trade.gov.

Dated: July 30, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026–15719 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[S–390–2026]****Foreign-Trade Zone 57; Application for Subzone; AUMOVIO Systems, Inc.; Morganton, North Carolina**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Charlotte Regional Business Alliance, grantee of FTZ 57, requesting subzone status for the facilities of AUMOVIO Systems, Inc., located in Morganton, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 30, 2026.

The proposed subzone would consist of the following sites: *Site 1* (18.15 acres) 1103 Jamestown Road, Morganton; and *Site 2* (7.6 acres) 705 Jamestown Road, Morganton. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 57.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ

Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 14, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through September 28, 2026.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: July 30, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026–15683 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**International Trade Administration****Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of an antidumping duty or countervailing duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2026

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in September 2026 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

		Commerce contact
Antidumping duty proceedings		
Petroleum Wax Candles from China A-570-504 (6th Review)	.....	Thomas Martin (202) 482-3938.
Polyethylene Retail Carrier Bags from China A-570-886 (4th Review)	.....	Mary Kolberg (202) 482-1785.
Polyethylene Retail Carrier Bags from Indonesia A-560-822 (3rd Review)	.....	Mary Kolberg (202) 482-1785.
Polyethylene Retail Carrier Bags from Malaysia A-557-813 (4th Review)	.....	Mary Kolberg (202) 482-1785.
Polyethylene Retail Carrier Bags from Taiwan A-583-843 (3rd Review)	.....	Mary Kolberg (202) 482-1785.
Polyethylene Retail Carrier Bags from Thailand A-549-821 (4th Review)	.....	Mary Kolberg (202) 482-1785.
Polyethylene Retail Carrier Bags from Vietnam A-552-806 (3rd Review)	.....	Mary Kolberg (202) 482-1785.
Countervailing duty proceedings		
Polyethylene Retail Carrier Bags from Vietnam C-552-805 (3rd Review)	.....	Mary Kolberg (202) 482-1785.

Suspended Investigations

No Sunset Reviews of suspended investigations are scheduled for initiation in September 2026.

Commerce’s procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service lists, it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹ An electronically-filed document must be received successfully in its entirety via Commerce’s online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS) by 5:00 p.m. Eastern Time on the day on which it is due. For further information on procedures for filing information with Commerce through ACCESS, refer to User Guide found at <https://access.trade.gov/help>.

In prior proceedings we have encouraged interested parties to provide

an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide, at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the decision memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Notification to Interested Parties

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 24, 2026.

Scot Fullerton,
Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.
[FR Doc. 2026-15662 Filed 7-31-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty (AD) and

countervailing duty (CVD) orders and suspended investigations listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same orders and suspended investigations.

DATES: Applicable August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce’s conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following AD and CVD orders and suspended investigations:

¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

Commerce case No.	ITC case No.	Country	Product	Commerce contact
Antidumping Duty Proceedings				
A-570-956	731-TA-1168 ...	China	Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (3rd Review).	Thomas Martin (202) 482-3938.
Countervailing Duty Proceedings				
C-570-957	701-TA-469	China	Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (3rd Review).	Mary Kolberg (202) 482-1785.

Suspended Investigations

No Sunset Reviews of suspended investigations are scheduled for initiation in August 2026.

Filing Information

All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary

information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹

Information Required From Interested Parties

Domestic interested parties, as defined in sections 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.²

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's

regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).³ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

In prior proceedings we have encouraged interested parties to provide an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the decision memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Notification to Interested Parties

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 24, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-15663 Filed 7-31-26; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

² See 19 CFR 351.218(d)(1)(iii).

³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–850]

Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that thermal paper from Germany was not sold in the United States at less than normal value during the period of review (POR) November 1, 2023, through October 31, 2024.

DATES: Applicable August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Anne Entz, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3845.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2026, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ We received no comments from interested parties on the *Preliminary Results*. Therefore, we made no changes from the *Preliminary Results* and, accordingly, there is no decision memorandum accompanying this **Federal Register** notice. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order²

The merchandise covered by the *Order* is thermal paper from Germany. For a complete description of the scope of the *Order*, see the *Preliminary Results*.³

Review-Specific Rate for Non-Examined Companies

The Act and Commerce’s regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an

administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” Therefore, because the rate calculated for Koehler Paper SE and Koehler Kehl GmbH (collectively, Koehler) in this administrative review is zero, consistent with section 735(c)(5)(A) of the Act, for the companies not selected for individual examination in this review (*i.e.*, Convertidoras PCM, S.A. de C.V. (Convertidoras) and Papeles y Conversiones de Mexico, S.A. de C.V. (Papeles)), we are assigning the most recent above-*de minimis* rate calculated in this proceeding as the review-specific rate, *i.e.*, 0.76 percent.⁴

Final Results of Review

We determine that the following estimated weighted-average dumping margins exist for the period November 1, 2023, through October 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Koehler Paper SE; Koehler Kehl GmbH	0.00
Convertidoras PCM, S.A. de C.V.	0.76
Papeles y Conversiones de Mexico, S.A. de C.V.	0.76

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce made no changes from the *Preliminary Results*,

there are no new calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Because the weighted-average dumping margin for Koehler is zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce’s “automatic assessment” practice will apply to entries of subject merchandise during the POR produced by Koehler for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁵

For Convertidoras and Papeles, which were not selected for individual review, we will assign an assessment rate based on the most recent above-*de minimis* rate calculated in this proceeding as the review-specific rate, *i.e.*, 0.76 percent, as discussed in the “Review-Specific Rate for Non-Examined Companies” section above.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above is the weighted-average dumping margin established in the final results of this administrative review; (2)

¹ See *Thermal Paper from Germany: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024*, 91 FR 14809 (March 27, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders*, 86 FR 66284 (November 22, 2021) (*Order*).

³ See *Preliminary Results* PDM at 4.

⁴ See *Thermal Paper From the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review; 2021–2022*, 89 FR 47517, 47518 (June 3, 2024).

⁵ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 6.27 percent, the all-others rate established in the *Amended Final Determination*.⁶ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 27, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–15664 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF910]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public webinar/conference call.

SUMMARY: NMFS will hold a 2-day hybrid Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2026. The intent of the meeting is to consider options for the conservation and management of HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held on Wednesday, September 9, from 9 a.m. to 5 p.m. ET and Thursday, September 10, from 9 a.m. to 3 p.m. ET.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting will also be accessible via WebEx conference call and webinar. Conference call and webinar access information are available at: <https://www.fisheries.noaa.gov/event/september-2026-hms-advisory-panel-meeting>.

Participants accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT:

Peter Cooper (peter.cooper@noaa.gov) or Anna Quintrell (anna.quintrell@noaa.gov) at 301–427–8503.

SUPPLEMENTARY INFORMATION: HMS fisheries (swordfish, sharks, tunas, and billfish) are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801

et seq.) and consistent with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635.

The Magnuson-Stevens Act requires the establishment of APs and requires NMFS to consult with and consider the comments and views of AP members during the preparation and implementation of FMPs or FMP amendments (16 U.S.C. 1854(g)(1)(A)–(B)). NMFS meets with the HMS AP approximately twice each year to consider potential alternatives for the conservation and management of Atlantic swordfish, sharks, tunas, and billfish fisheries, consistent with the Magnuson-Stevens Act.

Some of the discussion topics are:

- Atlantic bluefin tuna fishery update (year in review);
- HMS fisheries economics update;
- Updates on various shark actions; and
- Continued discussion on actions under Executive Order 14276.

We anticipate inviting other NMFS offices and the U.S. Coast Guard to provide updates, if available, on their activities relevant to HMS fisheries. Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting (see **ADDRESSES**).

All members of the public will have virtual access to the meeting available via webinar and status updates of in-person public access to the meeting will be available on the NMFS website (see **ADDRESSES**). The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at 301–427–8503, at least 7 days prior to the meeting.

Dated: July 30, 2026.

Shannon Bettridge,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–15684 Filed 7–31–26; 8:45 am]

BILLING CODE 3510–22–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities

AGENCY: Election Assistance Commission.

ACTION: 60-Day request for public comment on standardized EAC Progress Report.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election

⁶ See Order, 86 FR at 66286; see also *Thermal Paper from Germany: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination; Notice of Amended Order, In Part*, 90 FR 60617 (December 29, 2025) (*Amended Final Determination*).

Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) an extension of the previously approved information collection OMB Control Number 3265–0026 EAC Progress Report (EAC–PR).

DATES: Comments must be received by 5 p.m. Eastern on Monday, October 5, 2026.

ADDRESSES: Comments on the proposed form should be submitted electronically via <https://www.regulations.gov> (docket ID: EAC–2026–0232).

Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Office of Grants Management. All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Title and OMB Number

EAC Progress Report (EAC–PR); OMB Control Number: 3265–0026

Purpose

The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring, and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect cost rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC–PR is employed for both interim and final progress reports for grants issued under HAVA authority. This format contains no changes to the report or instructions since the approved standard request in November 2023. The PR directly benefits award recipients by making it easier for them to administer federal grant and cooperative agreement programs through standardization of the types of information required in progress reporting- thereby reducing their administrative effort and costs.

The requirement for grantees to report on performance is the OMB grants policy. Specific citations are contained

in Code of Federal Regulations TITLE 2, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Public Comments

After obtaining and considering public comment, the EAC will prepare the format for final clearance. Comments are invited on (a) ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and (b) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents: All EAC grantees and state governments.

ANNUAL BURDEN ESTIMATES					
EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251	EAC–PR	29	2	1	58
101	EAC–PR	12	2	1	24
Election Security	EAC–PR	56	2	1	112
Total .....	.....	.....	.....	.....	194

The estimated annualized cost of this burden is \$5,028.48, calculated by multiplying the annualized burden (194 hours) by an hourly rate of \$25.92 (GS–8/Step 5 hourly basic rate).

Seton Parsons,
Senior Associate Counsel, U.S. Election Assistance Commission.
[FR Doc. 2026–15611 Filed 7–31–26; 8:45 am]
BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY
[Docket No. 26–78–LNG]

Venture Global CP2 LNG, LLC;
Application for Long-Term
Authorization To Export Liquefied
Natural Gas to Non-Free Trade
Agreement Nations

AGENCY: Hydrocarbons and Geothermal Energy Office, Department of Energy.
ACTION: Notice of application.

SUMMARY: The Hydrocarbons and Geothermal Energy Office (HGEO) of the Department of Energy (DOE) gives

notice (Notice) of receipt of an application (Application), filed by Venture Global CP2 LNG, LLC (CP2 LNG) on July 7, 2026. CP2 LNG requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to approximately 620.5 billion cubic feet (Bcf) of natural gas per year (Bcf/yr) from the proposed CP2 LNG Expansion Project (Project). The proposed CP2 LNG Expansion Project will be interconnected with CP2 LNG’s export terminal and associated facilities, which are currently under construction in Cameron Parish, Louisiana (CP2 LNG Terminal). CP2 LNG filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, October 2, 2026.

ADDRESSES:

Electronic Filing by email (Strongly encouraged): fergas@hq.doe.gov.
Postal Mail, Hand Delivery, or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (EX–31), Office of Global Energy Security, Hydrocarbons and Geothermal Energy Office, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE’s receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT:
Jennifer Wade or Peri Ulrey, U.S. Department of Energy (EX–31), Office of Global Energy Security, Office of Strategic Resources, Hydrocarbons and Geothermal Energy Office, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, jennifer.wade@hq.doe.gov or peri.ulrey@hq.doe.gov.
Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the

Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW, Washington, DC 20585, (240) 780-1691, cassandra.bernstein@hq.doe.gov.

SUPPLEMENTARY INFORMATION: CP2 LNG requests authorization to export additional volumes of domestically produced LNG from the proposed CP2 LNG Expansion Project.¹ The Project will be located at the CP2 LNG Terminal, which is currently under construction on the east side of the Calcasieu Ship Channel and the nearby Monkey Island, in Cameron Parish, Louisiana. Specifically, CP2 LNG states that the proposed Project will expand the CP2 LNG Terminal by adding six refrigerant liquefaction blocks, a new natural gas-fired combined cycle power plant, a third marine berth within the already-approved berthing area, and other associated infrastructure. CP2 LNG states that the CP2 LNG Expansion Project will be interconnected with the CP2 LNG Terminal and operated together with the Terminal as a single LNG export facility on a fully integrated basis. According to CP2 LNG, the CP2 LNG Expansion Project will increase the maximum peak liquefaction and export capacity of the CP2 LNG Terminal by 11.7 million metric tons per annum (mtpa) of LNG, or by the equivalent of 620.5 Bcf/yr of natural gas.

Therefore, CP2 LNG requests authorization to export LNG in a volume equivalent to 620.5 Bcf/yr of natural gas by vessel on a non-additive basis to: (i) any country with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), and (ii) any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA.² DOE will review CP2 LNG's request for authorization to export LNG to FTA

countries separately pursuant to NGA section 3(c).³

CP2 LNG seeks this authorization on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. CP2 LNG requests the authorization for a term of 20 years after commercial exports under the requested authorization begin, plus a three-year make-up period at the end of that term, consistent with recent DOE practice.

Additional details can be found in CP2 LNG's Application, posted on the DOE website at <https://www.energy.gov/hgeo/articles/venture-global-cp2-lng-llc-cp2-lng-docket-no-26-78-lng>.

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy under NGA section 3(a), DOE's regulations, and any other documents deemed appropriate.

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 60 days from the date of publication of this Notice in the **Federal Register** in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating the Application must file a motion to intervene or notice of intervention.⁴ The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's

regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

(1) Submitting the filing electronically at fergas@hq.doe.gov;

(2) Mailing the filing to the Office of Global Energy Security at the address listed in the **ADDRESSES** section; or

(3) Hand delivering the filing to the Office of Global Energy Security at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to "Docket No. 26-78-LNG" or "CP2 LNG Expansion Project Application" in the title line. Filings must be submitted in English to be considered.⁵

For electronic submissions: Please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Application, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at www.energy.gov/hgeo/regulation.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on July 29, 2026.

Amy Sweeney,

Director, Office of Global Energy Security, Office of Strategic Resources.

[FR Doc. 2026-15642 Filed 7-31-26; 8:45 am]

BILLING CODE 6450-01-P

¹ As summarized in the Application, CP2 LNG is currently authorized by DOE to export LNG from the CP2 LNG Terminal in Docket No. 21-131-LNG. Additionally, CP2 LNG has a pending application to export additional volumes of LNG to non-FTA countries in Docket No. 21-131-LNG, as a result of an uprate in the authorized peak output of the CP2 LNG Terminal (separate from the Application at issue in this proceeding). CP2 LNG also summarizes its authorization for the CP2 LNG Terminal issued by the Federal Energy Regulatory Commission (FERC), as well as its pending applications before FERC. As relevant here, CP2 LNG states that, on May 26, 2026, CP2 LNG and its affiliate, Venture Global CP Express, LLC, filed a new application with FERC for the CP2 LNG Expansion Project in FERC Docket No. CP26-530-000.

² 15 U.S.C. 717b(a).

³ *Id.* 717b(c).

⁴ 10 CFR 590.303.

⁵ See Executive Order 14224 of March 1, 2025, *Designating English as the Official Language of the United States*, 90 FR 11363 (Mar. 6, 2025).

DEPARTMENT OF ENERGY**National Petroleum Council Meeting**

AGENCY: Office of Hydrocarbons and Geothermal Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, August 31, 2026; 11 a.m. to no later than 12 p.m. (EDT).

ADDRESSES: Virtual meeting.

FOR FURTHER INFORMATION CONTACT: Paul Bamonte, U.S. Department of Energy, Office of Strategic Resources (EX-30), 1000 Independence Avenue SW, Washington, DC 20585; telephone: (240) 252-8069 or email: paul.bamonte@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Purpose of the Meeting: The National Petroleum Council will hold a meeting on August 31, 2026, to present and consider for approval the final report of the Committee on Resource Assessment.

Tentative Agenda:

- Call to Order and Introductory Remarks
- Department of Energy Remarks
- Presentations, Discussion, and Consideration of the Final Report of the NPC Resource Assessment Committee
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public and will be convened virtually. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to listen and/or make oral statements pertaining to agenda items should contact Mr. Paul Bamonte at the address or telephone number listed above.

Approximately 15 minutes will be reserved for public comments. The time allocated per speaker will depend on the number of requests received but will not exceed five minutes. Requests to listen to the proceedings and/or make oral statements must be received at least seven days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council

are invited to send a written statement to paul.bamonte@hq.doe.gov. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Minutes: A recording of the meeting and the minutes of the meeting will be available at <https://www.energy.gov/hgeo/national-petroleum-council-npc>, or by contacting Mr. Bamonte. He may be reached at the postal address or email address listed previously.

Signing Authority: This document of the Department of Energy was signed on July 30, 2026, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 30, 2026.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2026-15648 Filed 7-31-26; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 8221-124]

Alaska Energy Authority; Notice of Application for Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-capacity amendment of license.
- b. *Project No:* P-8221-124.
- c. *Date Filed:* June 30, 2026.
- d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Bradley Lake Hydroelectric Project.

f. *Location:* The project is located on the Bradley River in Kenai Peninsula Borough, Alaska. The project occupies

federal lands managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Ryan McLaughlin, 813 W Northern Lights Blvd., Anchorage, AK 99503, 907-771-3012, or rtemclaughlin@akenergyauthority.org.

i. *FERC Contact:* Rebecca Martin, (202) 502-6012, or martin.rebecca@ferc.gov.

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* August 28, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P-8221-124. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee is proposing to: (1) build a new diversion dam to divert meltwater and surface runoff coming from the Dixon Glacier, located at the headwaters of the Martin River, into Bradley Lake; (2) raise the normal maximum operating pool elevation of Bradley Lake by about 16 feet through a combination of raising the concrete spillway crest elevation, adding spillway crest gates, and raising the dam embankment crest; and (3) install a 0.3-megawatt (MW) micro-hydro turbine in one of the Bradley Lake Dam's fishwater release valves. Together, these three components comprise the Bradley Lake Expansion Project, which would increase the Bradley Lake Project's installed capacity from 119.7 MW to 120.0 MW and average annual power generation by approximately 38 percent.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS",

"PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; and (3) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-15691 Filed 7-31-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER26-3216-001.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: Tariff Amendment: Duke Energy Carolinas, LLC submits tariff filing per 35.17(b); Errata to Filing of Revisions to Joint OATT Formula Transmission Rates to be effective 12/31/9998.

Filed Date: 7/28/26.

Accession Number: 20260728-5044.

Comment Date: 5 p.m. ET 8/18/26.

Docket Numbers: ER26-3304-000.

Applicants: Idaho Power Company.

Description: 205(d) Rate Filing: Rate Schedule No. 190—Engineering & Procurement Agreement to be effective 7/28/2026.

Filed Date: 7/28/26.

Accession Number: 20260728-5045.

Comment Date: 5 p.m. ET 8/18/26.

Docket Numbers: ER26-3305-000.

Applicants: California Independent System Operator Corporation.

Description: 205(d) Rate Filing: 2026-07-28 Tariff Amendment to Model Loop Flow in Annual CRR Process to be effective 7/29/2026.

Filed Date: 7/28/26.

Accession Number: 20260728-5046.

Comment Date: 5 p.m. ET 8/18/26.

Docket Numbers: ER26-3306-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4973 NextEra Energy Resources Development Surplus GIA to be effective 9/28/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5007.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3307-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4979 Longroad Development Company Surplus GIA to be effective 9/28/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5008.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3308-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026-07-29 SA 4812 ATC-WPL GIA (E0037) to be effective 7/22/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5016.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3309-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026-07-29 SA 4813 Entergy Louisiana-Entergy Louisiana GIA (E0043) to be effective 7/22/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5019.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3310-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026-07-29 SA 4814 NIPSCO-Mayapple Solar FCA (AG1-349) to be effective 7/22/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5021.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3311-000.

Applicants: Hashknife Energy Center II LLC.

Description: 205(d) Rate Filing: MBR Tariff Revision to be effective 7/30/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5030.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26-3312-000.

Applicants: Bulldog Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 7/30/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5033.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26–3313–000.
Applicants: Cane Creek Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5035.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3314–000.
Applicants: Catalina Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5036.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3315–000.
Applicants: Fresh Air Energy XXIII, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5037.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3316–000.
Applicants: Landrace Holdings, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5038.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3317–000.
Applicants: Moonshot Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5039.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3318–000.
Applicants: Old Hayneville Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5040.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3319–000.
Applicants: PGR 2021 Lessee 13, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5041.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3320–000.
Applicants: PGR 2021 Lessee 18, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5042.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3321–000.

Applicants: PGR 2021 Lessee 9, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5043.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3322–000.
Applicants: PGR 2022 Lessee 1, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5044.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3323–000.
Applicants: PGR 2022 Lessee 2, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5045.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3324–000.
Applicants: PGR 2022 Lessee 4, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5046.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3325–000.
Applicants: PGR 2022 Lessee 5, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5047.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3326–000.
Applicants: PGR 2023 Lessee 1, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5048.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3327–000.
Applicants: Sonny Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5049.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3328–000.
Applicants: Virginia Line Solar, LLC.
Description: 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 7/30/2026.
Filed Date: 7/29/26.
Accession Number: 20260729–5050.
Comment Date: 5 p.m. ET 8/19/26.
Docket Numbers: ER26–3329–000.
Applicants: Paulding Wind Farm IV LLC.
Description: 205(d) Rate Filing:
 Supplement to Shared Facilities

Agreement and Request for Waivers to be effective 7/30/2026.

Filed Date: 7/29/26.

Accession Number: 20260729–5052.

Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26–3330–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO–NYSEG Joint 205: Amended Standard IA Yellow Barn Solar SA2945 (CEII) to be effective 7/20/2026.

Filed Date: 7/29/26.

Accession Number: 20260729–5054.

Comment Date: 5 p.m. ET 8/19/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: July 29, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–15639 Filed 7–31–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–532–000]

Rio Grande LNG Train 6, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Rio Grande LNG Expansion Project, Request for Comments on Environmental Issues, Notice of Public Scoping Session, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental effects of the Rio Grande LNG Expansion Project (Project) involving construction and operation of facilities by Rio Grande LNG Train 6, LLC (Rio Grande LNG) in Cameron County, Texas.¹ The Commission will use this EIS in its decision-making process to determine whether the Project is in the public interest. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental effects that could result whenever it considers the issuance of an authorization. This gathering of public input is referred to as “scoping.” By notice issued on March 9, 2026, in Docket No. PF26–3–000, the Commission opened a scoping period during Rio Grande LNG’s planning process for the Project and prior to filing a formal application with the Commission, a process referred to as “pre-filing.” Rio Grande LNG has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process. Additional information about the Commission’s NEPA process is described below in the *NEPA Process and the EIS* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and effects, and any relevant information,

studies, or analyses of any kind concerning effects affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 31, 2026. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, during the pre-filing process, the Commission opened a scoping period which expired on April 8, 2026; however, Commission staff continued to accept comments during the entire pre-filing process. Staff also held two scoping sessions to take oral scoping comments. Those sessions were held in Port Isabel, Texas on March 24 and 25, 2026. Due to an error in the distribution of the Notice of Scoping to the interested stakeholders on the mailing list, we have decided to conduct one virtual scoping session for the Project. All substantive written and oral comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF26–3–000 you do not need to file those comments again.

Rio Grande LNG provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP26–532–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend the virtual public scoping session its staff will conduct by telephone, scheduled as follows:

Date and Time: August 19, 2026; 5:00–7:00 p.m. CST; Call in number: 1–888–652–5200; Passcode: Ask to be joined into the Federal Energy Regulatory Commission (FERC) call.

The primary goal of this scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted.

There will not be a formal presentation by Commission staff when the session opens. You may call at any time after the session begins at which time you will be placed on hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of 3 minutes will be implemented for each commentor. Please note that your hold times may vary based on the number of callers at any given time.

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is FERC/EISX–019–20–000–1781175659.

Your oral comments will be recorded by the court reporter and become part of the public record for this proceeding. Transcripts of all comments received during the scoping session will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or *OPP@ferc.gov*.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Effects

Rio Grande LNG proposes to expand the previously authorized Rio Grande LNG Terminal along the Brownsville Ship Channel in Cameron County, Texas. The Rio Grande LNG Expansion Project would produce about 6.03 million tonnes per annum of liquified natural gas (LNG) for export to U.S. allies and trading partners. According to Rio Grande LNG, its Project would expand the LNG production and ship loading capacity of the authorized Rio Grande LNG Terminal through the addition of a sixth liquefaction train and a third marine jetty to meet consistent and growing global demand for U.S. natural gas.

The Rio Grande Expansion Project would consist of the following facilities:

- one new liquefaction train (Train 6);
- one new marine jetty (Berth 3); and
- associated facilities and supporting infrastructure.

The general location of the Project facilities are shown in appendix 1.²

Land Requirements for Construction

Construction of the planned facilities would disturb about 303 acres of land for Train 6 and associated infrastructure and about 22 acres for Berth 3. The Project would also utilize about 383 acres of temporary offsite construction yards. The Project would be constructed entirely within the authorized Rio Grande LNG Terminal currently under construction. Following construction of

the Rio Grande LNG Expansion Project, Rio Grande LNG would maintain about 51 acres for permanent operation of the Project's facilities (Train 6, Berth 3, and associated infrastructure). The temporary offsite construction yards would be restored and revert to former uses.

Based on an initial review of Rio Grande LNG's proposal and public comments received during the pre-filing scoping process, Commission staff have identified several expected effects that deserve attention in the EIS. The Project would affect 28.7 acres of open water in the Brownsville Ship Channel during construction. Additionally, Project operation would result in about 277 tons per year of nitrogen oxide emissions, 7 tons per year of particulate matter of aerodynamic diameter of 2.5 microns or less emissions, and 5.8 tons per year of hazardous air pollutant emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss effects that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid effects on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. U.S. Department of Transportation- Pipeline and Hazardous Materials Safety Administration, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and the U.S. Coast Guard are cooperating agencies in the preparation of the EIS.³ Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary⁴ and the Commission's natural gas

environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action. Alternatives currently under consideration include:

- the no-action alternative;
- system alternatives; and
- configuration alternatives.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental effects.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.⁵ The Project EIS will document findings on the effects on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On June 9, 2026, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the email and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (888) 208-3676 or TTY (202) 502-8659.

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁴ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁵ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in January 2027, opening a 45-day comment period.

Issuance of Notice of Availability of the final EIS June 25, 2027

90-day Federal Authorization Decision Deadline ⁶ September 23, 2027

If a schedule change becomes necessary for the final EIS, an additional

notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here.

Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

FEDERAL AND STATE DELEGATED PERMITS

Agency	Permit
Federal Energy Regulatory Commission	Natural Gas Act Section 3 Facility Authorization.
U.S. Department of Energy, Hydrocarbons and Geothermal Energy Office.	Natural Gas Act Section 3 Export Authorization to Free Trade Agreement and Non-Free Trade Agreement Nations.
U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration.	Letter of Determination.
U.S. Army Corps of Engineers—Galveston District.	Clean Water Act, Section 404 Standard Permit.
National Marine Fisheries Service—Protected Resources Division.	Section 408 Permission.
National Marine Fisheries Service—Habitat Conservation Division.	Marine Protection, Research, and Sanctuaries Act, Section 103 Permit.
National Marine Fisheries Service—Marine Mammal Division.	Endangered Species Act, Section 7 Consultation.
U.S. Fish and Wildlife Service—Texas Coastal and Central Plains Ecological Field Office.	Fish and Wildlife Coordination Act Consultation.
Federal Aviation Administration	Magnuson Stevens Fisheries Conservation and Management Act—Essential Fish Habitat Consultation.
U.S. Coast Guard	Marine Mammal Protection Act—Incidental Harassment Authorization.
	Endangered Species Act, Section 7 Consultation.
	Migratory Bird Treaty Act Consultation.
	Fish and Wildlife Coordination Act Consultation.
	Determination of Hazard/No Hazard pursuant to 14 CFR part 77.
	Water Suitability Assessment.
State	
Texas Historical Commission	Section 106 of the National Historic Preservation Act Consultation.
Texas Commission on Environmental Quality ...	Clean Air Act, New Source Review—Prevention of Significant Deterioration Permit.
	Title V Operating Permit.
	Clean Water Act Section 402—National Pollutant Discharge Elimination System—Construction Wastewater Discharge Permit.
	Hydrostatic Test Water Discharge Permit.
	Operational Wastewater Discharge Permit.
Railroad Commission of Texas	Clean Water Act Section 401 Water Quality Certification.
Texas Parks and Wildlife Department	Coastal Zone Management Act—Consistency Determination.
	State-listed Species Consultation.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project, which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain

distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to

remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26-532-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

⁶ The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority,

that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per

18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Additional Information

Additional information about the Project is available on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP26–532). Be sure you have selected an appropriate date range. For assistance with eLibrary, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–15695 Filed 7–31–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–544–000]

Vinton Dome Storage Hub, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Vinton Dome Storage Hub Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Vinton Dome Storage Hub Project involving construction and operation of facilities by Vinton Dome Storage Hub, LLC (Vinton Dome) in Calcasieu Parish, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission

will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 28, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 22, 2026, you will need to file those comments in Docket No. CP26–544–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement.

However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Vinton Dome provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–544–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed

to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202)502-6595 or OPP@ferc.gov.

Summary of the Proposed Project

Vinton Dome proposes to construct a new natural gas storage facility in Calcasieu Parish, Louisiana. The Project is a high-deliverability natural gas storage facility designed for the injection and storage of natural gas in underground solution-mined salt caverns and the withdrawal of stored natural gas for delivery to interstate gas transmission pipelines.

The storage facility would be supplied by four 24-inch-diameter, bidirectional natural gas pipelines that will interconnect with existing and planned interstate gas transmission pipelines owned and operated by others. Vinton Dome states the gas storage facility would provide a total underground storage capacity of approximately 63.5 billion cubic feet (Bcf) and a working gas capacity of 44.5 Bcf.

The Vinton Dome Storage Hub Project would consist of the following facilities:

- five salt dome storage caverns, each 8.9 Bcf in working gas capacity and 3.8 Bcf in bas capacity for a total per cavern capacity of 12.7 billion cubic feet;
- six raw groundwater withdrawal and six class II brine disposal wells, including associated pumping and pipeline systems;
- one cavern leaching plant;
- one 55,000-horsepower (hp) compressor station with ten Caterpillar 3616 natural gas driven reciprocating compressor engines at 5,500 hp per unit, with appurtenant and auxiliary equipment;

- a northern header system, consisting of approximately 16.02-mile-long dual 24-inch-diameter, bidirectional natural gas pipelines and six interconnects with other interstate gas transmission pipelines with metering and regulation stations; and
- an eastern header system, consisting of approximately 16.27-mile-long dual 24-inch-diameter, bidirectional natural gas pipelines, three interconnects with metering and regulation stations, and three dual 24-inch-diameter, bidirectional natural gas lateral pipelines totaling approximately 0.88 mile to interconnect with four existing interstate gas transmission pipelines and metering and regulation stations.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed project would disturb approximately 589.9 acres of land for the aboveground facilities, the storage caverns, and the pipeline. Following construction, Vinton Dome would maintain approximately 227.5 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and reverted to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomic
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further

study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the email and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26-544-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number"

field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-15694 Filed 7-31-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26-548-000]

Guardian Pipeline, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Guardian 3 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Guardian 3 Expansion Project (G3 Expansion Project) involving construction and operation of facilities by Guardian Pipeline, LLC (Guardian) in Kendall, DeKalb, McHenry, and Will counties, Illinois as well as Dodge and Fond du Lac counties, Wisconsin. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis

in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 28, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on July 1, 2026, you will need to file those comments in Docket No. CP26-548 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Commission has no jurisdiction over these matters.

Guardian provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26-548) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to

receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Summary of the Proposed Project

Guardian proposes to construct and operate 68.3 miles of new 36-inch-diameter pipeline comprised of looping¹ segments at two separate locations in Kendall, DeKalb and McHenry counties, Illinois; two new natural gas-fired 11,110-horsepower compressor units in Will County, Illinois; modifications to the compressor facilities at the existing Sycamore Compressor Station in DeKalb County; a new 9,000-horsepower compressor station (CS) in Dodge County, Wisconsin; a new meter and regulator station in Fond du Lac County, Wisconsin and other minor appurtenant facilities in Illinois. The G3 Expansion Project would provide about 536,903 dekatherms/day (Dth/day) of long-term firm transportation capacity. According to Guardian, its project would help meet the growing demand for additional natural gas supplies in Wisconsin and neighboring states by creating additional firm transportation capacity from liquid trading hubs in the Chicago area to points of delivery in Wisconsin.

The G3 Expansion Project would consist of the following facilities:

- Approximately 42.6 miles of 36-inch-diameter looping natural gas pipeline (Juliet Loop) in Kendall and DeKalb counties, Illinois;
- approximately 25.5 miles of 36-inch-diameter looping natural gas pipeline (Sycamore Loop) in DeKalb and McHenry counties, Illinois;
- two new natural gas 11,110-horsepower (HP) compressor units within Guardian's existing Joliet Compressor Station (CS) in Will County, Illinois;
- modifications to the compression facilities within Guardian's existing Sycamore CS in DeKalb County;
- greenfield 9,000-HP CS (Eden CS) in Dodge County, Wisconsin;

- greenfield meter and regulator station (MS) (Sheboygan MS) in Fond du Lac County, Wisconsin; and
- Other appurtenant pipeline facilities in Illinois.

The general location of the project facilities is shown in appendix 2.²

Land Requirements for Construction

Construction of the proposed facilities would disturb about 1,604 acres of land for the aboveground facilities and the pipeline. Following construction, Guardian would maintain about 476 acres for permanent operation of the project's facilities; the remaining acreage would be restored.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- Socioeconomics;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the email and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FercOnlineSupport@ferc.gov or call toll free, (866) 208-3676 or TTY (202) 502-8659.

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity. A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary³ and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁵ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local

government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26-548 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 1).

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-15693 Filed 7-31-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP26-992-000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: 4(d) Rate Filing: EGTS—26.07.29 Negotiated Agreements to be effective 9/1/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5012.

Comment Date: 5 p.m. ET 8/10/26.

Docket Numbers: RP26-993-000.

Applicants: Big Sandy Pipeline, LLC.

Description: Compliance filing: Big Sandy Fuel Filing Effective 9-1-2026 to be effective N/A.

Filed Date: 7/29/26.

Accession Number: 20260729-5022.

Comment Date: 5 p.m. ET 8/10/26.

Docket Numbers: RP26-994-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (EOG August–October 2026) to be effective 8/1/2026.

Filed Date: 7/29/26.

Accession Number: 20260729-5034.

Comment Date: 5 p.m. ET 8/10/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR26-26-001.

Applicants: Buffalo Run Pipeline LLC.

Description: 284.123 Rate Filing: Supplemental Statement of Operating Conditions to be effective 4/1/2026.

Filed Date: 7/28/26.

Accession Number: 20260728-5047.

Comment Date: 5 p.m. ET 8/11/26.

Docket Numbers: PR26-27-001.

Applicants: Bull Run Pipeline LLC.

³ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁴ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁵ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Description: 284.123 Rate Filing: Supplemental Statement of Operating Conditions to be effective 4/1/2026.

Filed Date: 7/28/26.

Accession Number: 20260728–5048.

Comment Date: 5 p.m. ET 8/11/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: July 29, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026–15640 Filed 7–31–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Changes to E-Tariff Validation Error Codes

Take notice that effective August 3, 2026, the following additions will be made to the eTariff Validation Error Codes.

Error code	Description
191	The Lead Applicant's CID is different from the Lead Applicant's CID in the original filing in this docket (–000).
193	Lead Applicant is not registered in Company Registration to make eTariff filings.

Validation Error Code 191 checks to make sure the Lead Applicant CID (lead_applicant_id) on a sub-docket filing (–001 and above) matches the Lead Applicant CID on the initial filing (–000). The Commission assigns the same applicant(s) to all subsequent sub-

docket filings as it did for the initial filing. Filers, therefore, should use the same Lead Applicant CID for all subsequent filings in the same docket. This error code initially will be deployed as a warning.

Validation Error Code 193 will result in rejection of the filing if the Lead Applicant CID is not registered to make eTariff filing in Company Registration. Although some entities, such as Holding Companies, Service Companies and Corporations register in Company Registration to make certain form filings file on behalf of their affiliates, they cannot be lead applicants on eTariff filings because they do not have the right under the statutes administered by the Commission to make a tariff filing.

For more information, contact Michael.Goldenberg@ferc.gov, James.Sarikas@ferc.gov, or etariffresponse@ferc.gov.

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–15690 Filed 7–31–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5089–027]

Fall River Electric Cooperative, Inc.; Notice of Revised Schedule for Environmental Assessment

On August 31, 2021, Fall River Electric Cooperative, Inc. (Fall River) filed an application for a new major license for the existing 7.45-megawatt Felt Hydroelectric Project (Felt Project; FERC No. 5089). The Felt Project is located on the Teton River in Teton County, Idaho. The project occupies federal lands administered by the U.S. Bureau of Land Management.

In accordance with the Commission's regulations, on October 1, 2025, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. On December 15, 2025, the Commission issued a notice of intent to prepare an Environmental Assessment (EA) with a schedule indicating that staff anticipated issuing the EA on August 31, 2026. However, upon further review,

staff intends to issue the EA by October 30, 2026.¹

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. The EA will be issued for a 30-day comment period. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	October 30, 2026.

Any questions regarding this notice may be directed to Ingrid Brofman at (202) 502–8347 or at ingrid.brofman@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–15692 Filed 7–31–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15331–001]

Marlow Hydro, LLC; Notice of Intent To Prepare an Environmental Assessment

On July 31, 2024, Marlow Hydro, LLC filed an application to license the 225-kilowatt Nash Mill Dam Hydroelectric Project No. 15331. The project is located on the Ashuelot River in Cheshire County, New Hampshire.

In accordance with the Commission's regulations, on May 12, 2026, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1764758177.

environmental assessment (EA) on the application to license the project.¹

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

The application will be processed according to the following schedule. The EA will be issued for a 30-day comment period. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	May 12, 2027.

Any questions regarding this notice may be directed to Joshua Dub by telephone at (202) 502-8138 or by email at Joshua.Dub@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: July 29, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-15689 Filed 7-31-26; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2025-0760; FRL 12061-01-OW]

National Pollutant Discharge Elimination System (NPDES) 2027 Issuance of General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: All 10 Environmental Protection Agency (EPA) Regions are

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX-019-20-000-1778660746.

proposing for public comment the draft 2027 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities, also referred to as the “proposed 2027 Construction General Permit (CGP)” or the “proposed permit.” The proposed permit, if finalized, will replace the existing 2022 CGP that will expire on February 17, 2027. The EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where the EPA is the NPDES permitting authority, including Massachusetts, New Hampshire, New Mexico, most Indian country lands, the District of Columbia, U.S. territories and protectorates except for the U.S. Virgin Islands, Lands of Exclusive Federal Jurisdiction, and certain other Federal areas. The EPA seeks comment on the proposed permit and on the accompanying fact sheet, which contains supporting documentation. The fact sheet and proposed permit can be found at <https://www.epa.gov/npdes/proposed-2027-construction-general-permit-cgp-and-related-documents>.

DATES: Comments on the proposed permit must be received on or before September 2, 2026. The EPA will host a webinar during the comment period that will provide an overview of the proposed 2027 CGP and an opportunity for participants to ask questions. The EPA will announce details of the webinar at <https://www.epa.gov/npdes/proposed-2027-construction-general-permit-cgp-and-related-documents>.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2025-0760, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this proposed permit, Docket ID No. EPA-HQ-OW-2025-0760. 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 permit issuance process, see the “Written Comments” (section I.C of this document) and “What Process will the EPA Follow to Finalize the Permit” (section I.E of this document) headings of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Office of Wastewater Management at schaner.greg@epa.gov.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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- IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- X. Compliance With the National Environmental Policy Act (NEPA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Construction Activities

I. General Information

A. Does this action apply to me?

1. Entities Covered by This Permit

This proposed permit would cover the following entities, as categorized in the North American Industry Classification System (NAICS):

TABLE 1—ENTITIES COVERED BY THIS PROPOSED PERMIT

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. This table includes the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not included could also be affected. To determine whether your entity may be affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. 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.

2. Construction Projects for Which Operators Are Eligible for Permit Coverage

Coverage under this permit would be available to operators of eligible projects located in those areas where the EPA is the permitting authority. A list of eligible areas is included in Appendix B of the proposed permit. Eligibility for permit coverage would be limited to operators of “new sites,” operators of “existing sites,” “new operators of new or existing sites,” and operators of “emergency-related projects.” A “new site” would be a site where construction activities commence on or after the effective date of the final 2027 CGP. An “existing site” would be a site where construction activities commenced prior to the effective date of the final 2027 CGP. A “new operator of a new or existing site” would be an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site. An “emergency-related project” would be a project initiated in response to a public emergency (e.g., mud slides, earthquake, extreme flooding conditions, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the

environment, or to reestablish public services.

3. Geographic Coverage

The 2027 CGP would provide coverage to eligible operators for stormwater discharges from construction activities that occur in areas not covered by an approved state NPDES program. The areas of geographic coverage for the proposed 2027 CGP are listed in Appendix B, and include the states of New Hampshire, Massachusetts, and New Mexico, as well as most Indian country lands, Lands of Exclusive Federal Jurisdiction, and areas in selected states for federally-operated projects. The area of coverage would also include the District of Columbia, Puerto Rico, and the Pacific Island territories (i.e., Island of American Samoa, Island of Guam, Johnston Atoll, Commonwealth of the Northern Mariana Islands, Midway Island, and Wake Island).

B. How can I get copies of these documents and other related information?

You may access this **Federal Register** document and other associated documents electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>. Electronic versions of this proposed permit and fact sheet are available on the EPA’s NPDES website at <https://www.epa.gov/npdes/proposed-2027-construction-general-permit-cgp-and-related-documents>.

C. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2025-0760, 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. The EPA may publish any comment received to its public docket. Do not submit to the EPA’s docket at <https://www.regulations.gov> any

information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

D. Will a public hearing be held on this action?

The EPA does not currently intend to schedule a public hearing concerning the proposed permit. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing should be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing should state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, the EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If the EPA finds there is a significant degree of public interest and holds a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing in accordance with 40 CFR 124.10. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

E. What process will the EPA follow to finalize the permit?

After the comment period closes, the EPA intends to issue a final permit prior to the expiration date of the current 2027 CGP. The EPA will consider all significant comments before issuing a final permit. The EPA's responses to public comments received will be included in the docket as part of the final permit issuance.

F. Who would be covered under the 2027 CGP?

Assuming the EPA issues a final permit, eligible operators of existing and new construction sites may seek authorization under the final 2027 CGP. If the 2027 CGP is finalized, any construction site operator that obtained permit coverage under the 2022 CGP prior to its expiration date would automatically remain covered under the 2022 CGP as described in Part 1.4.3 and Table 1 of the proposed permit. The purpose of providing, consistent with 40 CFR 122.6, a limited period of extended coverage under the expired CGP to already permitted sites is to address the additional time needed by these operators to review the new permit, update their stormwater plans to conform with any new requirements, and submit a new Notice of Intent (NOI) for coverage under the new CGP.

G. Who are the EPA regional contacts for this permit?

For EPA Region 1, contact Meridith Finegan: email at finegan.meridith@epa.gov.

For EPA Region 2, contact Sieglinde Pylypchuk: email at pylypchuk.sieglinde@epa.gov, or for Puerto Rico, contact Sergio Bosques: email at bosques.sergio@epa.gov.

For EPA Region 3, contact Shana Stephens: email at stephens.shana@epa.gov.

For EPA Region 4, contact Mary Kuo: email at kuo.mary@epa.gov.

For EPA Region 5, contact John Nguyen: email at nguyen.john@epa.gov.

For EPA Region 6, contact Suzanna Perea: email at perea.suzanna@epa.gov.

For EPA Region 7, contact Mark Matthews: email at matthews.mark@epa.gov.

For EPA Region 8, contact Amy Maybach: email at maybach.amy@epa.gov.

For EPA Region 9, contact Kelsey Husted: email at husted.kelsey@epa.gov.

For EPA Region 10, contact Jill Seale: email at seale.jill@epa.gov.

II. Background of Permit

The Clean Water Act (CWA) establishes a comprehensive program

“to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water.” 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires the EPA to control discharges of pollutants from point sources into waters of the United States through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. 33 U.S.C. 1342.

The Water Quality Act of 1987 added section 402(p) to the CWA, which directed the EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). The EPA published a final regulation, often called the “Phase I Rule,” in the **Federal Register** on November 16, 1990, establishing permit application requirements for, among other things, “storm water discharges associated with industrial activity.” See 55 FR 47990. The EPA defines the term “storm water discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S., were included in the definition of “industrial activity” pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the “Phase II Rule,” was published in the **Federal Register** on December 8, 1999. 64 FR 68722. The Phase II Rule requires NPDES permits for discharges from construction activities disturbing at least one acre but less than five acres, including activities that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See *id.*

NPDES permits for construction stormwater discharges are required under section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under CWA section 301 and, where applicable, section 306, and water quality-based limits under CWA section 301(b)(1)(C), 33 U.S.C. 1342(a)(1), 1311, and 1316. Technology- and water quality-based limitations for construction stormwater discharges are discussed in that order in sections II.A and II.B of this document.

A. Technology-Based Effluent Limitations

Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA. Once a new ELG and NSPS are established in accordance with CWA sections 301 and 306, NPDES permits must incorporate limits based on such technology-based standards. See 33 U.S.C. 1311 and 1316; see also 40 CFR 122.44(a)(1). On December 1, 2009, the EPA published final regulations establishing technology-based ELGs and NSPS for the Construction & Development (C&D) point source category. See 40 CFR part 450 and 74 FR 62996. The EPA amended the C&D rule on March 6, 2014 to satisfy the EPA's obligations pursuant to a litigation settlement of a challenge to the 2009 rule. See 79 FR 12661.

All NPDES construction stormwater permits issued by the EPA or states, including the proposed permit, must incorporate the requirements of the C&D rule, as amended. 40 CFR 450.21. The technology-based effluent limitations in the C&D rule are non-numeric limitations. The non-numeric effluent limitations in the C&D rule are designed to prevent or minimize the mobilization and discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize the exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites.

The fact sheet that accompanies the proposed permit summarizes how the EPA has incorporated the effluent limits from the C&D rule into the proposed permit and provides the Agency's accompanying rationale.

B. Water Quality-Based Limitations

In accordance with CWA section 301(b)(1)(C) and the EPA's regulations at 40 CFR 122.44(d)(1), the EPA and states are required to include additional or more stringent permit requirements when necessary to achieve water quality standards. 33 U.S.C. 1311(b)(1)(C). The 2022 CGP contains several provisions to protect water quality, including heightened inspection and stabilization requirements for sites discharging to certain sensitive waters, monitoring requirements for certain dewatering discharges, requirements for discharges to waters impaired for polychlorinated biphenyls (PCBs), and corrective action procedures.

In March 2025, the U.S. Supreme Court in its *City and County of San Francisco v. EPA* opinion (*San Francisco v. EPA*, No. 23–753) invalidated certain narrative water quality-based requirements that were included in the city’s NPDES permit. The 2022 CGP includes narrative requirements in the water quality-based section of the permit (Part 3) that are similar to the type of provision that was invalidated in the *San Francisco* decision.¹ As discussed in section IV of this document, the EPA is proposing changes to the water quality-based requirements in the proposed 2027 CGP to ensure consistency with the *San Francisco* decision.

III. Process Used To Identify Proposed Permit Changes

As with prior iterations of the CGP, the EPA has continued to prioritize seeking input during the development of the draft permit from various stakeholders that have expressed an interest in construction stormwater in the past. The EPA met with stakeholders representing the construction industry and environmental interests. A summary of these meetings is included in the docket for this proposal. The purpose of these meetings was to help identify areas of the 2022 CGP that may benefit from further clarification or modification to more effectively achieve the pollutant reduction objectives of the permit. The feedback obtained from these meetings helped inform the types of clarifications and other changes the EPA is proposing here, as well as the areas where the Agency is soliciting further feedback during the public comment period. Also, the EPA is proposing changes to the permit as informed by the EPA’s learned experiences in implementing the 2022 CGP and working directly with covered operators. As introduced in section II.B of this document, the EPA is proposing additional changes to the permit to ensure the water quality-based limitations in Part 3 are consistent with the Supreme Court’s *San Francisco* decision, which was published after the EPA’s issuance of the current 2022 CGP.

IV. Summary of Proposed Permit Changes

The EPA proposes to make several modifications in the 2027 CGP, which are summarized below and discussed in more detail in the fact sheet, along with

EPA’s accompanying rationale for each proposed permit condition. The EPA also specifically requests comment on several potential permit modifications, which are summarized in section V of this document. The fact sheet and proposed permit can be found at <https://www.epa.gov/npdes/proposed-2027-construction-general-permit-cgp-and-related-documents>. A comprehensive list of all the proposed changes, as well as the corresponding parts of the permit that could be modified, is included in a table in section III.B of the fact sheet.

The following is a detailed summary of the more significant changes proposed to be included in the final permit.

1. Changes To Conform to a Recent Supreme Court Decision

The EPA is proposing changes to specific water quality-based requirements to address the Supreme Court’s decision in *City and County of San Francisco v. EPA*, No. 23–753 (S. Ct. Mar. 4, 2025) (referred to as “the *San Francisco* decision”). The Supreme Court found that the CWA does not authorize what the Court referred to as “end-result” permit requirements that “do not spell out what a permittee must do or refrain from doing but instead make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants.” *City and County of San Francisco v. EPA*, 604 U.S. 334, 338 (2025). The 2022 CGP includes language that could be considered the type of end-result provision addressed in the *San Francisco* decision. The proposed changes to the permit include removing a narrative limitation that required discharges to be “controlled as necessary to meet applicable water quality standards” and replacing it with a set of more specific narrative limits that are indicators of water quality problems in the discharge. These indicator conditions were previously incorporated into the 2022 CGP as part of the EPA’s April 2025 modification of the permit; however, at that time, these requirements were only made applicable to newly eligible sites within Lands of Exclusive Federal Jurisdiction given the narrow modification being made to the permit. The proposed change in the 2027 CGP would make these indicator conditions applicable to all CGP permittees. The EPA also proposes further conforming edits to other parts of the CGP that contain similar language implicated by the *San Francisco* decision. Refer to Sections 3 and 3.1 of the proposed permit fact sheet for further information on the

rationale supporting adoption of these changes.

2. Modernizing Permitting Through Electronic Exchange of Site Information

Currently, the EPA does not have real-time access to information from CGP permittees’ Stormwater Pollution Prevention Plans (SWPPPs), which can delay the Agency’s ability to provide assistance to operators and answer questions from the public about specific sites. Under the CGP, SWPPPs are required to be developed before the NOI is submitted. While the operator is required to make the SWPPP available to the EPA upon request or at the time of an on-site inspection (Part 7.3), it is not currently required to be submitted with the NOI. The lack of real-time access to the SWPPP, or key aspects of the SWPPP, such as the site map and a description of stormwater controls to be used at the site, has meant that the EPA is often limited in its ability to provide compliance assistance to permittees or answer basic questions about how a site is planning to comply with permit requirements. To address this issue, the EPA proposes to require the operator to include as part of the NOI either a copy of the full SWPPP, a Uniform Resource Locator (URL) where a copy of the SWPPP can be viewed, or a copy of the SWPPP site map and the signed certification required by Part 7.2.10. It has been EPA’s experience in reviewing SWPPPs for compliance purposes that were developed by permittees covered under the CGP that nearly all of them are developed in digital format. Since these SWPPPs are already saved as digital files, requiring this information as part of the electronic submittal of the NOI will not impose a significant additional burden. In acknowledgment of the need for the SWPPP to change during the project, the EPA would also specify in the permit that the version of the SWPPP submitted with the NOI would be used by the Agency for reference purposes only and would not form a definitive basis for determinations of compliance. The EPA also proposes to clarify that if the SWPPP includes restricted information (*i.e.*, information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations, including for example classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information) it may be withheld from public access. The EPA is requesting specific comment on this proposed

¹ The EPA notes that an April 2025 modification to the CGP included targeted changes to the permit’s water quality-based requirements as they apply to projects within Lands of Exclusive Federal Jurisdiction to comport with the *San Francisco* decision. 90 FR 15653 (April 15, 2025).

change as well as recommendations on suggested alternatives.

3. Updates To Reflect Best Industry Practice

A proposed change related to sediment basins is intended to reflect current best practices in stormwater management at construction sites. Where operators choose to install a sediment basin at their site, they must comply with the design, installation, and maintenance requirements of Part 2.2.12 of the current permit. The EPA inspections under the 2022 CGP found instances where significant downstream sediment discharges occurred as a result of operators immediately starting to use the basin after excavation and prior to sufficient stabilization. To address this concern, for those operators installing a sediment basin at their site, the EPA proposes to require stabilization measures to be implemented prior to first directing stormwater to the sediment basin to ensure that soil from the basin itself does not become a source of sediment discharge. At a minimum, the permit would specify that the sediment basin embankment and side slopes, as well as related conveyance structures and discharge points, must be stabilized following the initial construction of the basin and prior to its first use. The specific type of stabilization, whether vegetative or non-vegetative, is left to the discretion of the operator and whatever design specifications prevail in the area of the project. This requirement is consistent with Federal and State design manuals as is discussed below in the section addressing Part 2.2.12.

4. Permit Streamlining

The EPA's proposal also includes several modifications intended to streamline permit requirements while maintaining continued water quality protection. The following is a summary of the more noteworthy of these proposed changes:

- *Clarify that perimeter controls are only needed in specific areas of the site*—The EPA has found during inspections that operators frequently interpret the CGP to require the entire perimeter of the construction site to be surrounded by a sediment control regardless of whether stormwater flows in the direction of the control. Perimeter controls installed in areas that are not receiving stormwater are not achieving a stormwater control purpose and are therefore an unnecessary expenditure for CGP compliance. For this reason, the EPA proposes to further clarify Part 2.2.3 to emphasize that perimeter controls are necessary only for areas that

have the potential to receive stormwater from disturbed areas.

- *Clarify stabilization deadlines for sites in arid, semi-arid, or drought-stricken areas*—The EPA has found that the stabilization provisions applying to arid, semi-arid, and drought-stricken areas have proven to be unnecessarily confusing. Specifically, the current stabilization deadlines differ depending on an overlapping set of factors related to whether construction will occur during the “seasonally dry period,” whether the site disturbs more or less than five acres, and whether the site discharges to a sensitive water. The EPA is proposing to simplify the permit by establishing a more straightforward approach to determine which stabilization deadline applies.

- *Provide flexibility for stabilization during sudden snow or frozen conditions*—The 2022 CGP does not provide clear direction for sites experiencing unforeseeable winter weather conditions (such as unforeseeable snow or frozen ground conditions) that result in triggering the permit requirement for operators to stabilize the exposed portions of the site for 14 or more days of inactivity. The EPA is aware of at least one site permitted under the 2022 CGP that faced this same situation as a result of an unexpected snowstorm during the current permit term. Though there is currently a provision addressing “unforeseen circumstances” (Part 2.2.14b.ii in the 2022 CGP) such as “problems with supply of seed stock or with the availability of specialized equipment and unsuitability of soil conditions due to excessive precipitation and/or flooding,” this provision is not directly applicable to the unforeseeable winter weather conditions scenario explained above. To provide clarity on this issue and flexibility in the timelines for unforeseeable winter conditions that could cause unplanned delays in construction, the EPA proposes to allow construction sites in these specific circumstances to temporarily suspend the need to stabilize the site while the conditions persist. Providing this flexibility would acknowledge the impracticability of complying with standard stabilization timeframes during these extreme weather conditions while also ensuring that these sites achieve stabilization at the soonest practicable time after these conditions dissipate consistent with the CGP's overall erosion control objectives.

- *Reduce the number of photos that must be submitted with the Notice of Termination (NOT)*—Under the current 2022 CGP, when a site terminates

coverage because the construction activities are completed, the permit requires the operator to submit both “before and after” photographs of the site to demonstrate compliance with the stabilization requirements. Through evaluating the photos submitted during the current permit term, the EPA is finding that it is likely unnecessary to compare before and after photos to substantiate compliance with the stabilization requirements, and that having just the post-stabilization photos of a construction site should be sufficient to ensure the site's compliance with these requirements. For this reason, the EPA proposes to no longer require operators to submit before photos with their NOT form. See *2022 Construction General Permit (CGP)—Evaluation of Stabilization Photo Requirements*, EPA # 833-R-26-001 (EPA, 2026), available in the docket for the proposed permit at <https://www.regulations.gov> for Docket ID No. EPA-HQ-OW-2025-0760.

- *Consider streamlining of specific turbidity monitoring and reporting requirements*—Under the current 2022 CGP, sites discharging dewatering water to sensitive waters are required to conduct turbidity monitoring daily when there is a discharge. The site is also required to report on the weekly average turbidity levels every quarter. Based on the EPA's evaluation of the submitted data and feedback received from permittees for the 2022 CGP (see *Evaluation of Turbidity Data from EPA's 2022 Construction General Permit*, EPA # 833-R2-6002 (EPA, 2025), available in the docket for the proposed permit at <https://www.regulations.gov> for Docket ID No. EPA-HQ-OW-2025-0760), the Agency is considering potential changes to these requirements as follows:

- Request public feedback on reducing monitoring frequency for certain dewatering discharges*—The EPA is contemplating whether to reduce the frequency of turbidity monitoring from daily to weekly for sites that will be discharging dewatering water continuously for an extended period of time. In particular, the EPA is requesting comment (1) generally on the proposal to reduce the monitoring frequency for sites discharging dewatering water for longer periods of time, and (2) specifically on the option of allowing sites discharging continuously for more than three days to monitor weekly if the average value of the first three days of turbidity monitoring does not exceed the benchmark. This potential permit change is predicated on the general understanding that where sites are being

dewatered by pumping out underlying groundwater the turbidity levels in the discharge are not expected to fluctuate significantly after the first few days because the dewatered water is not exposed to the surface level soil disturbances. EPA is seeking any data or other technical information to help inform the Agency's decision on whether to provide additional monitoring flexibility for this type of dewatering.

—*Request comment on streamlining the reporting requirements for certain sites*—Where a group of operators coordinate turbidity monitoring efforts at the same site, the 2022 CGP requires each operator to submit a monitoring report every quarter regardless of the role that the individual is taking with respect to collecting the actual samples. During the 2022 CGP permit term, the EPA heard from operators who inquired whether it is necessary for all operators in the operator group to submit reports when the EPA is already receiving the turbidity data from one of the operators. The EPA is open to ways in which it may be able to reduce unnecessary reporting burden while still continuing to receive the same level of turbidity data it needs to ensure that on-site controls are working to protect water quality. For this reason, the EPA invites public input on whether the 2027 CGP should relieve some operators of the reporting requirement for turbidity benchmark monitoring as long as they submit an initial quarterly report informing the Agency that they are relying on another permitted operator at the same site to monitor and report and identifying the specific operator.

5. Changes in Formatting, Correcting Errors, and Updating References

The EPA identifies several proposed, non-substantive changes including permit formatting, corrections of typographical errors, and updates to technical references. Included in this category is one set of changes that is focused on improving permit readability by reducing the overall number of footnotes from the 2022 CGP. Over the course of the past three CGP permit terms, the number of footnotes used to provide examples and additional information and references grew from 26 in the 2012 CGP to 95 in the 2022 CGP. While these footnotes provide useful information, the EPA is concerned that the location of footnotes at the bottom of the page in smaller font makes this text less accessible. For these reasons, the EPA is proposing to cut back on the use of footnotes by instead incorporating much of the same

information into the body of the permit. Where the current footnote included examples or additional notations that further clarify what is meant by specific permit text, the EPA generally moved this text to the body of the permit.

Where changes to the text are proposed, they are shown in a different font at <https://www.epa.gov/npdes/proposed-2027-construction-general-permit-cgp-and-related-documents>. The vast majority of these changes would result in no substantive edits to the footnote text in the 2022 CGP. If finalized as proposed, this would result in reducing the number of footnotes from 95 to 31. For further information on where the footnote text is proposed to be moved, see *Proposed 2026 Construction General Permit (CGP)—Tracking of Changes to Footnotes from 2022 CGP* (EPA, 2026).

V. Specific Provisions for Which the EPA Is Soliciting Comment

While the EPA encourages the public to review and comment on all provisions in the proposed permit, the EPA has included in the body of the proposed permit several proposed provisions on which the EPA specifically requests feedback. The following list summarizes these specific requests for comment, and where they are included in the permit. The EPA notes that this section only includes summaries of the requests for comment on specific provisions. The Agency recommends that the public read each comment request within the body of the permit itself for more information.

1. Request for comment on specific aspects of the EPA's proposal to require the NOI to include a copy of the operator's SWPPP, an internet site where the SWPPP may be viewed, or a copy of the SWPPP site map and signed certification. See request for comment in Part 1.4.1 of the proposed permit.

2. Request for comment on the water quality conditions included in Parts 3.1 related to proposed changes to conform with the *San Francisco* decision. See request for comment in Part 3.1 of the proposed permit.

3. Request for comment on whether flexibility for submitting monitoring reports should be provided for individual operators who are part of a larger group of operators coordinating to comply with their site's turbidity monitoring and whether submitting reports should still be required when there is no dewatering discharge during a monitoring quarter. See request for comment in Part 3.3 of the proposed permit.

4. Request for comment on a potential alternative turbidity monitoring

framework for sites that will be discharging dewatering water for an extended period of time (e.g., more than 2–3 days). See request for comment in Part 3.3.1 of the proposed permit.

VI. Paperwork Reduction Act (PRA)

The information collection activities in this proposed permit have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. A copy of the ICR can be found in the docket for this permit (Docket ID No. EPA-HQ-OW-2025-0760), and it is briefly summarized here.

Section 402 of the CWA and the NPDES regulations require collection of information primarily used by permitting authorities, permittees (operators), and the EPA to make NPDES permitting decisions. Certain changes in this permit require revisions to the ICR to reflect changes to the forms and other information collection requirements. The EPA is reflecting the paperwork burden and costs associated with this permit in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons.

The EPA is proposing to collect new information as part of the 2027 CGP, if finalized. Under the proposed permit, the NOI form would be updated from the 2022 CGP to collect new information related to the following: adding an erroneously omitted question about the type of operator (required by eReporting regulations at 40 CFR part 127, appendix A, table 2); and requiring operators to provide access to their full SWPPP or to the SWPPP site plan and signed certification. The EPA is also proposing to add a question to the NOT form for the operator to indicate which of the CGP's final stabilization criteria it has met.

The ICR for this proposed permit estimates the incremental change in recordkeeping and reporting burden for the proposed 2027 CGP (which includes burden introduced in the 2022 CGP) compared to the total EPA CGP burden accounted for in the 2023 NPDES Program ICR. Any increases in burden are attributable to changes made in the 2022 CGP; the proposed changes in the 2027 CGP would decrease incremental burden as compared to the 2022 CGP.

Respondents/affected entities: Construction operators in the areas where the EPA is the NPDES permitting authority.

Respondent's obligation to respond: Compliance with the CGP's information collection and reporting requirements is mandatory for CGP operators.

Estimated number of respondents: the EPA estimates that for the duration of

the three-year ICR period approximately 7,800 operators will obtain coverage under the 2027 CGP, or 2,600 operators per year.

Frequency of response: Response frequencies in the 2027 CGP vary from once per permit term to quarterly.

Total estimated burden: the EPA estimates that the incremental change in information collection burden from the 2027 CGP is 29,367 hours per year. Burden is defined at 5 CFR 1320.3(b). This burden estimate reflects a decrease from the 2022 CGP burden, which is attributable to proposed changes that streamline reporting requirements, such as reducing the number of photographs required to be submitted with the NOT.

Total estimated cost: the EPA estimates that the incremental change in the annual information collection cost from the 2027 CGP is \$2,886,987 per year. This estimate reflects an incremental decrease in costs of \$25,383 from the 2022 CGP, which is attributable to the streamlining changes that are proposed as part of this permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Submit your comments on the EPA's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this notice. The EPA will respond to any ICR-related comments in the final permit. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than September 2, 2026.

VII. Proposed 2027 CGP Incremental Cost Analysis

The cost analysis accompanying this proposed permit monetizes and quantifies certain incremental cost impacts of the proposed permit changes as compared to the 2022 CGP. The EPA analyzed each change in the proposed 2027 CGP considering the previous permit's (*i.e.*, the 2022 CGP) requirements. The objective of this incremental cost analysis is to show where or to what extent the proposed 2027 CGP requirements impose an incremental increase in administrative

and compliance costs (such as the cost to conduct site inspections or to prepare compliance reports) on operators in relation to costs that are already accounted for in the 2022 CGP.

The EPA expects there would be an incremental decrease in costs to operators that would be covered under the proposed 2027 CGP, including small businesses. The EPA anticipates the estimated total average annual incremental cost decrease (compared to the 2022 CGP) would be \$25,383 per year. A copy of the EPA's incremental cost analysis for the proposed permit, titled "Incremental Cost Impact Analysis for the Proposed 2027 Construction General Permit (CGP)," is available in the docket (Docket ID No. EPA-HQ-OW-2025-0760).

VIII. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an interim cost analysis, summarized in section VIII of this preamble, which is available in the docket (Docket ID No. EPA-HQ-OW-2025-0760). This proposed permit, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action, which, if finalized, will apply in broad areas of Indian country to a wide range of potential operators, including potential Tribal operators, has Tribal implications as specified in Executive Order 13175. The EPA does not expect this proposed action, if finalized, to result in any substantial direct costs to Tribes; nor would the action preclude or preempt Tribes' ability to develop their own water quality codes or regulations under Tribal law. Nonetheless, in developing this proposed action the EPA was, as described in the Executive Order, mindful of the Federal Government's unique government-to-government relationship with Tribes and the Federal Government's trust relationship with Tribes. To help inform the EPA about Tribal views, interests, and concerns, and consistent with the EPA's "Policy on Consultation with Indian Tribes" (December 7, 2023), the Agency consulted with Tribal officials during the development of this proposed action

to gain an understanding of and, where appropriate, to address the Tribal implications of the proposed permit.

The EPA conducted Tribal consultation between July 7, 2025, and September 5, 2025, during which time there were 574 federally recognized Tribes. The EPA emailed letters to the Leaders and Environmental Directors of these 574 Tribes upon initiation of consultation, providing background information about the proposed reissuance of the permit and the consultation plan, and requesting Tribal input on potential revisions to the proposed 2027 CGP. During this consultation, the EPA conducted the following activities:

- July 9, 2025—The EPA participated in the National Tribal Water Council monthly conference call and received written comments in response.

- July 22, 2025—The EPA led an informational webinar to provide an overview of the current CGP and information regarding the ongoing consultation. Tribal representatives were given the opportunity to ask questions about the current CGP and to provide any feedback on issues for the EPA to consider during the development of the proposed permit. A total of 30 Tribal representatives attended.

- July 24, 2025—The EPA led a second informational webinar to provide an additional opportunity for engagement on the CGP.

The EPA received comments providing input from Tribes and took these into consideration when developing the proposed permit. These comments are described in the EPA's Tribal consultation summary, which can be accessed at <https://www.epa.gov/dockets> in the docket for this permit (refer to Docket No. EPA-HQ-OW-2025-0760).

The EPA will provide email notification to Tribes of the proposed permit and invite those interested to provide the Agency with comments.

X. Compliance With the National Environmental Policy Act (NEPA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Construction Activities

Pursuant to NEPA and the EPA's regulations for implementing NEPA (40 CFR part 6), the EPA made the determination on July 27, 2026 that the potential issuance of the EPA's final 2027 CGP was eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). See "Categorical Exclusion: Issuance of the EPA 2027 National Pollutant Discharge

Elimination System (NPDES) General Permit for Discharges from Construction Activities,” Document Number N2026213 at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/nepa/details?nepaId=566594>. The EPA has reviewed the proposed permit and has found that it does not affect the EPA’s prior categorical exclusion determination for the permit, including that it does not involve any extraordinary circumstances listed in 40 CFR 6.204(b)(1) through (10). The EPA has documented these findings as part of a revised categorical exclusion memorandum that is available to the public at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/nepa/details?nepaId=566594>. If new information or changes to the proposed permit before final issuance involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, the EPA will prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

(Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*)

Mark Sanborn,

Regional Administrator, EPA Region 1.

Javier Laureano Perez,

Director, Water Division, EPA Region 2.

Hector Velez-Cruz,

Acting Director, Caribbean Environmental Protection Division, EPA Region 2.

Catharine McManus,

Director, Water Division, EPA Region 3.

Kathlene Butler,

Director, Water Division, EPA Region 4.

Tera Fong,

Director, Water Division, EPA Region 5.

Troy Hill,

Director, Water Division, EPA Region 6.

Jeffery Robichaud,

Director, Water Division, EPA Region 7.

Sara Loiacono,

Acting Director, Water Division, EPA Region 8.

Tomas Torres,

Director, Water Division, EPA Region 9.

Krishnaswamy Viswanathan,

Director, Water Division, EPA Region 10.

[FR Doc. 2026–15656 Filed 7–31–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 360645]

Sunshine Act; Open Commission Meeting Thursday, August 6, 2026

July 30, 2026.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 6, 2026, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC. While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: www.fcc.gov/visit. Open Meetings are streamed live at: www.fcc.gov/live and on the FCC’s YouTube channel.

Item No.	Bureau	Subject
1	Office of Engineering and Technology.	<i>Title:</i> Unleashing Unlicensed Spectrum for Direct-to-Device (ET Docket No. 26–169). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking that would explore new avenues to allow innovative unlicensed wireless devices to communicate directly with satellites. The item would propose and seek comment on use of certain frequencies available under part 15 of the Commission’s rules for communications between Earth and space, including direct-to-device (D2D) services. The NPRM would also propose to clarify that use of part 15 unlicensed devices is permitted within FCC-authorized spacecraft, and seek comment on other scenarios where part 15 unlicensed devices may safely operate in space.
2	Wireline Competition	<i>Title:</i> Maximizing Efficiencies in Universal Service Administration (WC Docket No. 26–173). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking that would propose to strengthen the Commission’s management and administration of the Universal Service Fund (USF) by reforming and improving USF administration processes, the structure of USF administration, operating costs associated with USF administration, and the impact of USAC’s Board of Directors on USF administration.
3	Media	<i>Title:</i> Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule (MB Docket No. 17–318). <i>Summary:</i> The Commission will consider a Report and Order that would remove artificial barriers to broadcast television’s ability to attract capital and generate revenue, thus enabling broadcast television owners to better fulfill their public interest obligations, including through increased investment in local programming. The Report and Order also enables broadcast television station owners to expand their audience reach, gaining important leverage against national television networks.
4	Wireline Competition	<i>Title:</i> Promoting Telehealth in Rural America (WC Docket No. 17–310). <i>Summary:</i> The Commission will consider a Third Further Notice of Proposed Rulemaking and Order that would seek comment on several improvements to the Rural Health Care Program intended to reduce administrative burdens on program participants and better administer limited program funding given increased program participation and service costs. The accompanying Order would permit the use of previously approved rural rates for funding year 2027 that would otherwise require approval of a cost-based justification.

* * * * *

The meeting will be webcast at: www.fcc.gov/live. Open captioning will be provided as well as a text only version on the FCC website. Other

reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you

if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: fcc504@fcc.gov or call the Consumer

& Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): MediaRelations@fcc.gov. Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live.

Authority: This meeting is held, in accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b).

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2026–15733 Filed 7–30–26; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0805; FR ID 359781]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's

burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 2, 2026. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

Title: Section 90.527, Regional Plan Requirements; and Section 90.523, Eligibility.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents and Responses: 1,066 respondents; 1,066 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523 and 90.527). Statutory authority for this information collection is contained in 4(i), 11, 303(g), 303(r), 332(c)(7), and 337(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 337(f), unless otherwise noted.

Total Annual Burden: 1,066 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies.

Section 90.527 requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the

consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents.

Commission staff use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information is also used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz band rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–15685 Filed 7–31–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PSHSB & OET: PS Docket No. 26–189; DA 26–758; FR ID 359960]

Seeking Comment on Prohibiting the Importation and Marketing of Certain Foreign-Produced Military-Grade Uncrewed Aircraft Systems (UAS) and UAS Critical Components for Non-U.S. Government, Including Those With Swarming Capabilities

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau (PSHSB) and the Office of Engineering and Technology (OET) seek comment on

proposing to prohibit the continued importation and marketing of certain military-grade foreign-made UAS and UAS critical components that are found on the Federal Communications Commission's (FCC) Covered List. Through this Public Notice, acting pursuant to section 2.939 of the Federal Communications Commission's rules, PSHSB and OET propose to apply such prohibitions given that these devices have been found to pose an unacceptable risk to the national security of the United States and to the safety and security of United States persons pursuant to the Secure and Trusted Communications Act of 2019.

DATES: Comments are due on or before September 2, 2026.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. You may submit comments, identified by PS Docket No. 26–189, by any of the following methods:

- *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs>. Follow the instructions for submitting comments. *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530.

FOR FURTHER INFORMATION CONTACT:

Chris Smeenk, Attorney Advisor, Operations and Emergency Management Division, Public Safety and Homeland Security Bureau, (202) 418–1630 or Chris.Smeenk@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice released on July 21, 2026 in PS Docket No. 26–189. The full text of this document is available at: <https://docs.fcc.gov/public/attachments/DA-26-758A1.docx>.

In November 2022, the Federal Communications Commission (FCC or Commission) adopted rules to prohibit authorization of equipment identified on the Covered List. However, the Commission did not revoke previously granted authorizations of covered equipment. In October 2025, the Commission adopted the *EA Security Second R&O* (90 FR 53227) which, among other things, established a procedure to limit the scope of an existing authorization of covered equipment to prohibit continued importation or marketing of such equipment, without revoking the underlying authorization. The Commission noted that its goal is to mitigate potential national security risks associated with covered equipment in the nation's supply chain that was authorized prior to a Covered List addition under 47 U.S.C. 1601(b).

The Commission directed PSHSB and OET to “institute proceedings to determine whether to apply these prohibitions to some or all of the equipment currently on the Covered List,” and it delegated authority to PSHSB and OET to apply such prohibitions pursuant to the framework and process outlined in the *EA Security Second R&O*. The Commission gave specific directives to PSHSB and OET regarding how to analyze and implement the new procedures.

On December 22, 2025, PSHSB added all UAS and UAS critical components produced in a foreign country to the Covered List. This action was based on a National Security Determination from an Executive Branch interagency body, including several appropriate national security agencies, determining (among other things) that UAS produced in a foreign country pose an unacceptable risk to the national security of the United States and to the safety and security of United States persons.

Today, we initiate another proceeding to prohibit the continued importation and marketing of certain previously authorized equipment: foreign-produced UAS and UAS critical components on the FCC's Covered List that qualify as “military-grade” as defined below.

The Commission has legal authority to review an existing authorization for covered equipment, and to revoke such authorization pursuant to current rules. Under section 2.939(a), the FCC may “revoke . . . any equipment authorization” for various reasons, including “conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application.” Likewise, under section 2.939(e), PSHSB and OET “may place limitations on an existing authorization for covered equipment authorizations to prohibit continued importation or marketing” of such equipment.

Scope. Pursuant to section 2.939(e), we propose to prohibit the continued importation and marketing of any previously-authorized military-grade UAS or UAS critical component that is listed on the Covered List. We propose to limit the proposed prohibitions to military-grade UAS or UAS critical components, which we define on the basis of other agencies' regulations governing certain high-risk UAS, and following discussions with our partners in other national security agencies. Specifically, we consider military-grade UAS and UAS critical components to be any of the following:

(1) UAS that weigh 55 pounds or more on takeoff, *i.e.* UAS that are not “small unmanned aircraft” pursuant to Federal Aviation Administration (FAA) rules.

- These UAS are considered “larger platforms” that offer greater payload capacity, endurance, and range, which make them suitable for military operations requiring heavy sensors, communications equipment, or specialized weapons systems (*i.e.*, deep-strike operations, persistent wide-area surveillance, electronic warfare, and cargo resupply).

- Their increased power and stability also allow them to operate effectively in more demanding environments, making them highly effective for various missions.

- UAS that weigh over 55 pounds or more operating individually or in a swarm have the capability to carry out a significant attack on the United States homeland.

(2) UAS capable of dispensing “economic poison” under FAA rules.

- These UAS can be used to deliver hazardous substances in ways that bypass traditional defense and detection systems. Their ability to fly autonomously, reach remote areas, and carry dangerous materials make them ideal for military operations.

- Aerosol dispensing platforms operating independently or in a swarm

can carry out mass chemical or biological attacks against United States persons and our food supply.

(3) UAS that contain or integrate sensors capable of thermal imaging (*i.e.* the capability to capture and translate the difference in temperature between objects, as well as an object's heat signature and residual heat signature).

- UAS that feature these sensors are ideal for military use because their ability to operate effectively in low visibility environments enhances night operations, covert surveillance, and targeting capabilities.

- These capabilities allow forces to bypass camouflage, navigate in total darkness, and identify concealed heat signatures that are entirely invisible to standard optical sensors and the human eye.

- These capabilities also make it more difficult to protect critical infrastructure, maintain operational security, and prevent intelligence collection in sensitive areas.

(4) UAS that contain or integrate sensors capable of Light Detection and Ranging (LiDAR), a "remote sensing technology that measures distance by illuminating a target with a laser and analyzing the reflected light."

- These UAS offer military utility by providing enhanced capability to conduct detailed three-dimensional terrain mapping, penetrate dense foliage to reveal hidden structures, assist in autonomous navigation in GPS-denied environments, and conduct covert reconnaissance under a range of environmental conditions.

(5) UAS docking stations, defined as multipurpose systems that enable UAS to land safely, take off, recharge and/or replace batteries, and transfer data and payload.

- UAS docking stations are infrastructure that enable persistent, 24/7 autonomous operations allowing faster, more continuous intelligence, surveillance, reconnaissance, and other mission workflows.

- Additionally, by serving as coordinated launch, recovery, and servicing nodes, docking stations facilitate the capability for large-scale drone swarms to support military operations.

(6) UAS "specially designed to incorporate a defense article."

- These UAS are ideal for military use because they can enable combat commanders to conduct unparalleled precision strikes, kinetic effect delivery, and electronic warfare capabilities at a significantly lower cost and risk to human life than manned aircraft.

- They also extend range, persistence, or precision beyond traditional platforms.

(7) Swarming UAS, defined as:

- Ground control stations purpose-built for, or UAS integrated with flight control or vehicle management systems specially designed for, managing drone swarms, consisting of UAS that operate autonomously (without human intervention) to coordinate with each other, avoid collisions, maintain formations, and dynamically respond to changes in operational or threat environments, or if weaponized, synchronize targeting activities across multiple drones; or

- UAS purpose-built to perform flights in coordinated and synchronized formations, including applications such as multi-UAS light shows, where numerous illuminated UAS work together to create synchronized aerial displays.

- This capability enables large numbers of UAS to coordinate autonomously, making them harder to detect, track, and counter.

- Swarm-enabled UAS can overwhelm defenses, provide persistent surveillance, and create complex operational challenges that strain traditional air defense systems, which pose significant risks to public safety and national security.

This prohibition on importation and marketing would not apply to any non-military-grade UAS or UAS critical components, nor would it apply to any domestically produced UAS or UAS critical components or to any other already-authorized covered equipment. It would also only apply to *covered* UAS and UAS critical components and would therefore not apply to any UAS or UAS critical components that are exempt from the Covered List—including UAS and UAS critical components identified on the Defense Contract Management Agency's (DCMA's) Blue UAS Cleared List; UAS and UAS critical components that qualify as "domestic end products" under the Buy American Standard, 48 CFR 25.101(a); and UAS and UAS critical components granted a Conditional Approval by the Department of War or the Department of Homeland Security. Any UAS or UAS critical component subsequently removed from the Covered List, such as through Conditional Approval, would also be exempt from this prohibition. Furthermore, this prohibition would not apply to importation or marketing for the purpose of use by the federal government, nor for the purpose of commercial testing and product development. Finally, while

importation and marketing would be prohibited, this prohibition would not affect the continued use or operation of already-purchased UAS or UAS critical components.

We seek comment on this list of prohibitions. Does this list adequately capture military-grade UAS and UAS critical components? Are there UAS and UAS critical components that are listed above, but are not military-grade? Are there UAS and UAS critical components that are not listed above that are military-grade?

Below, we provide a brief analysis of the relevant factors that would justify limitation on the authorization of previously authorized covered equipment and tentatively conclude that prohibiting the continued importation and marketing of this previously authorized covered equipment serves the public interest.

National security impacts. We start with national security concerns, because, as the Commission noted in the *EA Security Second R&O*, "[i]t is obvious and unarguable that no governmental interest is more compelling than the security of the Nation." In the *EA Security Second R&O*, the Commission stated that older models of covered equipment, which are still widely sold in the United States, pose an unacceptable risk to national security when imported or marketed in the United States, "not only when such equipment is new to the market." The Commission agreed with commenters who pointed out that certain previously authorized devices that are now considered covered equipment "likely remain[] marketable in the United States" and "may present continuing national security threats." The Commission also directed PSHSB and OET to "give particular weight to the fact that the relevant equipment was determined to pose 'an unacceptable risk to the national security of the United States or the safety and security of United States persons.'"

Subject to exceptions, an Executive Branch interagency body with appropriate national security expertise, including appropriate national security agencies, one of whom was the Department of War, specifically determined that UAS and UAS critical components produced in foreign countries "pose unacceptable risks to the national security of the United States or the safety and security of United States persons." This determination of "unacceptable risks" was based on an assessment of "threats from unauthorized surveillance, sensitive data exfiltration, supply chain vulnerabilities, and other potential

threats to the homeland.” We tentatively accept this determination and “give [it] particular weight,” as the Commission directed. This determination, which covered foreign-produced UAS and UAS critical components generally, necessarily includes already-authorized foreign-produced military-grade UAS and UAS critical components.

Therefore, based on the *EA Security Second R&O* and the UAS and UAS critical component National Security Determination, we tentatively conclude that prohibiting the continued importation and marketing of previously authorized covered military-grade UAS and UAS critical components as described above is necessary to protect national security by mitigating risks to the U.S. communications sector.

We also believe that military-grade foreign-produced UAS and UAS critical components might pose even particularly acute national security or related risks, given their military-grade capabilities. We invite comment on whether military-grade UAS and UAS critical components, as described above, pose particularly acute national security risks of the sort described in the National Security Determination.

Economic and supply chain impacts. We seek comment on the potential economic and supply chain impacts of prohibiting the continued importation and marketing of already-authorized covered military-grade UAS and UAS critical components. How would this proposed action affect the financial interests of consumers, providers, and manufacturers in the communications sector? As the Commission noted in the *EA Security Second R&O*, it may consider “countervailing economic concerns when implementing the prohibitions for already-authorized devices.” What are the economic or supply chain considerations that weigh either in favor or against taking this proposed action? We invite commenters to provide data that we should consider in our analysis.

We tentatively conclude that our proposed action would not have substantial economic and supply chain impacts. Outside of importation, marketing, and sales to the U.S. government, which are excluded from the scope of this proposed action, military-grade UAS and UAS critical components represent a minority of the remaining UAS and UAS critical component market. Recreational consumers comprise the majority of individual drone operators and are unlikely to fly military-grade UAS. While foreign-produced UAS and UAS critical components dominate the recreational market, domestic

production of UAS and UAS critical components in the higher-end, military-grade subsectors is more prevalent. Moreover, several of the categories of UAS and UAS critical components are subject to U.S. export controls or other regulatory restrictions and likely comprise a small market within the United States.

Do commenters agree that economic and supply chain impacts are relatively minor and contained? Are there domestically-produced alternatives for military-grade UAS and UAS critical components? Would this proposal be cost-effective for the public in terms of obtaining trusted equipment? Would providers’ compliance costs decrease as they replace covered equipment with trusted equipment? We strongly encourage commenters to supply data and other specific evidence of economic costs to this prohibition.

On the other hand, we seek comment on any economic benefits that might arise as a result of these prohibitions. We note that after the initial update to the Covered List, billions of dollars have already been raised by domestic UAS producers, creating thousands of U.S. manufacturing jobs. Additionally, billions more have been committed for domestic production of UAS and UAS critical components, which are expected to generate additional jobs. These investments include capital from domestic investors as well as foreign investors supporting U.S. manufacturing. We tentatively conclude that the proposed prohibitions of military-grade UAS and UAS critical components would similarly generate substantial investment in domestic production, given the loss of foreign-produced supply. Do commenters agree? We seek comment on the economic effects of the likely investment in United States production that this proposed prohibition would yield.

Public interest analysis. We tentatively conclude that prohibiting the importation and marketing of previously authorized covered military-grade foreign-produced UAS and UAS critical components is consistent with the public interest, because it protects American communications networks from devices specifically determined by an Executive Branch interagency body to “pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.”

We also tentatively conclude that there are no public interest factors that outweigh our tentative conclusion regarding the proposed ban on import and marketing of this previously authorized equipment. After all, as the

Commission noted in the *EA Security Second R&O*, “[i]t is obvious and unarguable that no governmental interest is more compelling than the security of the Nation.” We seek comment on this public interest analysis. Do commenters agree that the national security benefits outweigh any negative economic or supply chain factors? Are there any other public interest considerations that weigh in favor or against taking this proposed action?

We invite commenters to provide any information that would assist the Commission in its balancing of the need to address the national security risks posed by the continued importation and marketing of previously-authorized covered equipment that are military-grade UAS and UAS critical components in communications networks with the impact of the proposed prohibitions on government partners, consumers, industry, and the public at large.

Existing authorizations. We clarify that, if this prohibition is adopted, the continued use or operation of previously-authorized military-grade UAS and UAS critical components that are already in the hands of users would remain authorized. This is consistent with the approach that the Commission adopted in the *EA Security Second R&O*. The limitation on existing authorizations would not result in the revocation of an existing authorization of covered equipment and, therefore, would not affect the continued use or operation of devices that consumers already possess.

Implementation timeline. We propose that all parties must cease all importation and marketing activities regarding such previously-authorized military-grade UAS and UAS critical components 180 days after publication in the **Federal Register**. We believe that this timeline is reasonable and strikes the appropriate balance between addressing the national security concerns and minimizing any potential adverse economic or supply chain impacts. Although the Commission’s prohibition with respect to covered equipment added to the Covered List in 2024 or earlier took effect within 10 days of publication in the **Federal Register**, given the expected large scope of equipment at issue in this proposed prohibition, as well as the shorter time that such foreign produced military-grade UAS and UAS critical components have been listed on the Covered List, we believe that a more extended time period to permit an orderly transition is appropriate.

We seek comment on the proposed timeline and invite input from responsible parties and relevant manufacturers, importers, distributors, retailers, and other interested entities. Specifically, we request that commenters address implementation considerations including the quantity of devices that have already been imported into the United States and are available for or being held for marketing or sale, new or recently updated device models that are en route to the United States or pending shipment, and devices that are subject to executed distribution, marketing, or sales agreements, but have not yet entered the supply chain.

Permit-but-disclose proceeding. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.

If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

themselves with the Commission’s *ex parte* rules.

Authority: 47 U.S.C. 151, 154, 229, 301, 302a(b), 303, 1004, 1601–1609; Pub. L. 117–55, 135 Stat. 423–24.

Federal Communications Commission.

Zenji Nakazawa,
Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2026–15659 Filed 7–31–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0848; FR ID 360191]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 2, 2026. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 584 respondents; 7,278 responses.

Estimated Time per Response: 0.5–26 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201 and 251 of the Communications Act of 1934, as amended.

Total Annual Burden: 25,873 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements implement sections 201 and 251 of the Communications Act of 1934, as amended, to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, and to promote deployment of advanced telecommunications services without significantly degrading the performance of other services.

All of the requirements will be used by the Commission and competitive local exchange carriers (LECs) to facilitate the deployment of telecommunications services, including advanced telecommunications services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–15678 Filed 7–31–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than September 2, 2026.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Bank7 Corp, Oklahoma City, Oklahoma*; to acquire Century Financial Services Corporation, and thereby indirectly acquire Century Bank, both of Santa Fe, New Mexico.

Board of Governors of the Federal Reserve System.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2026-15655 Filed 7-31-26; 8:45 am]

BILLING CODE:P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-N-1536]

Angela Anatilde Baquero: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarment Angela Anatilde Baquero from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Angela Anatilde Baquero was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Mrs. Baquero was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of May 6, 2026 (30 days after receipt of the notice), Mrs. Baquero has not responded. Mrs. Baquero's failure to respond and request a hearing constitutes a waiver of Mrs. Baquero's right to a hearing concerning this matter.

DATES: This order is applicable August 3, 2026.

ADDRESSES: Any application by Mrs. Baquero for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All applications must include the Docket No. FDA-2026-N-1536. Received applications will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240–402–8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

On January 14, 2026, Mrs. Baquero was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division, when the court accepted her plea of guilty and entered judgment against her for conspiracy to commit wire fraud against the United States in violation of 18 U.S.C. 371. The underlying facts supporting the conviction are as follows:

As contained in the Information and in the Factual Proffer in Support of Guilty Plea from Mrs. Baquero's case, between about January 2019 and January 2020, Mrs. Baquero engaged in a conspiracy to defraud the United States through her role as co-owner and clinical research director of A&R Research Group LLC (A&R), a medical research clinic conducting clinical drug trials. Along with her husband Ricardo Acuna, who served as regulatory and contract affairs manager, Mrs. Baquero orchestrated a scheme to unlawfully enrich themselves by falsifying data and making fraudulent representations while conducting two asthma clinical trials sponsored by a pharmaceutical company.

A&R contracted with a drug sponsor through a Contract Research Organization (CRO) to conduct trials for investigational drugs treating moderate to severe asthma and mild to moderate

asthma. The company received \$320,247.98 for these trials. Mrs. Baquero served as study coordinator, responsible for recruiting subjects, maintaining case histories, and communicating with sponsors. She signed delegation logs acknowledging her responsibilities to perform certain tasks as part of the trials and received protocol training from the CRO prior to beginning the asthma trials. Mrs. Baquero understood that A&R was required to conduct trials honestly, accurately, and in accordance with Federal regulations and clinical trial protocols, and that the sponsor, CRO, and FDA could audit the trial site at any time.

The conspiracy's purpose was twofold: first, to make false representations about subject eligibility and participation to secure payments from the sponsor and CRO; second, to falsify and fabricate material documents including case histories, spirometry readings, electrocardiogram data, and other trial data. Mrs. Baquero and her co-conspirators knowingly failed to conduct the clinical trials according to their protocols and applicable Federal regulations.

To inflate payments received from the sponsor, Mrs. Baquero and two co-conspirators obtained fake medical records for at least 17 trial subjects who lacked legitimate documentation of qualifying asthma diagnoses. She provided Co-Conspirator 1 and Co-Conspirator 2 with eligibility criteria needed to create fraudulent medical records, which they then purchased for themselves and others. Upon receiving these fake records, Mrs. Baquero directed Mr. Acuna to pay the co-conspirators for obtaining them. She then enrolled these subjects in the asthma trials using the falsified documentation. In one instance, Mrs. Baquero enrolled Co-Conspirator 1 in Asthma Trial 1 on March 22, 2019, despite knowing this individual used a fake driver's license, participated under a false identity, and was simultaneously enrolled in another A&R trial under their real name.

Mrs. Baquero furthered the conspiracy by obtaining false study assessments and blood samples to conceal the fact that those subjects enrolled in the asthma trials were not qualified for and were not participating in the trials. On March 4, 2019, she personally performed a spirometry reading while pretending to be a trial subject. She also had Co-Conspirator 1 and Co-Conspirator 2 perform spirometry readings and provide blood samples for other enrolled subjects, with Mr. Acuna then issuing payments for these

fraudulent assessments. These falsified results were submitted to the CRO and sponsor to create the illusion of legitimate trial participation and protocol compliance.

The fabricated medical records and falsified physical examination forms were included in subjects' case histories. When the sponsor conducted an in-person audit in August 2019 due to suspicious spirometry and electrocardiogram readings, Mrs. Baquero and the clinical investigator knowingly provided case histories containing falsified data. On January 24, 2020, these same fraudulent case histories, containing fake medical records, falsified clinical data, and documentation of payments to non-participating subjects, were provided to an FDA investigator during an official inspection.

Through these false and fraudulent representations, Mrs. Baquero's conduct resulted in A&R receiving the full \$320,247.98 payment from the sponsor, enriching herself and Mr. Acuna as joint owners of the company while compromising the integrity of clinical research intended to ensure drug safety and efficacy.

As a result of this conviction, FDA sent Mrs. Baquero, by certified mail, on March 27, 2026, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Mrs. Baquero was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. The proposal informed Mrs. Baquero of the proposed debarment and offered her an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and a waiver of any contentions concerning this action. Mrs. Baquero received the proposal and notice of opportunity for a hearing on April 6, 2026. Mrs. Baquero failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(a)(2)(A) of the FD&C Act,

under authority delegated to the Director, Division of Enforcement, finds that Mrs. Angela Anatilde Baquero has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product.

As a result of the foregoing finding, Mrs. Baquero is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act. Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Mrs. Baquero during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mrs. Baquero provides services in any capacity to a person with an approved or pending drug product application during her period of debarment, she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act. In addition, FDA will not accept or review any abbreviated new drug application from Mrs. Baquero during her period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a “drug product” is defined as a “drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262)” (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-15635 Filed 7-31-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-N-1535]

Ricardo Andres Acuna: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal

Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Ricardo Andres Acuna from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ricardo Andres Acuna was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Mr. Acuna was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of May 6, 2026 (30 days after receipt of the notice), Mr. Acuna has not responded. Mr. Acuna's failure to respond and request a hearing constitutes a waiver of Mr. Acuna's right to a hearing concerning this matter.

DATES: This order is applicable August 3, 2026.

ADDRESSES: Any application by Mr. Acuna for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For a written/paper application submitted to the Dockets Management

Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All applications must include the Docket No. FDA-2026-N-1535. Received applications will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug

Administration, 240–402–8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

On January 14, 2026, Mr. Acuna was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division, when the court accepted his plea of guilty and entered judgment against him for conspiracy to commit wire fraud against the United States in violation of 18 U.S.C. 371. The underlying facts supporting the conviction are as follows:

As contained in the Information and in the Factual Proffer in Support of Guilty Plea from Mr. Acuna's case, between about January 2019 and January 2020, Mr. Acuna conspired with others to defraud a pharmaceutical sponsor conducting clinical trials for asthma medications. As co-owner of A&R Research Group LLC (A&R) with his wife Angela Baquero, Mr. Acuna served as the regulatory and contract affairs manager, responsible for maintaining study documents, collecting signatures, completing required forms, and serving as the primary contact for sponsors. Mrs. Baquero acted as clinical research director and study coordinator of A&R which partnered with a licensed Florida physician who served as the clinical investigator for all trials.

A&R conducted two clinical trials for investigational asthma drugs, receiving \$320,247.98 from the sponsor. Mr. Acuna signed Clinical Trial Agreements with the Contract Research Organization (CRO) representing the sponsor, acknowledging A&R's obligation to follow trial protocols and applicable Federal regulations. He also signed Site Delegation Authority Logs and received training from the CRO, demonstrating his knowledge of the requirements and his delegated responsibilities. Mr. Acuna understood that the sponsor, CRO, and FDA could audit the trial site at any time and that A&R was required to cooperate fully with auditors.

The conspiracy's purpose was to unlawfully enrich Mr. Acuna and his co-conspirators through two primary

schemes: making false representations about subject eligibility and participation to secure payments from the sponsor and/or CRO, and falsifying material trial documents and data, including case histories, spirometry readings, echocardiogram data, and other data.

Mr. Acuna and his co-conspirators knowingly failed to conduct the trials according to the trial protocols and applicable federal regulations. Mrs. Baquero, along with Co-Conspirator 1 and Co-Conspirator 2, obtained fake medical records for at least 17 trial subjects who lacked legitimate documentation of qualifying asthma diagnoses. Mr. Acuna facilitated this fraud by issuing payments to the co-conspirators for obtaining these false records. For instance, on June 12, 2019, Mr. Acuna signed a check for \$120 to Co-Conspirator 1 for fake medical records for two subjects.

The fraud extended beyond falsified enrollment documents. Mrs. Baquero directed Co-Conspirator 1 and Co-Conspirator 2 to perform spirometry readings and provide blood samples on behalf of other enrolled subjects, and Mr. Acuna issued payments for these fraudulent assessments. On May 28, 2019, Mr. Acuna signed a check for \$150 to Co-Conspirator 2 for "4 Spirometries," knowing this compensated the co-conspirator for performing tests on behalf of other subjects. Significantly, Mr. Acuna did not include this payment in any trial-related records. These fraudulent spirometry readings and blood samples were submitted to the CRO and sponsor to create the false impression that subjects were participating properly and that A&R was conducting the studies in accordance with the clinical trial protocols.

In August 2019, based in part on suspicious spirometry and echocardiogram readings, the sponsor conducted an in-person audit of A&R. During this audit, Mr. Acuna and Mrs. Baquero provided case histories that they knew contained records of payments to subjects who had not actually participated in the studies. On January 24, 2020, these same fraudulent case histories were provided to an FDA investigator during an official inspection. Through these false and fraudulent representations regarding the asthma trials, Mr. Acuna's conduct resulted in A&R receiving the full \$320,247.98 payment from the sponsor, enriching both himself and Mrs. Baquero as joint owners and controllers of the company.

As a result of this conviction, FDA sent Mr. Acuna, by certified mail, on

March 27, 2026, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act that Mr. Acuna was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. The proposal informed Mr. Acuna of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Acuna received the proposal and notice of opportunity for a hearing on April 6, 2026. Mr. Acuna failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Director, Division of Enforcement, finds that Mr. Ricardo Andres Acuna has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product.

As a result of the foregoing finding, Mr. Acuna is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act. Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Mr. Acuna during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Acuna provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act. In addition, FDA will not accept or review any abbreviated new drug application from Mr. Acuna during his period of

debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a “drug product” is defined as a “drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262)” (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–15636 Filed 7–31–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1254]

Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry titled “Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.” This guidance provides recommendations for the design and conduct of studies evaluating the adhesion performance of a transdermal or topical delivery system (collectively referred to as TDS). Depending on the objectives of a generic TDS product development program, applicants may choose to evaluate TDS adhesion in studies performed to evaluate TDS adhesion only, or in studies performed with a combined purpose (e.g., for the simultaneous evaluation of adhesion and bioequivalence (BE) with pharmacokinetic (PK) endpoints). The recommendations in this guidance relate to studies submitted in support of an abbreviated new drug application (ANDA). The guidance replaces the draft guidance (Revision 2) “Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs,” issued on April 13, 2023.

DATES: The announcement of the guidance is published in the **Federal Register** on August 3, 2026.

ADDRESSES: You may submit either electronic or written comments on

Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2016–D–1254 for “Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Susan Levine, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1674, Silver Spring, MD 20993–0002, 240–402–7936, Susan.Levine@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry titled “Assessing Adhesion With Transdermal

and Topical Delivery Systems for ANDAs.” This guidance finalizes the draft guidance (Revision 2), which was announced in the **Federal Register** on April 13, 2023 (88 FR 22456). FDA received no comments on the revised draft guidance (Revision 2) and, thus, no comments were considered before publication of this guidance.

The guidance provides recommendations for the design and conduct of studies evaluating the adhesion performance of a TDS. Depending on the objectives of a generic TDS product development program, applicants may choose to evaluate TDS adhesion in studies performed to evaluate TDS adhesion only, or in studies performed with a combined purpose (e.g., for the simultaneous evaluation of adhesion and BE with PK endpoints). FDA recommends that applicants consult this guidance in conjunction with any relevant product-specific guidances for industry when considering the design and conduct of studies that may be appropriate to support the BE of a proposed generic TDS product to its reference listed drug and/or reference standard product. FDA also recommends that an applicant who seeks to use an alternative approach to FDA’s recommendations for the design and conduct of studies evaluating the adhesion performance of a TDS contact the Agency to discuss the proposed alternative approach to evaluate adhesion performance for that particular drug product.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this final guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 relating to the submissions of abbreviated new drug applications have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–15613 Filed 7–31–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–D–4272]

Biosimilar and Interchangeable Biosimilar Products: Considerations for Container Closure Systems and Device Constituent Parts; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled “Biosimilar and Interchangeable Biosimilar Products: Considerations for Container Closure Systems and Device Constituent Parts.” This draft guidance is intended to help applicants develop container closure systems and device constituent parts for proposed biosimilar and interchangeable biosimilar products. This draft guidance expands on and clarifies the Agency’s recommendations and expectations regarding the development of delivery devices and container closure systems described in Q.I.4 of the guidance for industry entitled “Questions and Answers on Biosimilar Development and the BPCI Act” and the guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product” for biosimilar and interchangeable biosimilar products, respectively.

DATES: Submit either electronic or written comments on the draft guidance by October 2, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. [insert docket number xxxxx] for “Biosimilar and Interchangeable Biosimilar Products: Considerations for Container Closure Systems and Device Constituent Parts.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Mustafa Ünlü, Center for Drug Evaluation and Research (HF–22), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1139, Silver Spring, MD 20993, 301–796–3396, *CDER-BiologicsBiosimilarsInquiries@fda.hhs.gov*; or Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Biosimilar and Interchangeable Biosimilar Products: Considerations for Container Closure Systems and Device Constituent Parts.” As part of the negotiations relating to the reauthorization of the Biosimilar User Fee Act (BsUFA), as described in “Biosimilar Biological Product Reauthorization Performance Goals and Procedures for Fiscal Years 2023 Through 2027” (BsUFA III goals letter), FDA agreed to issue guidance on “considerations for developing presentations, container closure systems, and device constituent parts for proposed interchangeable biosimilar biological products.” This draft guidance expands on and clarifies the Agency’s recommendations and expectations regarding the development of delivery devices and container closure systems described in Q.I.4 of the guidance for industry entitled “Questions and Answers on Biosimilar Development and the BPCI Act” issued on September 20, 2021 (86 FR 52154) (the Biosimilar Q&As) and the guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product” issued on May 14, 2019 (84 FR 21342) (the Interchangeability guidance) for biosimilar and interchangeable biosimilar products, respectively. When this draft guidance is finalized, the Agency intends to update section VIII of the Interchangeability guidance, “Considerations for Developing Presentations for Proposed Interchangeable Products,” and to remove Q.I.4 of the of the Biosimilar Q&As.

Section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)) provides an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed reference product. Section 351(k) of the PHS Act sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable biosimilar product. In this draft guidance, FDA outlines its recommendations for the development of container closure systems and device constituent parts for biosimilar and interchangeable biosimilar products.

Expectations regarding product quality considerations for container closure systems and devices are generally the same for proposed biological products submitted in a marketing application under section

351(a) of the PHS Act as for proposed biosimilar and interchangeable biosimilar products submitted in a marketing application under section 351(k) of the PHS Act. The draft guidance provides a high-level summary of product quality recommendations that are captured across multiple FDA guidances.

The draft guidance also describes considerations for the evaluation of the user interface of the presentations of proposed biosimilar and interchangeable biosimilar combination products through comparative analyses to determine if potential differences from the reference product warrant collecting additional information to support approval of the proposed combination product as biosimilar to or interchangeable biosimilar with its reference product.

In addition, the draft guidance explains the challenges that may arise when seeking licensure of an interchangeable biosimilar combination product in a different presentation than its reference product and encourages discussions with the Agency early during the development of such products.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Biosimilar and Interchangeable Biosimilar Products: Considerations for Container Closure Systems and Device Constituent Parts.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 regarding sponsor requests to FDA related to the submission of an investigational new drug application have been approved under OMB control number 0910–0014. The collections of information in section 351(a) of the PHS Act and part 601 (21 CFR part 601)

relating to the submission of a biologics license application have been approved under OMB control number 0910–0338. The collections of information in section 351(k) of the PHS Act and part 601 relating to the submission of biosimilar applications and biosimilar user fee applications have been approved under OMB control number 0910–0718. The collections of information in 21 CFR parts 210 and 211 relating to current good manufacturing practice requirements have been approved under OMB control number 0910–0139. The collections of information in 21 CFR 201.56 and 201.57 for the submission of labeling have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–15630 Filed 7–31–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3546]

Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry titled “Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.” This revised draft guidance provides recommendations for the design and conduct of studies to evaluate the in vivo skin irritation (and sensitization, if applicable) potential of a proposed transdermal or topical delivery system (collectively referred to

as TDS). The recommendations in this revised draft guidance relate to studies submitted in support of an abbreviated new drug application (ANDA). The revised draft guidance is intended to clarify FDA’s recommendations and expectations related to in vivo skin irritation and in vivo combined skin irritation and sensitization studies. This draft guidance replaces the draft guidance “Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs” (April 2023).

DATES: Submit either electronic or written comments on the draft guidance by October 2, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2018–D–3546 for “Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food

and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Susan Levine, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1674, Silver Spring, MD 20993–0002, 240–402–7936, Susan.Levine@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry titled “Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.” This guidance revises the draft guidance of the same name that was published in the **Federal Register** on April 13, 2023 (83 FR 50945).

The components and composition of a TDS formulation, including the nature of the drug substance and/or the occlusivity of the TDS materials, in conjunction with other factors such as the environmental humidity or the condition of the skin, may have the potential to irritate the skin or lead to a sensitization reaction. Such reactions can be unpleasant to the patient and may affect patient compliance, skin permeability, and/or adhesion of the TDS to the skin. The collective consequence of these potential effects could create uncertainty about the resulting drug delivery profile and the rate and extent of drug absorption from the TDS. Therefore, when appropriate, applicants should perform a comparative assessment of the test (T) and reference (R) TDS products using an appropriately designed skin irritation (or combined irritation and sensitization) study with human subjects to demonstrate that the potential for a skin irritation or sensitization reaction with the T TDS is no worse than the reaction observed with the R TDS.

This revised draft guidance (Revision 2) provides the following updates to the last revised draft guidance (Revision 1) from April 2023:

(1) Clarifies recommendations for the design and conduct of studies to evaluate the in vivo skin irritation (and sensitization, if applicable) potential of a proposed TDS.

(2) Clarifies when an in vivo study to assess the sensitization potential of a TDS product may not be needed.

The recommendations in this revised draft guidance relate to studies submitted in support of an ANDA. The Agency is seeking comments on the recommendations reflected in the revised draft guidance announced in this notice. In addition, FDA invites comments on the scoring scales and any alternative approaches, including those recommended by international regulatory agencies, that may have been used for the comparative assessment of the irritation/sensitization potential for proposed generic TDS products. FDA also specifically invites comments regarding the comparative assessment of sensitization itself, *i.e.*, whether there are clinical scenarios where a comparative sensitization assessment may be uninformative when conducted in addition to a comparative irritation assessment.

This revised draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 relating to the submission of abbreviated new drug applications, including the design and conduct of studies and the submission of study data, as well as the collections of information relating to good clinical practice, have been approved under OMB control number 0910–0001. The collections of information for controlled correspondence and meetings related to generic drug development are approved under OMB control number 0910–0727.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance->

[compliance-regulatory-information/guidances-drugs](https://www.fda.gov/compliance-regulatory-information/guidances-drugs), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–15612 Filed 7–31–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding 340B Rebate Model Pilot Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), Office of Pharmacy Affairs (OPA), which administers the 340B Drug Pricing Program (340B Program), is issuing this Notice to announce the availability of a revised 340B Rebate Model Pilot Program (Pilot). The Pilot provides a rebate mechanism through which qualifying drug manufacturers may effectuate the 340B ceiling price for certain drugs sold to covered entities. Consistent with HRSA’s longstanding statutory authority, rebates will be used instead of upfront discounts.

HRSA issued a Request for Information (RFI) ¹ to gather input from interested parties regarding the potential use of rebates to effectuate the ceiling price under the 340B Program, including the standards and procedures that should govern the approval of manufacturer rebate plans and the impacts on all stakeholders. After carefully considering all comments from interested parties and different policy alternatives, HRSA is announcing this Pilot, which will implement a rebate approach for a limited set of drugs, and which builds on established and successful rebate programs.

This Notice is effective immediately as published, unless revised by a future notice. HRSA reserves the right to issue revisions or addenda to this Notice at a later date.

¹ *Request for Information* (91 FR 7287) (Feb. 17, 2026), available at <https://www.federalregister.gov/documents/2026/02/17/2026-03042/request-for-information-340b-rebate-model-pilot-program>.

DATES: Eligible manufacturers seeking to participate in the 340B Rebate Model Pilot Program must submit plans to 340Bpricing@hrsa.gov no later than August 24, 2026, for an effective date of January 1, 2027, for selected drugs for initial price applicability year 2026 and 2027 during their price applicability periods.

FOR FURTHER INFORMATION CONTACT:

Chantelle Britton, Director, Office of Pharmacy Affairs, HRSA, 5600 Fishers Lane, Mail Stop 10W29, Rockville, MD 20857; email: 340Bpricing@hrsa.gov; telephone 301–594–4353.

SUPPLEMENTARY INFORMATION:

I. Background

Section 340B of the Public Health Service Act entitled “Limitation on Prices of Drugs Purchased by Covered Entities,” was created under section 602 of Public Law 102–585, 106 Stat. 4943, 4967, the “Veterans Health Care Act of 1992,” and codified at section 340B of the Public Health Services Act (PHSA)² (hereinafter “the 340B statute” or otherwise referred to herein as “section 340B”). Section 340B requires pharmaceutical manufacturers participating in Medicare Part B (which covers physician-administered drugs) and Medicaid to sell drugs at reduced prices to certain healthcare providers known as “covered entities.” While the 340B Program “was intended to enable certain hospitals and clinics ‘to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services,” *Am. Hosp. Ass’n v. Hargan*, 289 F. Supp. 3d 45, 47 (D.D.C. 2017) (quoting H.R. Rep. No. 102–384, pt. 2, at 12 (1992)), participation is not limited to small hospitals that traditionally serve a low-income population, such as community disproportionate share hospitals. Rather, large academic medical centers and integrated health systems may also qualify if they meet certain criteria. As of April 1, 2026, the 340B Program includes 15,249 covered entities³ and 49,214 associated sites⁴ and reached \$100 billion in purchases at discounted 340B pricing in 2025.

Section 340B(a)(1) of the PHSA instructs HHS to enter into pharmaceutical pricing agreements with

manufacturers of covered outpatient drugs⁵. Under section 1927(a)(1) and (5)(A) of the Social Security Act, a manufacturer must enter into an agreement with the Secretary that complies with section 340B “[i]n order for payment to be available under section 1903(a) or under part B of title XVIII of the Social Security Act for covered outpatient drugs of a manufacturer.” These “are not transactional, bargained-for contracts” but rather “simply incorporate statutory obligations and record the manufacturers’ agreement to abide by them.” *Astra USA, Inc. v. Santa Clara Cnty.* 563 U.S. 110, 113, 118 (2011). When a drug manufacturer signs a pharmaceutical pricing agreement, it agrees that the prices charged for covered outpatient drugs to covered entities will not exceed statutorily defined 340B ceiling prices. 340B ceiling prices are based on quarterly pricing reports that manufacturers provide to the Secretary through the Centers for Medicare & Medicaid Services (CMS) and are calculated by HRSA.

Section 340B imposes two core prohibitions on covered entities: (1) duplicate discounts, and (2) diversion of drugs purchased under the 340B Program. 42 U.S.C. 256b(a)(5). To prevent duplicate discounts, the statute specifies that a covered entity shall not request a discount for a drug that is already subject to a separate Medicaid rebate requirement. *Id.* § 256b(a)(5)(A); see also Social Security Act § 1927(a)(5)(C) (creating a default mechanism for enforcing duplicate discount prohibition if HRSA fails to implement a mechanism to enforce the prohibition). And to prevent diversion, the statute specifies that “a covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.” *Id.* § 256b(a)(5)(B).

The landscape governing 340B pricing obligations has also been shaped by more recent legislation with direct implications for how 340B ceiling prices interact with other federal drug pricing programs. In the Inflation Reduction Act of 2022, Public Law 117–169, 136 Stat. 1818, Congress gave the Secretary authority to negotiate the prices that Medicare pays for certain pharmaceutical products that lack generic competition and that account for a disproportionate share of Medicare’s expenses (“selected drugs”). 42 U.S.C. 1320f(a), 1320f–1(b), (d), (e) (hereinafter “the Medicare Drug Price Negotiation

Program” or “MDPNP”). The MDPNP⁶ applies only to manufacturers that choose to participate in Medicare and Medicaid and applies only to the prices that Medicare pays for the selected drugs. *Id.* § 1320f–1(b), (d). If negotiations for a selected drug are successful, the manufacturer memorializes its agreement to make the drug available to Medicare beneficiaries at the negotiated price, which is called the maximum fair price (MFP). *Id.* § 1320f–2(a).

The negotiated price of drugs and biologics in the MDPNP and the 340B Program are not cumulative. 42 U.S.C. 1320f–2(d). If a manufacturer provides a drug to a Medicare beneficiary at the MFP established by the MDPNP and if the negotiated price is lower than the 340B ceiling price, then the manufacturer need not also provide a 340B discount to the covered entity. *Id.*; see Ctrs. for Medicare & Medicaid Servs. (CMS), *Medicare Drug Price Negotiation Program: Final Guidance, Implementation of Sections 1191–1198 of the Social Security Act for Initial Price Applicability Year 2026 and Manufacturer Effectuation of the Maximum Fair Price in 2026, 2027, and 2028*, at 253–256 (Sept. 30, 2025), <https://perma.cc/37EL-GRUW>. Negotiated prices for the first year of the MDPNP took effect on January 1, 2026. *Id.* at 154.

II. Statutory Framework and Early Implementation of the 340B Program

A. Statutory Flexibility in Pricing Mechanisms

Since its beginning, the 340B price reductions were to be “implemented, at the discretion of the Secretary, either by a point-of-purchase discount, a rebate, or other mechanism.” H.R. Rep. No. 102–384, pt. 2, at 12 (1992); *id.* (stating manufacturers “would have to enter into an agreement with the Secretary of HHS to provide price reductions (whether through a discount, rebate, or other mechanism) to these ‘covered entities’ on covered outpatient drugs”); see also Guidance Regarding Section 602 of the Veterans Health Care Act of 1992; Limitation on Prices of Drugs Purchased by Covered Entities, 58 FR 27289, 27290 (May 7, 1993) (stating that the act creating the 340B Program is “an attempt to provide federal purchasers with a process whereby they will receive drug discounts or rebates”). As the House Report stated:

The Committee bill does not specify whether “covered entities” would receive

² 42 U.S.C. 256b.

³ A “covered entity” is an entity that is listed within section 340B(a)(4) of the PHSA, meets the requirements under section 340B(a)(5) of the PHSA, and is registered and listed in the 340B database. 42 CFR 10.3.

⁴ Associated sites include offsite outpatient facilities integral to a parent 340B hospital or a site that shares a grant number or designation number for community health centers or Federally Qualified Health Center Look-alikes.

⁵ OMB Control Number 0915–0327.

⁶ <https://www.cms.gov/priorities/medicare-prescription-drug-affordability/overview/medicare-drug-price-negotiation-program>.

these favorable prices through a point-of-purchase discount, through a manufacturer rebate, or through some other mechanism. A mechanism that is appropriate to one type of “covered entity,” such as community health centers, may not be appropriate to another type, such as State AIDS drug purchasing programs. The Committee expects that the Secretary of HHS, in developing these agreements, will use the mechanism that is the most effective and most efficient from the standpoint of each type of “covered entity.”

H.R. Rep. No. 102–384, pt. 2, at 16 (1992).

B. Early Reliance on Upfront Discounts and Replenishment Models

During the 340B Program’s early stages, covered entities maintained separate physical inventories of 340B drugs for eligible patients and drugs purchased at a higher commercial price for ineligible patients. Over time the replenishment (or virtual inventory) model emerged as the standard approach. Under a replenishment model, a pharmacy first dispenses drugs to patients from one commercial inventory, also referred to as its neutral inventory. Specialized software then evaluates each dispense to determine whether the patient qualifies as a 340B-eligible patient of the covered entity. Once a sufficient quantity of eligible dispenses has accumulated, the covered entity is authorized to purchase a matching replenishment quantity of that drug at the discounted 340B price through its wholesaler account, which is then shipped to the pharmacy to restock its neutral inventory. In this way, the covered entity effectively captures the 340B discount retroactively on drugs already dispensed to eligible patients, allowing it to realize the cost savings the program is designed to provide.

After several years of experience with this system, HRSA identified limitations for certain covered entities. In particular, it found that State AIDS Drug Assistance Programs (ADAPs) “have drug purchasing systems that have prevented their participation in the section 340B discount program.” 62 FR 45824 (Aug. 27, 1997). To address this constraint, unlike other 340B entities, ADAPs can choose to participate as a direct purchase entity (*i.e.* receive the 340B discount upfront) and/or through a rebate mechanism. In the ADAP rebate model, ADAPs pay retail prices to dispensing pharmacies on behalf of their clients. The Secretary subsequently recognized this approach, permitted ADAPs to obtain 340B pricing through rebates from manufacturers equal to the difference between the retail price paid and the 340B ceiling price, and required manufacturers to offer such rebates to ADAPs,

emphasizing that the agency was “recogniz[ing] a rebate option” for these providers.

C. Emergence of Rebate Proposals and Recent Agency Actions

Following passage of the MDPNP, a number of pharmaceutical manufacturers approached HRSA in 2024 with proposals to implement a new rebate model for complying with 340B pricing requirements. Each proposal for a rebate model worked in a similar way: covered entities (or contract pharmacies acting on their behalf) would initially purchase drugs at commercial prices and then, after dispensing the drugs to 340B patients, would submit claims to the manufacturers for a cash rebate “equal to the difference between the acquisition cost and the 340B ceiling price.”

In the fall of 2024, several pharmaceutical manufacturers informed HRSA that they intended to roll out rebate models irrespective of the Secretary’s approval. HRSA responded to these proposals with similar letters and expressed concern that “[s]hifting to the rebate model would disrupt how the 340B Program has operated for over thirty years” and sought clarification on how rebates would affect providers and patients. To that end, HRSA requested responses to a detailed list of questions to enable it to better evaluate the manufacturers’ proposals. The letters sought additional information about how the manufacturers would process and approve or reject claims; inquired into data privacy practices; and sought assurances that in implementing the rebates, the manufacturers would comply with their obligations under section 340B. Each manufacturer responded to these questions, and covered entities expressed concerns that the proposed models would fundamentally shift how the 340B Program has operated for over 30 years. At the time, HRSA considered information from a variety of stakeholders, including manufacturers, covered entities, trade organizations representing the interests of covered entities and manufacturers, information technology (IT) companies, and other supply chain trade organizations.

HRSA concluded its deliberations by determining manufacturer-imposed rebate approaches violate a manufacturer’s obligations under Section 340B(a)(1) of the Public Health Service Act because the 340B statute requires Secretarial pre-approval of any rebate mechanism and that no manufacturer may unilaterally shift from upfront discounts to a rebate

structure without HHS authorization. The court in *Eli Lilly & Co. v. Kennedy*, No. 24–cv–03220, 2025 WL 1423630 (D.D.C. May 15, 2025) agreed, holding that HRSA does have authority to require pre-approval of rebate models and that manufacturers may not implement such models unilaterally.⁷ *Id.* at *14.

Consistent with these developments, after considering the information received, on August 1, 2025, HRSA published a **Federal Register** Notice (“2025 Notice”) inviting manufacturers with MDPNP Agreements with CMS for initial price applicability year 2026 to participate in a voluntary rebate model pilot program. 90 FR 36163 (Aug. 1, 2025); *see also* HRSA Announces Application Process for the 340B Rebate Model Pilot Program and Request for Public Comment (July 31, 2025), <https://www.hrsa.gov/about/news/press-releases/rebate-model-pilot-program>. The pilot program was intended to launch a rebate model across a limited set of drugs that were subject to the MDPNP in 2026 to ensure a fair and transparent 340B rebate model process for all stakeholders involved.

HRSA received 1,243 public comments from stakeholders in response to the 2025 Notice, including from covered entity and manufacturer trade organizations, individual covered entities, and drug manufacturers. HRSA’s review of the public comments helped to inform the Agency’s review of and decision on whether to approve the manufacturer applications, and the conditions of approval.

On October 30, 2025, HRSA announced the approval of eight manufacturer applications for participation in the pilot program, with an effective date of January 1, 2026. HRSA later approved a ninth manufacturer application for participation in the pilot program with an effective date of April 1, 2026.

On December 1, 2025, covered entity stakeholders filed suit under the Administrative Procedure Act in the U.S. District Court for the District of Maine to enjoin implementation of the 2025 340B Rebate Model Pilot Program. *See Am. Hosp. Ass’n v. Kennedy*, 820 F. Supp. 3d 30 (D. Me. 2025). On December 29, 2025, the District Court granted the Plaintiffs’ request for a preliminary injunction, thus triggering a nationwide pause of the Pilot, while

⁷ On July 21, 2026, the D.C. Circuit affirmed the district court’s ruling upholding HHS’s position that Section 340B permits rebate models and manufacturers may not unilaterally implement such models without HHS Secretarial approval. *Novartis Pharms. Corp. v. Kennedy*, No. 25–5177 (D.C. Cir. July 21, 2026).

confirming that in establishing and implementing the 2025 340B Rebate Model Pilot Program, HRSA was not required to respond to public comments. *Id.* at 45. HHS appealed the preliminary injunction to the U.S. Court of Appeals for the First Circuit, which denied a stay of the District Court's order, thus keeping in place a nationwide pause of the 2025 Pilot. *Am. Hosp. Ass'n v. Kennedy*, 164 F.4th 28 (1st Cir. 2026).

HHS later voluntarily dismissed its appeal of the preliminary injunction, which was granted by the First Circuit on January 20, 2026, and opted to withdraw the 2025 Pilot. On February 10, 2026, the District Court formally vacated and remanded to HHS the "340B Rebate Model Pilot Program Application Notice," 90 FR 36163 (Aug. 1, 2025), the "Corrected 340B Rebate Model Pilot Program Application Notice," 90 FR 38165 (Aug. 7, 2025), and the approvals of applications from drug manufacturers submitted pursuant to those notices (announced between October 30 and November 14, 2025).

III. Expansion and Transformation of the 340B Program

At its inception, the 340B Program operated as a relatively simple pricing requirement. Covered entities were few in number, and the statutory scheme contemplated a straightforward transactional model in which manufacturers would provide drugs at discounted prices at the point of sale. Program administration reflected those assumptions: entities dispensed drugs directly, often from segregated inventories, and the application of the ceiling price occurred in a largely contemporaneous and verifiable manner. This structure aligned with the program's scale. With limited participants and relatively simple distribution arrangements, an upfront discount model provided a practical and administrable means of ensuring compliance with the ceiling price requirement.

Over time, however, the program expanded significantly. Administrative guidance permitted covered entities to rely on contract pharmacies and to utilize replenishment inventory systems rather than maintaining separate physical inventories.⁸ Congress further expanded the program through the Patient Protection and Affordable Care Act, which increased the number and

types of eligible covered entities.⁹ Public Law 111–148, § 7101(a), 124 Stat. 119, 821–22 (2010). As a result of these developments, the 340B Program has evolved into a large and economically significant component of the pharmaceutical marketplace.

That growth has been substantial. In 2022, total 340B program sales reached \$53.7 billion when measured at the discounted 340B price by 2023, covered entities purchased \$66.3 billion in covered outpatient drugs under the program, representing approximately 23.4% growth in just 1 year.

Comparatively, in 2023, prescription drug spending in the U.S. grew 10.1%. By 2024, covered entities purchased \$81.4 billion in covered outpatient drugs under the program, representing approximately 50% growth in just 2 years.

Over a longer horizon, there was a 174% increase in the number of covered entities between 2013 and 2023. As the market has shifted, covered entities now include large hospital systems and extensive networks of affiliated hospital outpatient sites, often operating through numerous arrangements with contract pharmacies.

A 340B contract pharmacy is a retail or specialty pharmacy that has entered into a formal agreement with a covered entity to dispense drugs on the covered entity's behalf. Because many covered entities, such as federally qualified health centers, lack the ability to operate their own in-house pharmacy, contract pharmacy arrangements provide a mechanism to extend their 340B Program benefits to eligible patients by leveraging existing pharmacy infrastructure. Under this arrangement, a contract pharmacy dispenses drugs to the covered entity's eligible patients, while the covered entity retains ultimate responsibility for ensuring compliance with 340B Program requirements, including proper tracking of eligible dispenses and accurate replenishment ordering.

As the 340B Program has grown, so too has its operational complexity. Transactions now frequently occur through multi-step distribution channels involving contract pharmacies and retrospective eligibility determinations. Because 340B transactions often flow through multi-step distribution channels, including contract pharmacies that serve multiple covered entities, real-time eligibility verification at the point of sale is not

always feasible, leaving eligibility determinations to be made after the fact based on claims data that may be incomplete or inconsistently documented. This retrospective approach creates a gap between when a drug is dispensed and when eligibility is confirmed, making it difficult to ensure that discounted purchases are accurately matched to qualifying patients (*i.e.*, raising the risk of diversion) and raising the risk that the same transaction could be counted toward both a 340B discount and a Medicaid rebate, a duplicate discount that the statute expressly prohibits. In this environment, administrative and program integrity challenges, including difficulties in verifying patient eligibility at the point of sale and preventing statutorily prohibited diversion and duplicate discounts, present challenges as the 340B Program has evolved over time.

The progression of the 340B Program from a narrow pricing safeguard to a complex, multi-billion-dollar system thus underscores the importance of flexibility in determining how statutory pricing obligations are implemented. The 340B statute itself contemplates such flexibility, directing that the ceiling price be determined "taking into account any rebate or discount, as provided by the Secretary." 42 U.S.C. 256b(a)(1). Accordingly, the method by which that price is effectuated must be capable of adapting to the Program's current scale and operational realities.

While HRSA initially administered the Program as primarily an upfront discount drug purchasing model, the size and complexity of the 340B Program and the pharmaceutical distribution chain, together with the MDPNP framework and nonduplication requirements,¹⁰ warrant reconsideration of whether the upfront discount model remains the most effective means of

¹⁰ As stated in Medicare Drug Price Negotiation Program: Revised Guidance, Implementation of Sections 1191–1198 of the Social Security Act for Initial Price Applicability Year 2026, "in accordance with section 1193(d)(1) of the Social Security Act, the Primary Manufacturer of a selected drug is not required to provide access to the Maximum Fair Price (MFP) for a selected drug to MFP-eligible individuals who are eligible to be furnished, administered, or dispensed such selected drug at a covered entity described in section 340B(a)(4) of the (Public Health Service (PHS)) Act if the selected drug is subject to an agreement described in section 340B(a)(1) of the PHSA and the 340B ceiling price (defined in section 340B(a)(1) of the PHSA is lower than the MFP for such selected drug. Under section 1193(d)(2) of the Social Security Act, the Primary Manufacturer is required to provide access to the MFP to 340B covered entities in a deduplicated amount to the 340B ceiling price if the MFP for the selected drug is lower than the 340B ceiling price for the selected drug."

⁸ See, e.g., 61 FR 43549 (Aug. 23, 1996) (permitting one contract pharmacy per covered entity); 75 FR 10272 (March 5, 2010) (permitting covered entities to use multiple contract pharmacies).

⁹ The ACA added five additional categories of hospital covered entities: Pediatric Hospitals, Rural Referral Centers, Critical Access Hospitals, Cancer Hospitals, and Sole Community Hospitals.

carrying out statutory objectives. In exercising its stewardship role, HRSA must balance covered entities' longstanding reliance on the upfront discount model against the need to ensure effective program oversight, safeguard the benefits of 340B pricing, and maintain program integrity and accountability in a rapidly evolving landscape, as it has done in the past.

IV. Program Integrity Considerations

When HRSA adopted the rebate option for ADAPs in 1998, commenters asserted that such a model should be limited only to ADAPs and not expanded to other categories of covered entities. HRSA responded that it agreed with those commenters, "at this time." 63 FR 35241, 35241–42 (June 29, 1998). As noted above, however, the Program has changed dramatically in the intervening 28 years. Since 1998, there have been multiple reports by Congress and governmental agencies noting the exponential growth of the Program;¹¹ the difficulty of enforcing the prohibition on duplicate discounts;¹² and concerns surrounding diversion.¹³ The 1998 ADAP guidance predates the adoption of the outpatient prospective payment system in 2000 (which led CMS to codify a regulatory policy on off-campus provider billing), as well as the enactment of Medicare Part D in 2003 (which created a new outpatient drug benefit for Medicare beneficiaries while dramatically expanding the use and understanding of rebates in the pharmaceutical supply chain), the Deficit Reduction Act in 2005 (which added pediatric hospitals as a class of 340B covered entities), the Affordable

Care Act in 2010 (which added five additional categories¹⁴ of 340B hospital covered entities), and the Inflation Reduction Act in 2022 (which gave CMS the authority to negotiate drug prices but creating the potential for a new category of duplicate discounts).

The growing complexity of the pharmaceutical supply chain, combined with the enactment of the statutory provisions cited above, makes program integrity a growing risk. For example, the 340B statute is clear that a manufacturer is not required to provide a rebate for a unit of a covered outpatient drug under the Medicaid Drug Rebate Program and provide 340B pricing for that same unit of drug. Yet the growing number of child sites of covered entities and contract pharmacies and the growth in the number of patients who are eligible for insurance coverage for prescription drugs make it more difficult to guard against duplicate discounts with an upfront discount model. Child sites and contract pharmacies introduce complexity because they operate separately from the covered entity itself, often billing under their own identifiers or through intermediary systems that may not be fully integrated with the covered entity's patient eligibility records. When a prescription is dispensed at one of these locations, the covered entity may lack real-time visibility into whether a Medicaid payer is involved, making it difficult to flag the transaction and exclude it from 340B pricing before the discount is applied. Without an ability to verify if a drug is 340B priced, the same drug purchase risks being simultaneously discounted under 340B and submitted for a Medicaid rebate, precisely the duplicate discount the statute is designed to prevent. Moreover, the HHS Office of Inspector General has noted that the prohibition on duplicate discounts is difficult to enforce with respect to drugs dispensed to Medicaid managed care enrollees, especially because the Medicaid Exclusion File, (MEF)¹⁵ which HRSA created in 1993

for fee-for-service Medicaid, is inadequate to capture duplicate discounts with respect to Medicaid managed care enrollees, and that this inadequacy results in both duplicate discounts going unreported as well as excluding some non-340B claims from rebate invoices, thereby resulting in foregone Medicaid rebates to states.¹⁶ The Government Accountability Office (GAO) has identified a similar concern.¹⁷

While there is no federal estimate of the financial extent of duplicate discounts in 340B, the topic has been evaluated by industry and academia. Manufacturer commenters stated in 2019, when the 340B program was less than half its current size, Medicaid/340B duplicate discounts amounted to as much as \$1.5 billion annually. HRSA is using the flexibility granted by the 340B statute and recognized by Congress on the enactment of the program to expand the use of a rebate model in the program. The Pilot will use a rebate approach to mitigate the deficiencies cited by Congress and other governmental entities in enforcing the prohibition on duplicate discounts, by proving a mechanism to avoid duplicate discounts.

V. Summary of Public Comments and HRSA Responses

On February 17, 2026, HRSA published a Request for Information (RFI) (91 FR 7287 (Feb. 17, 2026)) to gather broad stakeholder comments on a wide range of topics having to do with the potential use of rebates to effectuate the ceiling price under the 340B Program. The RFI sought comments on whether HRSA should implement a rebate model under the 340B Program, how best to operationalize any such rebate framework for stakeholders, and the potential operational and financial impacts of transitioning to a rebate model under the 340B Program. The RFI also sought comment on reliance interests in continuing to obtain the 340B ceiling prices through upfront discounts and whether such reliance interests are reasonable in light of the Secretary's express statutory authority to provide for acquisition of covered outpatient drugs at the 340B ceiling price via "rebate or discount." Commenters were invited to provide privileged or confidential information that they believed was necessary to

¹¹ Comm. on Energy and Com., *Review of the 340B Drug Pricing Program* (2018) (noting that the number of unique covered entities had grown 300% between 2011 and 2017; that the number of child sites had increased by 78% during that period; and that the number of contract pharmacies had increased 158% in that same period). See also U.S. Gov't Accountability Off., GAO–26–108784, *340B Drug Discount Program: Agency Oversight Has Improved, but Actions Needed to Address Weaknesses* (2025) (finding a 174% increase in the number of covered entities between 2013 and 2023).

¹² U.S. Dep't of Health & Hum. Servs. Off. of Inspector Gen., OEL–05–1300431 at 2, *Memorandum Report: Contract Pharmacy Arrangements in the 340B Program* (2014) (noting that "contract pharmacy arrangements create complications in preventing duplicate discounts"); see also U.S. Dep't of Health & Hum. Servs. Off. of Inspector Gen., OEL–05–14–00430, *State Efforts to Exclude 340B Drugs from Medicaid Managed Care Rebates* at 10 (2016); see also U.S. Gov't Accountability Off., GAO 20–212, *340B Drug Discount Program: Oversight of the Intersection with the Medicaid Drug Rebate Program Needs Improvement* (2020).

¹³ U.S. Dep't of Health & Hum. Servs. Off. of Inspector Gen., OEL–05–1300431 at 2, *Memorandum Report: Contract Pharmacy Arrangements in the 340B Program* (2014).

¹⁴ The Affordable Care Act added pediatric hospitals; rural referral centers; critical access hospitals; cancer hospitals; and sole community hospitals.

¹⁵ Pursuant to section 340B(a)(5)(A)(ii) of the PHSA, HRSA established the 340B Medicaid Exclusion File (MEF) as the mechanism to assist 340B covered entities and States in the prevention of duplicate discounts for drugs subject to Medicaid rebates. 58 FR 34058, 34058 (June 23, 1993). The 340B MEF is available on 340B Office of Pharmacy Affairs Information System. HRSA publishes the 340B MEF, which lists all of the covered entities that choose to bill Medicaid fee-for-service for the 340B drugs used for their Medicaid patients (carve-in), as the official data source to facilitate the prevention of duplicate discounts.

¹⁶ U.S. Dep't of Health & Hum. Servs. Off. of Inspector Gen., OEL–05–14–00430, *State Efforts to Exclude 340B Drugs from Medicaid Managed Care Rebates* (2016).

¹⁷ U.S. Gov't Accountability Off., GAO–26–108784, *Agency Oversight Has Improved, But Actions Needed to Address Weaknesses* (2025).

comment on the RFI. Those comments were not made public and were submitted to a separate email box (340Bpricing@hrsa.gov).

HRSA reviewed 2,449 public comments in response to that RFI, including 1,170 identical comments as part of a letter campaign. HRSA also received 26 non-public submissions for a total of 2,475 comments, all of which HRSA considered in the design of the revised Pilot.

This substantial feedback on the RFI came from a broad range of stakeholders across the health care and pharmaceutical sectors, including hospitals, health systems, federally qualified health centers, rural providers, Tribal organizations, manufacturers, pharmacies, technology companies (technology vendors with platforms to receive claims submissions), advocacy groups, and other interested parties. Comments reflect differing perspectives on the potential implementation of a rebate-based approach. Many covered entity stakeholders expressed concerns regarding the financial, operational, and administrative implications of a rebate model, including potential cash flow impacts and implementation burden. Covered entities expressed a high degree of consistency in comments across provider types. While Critical Access Hospitals, rural hospitals, FQHCs, and larger health systems emphasized different operational challenges, there was broad agreement that a rebate model could increase financial and administrative burden. The principal differences in covered entity type comments were in the nature of the risks highlighted: cash flow and liquidity for rural providers, operational complexity for larger systems, and patient access concerns for community-based and specialty safety-net providers. In contrast, manufacturers, technology vendors, some employer and purchaser coalitions, several patient advocacy groups and other stakeholders generally support a rebate model, emphasizing its potential to improve transparency, enhance program integrity, and address manufacturer challenges related to avoiding duplicative price concessions, including those involving the MDPNP and the Medicaid Drug Rebate Program. Across stakeholder groups, HRSA also received input on the importance of minimizing administrative burden and ensuring that any model leverages existing data and operational processes. The comments received on the RFI also provided HRSA with information on the potential advantages and disadvantages that implementation of a rebate model would have on the patients served by different covered entity types.

HRSA carefully reviewed and evaluated all comments submitted in response to the RFI. The agency conducted a systematic assessment of stakeholder input and used that feedback to inform the design and policy rationale of this revised Pilot. The following sections describe in greater detail how stakeholder perspectives shaped specific components of this revised Pilot and explain HRSA's responses to the principal issues raised. HRSA's evaluation considered both the substance and the evidentiary support of the comments received, and the agency's responses to the major comment themes are summarized below.

A. Reliance Interests Related To Maintaining Up Front Discounts

Commenters express differing views on the reliance interests of covered entities in the current upfront discount model. Several covered entity organizations express concern that HRSA has not accounted for covered entities' reliance interests in maintaining an upfront discount model. These commenters state that an upfront discount model has been used in the Program for more than 30 years and covered entities have reasonably relied on this consistency when designing their internal operations. They argue that there is no reason to shift to what they view as a costly rebate mechanism given this history. By contrast, manufacturers assert the costs of implementing a rebate mechanism have been overstated and the benefits of a rebate mechanism far outweigh the additional costs. They further assert that a rebate mechanism is not a novel concept as it has been used in a limited capacity in the 340B Program for decades, is widely employed across the drug industry, and the current replenishment system functions in several respects like a rebate mechanism, particularly insofar as post-dispensing determinations and financial true-up already occur outside the point of sale.

HRSA does not agree that exclusive reliance on an upfront discount model is reasonable or that such reliance foreclose consideration of alternative statutory mechanisms. The 340B statute expressly recognizes the authority to provide the 340B ceiling price via "rebate or discount," which provides the Secretary, through HRSA, discretion in how best to operationalize the statutory pricing requirement. Therefore, stakeholders cannot reasonably claim that a rebate model is unforeseeable or outside the range of

expected administrative options. Rebates are a common reimbursement mechanism across the pharmaceutical sector and have been recognized by HRSA since 1998 as a valid mechanism for 340B reimbursement for AIDS drug assistance programs. Rebates are also used extensively in Medicare Part D, including with respect to Part D drugs that are dispensed by pharmacies that may have contract pharmacy agreements with 340B Program covered entities. To the extent covered entities structured their operations around a single delivery mechanism, such reliance must be understood in light of the 340B statute's plain language and the 340B Program's evolving administrative framework and the evolution of the pharmaceutical distribution chain over the past 20 years.

The Medicare Part D Program relies extensively on rebates. Manufacturers pay rebates to Part D plans in exchange for formulary placement and other services such as developing a pharmacy network and Part D benefit design. Typically, dispensing a drug for which there is a rebate agreement to a Part D enrollee triggers the payment of a rebate from the manufacturer to the Part D plan, and CMS has a mechanism in place to report the payment of that rebate via its Direct and Indirect Remuneration guidance.¹⁸ HRSA anticipates that a rebate model would work similarly to the operation of rebates in the Part D Program; the 340B covered entity's dispensing of a drug that qualifies for the 340B price reduction would trigger the payment of a rebate by the manufacturer. Over the 20-year history of the Part D Program, a sophisticated rebate mechanism has developed and HRSA anticipates that a rebate model in the 340B Program would work similarly.

The significant growth in size and complexity of the 340B Program has introduced oversight challenges that were less pronounced when the Program was smaller and less complicated. While covered entities have relied on the upfront discount model for three decades, HRSA in its stewardship role must balance these interests against the rapidly changing 340B landscape that requires HRSA to weigh competing policy concerns, including program accessibility, administrative feasibility, statutory compliance, and the prevention of duplicate discounts and diversion.

The Supreme Court has explained that in those instances where an agency

¹⁸ See <https://www.cms.gov/newsroom/fact-sheets/medicare-part-d-direct-indirect-remuneration-dir>.

must consider reliance interests when deciding whether to change a long-standing policy, an agency may consider whether language in the ultimate source of the alleged reliance interests should have warned the public away from relying too heavily on a particular policy. See *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 32 (2020) (explaining that it would be permissible for the Department of Homeland Security to “respond that reliance on forbearance [from removal] and benefits was unjustified in light of the express limitations in the [agency memorandum]” stating that it conferred no substantive rights). But even if one assumed for the sake of discussion that covered entities’ reliance interests in this context are reasonable as a matter of law, such a conclusion does not thereby transform such reliance interests into a categorical prohibition against the Secretary exercising his express statutory discretion to provide for 340B pricing via “rebate or discount.” Were it not otherwise, reliance interests would have the impermissible effect of amending statutory language that gives an agency the express discretion to choose between two different implementation methods. As the Supreme Court has explained, “even if [an agency] ultimately concludes that the reliance interests rank as serious, they are but one factor to consider. [The agency] may determine, in the particular context before it, that other interests and policy concerns outweigh any reliance interests.” *Regents of Univ. of Cal.*, 591 U.S. at 32.

Such is the case here. As cited throughout this Notice, HRSA recognizes that there are costs associated with a rebate model, and for this reason has incorporated implementation features designed to limit or reduce operational disruption. The 340B statute expressly gives the Secretary the authority to choose between discounts or rebates. HRSA has taken into consideration covered entities’ reliance interests and found that, on balance, they do not outweigh the significant benefits of proceeding with the Pilot as described in this Notice.

Moreover, it is true that the 340B statute “was intended to enable certain hospitals and clinics to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.” *Am. Hosp. Ass’n v. Hargan*, 289 F. Supp. 3d 45, 47 (D.D.C. 2017) (internal quotation marks and citation omitted). But as the Supreme Court recently confirmed in rejecting

hospitals’ reliance on the general purpose of a statute designed to increase certain hospitals’ Medicare payments, “[n]o statute pursues a single policy at all costs, and we are not free to rewrite this statute (or any other) as if it did.” *Advocate Christ Med. Ctr. v. Kennedy*, 605 U.S. 1, 19 (2025) (internal quotation marks and citation omitted). As explained above, the 340B Program has witnessed unprecedented growth recently that has caused certain 340B Program stakeholders to reasonably question whether covered entities are complying with the 340B statute’s requirements, including the prohibition against duplicate discounts. The Pilot as described in this Notice exercises the Secretary’s express statutory authority to provide for 340B pricing via rebate, applied to a well-defined subset of 340B drugs that represent a relatively modest portion of overall 340B drug discounts.

B. Duplicate Discount Prevention and Program Integrity

Commenters identify duplicate discount prevention and overall program integrity as key considerations in evaluating a potential 340B rebate model. Manufacturers, technology and data intermediaries, certain pharmacy and manufacturer vendor stakeholders and some employer purchaser organizations emphasize that the current 340B framework presents challenges in identifying and preventing duplicate discounts across federal pricing programs, including Medicaid (fee-for-service and managed care) and Medicare, particularly in light of the implementation of the MDPNP and the Medicare Prescription Drug Inflation Rebate Program. These commenters state that existing mechanisms, such as the MEF and claims modifiers, are limited in their ability to ensure accurate, real-time identification of 340B utilization and often require post-hoc audits, manual reconciliation, and dispute resolution. Some commenters cite industry analyses, proprietary data, and government oversight reports suggesting that duplicate discounts may represent a significant source of program inefficiency and financial exposure. These commenters reference government reports identifying challenges in preventing duplicate discounts, particularly within Medicaid managed care, and separately cite industry analyses estimating that duplicate discounts could affect a substantial portion of 340B transactions and represent tens of billions of dollars annually, as well as hundreds of millions of dollars in unresolved disputes. These commenters assert that the implementation of the maximum

fair prices under the MDPNP, further increases the likelihood of overlapping price concessions across programs and state that a rebate model, supported by claims-level data validation, could improve transparency and enable more accurate coordination across pricing programs, thereby reducing the incidence of duplicate discounts and related disputes.

Manufacturers express that existing mechanisms are insufficient to reliably identify and prevent duplicate discounts between the 340B Program and the MDPNP. These commenters emphasize that, under the current framework, manufacturers lack timely access to claims-level data to identify all units subject to 340B pricing for which maximum fair price effectuation is not required. Manufacturers state that current efforts rely on claims modifiers, estimation methodologies, and voluntary data reporting that do not provide the manufacturers with precision they desire to minimize duplication of discounts. Manufacturers further highlight the operational challenges created by timing misalignments, whereby 340B eligibility is often determined after pricing decisions must be made, increasing the risk of duplicate discounts and requiring retrospective reconciliation through resource-intensive “pay-and-chase” processes. Based on these limitations, manufacturers contend that a rebate-based model, which links price concessions to validated claims data, would provide a more accurate, transparent, and administratively efficient mechanism to identify and prevent duplicate discounts across federal pricing programs.

Covered entity groups acknowledge the importance of preventing duplicate discounts but contend that the current framework, when properly implemented, is sufficient to meet statutory requirements, including in the context of MDPNP implementation. These commenters state that covered entities already maintain compliance systems, including inventory controls, billing safeguards, and audit processes, to prevent duplicate discounts and diversion, and that existing coordination mechanisms can be adapted to address MDPNP-related requirements.

Many commenters also express concern that a rebate model could shift compliance responsibility and financial risk onto covered entities while introducing additional administrative complexity, particularly given the requirements associated with MDPNP implementation. Commenters also identify alternative approaches to

addressing duplicate discounts within the existing framework, including enhanced use of claims modifiers, improvements to the MEF, standardized data-sharing arrangements, and the potential use of centralized or third-party clearinghouse models that do not require a shift from upfront discounts to a rebate-based pricing mechanism.

In response to these comments, HRSA recognizes the importance of ensuring program integrity and enabling manufacturers to prevent duplicate price concessions across all applicable pricing programs. HRSA believes that a rebate-based approach, which is authorized by the 340B statute, including the use of standardized claims-level data, will improve the identification and prevention of duplicate discounts. HRSA will use data collected through the Pilot, including rebate submissions, denials, and dispute outcomes, to more effectively prevent duplicate discounts relative to existing mechanisms and to inform future policy considerations related to program integrity and compliance. HRSA believes that the manufacturer data collection from covered entities under this Pilot will enable manufacturers to better identify 340B transactions both for purposes of their nonduplication efforts in MDPNP and deduplication in Medicaid Managed Care.

Also, there are many advantages a rebate model has for prospective program integrity measures and overall transparency, including ensuring that stakeholders have transparency into 340B transaction information. Alternatives that would preserve the upfront discount model or rely on clearinghouse mechanisms would not inform whether rebates are an efficient means of effectuating the 340B ceiling price, an option expressly authorized under the 340B statute, and therefore would fail to advance the central purpose of the Pilot. HRSA does not believe that reliance solely on standardized claim identifiers, audits, or improved coordination between government programs would be sufficient to address duplicate discount risks. Retrospective reviews, audits, and dispute resolution processes are inherently reactive, identifying potential duplicate discounts only after they have occurred. Conversely, a rebate model incentivizes covered entity compliance as a prerequisite to receiving 340B discounts.

Improved coordination across government programs is complicated by differences in timing, data availability, and program administration, which limit the ability to reconcile transactions accurately and in real time. As a result,

these approaches alone may not provide the level of precision, timeliness, and scalability necessary to ensure compliance with statutory nonduplication requirements. A rebate-based model, which ties price concessions to validated, claims-level data prior to payment, is intended to enhance HRSA's oversight of the 340B Program and improve program integrity by enabling more accurate, prospective identification of eligible transactions.

The Pilot will assist HRSA's evaluation of retrospective, claims-based reconciliation and may offer additional safeguards to assess whether a rebate model can improve transparency and HHS will use information from this Pilot to support compliance with statutory requirements across federal drug pricing programs.

C. Administrative and Implementation Costs to Covered Entities

Several commenters, primarily covered entities and provider organizations, assert that implementation of a rebate model would impose significant additional costs on covered entities across multiple dimensions. These commenters identify increased administrative burden, staffing needs, system modifications, and heightened financial exposure related to cash flow as key areas of concern. Many compare the costs associated with the upfront discount model to projected costs under a rebate-based approach and contend that the latter would be substantially higher.

By contrast, manufacturers and technology company commenters dispute these characterizations, arguing that the cost estimates submitted by covered entities are overstated or unsupported. Manufacturer and technology company commenters emphasize that covered entities are already required to collect and maintain the relevant claims-level data as part of routine billing, compliance, and audit activities. In their view, the data sharing requirements contemplated under a rebate model are materially similar to existing obligations imposed by Medicare, Medicaid, and commercial payers. These commenters further assert that existing infrastructure, including internal systems and third-party administrators (TPAs), can be leveraged to support data submission and rebate processing, thereby mitigating any incremental administrative burden or associated costs.

More specifically, covered entity and provider organizations commenters raise the following concerns regarding the potential costs of implementing a rebate pilot program, which

manufacturer and technology company commenters contend are overstated.

1. Comments Concerning Current Administrative Costs Under the Upfront 340B Discount

Covered entities and provider organizations generally describe current administrative costs for the upfront discount replenishment model as manageable and well-integrated into existing operations, noting that their systems, staffing, and workflows have been developed over time to support compliance with 340B requirements, including inventory management, split-billing, duplicate discount prevention, and audit readiness. Covered entities employ third-party administrators (TPA), which are specialized vendors that manage the administrative and operational functions of the 340B Program on behalf of covered entities, including tracking patient eligibility, managing split-billing software, processing claims data, and ensuring compliance with program requirements. These commenters emphasize that while program participation entails ongoing administrative effort, including use of third-party administrators (TPAs), compliance monitoring, and periodic audits, these activities are predictable, standardized, and embedded within existing pharmacy and billing infrastructure.

Manufacturers and technology company commenters offer a contrasting view, asserting that current administrative processes under the upfront discount model are complex, fragmented, and resource-intensive. In particular, they point to challenges in identifying and resolving duplicate discounts, preventing diversion, and avoiding discounts that are not required under the nonduplication provision of the MDPNP. These commenters state that existing mechanisms, such as the MEF, which is the mechanism that HRSA developed pursuant to section 340B(a)(5)(A)(ii) of the PHSA, as well as claims modifiers, are insufficient and often require significant manual reconciliation, audits, and dispute resolution efforts, resulting in ongoing administrative costs across stakeholders. Commenters cited to an Office of Inspector General report¹⁹ that noted that the MEF is not able to identify claims for outpatient prescription drugs paid by Medicaid managed care plans and noted that this is a particular area of vulnerability for duplicate Medicaid discounts. They further emphasize that, under the replenishment model,

¹⁹ <https://oig.hhs.gov/documents/evaluation/2918/OEI-05-14-00430-Complete%20Report.pdf>.

covered entities receive 340B pricing upfront without contemporaneous verification of eligibility, while manufacturers lack access to the claims-level data necessary to confirm compliance with statutory requirements. In their view, this lack of transparency contributes to inefficiencies and necessitates reliance on retrospective oversight mechanisms that are resource-intensive, limited in scope, and ineffective at preventing improper claims in real time.

2. Comments Concerning Administrative Costs Under a Potential 340B Rebate Model Pilot Program

Commenters also expressed divergent views regarding the administrative costs associated with implementing a 340B rebate model pilot program. Covered entities, provider trade associations, contract pharmacy representatives, third-party administrator consultants and patient advocacy stakeholders, generally assert that a rebate model would introduce substantial new administrative requirements, including claims-level data submission, rebate tracking, reconciliation across multiple systems, and management of denied or disputed claims. They state that implementation would likely require additional staffing and operational changes as well as increased reliance on TPAs or other external vendors, potentially resulting in additional service fees and contractual complexity. Commenters further express concern that, particularly during a transition period or for drugs not included in a pilot, covered entities may be required to maintain both existing upfront discounts processes and new rebate-related workflows, creating duplicative operational burdens. Several commenters also note that variability in manufacturer-specific requirements, such as differing data formats, submission timelines, validation criteria, and dispute processes, combined with a lack of standardized systems, could increase administrative complexity, require the use of multiple platforms, and lead to higher operational costs and inefficiencies.

By contrast, manufacturers and trade organizations assert that the incremental administrative burden associated with a rebate model would be limited or manageable. They emphasize that covered entities already collect and maintain much of the relevant claims-level data as part of routine billing and compliance activities, including data captured in electronic health records and submitted to payers. According to these commenters existing systems and TPAs can be leveraged to support data

submission and rebate processing, minimizing the need for new infrastructure. They further contend that a rebate model could, over time, reduce administrative burden by improving data transparency, decreasing reliance on retrospective audits and dispute resolution, and enabling more efficient identification and prevention of duplicate discounts and other compliance issues within the 340B Program.

3. Comments Concerning Staffing Impacts Under a Potential 340B Rebate Model Pilot Program

Commenters provide a range of quantitative estimates regarding potential staffing impacts associated with a 340B rebate model pilot program. Covered entities generally predict that a rebate model would result in the need for additional personnel to support claims-level data submission, rebate tracking, reconciliation, and denial or dispute resolution activities. Several commenters estimate that implementation could require approximately 0.5 to 1 full-time equivalent (FTE) for smaller entities and 1 to 2 or more FTEs for larger organizations or those with higher prescription volumes or extensive contract pharmacy networks. A covered entity trade association commenter cites that over 80% of surveyed entities anticipated needing additional staff, with associated annual personnel costs ranging from approximately \$30,000 to over \$200,000 per FTE, depending on role and location. In addition, commenters report that existing rebate-related processes can require 10 to 40 or more hours per week of staff time and indicate that a rebate model could increase workload due to expanded reporting, reconciliation, and appeals processes. These commenters provided only estimates of anticipated staffing impacts.

Manufacturers and other groups, on the other hand, assert that staffing impacts would be limited, emphasizing that covered entities already maintain the relevant claims-level data and operational infrastructure necessary to support rebate processing. These commenters state that, in addition to leveraging existing billing systems and TPAs, the administrative workload associated with rebate models may be comparable to or lower than current processes over time, particularly as improved data transparency reduces the need for manual audits and dispute resolution. One manufacturer trade group contends that a rebate model would leverage existing staffing and workflows, rather than necessitating

new personnel or fundamentally different operational systems. Manufacturers also question the reliability of specific quantitative estimates submitted by covered entity commenters, citing concerns about survey sample size, response bias, and assumptions regarding rebate payment timelines that differed materially from the Pilot's requirements.

In particular, a manufacturer trade group emphasizes that modern pharmacy and health system infrastructure including automation, batch processing, and TPAs can handle data extraction, formatting, and submission with minimal manual intervention once systems are configured. Accordingly, it maintains that ongoing staffing demands would be limited with most processes becoming automated after initial implementation. Finally, manufacturers assert that over time a rebate model could reduce overall administrative burden, including staffing demands, by improving data transparency and minimizing the need for labor-intensive retrospective activities such as audits, reconciliation, and dispute resolution.

A technology vendor commenter that has developed and deployed a 340B Program rebate processing platform similarly asserts that staffing impacts can be minimized through direct TPA integration. That commenter reports that, as of spring 2026, 53 TPAs are able to submit data directly to its rebate processing platform on behalf of covered entities, which in its view would significantly reduce or eliminate any potential burden of data compilation on the part of covered entities and reduce the need for additional in-house staff. The commenter asserts that for the more than 7,000 covered entities that have previously submitted data to the vendor's existing 340B ESP platform, the incremental work necessary to submit data under a rebate model is very limited because the required data fields are the same. With regard to covered entity concerns of maintaining processes for both existing upfront discounts processes and new rebate-related workflows, the Pilot design seeks to reduce burden in this area by requiring plans to allow covered entities to order the selected drugs under existing distribution mechanisms (*e.g.*, 340B wholesaler accounts with WAC prices loaded) to ensure purchases flow through existing infrastructure, eliminating the need for duplicative operational burdens.

4. Comments Concerning Systems and Infrastructure for Implementation of a Potential 340B Rebate Model Pilot Program

Commenters express differing views regarding the systems and infrastructure required to implement a 340B rebate model pilot program. Most covered entity groups express that their current IT systems, pharmacy management platforms, and TPA arrangements are designed to operate under the existing upfront discount and replenishment model and would require significant modification or replacement to support claims-level rebate submission and reconciliation. These commenters describe potential needs for new data integration across electronic health records, pharmacy systems, billing platforms, and financial systems, as well as the development of new workflows to manage rebate eligibility determination, submission, and tracking. Some commenters estimate that implementation could require tens of thousands of dollars in annual software and reporting costs for smaller entities, with estimates commonly ranging from approximately \$30,000 to \$50,000 per year for software, tracking functionality, and workflow redesign. Other commenters, particularly larger health systems, project substantially higher costs associated with systems integration, vendor support, and operational implementation, in some cases describing hundreds of thousands of dollars in one-time implementation costs and significant ongoing vendor expenditures. Commenters also express concern that variation in manufacturer-specific data requirements or platform requirements could necessitate the use of multiple systems, increasing complexity, interoperability challenges, and long-term maintenance costs. Manufacturers argue the opposite and assert that existing systems and infrastructure are largely sufficient to support a rebate model, noting that covered entities already maintain and transmit the relevant claims-level data for purposes of billing and reimbursement under Medicare, Medicaid, and commercial payers. These commenters state that current IT systems and TPAs could be leveraged to facilitate data submission and reconciliation and emphasize the availability of centralized or interoperable platforms designed to streamline rebate processing and improve data transparency. They further assert that such systems could reduce fragmentation over time by enabling standardized data exchange and more

efficient coordination among stakeholders.

Technology vendors that have developed rebate processing platforms similarly assert that existing systems and infrastructure are sufficient to support implementation. One such commenter, a technology company that has engaged with HRSA since 2019 to develop and operationalize a 340B rebate model, states that its platform is capable of effectuating discounted pricing directly to covered entities as a rebate at the unit level. This commenter reports that multiple manufacturers are already using its platform to collect claims data, that thousands of covered entities have registered on the platform, and that covered entities have reported fully onboarding in less than ten minutes through a self-service process. The commenter further explains that the platform integrates with existing billing, pharmacy, and TPA systems through publicly available application programming interfaces (or APIs), supports near real-time data submission, and incorporates automated validations that check for duplicate discounts before they occur. The commenter also notes that beta testing with covered entities, including health centers, hospitals, and clinics, confirmed that covered entity partners such as TPAs can connect to the platform using existing systems cheaply and quickly, and that standard TPA reports could be leveraged to create dispensation reports matching the format required by the platform. Based on this experience, the commenter contends that the administrative burden on covered entities is minimal once systems are configured, and that a rebate model will simplify the process of identifying when the right discount applies to the right dispense, thereby reducing the costs associated with manufacturer good-faith inquiries, audits, and dispute resolution under the current model.

5. Comments Concerning Other Anticipated Costs or Impacts of a Potential 340B Rebate Model Pilot Program

Commenters identified a range of additional anticipated costs and operational impacts associated with a potential 340B Rebate Model Pilot Program beyond those related to direct administrative, staffing, and systems requirements. Covered entities and provider organizations express concern that a rebate model could result in secondary financial effects, including loss of wholesaler prompt-pay or cost of goods discounts, increased borrowing or financing costs to manage larger working-capital requirements, and

potential inventory-related financial risk associated with purchasing drugs at higher upfront prices. While few commenters quantified these secondary effects directly, several quantified the underlying financial exposure, including 20- to 40-fold increases in upfront acquisition costs for affected drugs, approximately \$10 million in additional annual working-capital requirements for one large health system, and measurable reductions in liquidity (e.g., a 0.5% reduction in days cash on hand and more than \$1 million in cumulative liquidity impacts over 5 years). Some commenters also note the potential for disruptions (or actual disruptions, during the brief period in preparation for the earlier rebate model) to contract pharmacy arrangements, including reduced participation by pharmacy partners due to increased administrative complexity and financial risk, as well as broader impacts on wholesaler relationships, credit limits, and purchasing terms. In addition, commenters indicate that these combined pressures could lead to reductions in patient services, program offerings, or workforce capacity, particularly for smaller or resource-constrained covered entities. Commenters estimates for indirect financial exposures varied and ranged from hundreds of thousands of dollars annually to tens of millions of dollars annually for larger covered entities.

Manufacturer groups did not identify significant additional categories of cost beyond those associated with implementation and administration and instead emphasized potential offsetting benefits. These commenters state that improved claims-level transparency and coordination across pricing programs could reduce inefficiencies, minimize disputes, and improve overall program integrity. Some also suggested that more accurate application of discounts could lead to more predictable financial flows and reduced long-term administrative and compliance costs.

6. Response to Comments Concerning Administrative and Implementation Costs to Covered Entities

HRSA carefully considered the full range of comments while considering a range of policy options to best meet the commenters' varying perspectives. HRSA recognizes that most covered entities currently operate under an upfront discount model that reduces the need for post-purchase reconciliation. HRSA agrees that the upfront discount model limits certain administrative steps. However, the record demonstrates that covered entities and their contract pharmacy partners already perform

extensive administrative functions under the 340B Program, including inventory management, compliance oversight, audit preparation, collection and submission of claims-level data to manufacturers, TPAs, and payers, and reconciliation activities. The record further demonstrates that IT systems and vendors already exist in a competitive marketplace to allow covered entities to shift to a rebate model without significant burden. These existing capabilities reflect a mature operational infrastructure that can be leveraged, rather than replaced, under a rebate model to more effectively prevent duplicate discounts and address the program integrity concerns discussed in this Notice.

HRSA finds that many projections of administrative burden rest on assumptions that do not align with the design of the Pilot or that do not accurately reflect what is needed administratively to implement a rebate approach. For example, several commenters assumed that covered entities would be required to develop and maintain manufacturer-specific data submissions, support multiple proprietary submission platforms, submit purchasing data, encounter-level information, patient-level clinical information, or real-time claims feeds, and manually reconcile claims across multiple systems. Other commenters projected substantial staffing increases, including estimates of six or seven additional full-time employees, more than 12,000 additional annual labor hours, or approximately 240 additional staff hours per week, to support rebate administration, based on assumptions that data would require extensive manual collection, validation, and submission. Similarly, some commenters projected significant one-time system development costs by assuming the need to build new interfaces between electronic health records, split-billing software, third-party administrators, financial systems, and multiple manufacturer portals. These projections generally assumed limited automation, manufacturer-specific reporting requirements, or ongoing parallel workflows that are not contemplated under the Pilot. By contrast, the Pilot requires submission only for the limited universe of drugs included in the Pilot, utilizes standardized pharmacy and medical claims data elements, and relies primarily on information that covered entities already collect, maintain, and retain in the ordinary course of billing, dispensing, audit, and compliance activities. As discussed in Section

VIII.D., the Pilot does not require submission of purchasing records, encounter-level clinical documentation, or other patient-level information beyond the standardized claims elements specified by HRSA. HRSA also anticipates that use of standardized submission formats and centralized reporting will substantially reduce the need for the manual reconciliation and customized interfaces assumed by many commenters. HRSA published its estimate of the annual administrative cost in an Information Collection Request²⁰ to total \$523,345,680 for the 15,249 covered entities reporting claims. Based on that estimate, HRSA projects administrative costs of reporting claims data for the Pilot will average approximately \$34,320 per entity, but may vary by entity type.

The Pilot is structured to enable covered entities, manufacturers, and vendors to operationalize processes and identify implementation challenges on a limited, manageable scale. Based on 2025 data, the included products represent less than 5.5% of total 340B sales with the remaining 94.5% of drug sales continuing under the upfront 340B discount model in 2027. This approach allows for the evaluation and adjustment of workflows and data exchange mechanisms based on actual experience prior to broader application, generating concrete, practice-based evidence on how the rebate model operates.

Given the limited scope of the Pilot and its reliance on existing data infrastructure and operational processes, HRSA anticipates that any staffing impacts will generally be modest. The record shows that covered entities already collect and maintain relevant claims and purchase data and routinely utilize TPAs and automated systems for billing, compliance, and reconciliation activities. As a result, HRSA expects that, in many cases, additional staffing will be unnecessary because they may be absorbed within existing operational structures or supported through existing third-party arrangements. In limited cases, where operational structures are less sophisticated or TPAs are not utilized, covered entities may need additional staffing to support the Pilot's claims reporting processes.

Several commenters quantified one-time implementation activities associated with a rebate model, including process development, workflow redesign, staff training, IT system configuration, legal review, and

early-stage reconciliation. One academic medical center estimated approximately \$90,000 in one-time administrative implementation costs and an additional \$130,000 for initial IT integration and system configuration. Other commenters estimated approximately 40 hours of initial IT development, 20 hours of legal review, and elevated staffing requirements during the initial implementation period. HRSA recognizes that implementation of a new reporting process may require certain transitional activities. However, many commenters' estimates assumed manufacturer-specific submission requirements, manual reconciliation across multiple proprietary platforms, and customized interfaces that are not contemplated under the Pilot's standardized reporting approach. Consequently, while commenters identified legitimate startup activities, HRSA expects that implementation costs under the Pilot would be substantially reduced through standardized data elements, centralized reporting processes, and reliance on information already maintained by covered entities in the ordinary course of billing and compliance activities and the costs will be transitional. These costs are inherent to the adoption of a new operational approach, which requires that new processes be introduced on a limited scale to allow for calibration and refinement. HRSA expects that, as processes become standardized and integrated into routine operations, these transitional costs will diminish, consistent with ordinary program evolution.

Regarding systems and infrastructure, HRSA recognizes that implementation of a rebate model may require coordination with IT platforms to support the submission and validation of claims data. As an initial matter, the costs of the rebate IT platform must be paid by manufacturers. That is a requirement of participation in this Pilot. Additionally, consistent with comments from manufacturers and technology stakeholders, the record shows that rebate processing platforms have already been developed or are in the process of being operationalized and are designed to integrate with existing billing, pharmacy, and TPA systems. HRSA anticipates that these platforms will leverage existing data flows and automation capabilities, thereby minimizing the need for covered entities to develop new systems. While some covered entity commenters raise concerns that covered entities do not currently submit the data outlined in the Pilot to these IT platforms, HRSA

²⁰ https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202606-0906-001.

disagrees as manufacturers have utilized similar platforms and oftentimes the same company for implementation of various contract pharmacy requirements since at least 2021.²¹ Moreover, covered entities' data collection and reporting obligations under the current system extend beyond these specific manufacturer systems. HRSA expects that manufacturers and their designated platform vendors will be responsible for the development, operation, and maintenance of rebate processing platforms, including associated system costs for the rebate processing platform, and encourage platform designs that promote interoperability, minimize disruption to existing workflows, and reduce administrative burden on covered entities.

In response to commenter assertions that a rebate model would impose unmanageable costs and complexity, the record includes operational data from a technology vendor that has developed and deployed a rebate processing platform for the 340B Program. That commenter reports that the data fields and utilization data required for rebate submission are the same as those already submitted by more than 7,000 covered entities through the vendor's 340B ESP platform, making the incremental increased effort for those entities very limited. For entities that have not previously submitted data through such platforms, the commenter states that the upload, mapping, and validation steps are designed to be straightforward and user-friendly and typically require approximately 15 minutes per data upload submission, based on actual usage patterns. Furthermore, 53 TPAs are able to submit data directly to the rebate platform on behalf of covered entities, which the commenter states would significantly reduce or eliminate any potential data compilation burden on covered entities. Over 10,000 covered entities have already completed registration on the 340B rebate platform.

With respect to other anticipated costs, including vendor fees and training, HRSA notes that participation in the 340B Program has always entailed some level of compliance and

operational cost. Covered entities derive significant financial benefit from participation in the Program. For example, manufacturer commenters cited industry analyses estimating that covered entities derive substantial financial benefit from the difference between 340B acquisition costs and third-party reimbursement rates.

Covered entities are expected to maintain compliance as program requirements evolve. As part of its ongoing oversight, HRSA conducts audits and compliance reviews, and provides education and guidance to covered entities based on those efforts. Covered entities routinely update policies, procedures, IT systems and operational practices to align with program requirements and guidance and there may be operational costs associated with program participation and to ensure compliance. In addition, in 2025, covered entities purchased approximately \$100 billion in covered outpatient drugs under the 340B Program, underscoring the scale of discounted drug purchasing available to covered entities and the resulting financial resources and savings available to support care for underserved populations.

Overall, HRSA concludes that while a rebate model may introduce incremental or transitional administrative and operational changes, HRSA believes the magnitude of the associated costs is likely to remain low. The core data elements required for rebate processing, namely, standardized pharmacy and medical claims data, are already generated, maintained, and routinely transmitted by covered entities and their contract pharmacy partners in the ordinary course of billing and reimbursement across Medicare, Medicaid, and commercial payers. As a result, the rebate model builds on existing data infrastructure and workflows rather than requiring the creation of entirely new systems or data streams. In addition, commenters note that established technologies, including automated claims processing, batch data submission, and TPAs, can be leveraged to facilitate rebate submission and reconciliation with minimal manual intervention once implemented. Also, increased claims-level transparency may reduce reliance on retrospective audits, dispute resolution processes, and other resource-intensive compliance activities, offsetting some administrative costs over time. Taken together, these considerations support HRSA's conclusion that the overall costs of implementing a rebate model are likely to be modest, and in some cases, may be offset by efficiencies gained through

improved data visibility and streamlined program administration. HRSA believes the anticipated benefits of the Pilot outweigh the costs.

D. Payment Timing and Potential Cash-Flow Impacts for Covered Entities

Many commenters expressed concern that covered entities would be required to pay wholesale acquisition cost (WAC) upfront and wait for rebate payments, potentially creating liquidity constraints, reliance on credit, and financial instability, particularly for rural and safety-net providers. Other commenters stated that this would have limited impact because rebates would be paid prior to when drug purchase payments are due to wholesalers and that 340B rebate models cost the same or less than current drug inventory models. Commenters further state that the potential cash-flow impacts of a rebate-based model may be inaccurate or overstated. These commenters note that the numbers provided are only estimates and that healthcare providers already operate within reimbursement frameworks in which payment is received after the point of purchase, including under Medicare, Medicaid, and commercial payer systems, and asserted that rebate payment timelines could be structured to align with or occur prior to standard drug purchasing payment obligations. The commenters further note that wholesalers commonly provide covered entities with payment windows or credit arrangements for product purchases, allowing entities to receive and dispense medications prior to remitting payment for the corresponding wholesaler invoice. These commenters also indicate that unit-based rebate models could reduce delays associated with current models that require accumulation of a full package size before purchasing at the 340B discounted price and improve the predictability of reimbursement over time.

HRSA has considered the comments but based on available studies of a rebate model, HRSA believes that the Pilot is unlikely to result in unstable cash flow for covered entities, as certain commenters have predicted. IQVIA, a healthcare data analytics firm, recently empirically evaluated the opposing narratives about the impact of a shift from upfront discounts to rebates on providers' cash flow.²² IQVIA modeled the effects on cash flow of existing drug inventory and replenishment models

²¹ In 2021, several participating 340B manufacturers sought to limit the number and kinds of contract pharmacies to which they would ship orders by requiring certain claims level data in order for a covered entity to utilize a contract pharmacy. HRSA initially disallowed this practice, advising the manufacturers that the manufacturers needed to "deliver covered drugs to any contract pharmacies with which a covered entity chooses to partner." In the D.C. Circuit's ruling in *Novartis Pharms. Corp. v. Johnson*, 102 F.4th 452 (D.C. Cir. 2024), the Court held that the manufacturers had discretion to impose certain conditions on delivery.

²² <https://www.iqvia.com/locations/united-states/library/white-papers/how-will-a-rebate-model-impact-cash-flow-in-the-340b-drug-pricing-program>.

and compared those effects with a rebate model. Its analysis modeled liquidity impact and interest costs under a variety of assumptions, including different rebate timelines, different wholesaler payment timelines, different interest rates, and different 340B discount percentages. Their study concluded that: for entity-owned pharmacy purchases, interest costs for the rebate model (0.19%) were no larger than for the predominant drug inventory model used by those pharmacies, referred to as physical replenishment. For contract pharmacies, the rebate model had lower interest costs (0.03%) than both types of replenishment model, physical and credit-based replenishment. Even under unfavorable assumptions, rebate interest costs remained under 1.2%.

Similarly, a 2021 study by 3 Axis Advisors (another healthcare data analytics company) found a 340B rebate model improves cash flow relative to replenishment models in the case of covered entities that use contract pharmacies.²³

HRSA has incorporated several design elements intended to mitigate potential cash-flow impacts on covered entities. First, the Pilot requires prompt rebate payments, within 10 calendar days of submission of a complete claim. This accelerated payment timeline is intended to precede the payment deadlines associated with standard wholesaler payment terms, thereby reducing or eliminating the need for covered entities to “float” the WAC price or finance drug purchases for extended periods. Thus, while many covered entities would need to place an order at the higher WAC price for the drugs included in the Pilot, payment to wholesalers for those orders, in most cases, would occur after the rebate from the manufacturer is received. Therefore, HRSA expects the cash-flow impacts on covered entities to be minimal. Second, the Pilot requires unit-level rebate processing, which allows covered entities to receive rebates based on individual dispenses or administrations rather than waiting for full package utilization, as occurs under the current replenishment model. This approach is expected to accelerate the timing and frequency of rebate payments, resulting in more predictable and continuous cash flow. Third, the Pilot accounts for starting inventory considerations to facilitate the transition from upfront discounts to rebates for a limited set of drugs. HRSA has incorporated operational flexibilities, such as a 15-

day implementation grace period for unreplenished accumulations, to address commenter concerns regarding inventory timing, cash flow, and potential gaps between drug purchase and rebate eligibility during the transition to a rebate-based model.

Taken together, these design features are intended to ensure that covered entities can access 340B pricing in a timely manner while minimizing short-term liquidity pressures. HRSA emphasizes that timely rebate payment is a core requirement of manufacturer participation in the Pilot and is critical to maintaining operational stability for covered entities. HRSA intends to monitor manufacturer compliance with established payment deadlines and may take appropriate enforcement action where delays occur. Such actions may include corrective measures and, where warranted, removal of manufacturers from the Pilot that demonstrate repeated or systemic noncompliance with rebate payment requirements. If, for example, covered entities report that a manufacturer is consistently exceeding the 10 calendar day threshold for rebate payment, then HRSA could review a sample of allegedly affected transactions over a sufficient period of time (e.g., 10 calendar days) and, if HRSA were to find that a significant portion of those transactions (e.g., five or more percent) were delayed without justification, HRSA could initiate removal proceedings of that manufacturer from pilot participation for non-compliance.

E. Rebate Denials and Dispute Resolution

Commenters raise a range of concerns regarding rebate denials and dispute resolution under a potential 340B rebate model. Covered entities and other groups generally express concern that rebate determinations made after dispensing could introduce uncertainty regarding payment outcomes, including the risk of denied or delayed rebates. Several commenters indicate that even modest denial rates could result in unrecoverable financial losses and increase administrative burden associated with tracking, appealing, and reconciling denied claims. Commenters also express concern regarding the potential for inconsistent or non-standardized denial criteria across manufacturers, as well as the absence of clearly defined timelines, documentation requirements, or dispute resolution processes. In addition, some commenters noted that existing dispute mechanisms in related programs require significant manual effort and extended resolution periods, which could be

exacerbated under a rebate model if claim volumes increase.

Other commenters disagree and argue that the rebate model could improve the accuracy and efficiency of rebate determinations by enabling claims-level validation prior to payment and reducing the need for post hoc reconciliation. These commenters indicate that improved data transparency could help prevent improper payments and reduce the volume of disputes over time, particularly if standardized data elements and submission processes are used. Some commenters also note that centralized or platform-based approaches could facilitate more timely identification and resolution of discrepancies, provided that clear rules, standardized data requirements, and defined dispute resolution processes are established. They also indicated that such centralized or platform-based approaches support more predictable outcomes for covered entities, facilitate more efficient manufacturer review processes, and minimize the need for appeals.

In response to commenter concerns regarding rebate denials and dispute resolution, HRSA includes design features within the Pilot to promote transparency, consistency, and accountability in rebate determinations. Specifically, the Pilot requires manufacturers to document and report denied claims, including the basis for each denial and the status of any associated dispute. HRSA intends to use this information to monitor denial patterns and assess whether rebate determinations are applied in a consistent and appropriate manner across participating manufacturers and will remove manufacturers from the Pilot where appropriate. If, for example, covered entities report that a manufacturer is consistently denying rebate payment without acceptable justification, then HRSA could review a sample of allegedly affected transactions over a sufficient period of time (e.g., 10 calendar days) and, if HRSA were to find that a significant portion of those transactions (e.g., 5 or more percent) were denied without acceptable justification, HRSA could initiate removal proceedings of that manufacturer from pilot participation for non-compliance.

In addition, the Pilot will provide a defined pathway for covered entities to challenge denied claims, including specified timeframes for review and response, to facilitate timely resolution of disputes. Tools will be made available for reporting rebate denials to be challenged to assist HRSA's review

²³ <https://www.3axisadvisors.com/projects/kalderos-rebate-model-1021>.

and facilitation of resolution. This information will be made public on our website within 30 calendar days of the Pilot's effective date. HRSA anticipates that these measures will reduce administrative burden associated with prolonged reconciliation efforts, improve visibility into rebate outcomes, and support more standardized processes for dispute resolution. To the extent that disputes cannot be resolved through these mechanisms, covered entities may pursue available remedies through the 340B Administrative Dispute Resolution (ADR) process in accordance with the regulations issued pursuant to 42 U.S.C. 256b(d)(3)(A).

Commenters recommend that HRSA establish mechanisms to receive ongoing feedback during implementation of any rebate model pilot program. Suggested approaches included formal stakeholder engagement processes, such as public listening sessions, advisory groups, or technical working groups representing a range of stakeholders, as well as periodic opportunities for written input. Commenters also emphasized the importance of collecting and analyzing quantitative data generated through the Pilot, including information on rebate submissions, denials, dispute resolution, and payment timelines, and suggested that certain data be made available to support transparency and evaluation. In addition, commenters recommend that HRSA issue interim and final evaluation reports and use implementation experience to refine program design. Some commenters further highlight the need for direct communication channels and technical assistance to address operational issues in real time. HRSA is considering these recommendations in developing processes to monitor Pilot implementation, gather stakeholder input, and evaluate program outcomes.

F. Data Collection and Reporting Requirements

Commenters provide differing perspectives regarding the data collection and reporting requirements associated with a 340B Rebate Model Pilot Program. Most covered entities generally state that a rebate model could require expanded data collection and reporting, including claims-level tracking, validation, and reconciliation across multiple systems. Some commenters indicate that these requirements could necessitate additional staff time and coordination across pharmacy, billing, compliance, and finance functions, particularly for entities with limited administrative resources or complex contract pharmacy

arrangements. Commenters also raise concerns regarding the potential for variation in reporting requirements across manufacturers, which could increase complexity and require the use of multiple reporting systems or formats. Smaller covered entities indicate that they have limited IT capacity and express concern regarding the potential need for system modifications, increased reliance on TPAs, and additional data management resources. Some of these commenters also raised concerns regarding data privacy and security, particularly with respect to the transmission of claims-level information to manufacturers or third-party platforms.

On the other hand, manufacturers asserted that the incremental data collection and reporting burden would be limited, noting that covered entities already collect and maintain the relevant claims-level data as part of routine third-party billing, compliance, and audit processes. These commenters stated that existing TPAs and automated reporting systems could be leveraged to support data submission and reporting and that standardized data formats and centralized platforms could reduce duplicative reporting requirements over time.

In response to these comments, HRSA intends to limit data collection manufacturers may impose on covered entities under the Pilot to the minimum necessary to effectuate rebate payments and support 340B program integrity and nonduplication under the MDPNP. HRSA believes that limiting the required data collection to a narrowly defined set of standardized pharmacy and medical claims data elements substantially reduces the potential burden relative to broader reporting models considered during development of the Pilot. In response to stakeholder feedback, HRSA declined at this juncture to require additional data elements proposed by manufacturers, including purchasing data, encounter data, invoice-level information, and patient-level clinical information, because HRSA determined that collecting and reconciling such information could create additional operational complexity and systems burden for covered entities acclimating to a new rebate environment. Instead, the Pilot relies primarily on claims-level information that is already generated and maintained in the ordinary course of pharmacy and medical billing and that, in many cases, is already exchanged through existing payer, TPA, or contract pharmacy relationships.

HRSA anticipates relying on a defined set of standardized pharmacy and

medical claims data elements that are commonly available and already maintained by covered entities or their vendors in the ordinary course of billing and dispensing operations. For example, CMS requires submission of prescription drug event data (PDE) for purposes of calculating payments to Part D plans. HRSA expects that data submitted by covered entities to manufacturers will be comparable to data already being collected and maintained through existing third-party vendor relationships and therefore does not expect a significant impact on covered entities disproportionate to the significant benefits covered entities derive from the 340B Program.

In addition, the reporting requirements are limited to the selected drugs for initial price applicability years 2026 and 2027 as included on the CMS Medicare Drug Price Negotiation Selected Drug List during their price applicability periods, which represents a small portion of overall 340B utilization relative to the total number of covered outpatient drugs available under the Program. HRSA anticipates that this limited scope will allow covered entities and vendors to leverage existing infrastructure and implement operational changes incrementally rather than across the full universe of 340B transactions. HRSA also encourages the use of standardized reporting formats and interoperable systems to reduce variability and improve efficiency.

HRSA further believes that the burden associated with limited claims-level reporting is justified by the importance of ensuring program integrity, duplicate discount prevention, and coordination across federal pricing programs, including the MDPNP and Medicaid rebate programs. The Pilot is intended to generate implementation data and operational experience regarding these issues in a controlled and limited environment. HRSA anticipates that the Pilot will help to improve transparency, support prospective validation of transactions, and reduce reliance on retrospective audits and dispute resolution processes that many stakeholders described as resource-intensive under the current framework.

HRSA further notes that the Pilot introduces new reporting requirements for manufacturers that are not present under the upfront discount model. As a condition of participation, manufacturers will be required to report rebate data to HRSA, including information necessary to support program oversight and monitoring. HRSA anticipates that these requirements will enhance transparency

and enable HHS to evaluate the operational impacts of the rebate model.

G. Data Privacy Considerations and HIPAA Compliance

In light of the differing perspectives regarding the data collection and reporting requirements discussed in Section F, HRSA recognizes the importance of addressing questions regarding the applicability of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the data transfers contemplated under the Pilot. Although specific public comments raising concerns about HIPAA compliance and the ability of 340B covered entities that are HIPAA covered health care providers to disclose protected health information (PHI) under the Pilot were not submitted in response to the RFI, HRSA is aware that questions regarding the intersection of HIPAA and claims-level data submissions have arisen in other contexts within the 340B Program. HRSA addresses these questions here to provide clarity to covered entities, manufacturers, and other stakeholders regarding the applicability of HIPAA to the disclosure of PHI under the Pilot.

As an initial matter, HRSA notes that the data elements required under the Pilot, as set forth in Section VIII.D of this Notice, are limited to standardized pharmacy and medical claims fields such as date of service, NDC-11, quantity dispensed, prescriber ID, service provider ID, 340B ID, RX BIN, RX PCN, and health plan identification information. These data elements do not include direct patient identifiers such as patient names, addresses, dates of birth, Social Security numbers, medical record numbers, or other information that would directly identify individual patients.

To the extent that the data submitted under the Pilot is not individually identifiable health information, it is not PHI as defined under the HIPAA Privacy Rule, 45 CFR 160.103, and accordingly is not subject to the restrictions on use and disclosure set forth in the HIPAA Privacy Rule (45 CFR part 160 and subparts A and E of part 164). The Pilot requires that manufacturer plans ensure the IT platform used for data submission has mechanisms in place to protect the privacy of the data submitted. Under the HIPAA Privacy Rule, individually identifiable health information that has been de-identified in accordance with 45 CFR 164.514 is no longer PHI, and the Privacy Rule's restrictions on use and disclosure do not apply to such de-identified information. The HIPAA de-identification standard may be satisfied

through either the expert determination method, under which a person with appropriate knowledge and experience applies statistical and scientific principles and methods to determine that the risk of identifying an individual is very small, 45 CFR 164.514(b)(1), or the safe harbor method, under which specified identifiers are removed and the covered entity has no actual knowledge that the remaining information could be used alone or in combination with other information reasonably available to an intended recipient to identify an individual, 45 CFR 164.514(b)(2). Any de-identification of PHI to meet HIPAA obligations must comply with the HIPAA Privacy Rule requirements. Covered entities that submit data that has been properly de-identified consistent with 45 CFR 164.514 to manufacturers through the platforms would not be disclosing PHI to manufacturers and therefore would not need to rely on a HIPAA permission to allow the disclosure.

HRSA also recognizes that some stakeholders have raised questions in other contexts regarding the point at which de-identification occurs in the data transmission process, and specifically whether data may be considered PHI at the moment of transfer from a covered entity to a manufacturer's platform even if it is subsequently de-identified. HRSA's general view is that this concern may reflect a misunderstanding of how rebate processing platforms operate. As described in publicly available documentation for existing 340B claims data platforms, de-identification occurs through automated processes prior to data ingestion by the platform, such that neither the manufacturer nor its vendor receives or retains PHI.²⁴ Where such automated de-identification is validated through an expert determination under 45 CFR 164.514(b)(1), the resulting data does not constitute PHI regardless of whether the underlying source data, prior to automated processing, included identifiable elements.²⁵ HRSA emphasizes that the Pilot's design is intended to ensure that manufacturers do not receive or have access to PHI at

any point in the data submission process.

Even assuming, for purposes of analysis, that the data submitted by covered entities under the Pilot were to constitute PHI, HRSA notes that the HIPAA Privacy Rule generally permits covered entities to disclose PHI without individual authorization for purposes of payment. Under 45 CFR 164.506(c), a covered entity may use or disclose PHI for its own payment activities, which include activities undertaken to obtain reimbursement for the provision of health care, including the determination of eligibility or coverage and the adjudication of health benefit claims. See 45 CFR 164.501 (definition of "payment"). A covered entity's submission of claims-level data to a manufacturer, including vis-à-vis a rebate processing platform, in order to effectuate a rebate that reduces the covered entity's net acquisition cost for a covered outpatient drug relates to, and may affect by rebate, the payment activity of the covered entity.²⁶ HRSA further notes that the HIPAA Privacy Rule's minimum necessary standard, 45 CFR 164.502(b) and 164.514(d), requires that disclosures of PHI be limited to the minimum necessary to accomplish the intended purpose. The Pilot's data requirements, which are restricted to a defined and limited set of standardized claims fields, are designed to satisfy this standard.

HRSA also notes that certain of the covered entities that have raised data privacy concerns in other contexts routinely transmit materially identical claims-level data, including through the same or similar vendor platforms, for purposes of contract pharmacy replenishment, third-party payer billing, and compliance with Medicare, Medicaid, and commercial insurance requirements. The data elements required under the Pilot are comparable to, and in many cases, a subset of the information that covered entities already collect, maintain, and transmit in the ordinary course of these operations.

Finally, HRSA notes that the Pilot incorporates multiple data safeguard requirements that further mitigate any residual privacy risk to individuals. As

²⁴ 340B ESP Frequently Asked Questions, available at https://help.340besp.com/en/articles/14482537-frequently-asked-questions-faq#h_2b2d0863da.

²⁵ If a HIPAA covered health care provider is relying on the platform to de-identify PHI, the platform would be acting as a HIPAA business associate of the provider and would be required to have a valid business associate agreement in place. For additional information about HIPAA business associates and their requirements, see: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>.

²⁶ We note that OCR has acknowledged the permitted disclosure of PHI for rebate purposes to a pharmaceutical manufacturer in a similar scenario, stating "the Privacy Rule permits a health plan to disclose protected health information, such as prescription numbers, to a pharmaceutical manufacturer for purposes of adjudicating claims submitted under a drug rebate contract." See: <https://www.hhs.gov/hipaa/for-professionals/faq/455/does-hipaa-permit-health-plans-to-disclose-information-to-pharmaceutical-manufacturers/index.html>.

detailed in Section VIII.A, manufacturer plans must ensure that the IT platform has assurances in place to ensure data security, that data collection is limited to the specific elements necessary for providing 340B rebates, and that the platform has mechanisms in place to protect patient identifying information consistent with HIPAA and other applicable privacy and data security laws not inconsistent with federal law or 340B program requirements. The Pilot further requires that IT platforms have the capacity to filter and use only the data required to effectuate the rebate. These requirements, taken together, are designed to ensure that data submitted under the Pilot is collected, transmitted, and maintained in a manner that protects patient privacy while enabling the claims-level transparency necessary to support program integrity. HRSA does not anticipate that compliance with the Pilot's data submission requirements will require covered entities to violate HIPAA or any other applicable federal data privacy law. HRSA will further monitor implementation to confirm that participating manufacturers and their designated platforms maintain appropriate privacy and data security protections and whether any such violations would need to be reported to appropriate officials.

H. Required Reporting by Manufacturers

Manufacturers, technology and data intermediaries, and certain transparency-oriented stakeholders generally support the submission of data regarding the Pilot by manufacturers to HRSA. They indicate that the data can be used to assess compliance with a rebate model and its effectiveness. Commenters suggest that aggregate data, making certain to protect confidential and proprietary information, should be shared with the public and would be useful for all stakeholders. Several commenters express concern about the use of the 340B Prime Vendor to collect this information due to a perceived conflict of interest.

HRSA will require participating manufacturers to submit purchase data reports to the agency. HRSA will continue to assess reporting burden and implementation experience and may refine requirements as appropriate to balance program integrity objectives with administrative feasibility. HRSA agrees that the collection of Pilot data is important to evaluate adherence to the rebate framework and to evaluate the impact and effects of the Pilot. HRSA also agrees that providing aggregate data, which will not contain confidential or proprietary information,

to the public is important to provide further transparency into the 340B Program.

HRSA appreciates the commenters' concerns regarding perceived conflicts of interest in connection with the agency's use of the 340B Prime Vendor for certain Pilot-related activities. The 340B Prime Vendor, a contractor engaged by HRSA to provide operational support to covered entities participating in the 340B Program, including negotiating additional discounts with manufacturers and offering tools and resources to help entities manage Program compliance, does not make any eligibility determinations, enforcement decisions, or policy judgments regarding the 340B Program. HRSA does not agree that use of the 340B Prime Vendor to assist with Pilot data collection, for example, would pose a conflict of interest—actual or perceived. HRSA retains full authority over all aspects of the 340B Program and the long-standing role of the 340B Prime Vendor, which is recognized in the 340B statute (42 U.S.C. 256b(a)(8)), is operational and administrative in nature and akin to contractor support functions.

I. Impact on Patient Care

Covered entities, provider organizations, and some patient advocacy groups generally state that a shift from upfront discounts to a rebate-based model could affect the timing and availability of financial resources used to support patient care. They express concerns that patients will lose access to discounted drugs and needed services because covered entities will necessarily have to divert resources away from patient care and toward complying with a rebate pilot that carries a significant price tag. These commenters state that the rebate Pilot will undermine access to care for patients, particularly for small, rural, or under-resourced covered entities. They assert that certain covered entities will not be able to pay the list price for IRA drugs because they lack cash reserves or borrowing power to cover the initial costs of these medications and will be forced to turn away patients in need because they cannot afford to maintain their usual inventory of drugs. If the Pilot is implemented, these commenters indicate that potential delays in receiving rebates combined with potential rebate denial rates could reduce funds available to support patient services.

Several commenters also provide examples of the scale of services supported by 340B savings, noting that such savings are used to fund sliding fee

discount programs, medication assistance for uninsured and underinsured populations, and clinical services, with some entities reporting that tens of thousands of patients annually rely on these programs. Other commenters indicate that 340B savings support a broad range of services, including behavioral health, chronic disease management, and outreach programs, and expressed concern that reductions or delays in these resources could result in reduced service capacity, limitations on access to medications, or delays in care, particularly for smaller or resource-constrained providers. Patient and caregiver submissions emphasize the importance of ensuring that 340B savings translate into direct patient benefits, including reduced out-of-pocket costs. As a further adverse impact on patient access to care, commenters also highlight the potential withdrawal of certain retail pharmacies from processing 340B claims for IRA drugs dispensed at contract pharmacies. According to these commenters, if pharmacy chains opt not to provide 340B pricing, even on a temporary basis, for drugs included in the Pilot, this could result in patients having to go elsewhere and potentially travel far distances to obtain necessary medications—a problem that is particularly acute for rural communities.

In contrast, manufacturer commenters state that a rebate model could maintain or enhance patient access by improving program integrity and ensuring that discounts accrue to the patients that the 340B Program was intended to benefit. Some commenters cite industry analyses suggesting that duplicate discounts may affect up to approximately 25% of 340B drug transactions, representing tens of billions of dollars annually, and asserted that reducing such inefficiencies could improve the overall availability of resources within the healthcare system. These commenters also indicate that improved claims-level transparency and coordination across programs, including with the MDPNP, could support more accurate pricing and reduce the need for post hoc reconciliation, which may contribute to more predictable financial flows over time. While pharmacy stakeholders raise concerns about the seamless implementation of the Pilot with respect to contract pharmacy claims, they also highlight that testing rebates in the 340B Program could be done with certain safeguards in place such as 10-day rebate payment timelines, minimal

necessary data, and clear federal oversight.

Congress created the 340B Program so covered entities could “stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.” H.R. Rep. No. 102–384(II), at 12 (1992). The Pilot does not deviate from that statutory purpose. Nor does implementation of a rebate-based model modify the statutory 340B ceiling price, covered entity eligibility requirements, or the legal framework governing patient eligibility under the 340B Program. Rather, the Pilot changes the mechanism and timing by which the 340B price is effectuated, shifting from an upfront discount to a post-dispense rebate that is expressly authorized by the 340B statute.

HRSA further notes that the Pilot is structured to mitigate any potential operational or financial disruption to covered entities. Manufacturers participating in the Pilot would be required to issue rebates within the defined 10-day timeframe, from the date of data submission and the agency expects that, in most cases, covered entities will submit data shortly after dispense so that covered entities would receive rebate payments before payment obligations to wholesalers become due. As a result, HRSA does not anticipate that the Pilot will materially impair covered entities’ cash flow or their ability to furnish services to patients.

In addition, HRSA anticipates the Pilot will provide program integrity benefits that ultimately support patient care and stewardship of federal resources. By introducing claims-level verification and improved transparency, a rebate model will reduce the risk of duplicate discounts and diversion that undermine the integrity and sustainability of the 340B Program.

J. Other Comments

Commenters also raise a range of additional issues that did not fall within the specific topics outlined above. Several covered entities and provider organizations recommend that any rebate model pilot be limited in scope, including restricting participation to a subset of covered entities, such as voluntary participants, specific provider types, or entities with sufficient administrative and financial capacity to implement the model. These commenters state that a more targeted approach would allow HRSA to evaluate operational feasibility while minimizing potential disruption to smaller or resource-constrained entities. Other commenters suggest limiting the Pilot to certain drug categories,

dispensing settings, or payer types to better isolate potential program impacts.

Additional comments address issues such as the need for clear implementation guidance, stakeholder education and training, alignment with existing federal and state requirements, and coordination across federal programs including the MDPNP. Some commenters also emphasized the importance of standardization across manufacturers, including consistent data requirements, timelines, and processes, to reduce complexity and administrative burden.

HRSA has designed the Pilot to be limited in scope. HRSA will continue to consider stakeholder input regarding participation parameters and implementation approaches and may refine design elements. HRSA intends to ensure that stakeholders receive education and technical assistance as the Pilot is underway and more information on the mechanism by which stakeholders submit feedback and receive technical support is forthcoming.

VI. Alternatives Considered

As noted in the comment summaries above, covered entity commenters proposed several alternatives to a rebate model that they contend would address program integrity concerns within the existing upfront discount framework. These alternatives generally included: (1) enhanced use of claims modifiers; (2) establishment of a centralized clearinghouse or similar data-sharing mechanism; (3) more intensive audits and oversight activities; and (4) narrower pilot structures, including limiting participation to voluntary participants, restricting the Pilot to certain covered entity types, limiting the Pilot to fewer drugs or dispensing settings, or excluding physician-administered drugs, contract pharmacy arrangements, or other categories of transactions. HRSA carefully considered each of these proposals and, for the reasons explained below, does not believe that any of these alternatives, individually or in combination, would adequately achieve the program integrity and evaluation objectives that the Pilot is designed to advance. Several covered entity commenters urged HRSA to rely on enhanced use of claims modifiers as the primary mechanism for preventing duplicate discounts, rather than transitioning to a rebate model. Under this approach, covered entities and pharmacies would apply standardized identifiers to claims at the point of adjudication to flag 340B transactions, enabling payers and manufacturers to distinguish 340B

utilization from non-340B utilization without altering the upfront discount purchasing model. HRSA acknowledges that claims modifiers are a component of the current framework for identifying 340B transactions. However, HRSA does not believe that reliance on claims modifiers alone would adequately address the program integrity deficiencies that the Pilot is designed to mitigate and prevent.

The existing MEF, which HRSA created in 1993 to prevent duplicate discounts under the Medicaid Drug Rebate Program, relies on claims modifiers as its central mechanism. Yet multiple governmental oversight bodies have found this approach may be insufficient. In 2016, the HHS Office of Inspector General (OIG) reported that the MEF is inadequate to capture duplicate discounts with respect to Medicaid managed care enrollees, and that this inadequacy results in both duplicate discounts going unreported as well as the exclusion of some non-340B claims from rebate invoices, thereby resulting in foregone Medicaid rebates to states.²⁷ The OIG further noted in that same report that contract pharmacy arrangements create additional complications in preventing duplicate discounts. The GAO has identified similar deficiencies.²⁸ And the House Committee on Energy and Commerce, in its 2018 review of the 340B Program, documented the exponential growth of the program and the corresponding challenges in maintaining program integrity under existing mechanisms.²⁹ These findings demonstrate that claims modifiers, as currently implemented, may not be the best method to ensure compliance with the statutory duplicate discount prohibition, particularly in the context of Medicaid managed care and the increasingly complex distribution channels through which 340B drugs are dispensed.

Moreover, claims modifiers can be applied inconsistently, may be incomplete or unavailable at the time of adjudication, and depend on voluntary compliance by covered entities and dispensing pharmacies without an enforcement mechanism that ties the receipt of the 340B discount to verified claims data. Under the current model, manufacturers have argued that they lack timely access to claims-level data to identify all units subject to 340B pricing. The implementation of maximum fair prices under the MDPNP further increases concerns of

²⁷ OIG, *State Efforts to Exclude 340B Drugs from Medicaid Managed Care Rebates*, supra note 7.

²⁹ Committee on Energy and Commerce, *Review of 340B Drug Pricing Program*, supra note 2.

overlapping price concessions across programs, potentially compounding the limitations of a claims modifier approach.

Other covered entity commenters proposed the establishment of a centralized or third-party clearinghouse model as an alternative to a rebate-based approach. Under this proposal, an intermediary would serve as a central data hub to coordinate 340B transaction information among covered entities, manufacturers, and payers, with the goal of facilitating real-time or near-real-time identification of 340B utilization and preventing duplicate discounts without requiring covered entities to transition away from upfront discounts.

HRSA has considered this proposal and concludes that a clearinghouse model is, in substance, an enhanced claims modifier system operating under a different name. Like claims modifiers, a clearinghouse would depend on covered entities to accurately and completely report 340B transaction data to the intermediary, and on the intermediary to relay that information to manufacturers and payers in a timely and standardized manner. As manufacturer commenters have observed, unlike a clearinghouse, a rebate model by its very nature incentivizes covered entity compliance as a prerequisite to receiving 340B discounts. Under a rebate model, the covered entity must affirmatively submit validated claims data to receive the discount, which may help to align the incentive structure with program integrity objectives. A clearinghouse, by contrast, would preserve the current dynamic in which the discount is provided upfront and compliance verification occurs only after the fact. In addition, proposals to establish clearinghouses or similar intermediaries are not explicitly authorized under the 340B statute.

Commenters also proposed significantly narrowing the Pilot itself, including limiting participation to voluntary participants, restricting participation to entities with sufficient operational capacity, limiting the Pilot to fewer drugs or dispensing settings, or excluding physician-administered drugs or contract pharmacy arrangements. HRSA carefully considered these alternatives, including limiting the Pilot to certain entity types.

Regulatory regimes that impose fixed compliance costs (e.g., legal, operational, and administrative) may disproportionately burden small entities that often lack the economies of scale of larger entities. Large hospitals, for example, have dedicated legal, compliance, accounting, and

information technology departments capable of absorbing shifting regulatory mandates without disrupting patient care. As discussed throughout and below, we do not believe small hospitals and non-hospital healthcare entities will struggle to accommodate such changes. The Regulatory Flexibility Act of 1980 (RFA) directs agencies to avoid “one-size-fits-all” approaches and instead consider alternatives that mitigate impacts on small entities, especially when “the problems that gave rise to government action may not have been caused by those smaller entities.”³⁰ The procedural requirements of the RFA (e.g., 5 U.S.C. 604) are not statutorily mandated for this notice since this notice does not constitute a rulemaking action per 5 U.S.C. 553. Nevertheless, HRSA has carefully considered the principles of the RFA in line with HHS’s 2003 guidance.³¹ This guidance directs HRSA to mitigate impacts on small entities through, for example, “lessening the record-keeping and reporting requirements, delaying effective dates, establishing minimal requirements, or, if possible, waiving certain requirements” for any “proposed and final notices that function as rules.”³² Furthermore, Executive Order 12866 directs agencies to consider streamlining regulatory requirements for small entities when developing significant regulatory actions and the Office of Management and Budget’s Office of Information and Regulatory Affairs (OMB OIRA) has determined that this notice is “significant” per Section 3(f)(1) of E.O. 12866.³³ Likewise, the Paperwork Reduction Act of 1995 directs agencies to minimize the paperwork burden imposed on small entities.³⁴

³⁰ Regulatory Flexibility Act, 5 U.S.C. 603(a) (2024).

³¹ U.S. Dep’t of Health & Hum. Servs., Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services (May 2003), <https://aspe.hhs.gov/sites/default/files/documents/dd6288d1b8db19ee8a1f37b3ce775003/guidance-proper-consideration-hhs-2003-rulemaking.pdf>.

³² U.S. Dep’t of Health & Hum. Servs., Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services (May 2003), <https://aspe.hhs.gov/sites/default/files/documents/dd6288d1b8db19ee8a1f37b3ce775003/guidance-proper-consideration-hhs-2003-rulemaking.pdf>. While participation in this 340B Rebate Model Pilot Program is voluntary for 340B manufacturers, when HRSA approves a given manufacturer’s plan for pilot participation, it will become mandatory for 340B covered entities acquiring 340B drugs from that manufacturer.

³³ Exec. Order No. 12,866, 58 FR 51735 (Oct. 4, 1993).

³⁴ Paperwork Reduction Act, 44 U.S.C. 3501–3520.

HRSA categorizes covered entities by types that correspond to the statutory definition of “covered entity” provided at Section 340B(a)(4) of the PHSA.³⁵ There are 22 such types that are largely divisible into two categories: 340B hospitals and non-hospital entities. The former category, nonprofit or governmental hospitals participating in 340B, accounted for about 87% of program purchases in 2024.³⁶ These 340B hospitals constitute roughly half of all U.S. hospitals³⁷ and they provide inpatient and outpatient care. About 90% of hospitals’ 340B purchases (\$64.1 billion; roughly 79% of total 340B purchases) come from disproportionate share hospitals (DSH). DSHs are nonprofit or governmental hospitals that serve a large volume of low-income, Medicaid, and uninsured patients. The latter category, non-hospital entities, are generally clinics and health centers that receive federal grant funding. These non-hospital entities are more variegated in purpose and structure. Federally qualified health centers (FQHC, also known as Community Health Centers) provide comprehensive outpatient primary care while other non-hospital entities provide specialized care restricted to a narrow public health mission (e.g., 340B Black Lung Clinics treat active and retired coal miners suffering from Coal Mine Dust Lung Disease). FQHCs and Look-Alikes (i.e., clinics that meet all FQHC rules but do not receive federal funding; FQHC-LAs) constitute about half non-hospital entities’ 340B purchases (\$5.2 billion; roughly 6% of total 340B purchases).

As mentioned earlier in the discussion of potential impacts of a 340B Rebate Model Pilot Program, a 2025 report estimated that 340B covered entities’ financing (interest) costs associated with transitioning to a 340B rebate model would be negligible (less than one half a percent of the drugs’ list price), but it also found that these costs may be disproportionately larger for smaller entities that would need to obtain small business loans at higher

³⁵ 42 U.S.C. 256b(a)(4) (2018).

³⁶ This includes Disproportionate Share Hospitals, Children’s Hospitals, Rural Referral Centers, Critical Access Hospitals, Free-Standing Cancer Hospitals, and Sole Community Hospitals. 2024 340B Covered Entity Purchases, Health Res. & Servs. Admin. (Dec. 2025), <https://www.hrsa.gov/opa/updates/2024-340b-covered-entity-purchases>.

³⁷ The American Hospital Association (AHA) estimates a total of over 6,000 hospitals and HRSA data shows about 3,000 participate in 340B. Am. Hosp. Ass’n, Fast Facts on U.S. Hospitals, 2026 (2026), <https://www.aha.org/statistics/fast-facts-us-hospitals>. 340B OPAIS, Health Res. & Servs. Admin., <https://340bopais.hrsa.gov/> (last visited July 5, 2026).

interest rates.³⁸ But after careful consideration, HRSA has determined that these differences between the average hospital and the average FQHC do not justify carving up the Pilot. Phasing in, or otherwise scoping, the Pilot would fail to account for these differences and would undermine the integrity of the Pilot, which will provide important information to HRSA. Indeed, clean delineations along the lines of covered entity type may not be a particularly robust measure of disproportionality of impact (rendering such a distinction potentially arbitrary). HRSA specifically determined that limiting participation to non-hospital entities, voluntary covered entities, or only operationally sophisticated entities could introduce substantial selection bias and reduce the reliability and generalizability of Pilot findings. Covered entities vary significantly in size, structure, patient population, dispensing models, and reliance on contract pharmacy arrangements. A narrowly tailored or self-selected participant pool would not adequately reflect these differences and would constrain the agency's ability to assess how a rebate model functions across the broader 340B environment. Similarly, further limiting the number of drugs included in the Pilot would reduce the agency's ability to evaluate rebate administration and duplicate discount prevention in the context of the MDPNP and other overlapping pricing programs.

The nonduplication and duplicate discount issues that the Pilot is designed to address are inherently drug-specific and apply to all covered entities. The program integrity risk, along with the nonduplication risk, that the Pilot is designed to mitigate thus attaches to particular drugs, namely, those drugs for which overlapping federal pricing obligations create a heightened risk of duplicative price concessions, rather than to particular categories of covered entities. Scoping the Pilot by the drugs that generate the specific compliance challenge is therefore a rational and direct means of targeting the identified problem.

HRSA additionally notes that scoping the Pilot by entity type alone would not adequately address the identified 340B program integrity concern. The risk of duplicate discounts arises whenever a selected drug is dispensed by any 340B covered entity, regardless of whether that entity is a hospital, FQHC, or other provider type. Limiting the Pilot to a

subset of entity types while excluding others would leave the duplicate discount problem unaddressed for a significant portion of selected drug transactions, undermining the Pilot's ability to generate meaningful implementation data and to fulfill its program integrity objectives. By contrast, a drug-type scope ensures that the Pilot captures all transactions for which the specific compliance risk exists, across the full range of covered entity settings in which those drugs are dispensed, precisely the comprehensive and representative evaluation that the Pilot requires.

Retrospective enforcement mechanisms are inherently reactive and identify potential duplicate discounts only after they occur. By contrast, HRSA believes that a rebate-based model may improve prospective identification and validation of transactions by linking price concessions to standardized claims-level data submitted as part of the rebate process. Retrospective reviews, audits, and dispute resolution processes are inherently reactive, identifying potential duplicate discounts only after they have occurred. The exponential growth of the 340B Program, which now encompasses more than 15,000 covered entities, over 49,000 associated sites, and \$100 billion in annual purchases, has further strained the capacity of audit-based approaches.

In contrast, a rebate model shifts the compliance framework from a reactive enforcement posture to a prospective approach in which verification and claims-level validation occur before the discount is provided. This structural difference addresses a core limitation shared by all three of the alternatives proposed by covered entity commenters: under a clearinghouse, claims modifier, or audit-based approach, the 340B discount is provided upfront and compliance is assessed only retrospectively. Under a rebate model, the covered entity must submit validated claims data as a precondition to receiving the discount, creating an inherent incentive for accurate reporting and reducing the opportunity for duplicate discounts to go undetected.

For these reasons, HRSA concludes that none of the proposed alternatives would adequately serve the program integrity and evaluation objectives that the Pilot is designed to advance, and that a limited rebate pilot provides the most appropriate mechanism to evaluate operational feasibility, duplicate discount prevention, transparency, and coordination across federal pricing programs in the current programmatic environment.

VII. Pilot Evaluation and Transparency

HRSA will evaluate the Pilot using a combination of quantitative and qualitative methods. Quantitative measures will include data submitted by participating manufacturers and covered entities regarding rebate requests, rebate payments, payment timeliness, claim denials, dispute resolution outcomes, reporting burden, and other operational metrics. HRSA will also review information relating to administrative burden, duplicate discount prevention, data quality, and program integrity and may use data gleaned from the Pilot during reviews of routine 340B Program audits of both covered entities and manufacturers. Qualitative information will be collected through stakeholder engagement activities, including written feedback, listening sessions, technical assistance interactions, and other implementation-related communications.

HRSA intends to conduct ongoing monitoring throughout the Pilot and shall publish interim periodic summaries of implementation findings and lessons learned on our public-facing website. Upon conclusion of the first year of Pilot operations, HRSA will publish an evaluation by April 30, 2028. To the extent practicable and consistent with applicable law, HRSA will ensure that any public and aggregated information regarding Pilot performance will not contain confidential, proprietary, or individually identifiable information.

VIII. Supplemental Information

In light of all the comments received on the RFI, prior rebate model discussions with manufacturers, and feedback received from stakeholders on a rebate model, HRSA has developed a 340B Rebate Model Pilot Program that is consistent with the 340B statute, and that balances the burden on program stakeholders with the benefits to transparency and program integrity that a rebate model would provide. In developing the rebate pilot, HRSA considered the full range of stakeholder feedback and incorporated key updates to the prior 340B rebate model in direct response to that feedback.

HRSA is introducing this rebate approach in a methodical and thoughtful manner and limiting it to a select group of drugs (as described below). This approach will ensure a fair and transparent 340B rebate model process for all stakeholders involved. The drugs in the 340B Rebate Model Pilot Program are limited to the NDC-11s of the selected drugs for initial price applicability years 2026 and 2027.

³⁸ IQVIA, *How Will a Rebate Model Impact Cash Flow in the 340B Drug Pricing Program?* (2025), <https://www.iqvia.com/locations/united-states/library/fact-sheets/how-will-a-rebate-model-impact-cash-flow-in-the-340b-drug-pricing-program>.

included on the CMS Medicare Drug Price Negotiation Selected Drug List,³⁹ regardless of payer or indication and shall be limited to the price applicability period for the selected drug. Accordingly, the call to submit plans for HRSA/OPA review is limited to the manufacturers that have active selected drugs in the MDPNP for initial price applicability years 2026 and 2027.⁴⁰ HRSA/OPA is inviting qualifying drug manufacturers that meet this criteria to apply for participation in the 340B Rebate Model Pilot Program for a minimum 1-year period.

Manufacturer plans for participation in the 340B Rebate Model Pilot Program should be submitted to 340BPricing@hrsa.gov no later than August 24, 2026. Approvals, if any, will be made by September 24, 2026, for a January 1, 2027, effective date for drugs that are a selected drug for initial price applicability period 2026 and 2027. Manufacturers may not implement plans without first receiving HHS approval in accordance with section 340B(a)(1) of the PHSA.

Manufacturer plans for the 340B Rebate Model Pilot Program must include the criteria outlined below. Manufacturer plans that exceed or go beyond these criteria must include detailed justification and will be subject to additional levels of review by HRSA/OPA prior to approval. HRSA/OPA will review submitted plans and notify manufacturers if their plan is approved and the manufacturer may participate in the 340B Rebate Model Pilot Program. Submitted plans should succinctly describe how they meet all the criteria below. HHS reserves the right to revoke a manufacturer's approval to participate in the 340B Rebate Model Pilot Program at any time if a manufacturer is not in compliance with the criteria outlined below and with any other requirements set forth in the approved manufacturer plan.

A. General 340B Rebate Model Pilot Plan Requirements

1. Plan must identify the IT platform to be used for covered entity data submission and include assurances that

all costs for IT platform used for data submission, be borne by the manufacturer.

2. Plan must allow for 90 calendar days' notice to covered entities and other impacted stakeholders before implementing an approved rebate pilot plan, with instructions for registering for any IT platforms. Changes to approved plans must be submitted to OPA for review and approval prior to implementation, including the mechanism by which covered entities are to acquire drugs included in the rebate model pilot. OPA will determine if the changes can take effect immediately or if they require a notification period to covered entities. Manufacturers will be expected to provide HRSA with a copy of their final approved plan for public posting on HRSA's website to ensure consistency with what HRSA approved.

3. Plan must allow for covered entities to order the selected drugs under existing distribution mechanisms (e.g., 340B wholesaler accounts with WAC prices loaded) to ensure purchases flow through existing infrastructure.

4. Plan must provide technical assistance/customer service component and ensure that opportunities to engage directly with the manufacturer in good faith regarding questions or concerns are made available to covered entities through both the IT platform and provide a point of contact at the manufacturer.

5. Plan must ensure that the IT platform has assurances in place to ensure that the data is secure and protected and collection of the data is limited to the elements listed below that are necessary for providing 340B rebates pursuant to section 340B(a)(1) of the PHSA.

6. Plan must ensure that the manufacturer and the IT platform have mechanisms in place to protect the privacy and security of PHI or other PII, which is required to be safeguarded in a manner consistent with any applicable federal privacy and data security laws, including HIPAA.

7. Plan must describe whether an exception that would not apply broadly to all covered entities, and if any, will be communicated to both HRSA and affected covered entities (e.g., covered entities without access to a third-party administrator or rural hospitals or health centers).

B. Reporting Requirements

1. Plan must ensure that covered entities are allowed to submit and report data (as detailed below), at a minimum, up to 45 calendar days from date of dispense, with allowances for

extenuating circumstances and other exceptions, including adjustments when a 340B status change occurs on a claim.

2. Plan must ensure that the IT platform will have the capacity to receive data from all applicable covered entities and to filter and use only the data required to effectuate the rebate (e.g., if drugs other than a selected drug for initial price applicability year 2026 or 2027 during its price applicability period under the MDPNP are submitted, the platform will be able to identify and discard unneeded data).

3. Plan must ensure that the IT platform will have the capability to provide real-time reconciliation reports for covered entities to be informed of the rebate status of submitted claims.

4. Plan must ensure that a quarterly 340B price file for each of the manufacturer's 11-digit NDCs is made available to covered entities, so that covered entities may use the price file in conjunction with pharmacy billing systems to appropriately account for actual acquisition cost (i.e., post rebate price) for Medicaid billing and also to assist with sliding fee scales or cost sharing with patients.

5. Plan must require the manufacturer to provide HRSA/OPA with periodic reports consistent with the information outlined in this Notice, in a format and manner specified by HRSA/OPA (instructions forthcoming). Such data should detail data on purchases provided through rebates, information related to claim denials, and other information that may evaluate the effectiveness of the rebate model.

C. Rebates

1. Plan must include the rebate calculation equal to the wholesale acquisition cost (WAC) less the 340B ceiling price on the day of dispense.

2. Plan must specify that rebates are paid at the unit level.

3. Plan must include details to accommodate up to 2 unreplenished accumulated packages during the implementation phase. Covered entities shall have a 15-calendar day grace period, in which they may submit rebate requests for up to 2 unreplenished accumulated packages prior to the Pilot's effective date. For example, a covered entity may request a rebate for up to 2 packages of a product dispensed from its neutral inventory on December 16, even though the effective date for the product's participation in the pilot is January 1. The request for such rebates should still be made within 45 days of dispense.

4. Plan must ensure that all rebates are paid to the covered entity (or denied, with documentation to support)

³⁹ Medicare Drug Price Negotiation Selected Drug List, available at <https://www.cms.gov/files/zip/selected-drug-list-negotiated-prices-also-known-maximum-fair-prices-statutezip.zip>.

⁴⁰ <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-initial-price-applicability-year-2026.pdf> and <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-ipay-2027.pdf> Fact Sheet for Negotiated Prices for Applicability Years 2026 and 2027, available at <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-initial-price-applicability-year-2026.pdf> and <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-ipay-2027.pdf>, respectively.

within 10 calendar days of completed data submission. If the submission is returned for incomplete data, the 10-day clock for rebate payment will restart when all necessary data is submitted.

5. Plan must ensure that 340B rebates are not denied based on eligibility or compliance concerns with diversion or Medicaid duplicate discounts, pursuant to section 340B(a)(5)(A) and (B) of the Public Health Service Act and should provide for rationale and specific documentation for reasons claims are denied (e.g., nonduplication of discounts for a selected drug for which the MFP is required under the MDPNP or 340B rebate provided to another covered entity on the same claim). Rebates may not be denied for perceived lack of WAC purchases. If a manufacturer has concerns regarding Medicaid duplicate discounts, diversion, eligibility, or insufficient WAC purchases to support rebate requests, the manufacturer must raise those concerns directly with HRSA/OPA or utilize the 340B statutory mechanisms, such as audits and administrative dispute resolution, for addressing such issues. Covered entities are also afforded opportunities to raise concerns with HRSA/OPA if there are issues with rebate denials through reporting tools sent to 340Bpricing@hrsa.gov.

6. Plan must ensure that its implementation of the Pilot is limited to using the 340B rebates model only on sales of active selected drugs for the initial price applicability years 2026 or 2027, as included on the CMS Medicare Drug Price Negotiation Selected Drug List ("List"),⁴¹ regardless of payer, or indication, and only during the selected drug's effective dates of negotiated prices. The NDC-11s of the selected drug are included in the Pilot only to the extent they are on the List, and the selected drug is in its price applicability period in the MDPNP.

D. Data

1. All data requested as part of the Plan should be limited to only the following claim fields:

Pharmacy claims data fields	Medical claims data fields
Date of Service	Date of Service.
Date Prescribed	Claim Line Number.
Rx number	Claim Number.
Fill number	Unit of Measure.
NDC-11	NDC-11.
Quantity Dispensed ...	Quantity.
Prescriber ID	Rendering Physician ID.

Pharmacy claims data fields	Medical claims data fields
Service Provider ID ...	Service Provider ID.
340B ID	340B ID.
RX BIN	Health Plan Name.
RX PCN	Health Plan ID.
.....	Health Plan ID Qualifier (if available).

- Data definitions for each field must be submitted with the plan for HRSA's approval to ensure consistency and make it available for covered entities. Purchasing data and encounter data requests should not be requested as part of the pilot at this time.

- For BIN, PCN, and Health Plan fields for uninsured or cash paying patients, please allow the submission in the fields to be marked "CASH".

- Covered entities must be permitted to resubmit data if a rebate request is deemed incomplete or missing data.

- Instructions for providing data regarding wasted or undispensed units must be provided as part of the manufacturer's plan and communicated to covered entities.

Covered entity data that is handled by technology platforms and received by manufacturers as a part of this Pilot should not be used for any purpose other than those explicitly identified in this Pilot. This limitation extends to any collecting, aggregating, sharing, or licensing of Pilot data by manufacturers or technology platforms.

Thomas J. Engels,
Administrator.

[FR Doc. 2026-15633 Filed 7-31-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; National Health Service Corps Scholar/Students to Service Travel Worksheet, OMB No. 0906-0087—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review

of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 2, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 443-3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: National Health Service Corps Scholar/Students to Service Travel Worksheet, OMB No. 0906-0087—Revision

Abstract: Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program and the Students to Service (S2S) Loan Repayment Program use the online Travel Request Worksheet to request and receive travel funds from the federal government to, in accordance with the Public Health Service Act, section 331(c)(1), visit eligible NHSC sites to which they may be assigned.

The travel approval process is initiated when an NHSC scholar or S2S participant notifies the NHSC of an impending interview at one or more NHSC-approved practice sites. The Travel Request Worksheet is also used to initiate the relocation reimbursement process, in accordance with the Public Health Service Act, section 331(c)(3), after an NHSC scholar or S2S participant has successfully been matched to an approved practice site. Upon receipt of a completed Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the NHSC scholar or S2S participant and the NHSC logistics contractor regarding travel arrangements and authorization of the funding for the site visit or relocation.

A 60-day notice published in the **Federal Register** on May 20, 2026, vol. 91, No. 97; pp. 29498–99. There were no public comments.

⁴¹ <https://www.cms.gov/files/zip/medicare-drug-price-negotiation-selected-drug-list.zip>.

Need and Proposed Use of the Information: This information will facilitate NHSC scholar and S2S participants' receipt of federal travel funds that are used to visit high-need NHSC-approved practice sites. The Travel Request Worksheet is also used to initiate the relocation process after an NHSC scholar or S2S participant has successfully matched to an approved practice site.

Likely Respondents: Clinicians participating in the NHSC Scholarship

Program and the S2S Loan Repayment Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Travel Request Worksheet	400	2	800	0.0667	53.36
Total	400	.....	800	.....	53.36

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026-15596 Filed 7-31-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: September 16-18, 2026.

Time: September 16, 2026, 12:00 p.m. to 4:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Time: September 17, 2026, 9:30 a.m. to 6:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Time: September 18, 2026, 10:00 a.m. to 2:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Porter Neuroscience Research Center, Building 35A, Room GE620/630, 35 Convent Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892, 301-496-3501, mehrenj@mail.nih.gov.

Dated: July 30, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15682 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 23, 2026.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Report of Division Director and Division Staff.

Address: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Martin Gutierrez, Program Coordinator, Scientific Planning and Operations, Division of AIDS, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D50, Rockville, MD 20892, 240-292-4844, mgutierrez@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: July 30, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15696 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 15, 2026.

Open: 10:00 a.m. to 3:30 p.m.

Agenda: Call to Order and Opening Remarks, NINR Director's Report, Discussion of NINR Programs, Council Open Discussion.

Address: National Institutes of Health, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Closed: 3:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Elizabeth Tarlov, Ph.D., BA, MS Director, Division of Extramural Science Programs (DESP), National Institute of Nursing Research, Bethesda, MD 20892, (301) 594-1580, elizabeth.tarlov@nih.gov.

Registration is not required to attend the open portion of this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.ninr.nih.gov/aboutninr/nacnr>, where an

agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: July 29, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15627 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be partially open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodation, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://www.niehs.nih.gov/news/webcasts>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council (NAEHSC).

Date: September 10, 2026.

Open: 9:00 a.m. to 12:00 p.m.

Agenda: Discussion of Program Policies and Issues/Council Discussion.

Address: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual.

Closed: 12:45 p.m. to 3:00 p.m.

Agenda: To review and evaluate review and Evaluate Grant Applications.

Address: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W.

Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual.

Contact Person: David M. Balshaw, BA, Ph.D., Director and Acting Chief, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-27, Research Triangle Park, NC 27709-2233, 984-287-3234, balshaw@niehs.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.niehs.nih.gov/dert/c-agenda.htm, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 28, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15625 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: September 18, 2026.

Closed: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E32/1E34, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 5:30 p.m.

Agenda: NCATS Director's Report, Program Updates, Concept Clearance.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E32/1E34, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E454, Rockville, MD 20892, (301) 435-0809, anna.ramseyewing@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: July 29, 2026.

Bruce A. George,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15679 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with

attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 15, 2026.

Open: 9:30 a.m. to 10:45 a.m.

Agenda: Call to Order, Introductions, NIAMS Director's Report and Discussion.
Address: National Institutes of Health, Building 31 6C, Rooms A and B, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Open: 11:00 a.m. to 3:30 p.m.

Agenda: Inaugural Strategic Plan for Disability Health Research, Open Discussion.
Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Closed: 3:30 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Timothy Erik Edgerton, MBA Acting Deputy Director, Division of Extramural Activities, Grants Management Branch, Division of Extramural Activities, 6701 Democracy Blvd., Suite 838, Bethesda, MD 20892, (301) 594-7760, edgertont@mail.nih.gov.

Registration is not required to attend the open portion of this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles,

including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.niams.nih.gov/about/working-groups/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 28, 2026.

Denise M. Santeufemio,
Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15626 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 23, 2026.

Closed: 8:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Address: National Institute for Allergy and Infectious Diseases, National Institutes of

Health, 5601 Fishers Lane, Grand Hall
Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Open: 10:30 a.m. to 11:45 a.m.

Agenda: Report of Acting Institute Director and Institute Staff.

Address: National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall
Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Johanna S. Schneider, Ph.D., Acting Director, Division of Extramural Activities, National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 7C21, Rockville, MD 20892, 240-627-3558, schneiderjs@mail.nih.gov.

Name of Committee: National Advisory Allergy and Infectious Diseases, Council Combined Meeting of Division of Allergy, Immunology, and Transplantation Subcommittee and Division of Microbiology and Infectious Disease Subcommittee.

Date: September 23, 2026.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Report of Division Director and Division Staff.

Address: National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Garden Room 1, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Johanna S. Schneider, Ph.D., Acting Director Division of Extramural Activities, National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 7C21, Rockville, MD 20892, 240-627-3558, schneiderjs@mail.nih.gov.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Meeting of the Division of AIDS Subcommittee.

Date: September 23, 2026.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Report of Division Director and Division Staff.

Address: National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall
Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Johanna S. Schneider, Ph.D., Acting Director Division of Extramural Activities, National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 7C21, Rockville, MD 20892, 240-627-3558, schneiderjs@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.niaid.nih.gov/about/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 30, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-15688 Filed 7-31-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) provides notice of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT:

Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); Anastasia.Flanagan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** monthly, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/>

workplace/drug-testing-resources/certified-lab-list.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190, (Formerly: Gamma-Dynacare Medical Laboratories)

Note: DOT does not allow IITFs to test DOT-regulated specimens.

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ, 85254, 602-457-5411/623-748-5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890

Dynacare, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche

CompuChem Laboratories, Inc., A Member of the Roche Group)
MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088, Testing for Veterans Affairs (VA) Employees Only
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085, Testing for Department of Defense (DoD) Employees Only

Carlos Castillo,
Public Health Analyst, OAS.

[FR Doc. 2026-15637 Filed 7-31-26; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection**

[OMB Control Number 1651-0001]

Agency Information Collection Activities; Revision; Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 2, 2026) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent

within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (91 FR 32982) on June 02, 2026, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request

for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.

OMB Number: 1651-0001.

Form Number: 1302, 1302A, 7533, 7509.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Individuals and Businesses.

Abstract: Import Vessel Manifest:

CBP Form 1302: The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration*, or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38, 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=1302>.

Although the form has been mostly automated through the Automated Commercial Environment (ACE), there are still circumstances where a paper CBP form 1302 is required due to not being captured in ACE; Such as the data elements for equipment of the vessel which is intended for discharge or empty containers being transported coastwise. CBP is working to automate the remaining use cases of the CBP form 1302 through the Vessel Entrance and Clearance System (VECS). Some data elements may be collected via the Electronic Notice of Arrival/Departure (eNOAD), however, the eNOAD system does not have all of the data elements on CBP Form 1302. This form is not required to be submitted in hard copy for cargo brought to the United States with the intent to import and/or carry onboard in trade but is required for ship's equipment which is intended for discharge.

CBP Form 7533: The master or person in charge of a conveyance files CBP Form 7533, *INWARD CARGO MANIFEST FOR VESSEL UNDER FIVE TONS, FERRY, TRAIN, CAR, VEHICLE, ETC.*, which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents

may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61, 123.91, and 123.92, and is accessible at: https://www.cbp.gov/newsroom/publications/forms?title_1=7533.

Vessel Stow Plan: For all vessels transporting containerized goods to the US the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the United States. The vessel stow plan is provided for by 19 CFR 4.7c.

Container Status Messages (CSMs): For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

Importer Security Filing (ISF): For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames outlined in 19 CFR 149.2. Transmission of these data elements provide CBP with advanced information about the shipment.

Export Manifest and Electronic Export Manifest (pilots):

CBP Form 1302A: The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms*, or CBP-approved electronic equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87-4.89, and is accessible at: https://www.cbp.gov/newsroom/publications/forms?title_1=1302A.

Electronic Ocean Export Manifest: CBP began a pilot in 2015 to

electronically collect the air export manifest information. The carrier or its agent or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP must provide electronic export manifest (EEM) data to CBP prior to the conveyance departing the final U.S. port of export. Any trade member can provide the 7+1 data elements identified by CBP as the initial filling at least 24 hours prior to the conveyance departing the final U.S. port of export. The remaining EEM data elements must be provided at least two hours prior to a conveyance departing a U.S. port of export. This advance information is transmitted to CBP via the ACE's Export Information System. This information is transmitted to CBP in advance via the ACE's Export Information System.

Electronic Air Export Manifest: CBP began a pilot in 2015 to electronically collect the air export manifest information. The carrier or its agent or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP must provide electronic export manifest (EEM) data to CBP prior to the conveyance departing the final U.S. port of export. Any trade member can provide the 7+1 data elements identified by CBP as the initial filling at least 24 hours prior to the conveyance departing the final U.S. port of export. The remaining EEM data elements must be provided at least two hours prior to a conveyance departing a U.S. port of export. This advance information is transmitted to CBP via the ACE's Export Information System. This information is transmitted to CBP in advance via the ACE's Export Information System.

Electronic Rail Export Manifest: CBP began a pilot in 2015 to electronically collect the air export manifest information. The carrier or its agent or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP must provide electronic export manifest (EEM) data to CBP prior to the conveyance departing the final U.S. port of export. Any trade member can provide the 7+1 data elements identified by CBP as the initial filling at least 24 hours prior to the conveyance departing the final U.S. port of export. The remaining EEM data elements must be provided at least two hours prior to a conveyance departing a U.S. port of export. This advance information is transmitted to CBP via the ACE's Export Information System. This information is transmitted to CBP in advance via the ACE's Export Information System.

Import and Export (Vessel) manifest:

Manifest Confidentiality: An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31. The Vessel NPRM is updating the allowed data elements. <https://www.ecfr.gov/current/title-19/chapter-I/part-103>.

Air Manifest:

CBP Form 7509: The aircraft commander or agent must file Form 7509, *Air Cargo Manifest*, with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118 and is accessible at: https://www.cbp.gov/newsroom/publications/forms?title_1=7509.

Air Cargo Advance Screening (ACAS): Respondents submit a subset of the required 19 CFR 122.48a data elements (ACAS Data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. ACAS Data is transmitted via a CBP-approved electronic interchange system within prescribed time frames. Currently, the ACAS data consists of:

- (1) Air waybill number
- (2) Total quantity based on the smallest external packing unit
- (3) Total weight of cargo
- (4) Cargo description
- (5) Shipper name and address
- (6) Consignee name and address
- (7) Master air waybill (MAWB) number (conditional)
- (8) Second notify party (optional)
- (9) Optional data elements listed in 19 CFR 122.48a may be provided on the ACAS timeframe:
 - a. Trip/flight number
 - b. Carrier/ICAO (International Civil Aviation Organization) code
 - c. Airport of arrival
 - d. Airport of origin
 - e. Scheduled date of arrival
 - f. Consolidation identifier
 - g. Split shipment indicator
 - h. Permit to proceed information
 - i. Identifier of other party which is to submit additional air waybill information
 - j. In-bond information
 - k. Local transfer facility
 - l. Flight departure message
 - m. In-bond information
 - n. The total quantity of the cargo covered by the house air waybill

based on the smallest external packing unit

- o. The total weight of the cargo covered by the house air waybill
- p. Description
- q. Permit-to-proceed information
- r. Boarded quantity
- s. Boarded weight
- (10) Any additional information regarding ACAS data elements (optional)

Previously Approved Changes to ACAS:

Through the Enhanced ACAS interim final rule (IFR), CBP has amended its regulations to include additional data elements. The ACAS program enhances the security of flights carrying cargo into the United States by requiring the transmission of certain air cargo data and performing targeted risk assessments based on the transmitted data prior to an aircraft's departure for the United States. These risk assessments identify and prevent high-risk air cargo from being loaded onto an aircraft that could pose a risk to an aircraft during flight. In addition to the original ACAS data elements, Enhanced ACAS adds several mandatory and conditional data elements.

These additional data elements consist of:

- (1) Consignee email address (mandatory)
- (2) Consignee phone number (mandatory)
- (3) Shipment packing location and/or scheduled shipment pickup location (mandatory)
- (4) Ship to party (mandatory)
- (5) Verified Known Consignor (conditional, mandatory in specific circumstances)
- (6) Shipper email address (conditional, mandatory in specific circumstances)
- (7) Shipper phone number (conditional, mandatory in specific circumstances)
- (8) Customer account name (conditional, mandatory in specific circumstances)
- (9) Customer account issuer (conditional, mandatory in specific circumstances)
- (10) Customer account number (conditional, mandatory in specific circumstances)
- (11) Customer account shipping frequency/volume (conditional, mandatory in specific circumstances)
- (12) Customer account establishment date (conditional, mandatory in specific circumstances)
- (13) Customer account billing type (conditional, mandatory in specific circumstances)

- (14) Unmasked internet protocol (IP) address or media access control (MAC) address of the device used during account creation (conditional, mandatory in specific circumstances)
- (15) Unmasked internet protocol (IP) address or media access control (MAC) address of the device used to initiate the shipping transaction and the unmasked IP address or MAC address of the device used to file the ACAS filing each time an ACAS filing is submitted (conditional, mandatory in specific circumstances)
- (16) Shipping cost (conditional, mandatory in specific circumstances)
- (17) Biographic data (conditional, mandatory in specific circumstances)
- (18) Link to product listing and unmasked internet protocol (IP) address or media access control (MAC) address of the device used by the consignee to purchase the product (conditional, but mandatory in specific circumstances)

In tandem with the Enhanced ACAS interim final rule, CBP is also adding to the existing list of optional data elements that the public may provide at their discretion. CBP does not require trade members to provide this data. The list of optional data elements consists of:

- (1) Origin of Shipment
- (2) Declared Value
- (3) Harmonized Commodity Code (HTS—6 or HTS—10)
- (4) Transaction Type (e.g., B2B—business to business; B2C—business to consumer, etc.)
- (5) Special Handling Type
- (6) Customer Account Email Address
- (7) Customer Account Phone Number
- (8) Shipper Manufacturer Identification (MID) or Authorized Economic Operator (AEO) Number
- (9) Consignee Importer of Record number (or similar number)
- (10) Regulated Agent Name, Address and Code
- (11) ACAS Filing Type (e.g., Standard, Express, eCommerce, Postal)

New Proposed Change:

CBP is announcing a voluntary test for a new electronic informal entry process for mail in ACE through the development of new informal entry type 13—Informal Mail Entry for shipments valued at \$2,500 or less that are sent to the United States via mail. This test includes changes to two other CBP information collections: Entry/Immediate Delivery Application and

ACE Cargo Release; and Entry Summary.

Carriers transporting mail to the United States may elect to participate in the Entry Type 13 Test. Under current regulations, CBP is only provided with the weight of any mail arriving into the United States by these carriers, which fails to sufficiently address the risks in this environment and inhibits CBP from verifying that a specific mail article has been entered in accordance with all applicable requirements. Carriers voluntarily participating in this test will report the tracking number generated by a foreign postal operator for each arriving mail shipment on a manifest as part of their manifest filing. Regardless of whether the entry filer opts to participate in the Entry Type 13 Test, CBP encourages carriers transporting mail to the United States to voluntarily participate in this test. If both the carrier and the filer choose to participate in this test, CBP will be able to match the tracking number reported by the carrier to the tracking number reported on the entry filing, which would allow CBP to determine the precise time of arrival for each shipment and confirm that an entry has been timely filed for an imported mail article.

Type of Information Collection: Air Cargo Manifest (CBP Form 7509).

Estimated Number of Respondents: 215.

Estimated Number of Annual Responses per Respondent: 6,821.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 366,600.

Type of Information Collection: Air Cargo Advanced Screening (ACAS) Data.

Estimated Number of Respondents: 281.

Estimated Number of Annual Responses per Respondent: 4,383,097.

Estimated Number of Total Annual Responses: 1,231,650,254.

Estimated Time per Response: 0 minutes.

Estimated Total Annual Burden Hours: 0.

Type of Information Collection: Enhanced Cargo Advanced Screening (ACAS) Data—Verified Known Consignors.

Estimated Number of Respondents: 281.

Estimated Number of Annual Responses per Respondent: 4,383,097.

Estimated Number of Total Annual Responses: 1,231,650,254.

Estimated Time per Response: 0 minutes.

Estimated Total Annual Burden Hours: 0.

Type of Information Collection: Enhanced ACAS Data—Non-Verified Known Consignors.

Estimated Number of Respondents: 281.

Estimated Number of Annual Responses per Respondent: 666,823.

Estimated Number of Total Annual Responses: 187,377,263.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 3,122,954.

Type of Information Collection: Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533).

Estimated Number of Respondents: 33,000.

Estimated Number of Annual Responses per Respondent: 292.

Estimated Number of Total Annual Responses: 9,629,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 962,940.

Type of Information Collection: Inward Cargo Declaration (CBP Form 1302).

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses per Respondent: 300.

Estimated Number of Total Annual Responses: 3,000,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,500,000.

Type of Information Collection: Export Cargo Declaration (CBP Form 1302A).

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Type of Information Collection: Importer Security Filing.

Estimated Number of Respondents: 240,000.

Estimated Number of Annual Responses per Respondent: 34.

Estimated Number of Total Annual Responses: 8,100,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 8,100,000.

Type of Information Collection: Vessel Stow Plan.

Estimated Number of Respondents: 163.

Estimated Number of Annual Responses per Respondent: 109.

Estimated Number of Total Annual Responses: 17,767.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 31,803.

Type of Information Collection: Container Status Messages.

Estimated Number of Respondents: 60.

Estimated Number of Annual Responses per Respondent: 4,285,000.

Estimated Number of Total Annual Responses: 257,100,000.

Estimated Time per Response: 0.0056 minutes.

Estimated Total Annual Burden Hours: 23,996.

Type of Information Collection: Request for Manifest Confidentiality.

Estimated Number of Respondents: 5,040.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,040.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,260.

Type of Information Collection: Electronic Air Export Manifest.

Estimated Number of Respondents: 260.

Estimated Number of Annual Responses per Respondent: 5,640.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 121,711.

Type of Information Collection: Electronic Ocean Export Manifest.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 100,000.

Type of Information Collection: Electronic Rail Export Manifest.

Estimated Number of Respondents: 7.

Estimated Number of Annual Responses per Respondent: 598,830.

Estimated Number of Total Annual Responses: 4,191,810.

Estimated Time per Response: 0.52 minutes.

Estimated Total Annual Burden Hours: 36,329.

Type of Information Collection: ET—13 Test.

Estimated Number of Respondents: 84.

Estimated Number of Annual Responses per Respondent: 23,810.

Estimated Number of Total Annual Responses: 2,000,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 33,334.

Robert F. Altneu,

Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2026-15609 Filed 7-31-26; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651-0117]

Agency Information Collection Activities; Extension; Free Trade Agreements (FTAs)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 2, 2026) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Please submit written comments and/or suggestions in English. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border

Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (91 FR 24890) on May 07, 2026, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Free Trade Agreements.

OMB Number: 1651-0117.

Form Number: N/A.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

Abstract: The U.S. negotiates and implements free trade agreements (FTAs) and preferential trade

legislations (PTLs), also known as preference programs, to promote prosperity for the U.S. economy. FTAs and PTLs open new markets for U.S. exports, protect American producers and workers, and encourage free and equitable trade among our trading partners. Free Trade Agreements (FTAs) are established to reduce and eliminate trade barriers, strengthen, and develop economic relations, and lay the foundation for further cooperation to expand and enhance benefits of the agreement between partner countries. These agreements establish free trade by reduced-duty treatment of imported goods. FTAs encourage international trade by making it easier and cheaper for businesses to export and import products and services between partner countries.

The U.S. has entered into the following FTAs: United States-Chile Free Trade Agreement (US-CFTA) (Pub. L. 108-77); the Republic of Singapore (Pub. L. 108-78, 117 Stat. 948, 19 U.S.C. 3805 note); Australia (Pub. L. 108-286); Morocco (Pub. L. 108-302); Jordan (Pub. L. 107-43); Bahrain (Pub. L. 109-169); Oman (Pub. L. 109-283); Peru (Pub. L. 110-138, 121 Stat. 1455); Korea (Pub. L. 112-41); Colombia (Pub. L. 112-42, 125 Stat. 462); Panama (Pub. L. 112-43); and Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (CAFTA-DR) (Pub. L. 109-53, 119 Stat. 462); Japan (Presidential Proclamation 9974, (**Federal Register** Notice (84 FR 72187)); Mexico and Canada (USMCA) (Pub. L. 116-113 section 101-195) and Consolidated Appropriations Act of 2021 (Pub. L. No: 116-260) (December 27, 2020).

These FTAs involve collection of data elements such as information about the importer and exporter of the goods, a description of the goods, tariff classification number, country of origin and the preference criterion in the Rules of Origin. Collection of data elements for compliance with preferential claims made on importations under the applicable FTA, while performing data trade trend analysis for compliance and enforcement.

Respondents can obtain information on how to make preferential claims under these FTAs at <http://www.cbp.gov/trade/free-trade-agreements>, and use a standard fillable format for the FTA Certification for submission to CBP by going to <http://www.cbp.gov/document/guides/certification-origin-template>.

Type of Information Collection: U.S.-Chile FTA.

Estimated Number of Respondents: 40,000.

Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 80,000.

Type of Information Collection: U.S.-Singapore FTA.

Estimated Number of Respondents: 45,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 45,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 90,000.

Type of Information Collection: U.S.-Australia FTA.

Estimated Number of Respondents: 20,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 40,000.

Type of Information Collection: U.S.-Morocco FTA.

Estimated Number of Respondents: 4,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 8,000.

Type of Information Collection: U.S.-Bahrain FTA.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 1,000.

Type of Information Collection: U.S.-Jordan FTA.

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

Type of Information Collection: U.S.-Oman FTA.

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 200.

Type of Information Collection: U.S.-Peru TPA.

Estimated Number of Respondents: 4,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 8,000.

Type of Information Collection: U.S.-Korea FTA.

Estimated Number of Respondents: 200,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 400,000.

Type of Information Collection: U.S.-Colombia TPA.

Estimated Number of Respondents: 40,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 80,000.

Type of Information Collection: U.S.-Panama TPA.

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

Type of Information Collection: CAFTA-DR-U.S. FTA.

Estimated Number of Respondents: 800.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 2,400.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 4,800.

Type of Information Collection: JAPAN-U.S. FTA.

Estimated Number of Respondents: 40,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 80,000.

Type of Information Collection: USMCA.

Estimated Number of Respondents: 4,300,060.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,300,060.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 8,600,120.

Robert F. Altneu,

Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2026-15610 Filed 7-31-26; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Notice Regarding the Uyghur Forced Labor Prevention Act Entity List

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The U.S. Department of Homeland Security (DHS), as the Chair of the Forced Labor Enforcement Task Force (FLETF), announces the publication and availability of the updated Uyghur Forced Labor Prevention Act (UFLPA) Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA, on the DHS UFLPA website. The updated UFLPA Entity List is also published as an appendix to this notice. This update adds forty-three new entities to the UFLPA Entity List, two of which appear on two separate sub-lists. In addition, this update includes technical corrections to two existing entities on the UFLPA Entity List. Details related to the process for revising the UFLPA Entity List are included in this **Federal Register** notice.

DATES: This notice announces the publication and availability of the

UFLPA Entity List updated as of August 3, 2026, included as an appendix to this notice.

ADDRESSES: Persons seeking additional information on the UFLPA Entity List should email the FLETF at FLETF.UFLPA.EntityList@hq.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Samuel Greene, Acting Director, Entity List Office, Trade and Economic Security, Office of Strategy, Policy, & Plans, DHS. Phone: (202) 891-2331, Email: FLETF.UFLPA.EntityList@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS), on behalf of the Forced Labor Enforcement Task Force (FLETF), is announcing the publication of the updated UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to section 2(d)(2)(B) of the Uyghur Forced Labor Prevention Act (Pub. L. 117-78) (UFLPA), to <https://www.dhs.gov/uflpa-entity-list>. The UFLPA Entity List is available as an appendix to this notice. This update adds four entities to the section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. This update also adds forty-one entities to the section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government labor scheme that uses forced labor. In addition, this update modifies two entities on the UFLPA Entity List to reflect technical corrections. Future revisions to the UFLPA Entity List, which may include additions, removals, or technical corrections, will be published to <https://www.dhs.gov/uflpa-entity-list> and in the appendices of future **Federal Register** notices. See appendix 1.

Beginning on June 21, 2022, the UFLPA requires the Commissioner of U.S. Customs and Border Protection to apply a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor, and therefore, prohibited from importation into the United States

under 19 U.S.C. 1307. See section 3(a) of the UFLPA. As the FLETF revises the UFLPA Entity List, including by making additions, removals, or technical corrections, DHS, on its behalf, will post such revisions to the DHS UFLPA website (<https://www.dhs.gov/uflpa-entity-list>) and also publish the revised UFLPA Entity List as an appendix to a **Federal Register** notice.

Background

A. The Forced Labor Enforcement Task Force

Section 741 of the United States-Mexico-Canada Agreement Implementation Act established the FLETF to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307). See 19 U.S.C. 4681. Pursuant to DHS Delegation Order No. 23034, the DHS Under Secretary for Strategy, Policy, & Plans serves as Chair of the FLETF, an interagency task force that includes the Department of Homeland Security, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, the Treasury, and Commerce as member agencies.¹ See 19 U.S.C. 4681; Executive Order 13923 (May 15, 2020). In addition, the FLETF includes five observer agencies: the Departments of Energy and Agriculture, the National Security Council, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement Homeland Security Investigations.

B. The Uyghur Forced Labor Prevention Act: Preventing Goods Made With Forced Labor in the People's Republic of China From Being Imported Into the United States

The UFLPA requires, among other things, that the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy (UFLPA section 2(c)) for supporting enforcement of section 307 of the Tariff Act of 1930, to prevent the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China. As required by the UFLPA, the *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China*, which was published on the DHS

website on June 17, 2022 (see <https://www.dhs.gov/uflpa-strategy>), includes the initial UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA. See UFLPA section 2(d)(2)(B).

C. UFLPA Entity List

The UFLPA Entity List addresses distinct requirements set forth in clauses (i), (ii), (iv), and (v) of section 2(d)(2)(B) of the UFLPA that the FLETF identify and publish the following four lists:

- (1) a list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor;
- (2) a list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;
- (3) a list of entities that exported products made by entities in lists 1 and 2 from the People's Republic of China into the United States; and
- (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government-labor scheme that uses forced labor.

The UFLPA Entity List is a consolidated register of the above four lists. In accordance with section 2(e) of the UFLPA, effective June 21, 2022, entities on the UFLPA Entity List (listed entities) are subject to the UFLPA's rebuttable presumption that products they produce, wholly or in part, are made with forced labor and prohibited from entry into the United States under 19 U.S.C. 1307. The UFLPA Entity List is provided as appendix 1 to this notice. The UFLPA Entity List should not be interpreted as an exhaustive list of entities engaged in the practices described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA.

Revisions to the UFLPA Entity List, including all additions, removals, and technical corrections, will be published on the DHS UFLPA website (<https://www.dhs.gov/uflpa-entity-list>) and as an appendix to a notice that will be published in the **Federal Register**. See appendix 1. The FLETF will consider

¹ The U.S. Department of Homeland Security, as the FLETF Chair, has the authority to invite representatives from other executive departments and agencies, as appropriate. See Executive Order 13923 (May 15, 2020). The U.S. Department of Commerce is a member of the FLETF as invited by the Chair.

future additions to, or removals from, the UFLPA Entity List based on criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation(s) to add, remove or make technical corrections to an entry on the UFLPA Entity List. FLETF member agencies will review and vote on revisions to the UFLPA Entity List accordingly.

Additions to the Entity List

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Requests for Removal From the Entity List

Any listed entity may submit a request for removal (removal request) from the UFLPA Entity List along with supporting information to the FLETF Chair at FLETF.UFLPA.EntityList@hq.dhs.gov. In the removal request, the entity (or its designated representative) should provide information that demonstrates that the entity no longer meets or does not meet the criteria described in the applicable clause ((i), (ii), (iv), or (v)) of section 2(d)(2)(B) of the UFLPA. The FLETF Chair will refer all such removal requests and supporting information to FLETF member agencies. Upon receipt of the removal request, the FLETF Chair or the Chair's designated representative may contact the entity on behalf of the FLETF with questions on the removal request and may request additional information. Following review of the removal request by the FLETF member agencies, the decision to remove an entity from the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Listed entities may request a meeting with the FLETF after submitting a removal request in writing to the FLETF Chair at FLETF.UFLPA.EntityList@hq.dhs.gov. Following its review of a removal request, the FLETF may accept the meeting request at the conclusion of the review period and, if accepted, will hold the meeting prior to voting on the entity's removal request. The FLETF Chair will advise the entity in writing of the FLETF's decision on its removal

request. While the FLETF's decision on a removal request is not appealable, the FLETF will consider new removal requests if accompanied by new information.

Robert T. Law,

Under Secretary Office of Strategy, Policy, & Plans, U.S. Department of Homeland Security.

Appendix 1

This notice supersedes the UFLPA Entity List published in the **Federal Register** on January 15, 2025 (90 FR 3899). The UFLPA Entity List as of August 3, 2026 is available in this appendix and is published on <https://www.dhs.gov/uflpa-entity-list>. This update adds four entities to section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region:

- Xinjiang Communications Construction Group Co., Ltd.
- Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)
- Xinjiang Tianyun Organic Agriculture Co., Ltd.
- Zhengzhou Synear Food Co., Ltd.

Xinjiang Communications Construction Group Co., Ltd. ("Xinjiang Communications Construction Group") is a Chinese state-owned entity located in Urumqi City, Xinjiang Uyghur Autonomous Region (XUAR). Xinjiang Communications Construction Group's business activities include the survey, design, construction, operation of transportation infrastructure, the processing and manufacturing of transportation infrastructure building materials, in addition to warehousing and logistics. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Communications Construction Group participates in XUAR government-sponsored labor transfers that target Uyghurs from Kashgar Prefecture and Hotan County, XUAR. The FLETF therefore determined the activities of Xinjiang Communications Construction Group satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.) ("Xinjiang Nuziline"), located in Yili Prefecture in the XUAR, is a subsidiary of Tefeng Pharmaceutical Co., Ltd., involved in the research and development, production and sales of various pharmaceutical products, including conjugated estrogen products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Nuziline participates in XUAR government-sponsored forced labor transfer programs that target Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the XUAR. The FLETF therefore determined the

activities of Xinjiang Nuziline satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Xinjiang Tianyun Organic Agriculture Co., Ltd. ("Xinjiang Tianyun Organic"), located in Yili Prefecture in the XUAR, is involved in the production and sale of fish, including multiple salmon products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Tianyun Organic participates in XUAR government-sponsored recruitment and labor transfer programs to recruit, transfer, and receive Uyghur, Kazakh, and/or Kyrgyz persons out of the XUAR. The FLETF therefore determined the activities of Xinjiang Tianyun Organic satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Zhengzhou Synear Food Co., Ltd. ("Zhengzhou Synear") is a company located in Henan Province, China, that manufactures and distributes frozen food products including dumplings, steamed buns, rice balls, wontons, and snack foods. The United States Government has reasonable cause to believe, based on specific and articulable information, that Zhengzhou Synear works with the government of the XUAR to receive Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. The FLETF therefore determined the activities of Zhengzhou Synear satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

This update also adds forty-one entities to section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing-assistance" program or any other government labor scheme that uses forced labor:

- Alar Nanjiang Carbon New Material Co., Ltd.
- Aksu Aodu Sugar Industry Co., Ltd.
- Baiyin Nonferrous Group Co., Ltd. (also known as Baiyin Nonferrous; and BNMC; and formerly known as Baiyin Nonferrous Metals Company)
- Baoji Jucheng Titanium Industry Co., Ltd.
- Chacha Food Company, Limited (also known as Chacha Food Co., Ltd.; Qia Qia Food; and Chia Chia Food Co., Ltd.)
- Chalkis Health Industry Co., Ltd. (formerly known as Xinjiang Chalkis Co., Ltd.)
- Fujian Septwolves Industry Co., Ltd. (also known as Septwolves)
- Guangxi Kelun Pharmaceutical Co., Ltd.
- Henan Guorong Electronic Technology Co., Ltd. (also known as Goroe; and Guorong Shares)
- Henan Tongzhou Cotton Industry Co., Ltd.
- Hunan Aihua Group Co., Ltd. (also known as Aihua Group; and AiSHi)
- Jiangsu Tiangong Technology Co., Ltd.
- Jiangyin Xinren Aluminum Foil Technology Co., Ltd. (also known as Xinren Aluminum Foil)
- Jiangyin Xinren Aluminum Technology Co., Ltd. (also known as Xinren Aluminum)

- Kashgar Aodu Sugar Industry Co., Ltd.
- Kashgar Jiangguoguo Agricultural Technology Co., Ltd. (also known as Jiangguoguo)
- Nanjing Lilai Pharmaceutical Technology Co., Ltd.
- SDIC Xinjiang Lithium Industry Co., Ltd.
- SDIC Xinjiang Luobupo Potash Co., Ltd. (also known as SDIC Xinjiang Lop Nur Potash Co., Ltd.)
- Shandong Gold Mining Co., Ltd. (also known as Shandong Gold)
- Shandong Gold Smelting Co., Ltd.
- Shandong Weiqiao Pioneering Group Co., Ltd. (also known as Shandong Weiqiao Chuangye Group Co., Ltd.; Shandong Weiqiao Venture Co., Ltd.)
- Shandong Weiqiao Textile Technology Co., Ltd.
- Shihezi Xinren Battery Aluminum Foil Technology Co., Ltd.
- TBEA Co., Ltd.
- Tefeng Pharmaceutical Co., Ltd. (also known as Tefeng Pharmaceutical; and formerly known as Tefeng Health Technology Co., Ltd.)
- Tianshan Aluminum Group Co., Ltd. (formerly known as Shimga Pump Industry Group Co., Ltd.)
- Xinjiang Baiyin Mining Development Co., Ltd.
- Xinjiang Biochemical Pharmaceutical Co., Ltd.
- Xinjiang Huashidan Pharmaceutical Co., Ltd.
- Xinjiang Jinchuan Mining Industry Co., Ltd. (also known as Xinjiang Jinchuan Company)
- Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)
- Xinjiang Production and Construction Corps Eighth Division Tianshan Aluminum Co., Ltd. (also known as Tian Aluminum Co., Ltd.)
- Xinjiang Tefeng Pharmaceutical Industry Co., Ltd.
- Xinjiang Tianchi Energy Co., Ltd.
- Xinjiang Tianhongji Technology Co., Ltd. (formerly known as Xinjiang Tianhongji Silicon Industry Co., Ltd.)
- Xinjiang Tianshan Snow Lotus Pharmaceutical Co., Ltd.
- Xinjiang Tianshan Yingda Carbon Co., Ltd.
- Xinjiang Tianyun Organic Agriculture Co., Ltd.
- Xinjiang Tianzhan New Material Technology Co., Ltd.
- Yili Chuanning Biotechnology Co., Ltd. (also known as Twinings Bio; and CN BIO)

Baiyin Nonferrous Group Co., Ltd. (also known as Baiyin Nonferrous; and BNMC; and formerly known as Baiyin Nonferrous Metals Company) (“Baiyin Nonferrous”), headquartered in Gansu Province, China, is involved in the mining, smelting, processing, as well as financial investment and trading of various non-ferrous and precious metals. Baiyin Nonferrous owns and sources material from at least one mine in the XUAR, which is operated by its wholly-owned subsidiary, Xinjiang Baiyin Mining Development Co., Ltd. (“Xinjiang Baiyin”). The United States Government has reasonable cause to believe, based on specific and articulable information, that Baiyin Nonferrous and

Xinjiang Baiyin are sourcing copper and molybdenum from the XUAR. The FLETF therefore determined that the activities of Baiyin Nonferrous and Xinjiang Baiyin satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Baoji Jucheng Titanium Industry Co., Ltd. (“Jucheng Titanium”), located in Shaanxi, China is a company that focuses on the manufacturing, processing, development, and sales of titanium equipment, materials, and products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Jucheng Titanium sources titanium from the XUAR through a XUAR-based titanium producer. The FLETF therefore determined the activities of Jucheng Titanium satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Chacha Food Company, Limited (also known as Chacha Food Co., Ltd.; Qia Qia Food; and Chia Chia Food Co., Ltd.) (“Chacha Food”), is a company located in Anhui Province, China that mainly produces snack foods, such as nuts and roasted seeds. Chacha Food’s products are exported to nearly 50 countries and regions. The United States Government has reasonable cause to believe, based on specific and articulable information, that Chacha Food sources agricultural products including red dates, seeds, and nuts from the XUAR. Information reviewed by the FLETF, including corporate sources and other publicly available information, indicates that Chacha Food sources material from the XUAR. The FLETF therefore determined the activities of Chacha Food satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Chalkis Health Industry Co., Ltd. (formerly known as Xinjiang Chalkis Co., Ltd.) (“Chalkis”), is a state-owned holding listed company in the Sixth Division of Xinjiang Production and Construction Corps and is headquartered in the XUAR. Chalkis engages in the production, processing, and sale of tomatoes and tomato products, including tomato paste, sauce, and lycopene capsules. The United States Government has reasonable cause to believe, based on specific and articulable information, that Chalkis sources tomatoes from the XUAR. The FLETF therefore determined the activities of Chalkis satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Fujian Septwolves Industry Co., Ltd. (also known as Septwolves) (“Septwolves”), located in Fujian Province, China is a textile and apparel producer that primarily designs, manufactures, and sells menswear and textiles under its own brand, including men’s shirts, suits, trousers, jackets, knitwear, as well as underwear, socks, and other textile products. The United States Government has reasonable cause to believe that Septwolves sources cotton from the XUAR. The FLETF therefore determined the activities of Septwolves satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Henan Guorong Electronic Technology Co., Ltd. (also known as Goroe; and Guorong

Shares) (“Goroe”), is a company located in Henan Province, China, involved in the research and development, production and sales of aluminum foil materials for aluminum electrolytic capacitors. The United States Government has reasonable cause to believe that Goroe sources high-purity aluminum and electronic aluminum from suppliers located in the XUAR. The FLETF therefore determined the activities of Goroe satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Henan Tongzhou Cotton Industry Co. Ltd. (“Tongzhou Cotton”) is a company located in Henan Province, China, that is engaged in the production of cotton. The United States Government has reasonable cause to believe, based on specific and articulable information, that Tongzhou Cotton sources material, specifically cotton, from the XUAR. The FLETF therefore determined the activities of Tongzhou Cotton satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Hunan Aihua Group Co., Ltd. (also known as Aihua Group; and AiShi) (“Aihua Group”), is a company located in Hunan Province, China, that designs, develops, manufactures, and sells aluminum electrolytic capacitors, and produces aluminum foil and equipment. Aihua Group has production bases in several provinces across China, including the XUAR. The United States Government has reasonable cause to believe, based on specific and articulable information, that Aihua Group sources materials, including chemical foil, from its XUAR production base. The FLETF therefore determined the activities of Aihua Group satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Jiangsu Tiangong Technology Co., Ltd. (“Jiangsu Tiangong”) is a company located in Jiangsu Province, China, and is mainly engaged in the research and development, production, and sales of titanium and titanium alloy materials. The United States Government has reasonable cause to believe, based on specific and articulable information, that Jiangsu Tiangong sources titanium sponge from an XUAR-based titanium supplier. The FLETF therefore determined the activities of Jiangsu Tiangong satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Kashgar Aodu Sugar Industry Co., Ltd. (“Kashgar Aodu”) is a company located in Kashgar Prefecture, XUAR. Aksu Aodu Sugar Industry Co., Ltd. (“Aksu Aodu”) is a wholly-owned subsidiary of Kashgar Aodu, and is located in Aksu Prefecture, XUAR. Both companies are in the sugar beet business, using sugar beets to develop sugar products and molasses. The United States Government has reasonable cause to believe, based on specific and articulable information, that Kashgar Aodu and Aksu Aodu source sugar beets from the XUAR. Information reviewed by the FLETF, including Chinese-state media reporting, indicate that Kashgar Aodu and Aksu Aodu source material from the XUAR. The FLETF therefore determined that the activities of Kashgar Aodu and Aksu Aodu

satisfy the criterion for addition to the UFLPA Entity List under section 2(d)(2)(B)(v).

Kashgar Jiangguoguo Agricultural Technology Co., Ltd. (also known as Jiangguoguo) ("Jiangguoguo") is a company located in Kashgar Prefecture, XUAR. Jiangguoguo produces and sells raw fruit, snack foods, and health drinks. The United States Government has reasonable cause to believe that Jiangguoguo sources a variety of nuts and fruits from farmers and cooperatives across the XUAR. The FLETF therefore determined that the activities of Jiangguoguo satisfy the criterion for addition to the UFLPA Entity List under section 2(d)(2)(B)(v).

SDIC Xinjiang Luobupo Potash Co., Ltd. (also known as SDIC Xinjiang Lop Nur Potash Co., Ltd.) ("SDIC Lop Nur") is located in Bayingolin Mongol Autonomous Prefecture, XUAR, with a production base located in the Lop Nur Salt Lake in Bayingolin Mongol Autonomous Prefecture. SDIC Lop Nur primarily produces potassium sulfate fertilizers. SDIC Xinjiang Lithium Industry Co., Ltd. ("SDIC Lithium") is a wholly-owned subsidiary of SDIC Lop Nur and is also located in Bayingolin Mongol Autonomous Prefecture and produces lithium carbonate. The United States Government has reasonable cause to believe that SDIC Lop Nur and SDIC Lithium source potassium and lithium, respectively, from the brine from the Lop Nur Salt Lakebed, located in the XUAR. The FLETF therefore determined that the activities of SDIC Lop Nur and SDIC Lithium satisfy the criterion for addition to the UFLPA Entity List under section 2(d)(2)(B)(v).

Shandong Gold Mining Co., Ltd. (also known as Shandong Gold) ("Shandong Gold Mining") is headquartered in Shandong, China, and is engaged in the production of gold products, including exploration, mining, beneficiation, smelting (refining), deep processing and sales of gold products. Shandong Gold Mining's indirectly wholly-owned subsidiary, Xinjiang Jinchuan Mining Industry Co., Ltd. (also known as Xinjiang Jinchuan Company) ("Xinjiang Jinchuan") owns and operates the Jinshan Gold Mine, the largest single gold mine in the XUAR. Another wholly-owned subsidiary, Shandong Gold Smelting Co., Ltd. ("Shandong Gold Smelting"), is involved in the smelting of gold. The United States Government has reasonable cause to believe, based on specific and articulable information, that Shandong Gold Mining, Shandong Gold Smelting, and Xinjiang Jinchuan source gold from the XUAR. The FLETF therefore determined the activities of Shandong Gold Mining, Shandong Gold Smelting, and Xinjiang Jinchuan satisfy the criteria for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Shandong Weiqiao Pioneering Group Co., Ltd. (also known as Shandong Weiqiao Chuangye Group Co., Ltd.; Shandong Weiqiao Venture Co., Ltd.) ("Weiqiao Group"), and its subsidiary Shandong Weiqiao Textile Technology Co., Ltd. ("Weiqiao Textile") are located in Shandong, China, and are engaged in the production of cotton and cotton products. The United

States Government has reasonable cause to believe, based on specific and articulable information, that Weiqiao Group and Weiqiao Textile source material, specifically cotton, from the XUAR. The FLETF therefore determined the activities of Weiqiao Group and Weiqiao Textile satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

TBEA Co., Ltd. ("TBEA") is a company based in Changji Hui Autonomous Prefecture, XUAR, and operates in a variety of sectors, including power transmission and transformation, energy and materials, and is involved in a number of activities including research and development, production and sales of transformers and other power transmission and transformation products, high-purity aluminum and aluminum alloy products, and high-purity polysilicon. TBEA is also involved in the mining and sales of coal. Xinjiang Tianchi Energy Co., Ltd. ("Tianchi Energy") is a TBEA subsidiary based in Changji Hui Autonomous Prefecture, XUAR, and is involved in coal mining and sales, as well as power generation and supply. The United States Government has reasonable cause to believe, based on specific and articulable information, that TBEA sources aluminum and aluminum alloy products from the XUAR, and that Tianchi Energy sources coal from the XUAR. The FLETF has therefore determined the activities of TBEA and Tianchi Energy satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Tefeng Pharmaceutical Co., Ltd. (also known as Tefeng Pharmaceutical; and formerly known as Tefeng Health Technology Co., Ltd.) ("Tefeng"), headquartered in Jiangsu Province, China, is a pharmaceutical company involved in research and development, production, and sales of various pharmaceutical products, including conjugated estrogen products. Tefeng has three wholly-owned or majority-owned subsidiaries involved in vertically integrated operations. Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.) ("Xinjiang Nuziline") and Xinjiang Tefeng Pharmaceutical Industry Co., Ltd. ("Xinjiang Tefeng") are both located in the XUAR. Nanjing Lilai Pharmaceutical Technology Co., Ltd. ("Nanjing Lilai") is located in Jiangsu Province, China. The United States Government has reasonable cause to believe that Tefeng, Xinjiang Nuziline, Xinjiang Tefeng and Nanjing Lilai source material, specifically pregnant mare urine, from the XUAR used in the development and production of conjugated estrogen products. The FLETF therefore determined that the activities of Tefeng, Xinjiang Nuziline, Xinjiang Tefeng, and Nanjing Lilai satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Tianshan Aluminum Group Co., Ltd. (formerly known as Shimeng Pump Industry Group Co., Ltd.) ("Tianshan Aluminum") is engaged in the production of aluminum. Its Xinjiang-based subsidiaries, Xinjiang Production and Construction Corps Eighth Division Tianshan Aluminum Co., Ltd. (also

known as Tian Aluminum Co., Ltd.) ("Tian Aluminum"); Xinjiang Tianzhan New Material Technology Co., Ltd. ("Tianzhan New Material"); and Shihezi Xinren Battery Aluminum Foil Technology Co., Ltd. ("Xinren Battery") are also engaged in aluminum or aluminum product production. Subsidiaries Xinjiang Tianshan Yingda Carbon Co., Ltd. ("Yingda Carbon") and Alar Nanjiang Carbon New Material Co., Ltd. ("Nanjiang Carbon") produce carbon. The remaining two subsidiaries, Jiangyin Xinren Aluminum Technology Co., Ltd. (also known as Xinren Aluminum) ("Xinren Aluminum") and Jiangyin Xinren Aluminum Foil Technology Co., Ltd. (also known as Xinren Aluminum Foil) ("Xinren Aluminum Foil"), are headquartered in Jiangsu Province, China, and are indirectly wholly-owned subsidiaries of Tianshan Aluminum that are involved in the production and sales of aluminum products, including aluminum alloy and foil. The United States Government has reasonable cause to believe, based on specific and articulable information, that Tianshan Aluminum, its five Xinjiang-based subsidiaries and its two Jiangsu-based subsidiaries source material from the XUAR, specifically prebaked anode carbon, coal, petroleum coke, tar, oil, gas, aluminum liquid, and aluminum foil billets. The FLETF therefore determined the activities of Tianshan Aluminum and the seven named subsidiaries satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Xinjiang Biochemical Pharmaceutical Co., Ltd. ("Xinjiang Biochemical"), located in Urumqi, XUAR, produces raw materials and finished pharmaceutical products, including tablets, granules, hard capsules, and aerosols containing traditional Chinese medicine extracts, as well as raw materials that include lamb stomach extract. The United States Government has reasonable cause to believe that Xinjiang Biochemical sources lamb used in the production of finished pharmaceutical products from the XUAR. The FLETF therefore determined the activities of Xinjiang Biochemical satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Xinjiang Huashidan Pharmaceutical Co., Ltd. ("Xinjiang Huashidan Pharmaceutical"), located in Urumqi, XUAR, develops, produces, and sells drugs, infusions, and oral preparations. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Huashidan Pharmaceutical sources herbs and herbal extracts, including synthetic allicin, astragalus, and codonopsis from the XUAR. The FLETF therefore determined that the activities of Xinjiang Huashidan Pharmaceutical satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Xinjiang Tianhongji Technology Co., Ltd. (formerly known as Xinjiang Tianhongji Silicon Industry Co., Ltd.) ("Xinjiang Tianhongji"), is located in Shihezi, XUAR and produces negative electrode materials for lithium batteries and manufactures non-metallic mineral, graphite, and carbon products. The United States Government has reasonable cause to believe, based on specific

and articulable information, that Xinjiang Tianhongji sources carbon materials, including petroleum coke, anthracite, and asphalt, from the XUAR to produce lithium and sodium-ion battery materials. The FLETF therefore determined the activities of Xinjiang Tianhongji satisfy the criterion for addition to the UFLPA Entity List described in Section 2(d)(2)(B)(v).

Xinjiang Tianshan Snow Lotus Pharmaceutical Co., Ltd. ("Snow Lotus Pharmaceutical") is located in Changji Hui Autonomous Prefecture, XUAR. Snow Lotus Pharmaceutical is a pharmaceutical company that primarily produces "Snow Lotus Oral Liquid" and "Snow Lotus Health Wine." The United States Government has reasonable cause to believe, based on specific and articulable information, that Snow Lotus Pharmaceuticals sources snow lotus, an alpine medicinal herb, and grapes from the XUAR. The FLETF therefore determined the activities of Snow Lotus Pharmaceuticals satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Xinjiang Tianyun Organic Agriculture Co., Ltd. ("Xinjiang Tianyun Organic"), located in Yili Prefecture, XUAR, is involved in the production and sale of fish, including multiple salmon products. The United States Government has reasonable cause to believe, based on specific and articulable information, that Xinjiang Tianyun Organic sources salmon from salmon farms in the XUAR. The FLETF therefore determined the activities of Xinjiang Tianyun Organic satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Yili Chuanning Biotechnology Co., Ltd., (also known as Twinings Bio; and CN BIO) ("Yili Chuanning Biotechnology"), located in the Ili Kazakh Autonomous Prefecture, XUAR, is involved in the production and sale of antibiotic intermediates. Guangxi Kelun Pharmaceutical Co., Ltd. ("Guangxi Kelun Pharmaceutical") is located in the Guangxi Zhuang Autonomous Region of China and mainly produces cephalosporin antibiotics. The United States Government has reasonable cause to believe, based on specific and articulable information, that Yili Chuanning Bioethnology sources raw material, including corn, from the XUAR, and that Guangxi Kelun Pharmaceutical sources antibiotic intermediates produced by Yili Chuanning Biotechnology in the XUAR. The FLETF therefore determined the activities of Yili Chuanning Biotechnology and Guangxi Kelun Pharmaceutical satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

This update also includes technical corrections to two entities already on the UFLPA Entity List to reflect a change in the entity's official name:

- Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.), currently on the Entity List under Section 2(d)(2)(B)(i), is modified to read: "Xinjiang Goens Energy Technology Co., Ltd. (formerly known as Xinjiang GCL New Energy Material Technology Co., Ltd.; and Xinjiang GCL New Energy Materials Technology Co., Ltd.)."

- Xinjiang Tianmian Foundation Textile Co., Ltd., currently on the Entity List under Section 2(d)(2)(B)(ii), is modified to add the current official name of the entity as well as former names: "Kuitun Yadasi Textile Co., Ltd. (also known as Kuitun Yadaxi Textile Co., Ltd.; and formerly known as Xinjiang Tianmian Foundation Textile Co., Ltd.; and Xinjiang Tianhong Jiye Textile Co., Ltd.)."

Xinjiang Goens Energy Technology Co., Ltd. (formerly known as Xinjiang GCL New Energy Material Technology Co., Ltd.; and Xinjiang GCL New Energy Materials Technology Co., Ltd.) located in Changji, XUAR, is engaged in the "research, production, and sales of polysilicon and monocrystalline silicon, engineering consulting, and project development related to the photovoltaic industry." The company was originally listed on the UFLPA Entity List under Section 2(d)(2)(B)(i) on June 21, 2022, as Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.). A technical correction is required because the company changed its name to Xinjiang Goens Energy Technology Co., Ltd. This technical correction updates the UFLPA Entity List to reflect the entity's current name and includes the entity's "formerly known as" names.

Kuitun Yadasi Textile Co., Ltd. (also known as Kuitun Yadaxi Textile Co., Ltd.; and formerly known as Xinjiang Tianmian Foundation Textile Co., Ltd.; and Xinjiang Tianhong Jiye Textile Co., Ltd.), based in the XUAR, produces yarn and other textile products. The company was originally listed on the UFLPA Entity List under Section 2(d)(2)(B)(ii) as Xinjiang Tianmian Foundation Textile Co., Ltd. A technical correction is required because the company changed its name to Kuitun Yadasi Textile Co., Ltd. also known as Kuitun Yadaxi Textile Co., Ltd. This technical correction updates the UFLPA Entity List to reflect the entity's current name and includes the entity's "formerly known as" names.

The UFLPA Entity List is a consolidated register of the four lists that are required to be developed and maintained pursuant to section 2(d)(2)(B) of the UFLPA. One hundred and eighty-seven entities that meet the criteria set forth in the four required lists (see sections 2(d)(2)(B)(i), (ii), (iv), and (v) of the UFLPA) are specified on the UFLPA Entity List.

UFLPA Entity List August 3, 2026

UFLPA Section 2 (d)(2)(B)(i) A List of Entities in Xinjiang That Mine, Produce, or Manufacture Wholly or in Part Any Goods, Wares, Articles, and Merchandise With Forced Labor

Baoding LYSZD Trade and Business Co., Ltd. Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great

New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)

Xinjiang East Hope Nonferrous Metals Co., Ltd.

Xinjiang Goens Energy Technology Co., Ltd. (formerly known as Xinjiang GCL New Energy Material Technology Co., Ltd.; and Xinjiang GCL New Energy Materials Technology Co., Ltd.)

Xinjiang Junggar Cotton and Linen Co., Ltd. Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

UFLPA Section 2 (d)(2)(B)(ii) A List of Entities Working With the Government of Xinjiang To Recruit, Transport, Transfer, Harbor or Receive Forced Labor or Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups out of Xinjiang

Aksu Huaifu Color Spinning Co., Ltd. (also known as Aksu Huaifu Textiles Co., Ltd.; Akesu Huaifu; Aksu Huaifu Dyed Melange Yarn; and Akesu Huaifu Melange Yarn Co., Ltd.)

Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Younger Color Spinning Technology Co., Ltd.; and Chaohu Xinya Color Spinning Technology Co., Ltd.)

Baowu Group Xinjiang Bayi Iron and Steel Co., Ltd. (also known as Xinjiang Bayi Iron and Steel Co. Ltd.; Baosteel Group Xinjiang Bayi Iron and Steel Co., Ltd.; and Bayi Iron and Steel)

Camel Group Co., Ltd.

Changhong Meiling Co., Ltd. (formerly known as Hefei Meiling Co., Ltd.; and Hefei Meiling Group Holdings Limited)
COFCO Sugar Holdings Co., Ltd.

Dongguan Oasis Shoes Co., Ltd. (also known as Dongguan Oasis Shoe Industry Co. Ltd.; Dongguan Luzhou Shoes Co., Ltd.; and Dongguan Lvzhou Shoes Co., Ltd.)

Geehy Semiconductor Co., Ltd.

Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)

Kashgar Construction Engineering (Group) Co., Ltd.

KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)

Kuitun Yadasi Textile Co., Ltd. (also known as Kuitun Yadaxi Textile Co., Ltd.; and formerly known as Xinjiang Tianmian Foundation Textile Co., Ltd.; and Xinjiang Tianhong Jiye Textile Co., Ltd.)

Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.

Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile).

Ninestar Corporation
No. 4 Vocation Skills Education Training Center (VSETC)

Shandong Meijia Group Co., Ltd. (also known as Rizhao Meijia Group)

Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang

Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)

Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development).

Western Gold Co., Ltd.

Western Gold Hami Gold Mine Co., Ltd.

Western Gold Karamay Hatu Gold Mine Co., Ltd.

Xinjiang Communications Construction Group Co., Ltd.

Xinjiang Energy (Group) Co., Ltd.

Xinjiang Energy (Group) Real Estate Co., Ltd.

Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)

Xinjiang Jinbao Mining Co., Ltd.

Xinjiang Nonferrous Metals Industry Group Co., Ltd.

Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)

Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities

Xinjiang Shenhua Coal and Electricity Co., Ltd.

Xinjiang Tengxiang Magnesium Products Co., Ltd.

Xinjiang Tianshan Wool Textile Co., Ltd.

Xinjiang Tianyun Organic Agriculture Co., Ltd.

Xinjiang Zhonghe Co., Ltd. (also known as Xinjiang Joinworld Co., Ltd.)

Xinjiang Zhongtai Chemical Co., Ltd.

Xinjiang Zhongtai Group Co., Ltd.

Xinjiang Zijin Zinc Industry Co., Ltd.

Zhengzhou Syneer Food Co., Ltd.

Zhuhai Apex Microelectronics Co., Ltd.

Zhuhai G&G Digital Technology Co., Ltd.

Zhuhai Ninestar Information Technology Co., Ltd.

Zhuhai Ninestar Management Co., Ltd.

Zhuhai Pantum Electronics Co., Ltd.

Zhuhai Pu-Tech Industrial Co., Ltd.

Zhuhai Seine Printing Technology Co., Ltd.

UFLPA Section 2 (d)(2)(B)(iv) A list of Entities That Exported Products Described in Clause (iii) From the People's Republic of China Into the United States

Entities identified in sections (i) and (ii) above may serve as both manufacturers and exporters. The FLETF has not identified additional exporters at this time but will continue to investigate and gather information about additional entities that meet the specified criteria.

UFLPA Section 2 (d)(2)(B)(v) A List of Facilities and Entities, Including the Xinjiang Production and Construction Corps, That Source Material From Xinjiang or From Persons Working With the Government of Xinjiang or the Xinjiang Production and Construction Corps for Purposes of the "Poverty Alleviation" Program or the "Pairing-Assistance" Program or Any Other Government Labor Scheme That Uses Forced Labor

Aksu Biaoxin Fiber Co., Ltd. (formerly known as Aksu Shangheng Fiber Co., Ltd.)

Aksu Aodu Sugar Industry Co., Ltd.

Aksu Huafu Color Spinning Co., Ltd. (also known as Aksu Huafu Textiles Co., Ltd.; Akesu Huafu; Aksu Huafu Dyed Melange Yarn; and Akesu Huafu Melange Yarn Co., Ltd.)

Alar Nanjiang Carbon New Material Co., Ltd.

Anhui Yaozhiyuan Biotechnology Development Co., Ltd. (also known as Anhui Yaozhiyuan Chinese Herbal Medicine Co., Ltd.; Anhui Yaozhiyuan Chinese Medicinal Materials Co., Ltd.; and Anhui Yaozhiyuan Biological Technology Development Co., Ltd.)

Annan Canned Food Co., Ltd. (also known as Nanling County Annan Canned Food Co., Ltd.)

Awati Huafu Textile Co., Ltd.

Baiyin Nonferrous Group Co., Ltd. (also known as Baiyin Nonferrous; and BNMC; and formerly known as Baiyin Nonferrous Metals Company)

Baoding LYSZD Trade and Business Co., Ltd.

Baoji Jucheng Titanium Industry Co., Ltd.

Baotou Meike Silicon Energy Co., Ltd.

Binzhou Chinatex Yintai Industrial Co., Ltd.

Century Sunshine Group Holdings, Ltd.

Chacha Food Company, Limited (also known as Chacha Food Co., Ltd.; Qia Qia Food; and Chia Chia Food Co., Ltd.)

Chalkis Health Industry Co., Ltd. (formerly known as Xinjiang Chalkis Co., Ltd.)

Changji Esquel Textile Co., Ltd. (also known as Changji Yida Textile Co., Ltd.)

Changzhou Guanghui Food Ingredients Co., Ltd. (also known as GSweet; Changzhou Guanghui Food Additive Co., Ltd.; and Changzhou Guanghui Food Technology Co., Ltd.; and formerly known as Changzhou Guanghui Biotechnology Co., Ltd.)

Chenguang Biotech Group Co., Ltd.

Chenguang Biotechnology Group Yanqi Co., Ltd.

China Cotton Group Henan Logistics Park Co., Ltd., Xinye Branch

China Cotton Group Nangong Hongtai Cotton Co., Ltd.

China Cotton Group Shandong Logistics Park Co., Ltd.

China Cotton Group Xinjiang Cotton Co.

Dalian Sunspeed Foods Co., Ltd. (also known as Dalian Shengchi International Trade Co., Ltd.)

Donghai JA Solar Technology Co., Ltd.

Esquel Group (also known as Esquel China Holdings Limited)

Fujian Minlong Warehousing Co., Ltd.

Fujian Septwolves Industry Co., Ltd. (also known as Septwolves)

Gansu Yasheng International Trading Co., Ltd. (also known as Gansu Yasheng International Trade Co., Ltd.; and Yasheng International Trade; and formerly known as Gansu Yasheng International Trade Group Co., Ltd.)

Guangdong Esquel Textile Co., Ltd.

Guangxi Kelun Pharmaceutical Co., Ltd.

Hangzhou Union Biotechnology Co., Ltd. (also known as Hangzhou Youer Biotechnology Co., Ltd.; Youer Biotech; and Union Biotech)

Hebei Suguo International Trade Co., Ltd. (also known as Suguo International)

Hebei Tomato Industry Co., Ltd. (also known as Hebei Temeite Industrial Group Co.,

Ltd.; and formerly known as Hebei Temeite International Trade Co., Ltd.)

Hefei Bitland Information Technology Co., Ltd.

Henan Guorong Electronic Technology Co., Ltd. (also known as Goroe; and Guorong Shares)

Henan Tongzhou Cotton Industry Co. Ltd.

Henan Yumian Group Industrial Co., Ltd.

Henan Yumian Logistics Co., Ltd. (formerly known as 841 Cotton Transfer Warehouse)

Hengshui Cotton and Linen Corporation Reserve Library

Hetian Haolin Hair Accessories Co. Ltd.

Hetian Taida Apparel Co., Ltd.

Heze Cotton and Linen Co., Ltd.

Heze Cotton and Linen Economic and Trade Development Corporation (also known as Heze Cotton and Linen Trading Development General Company)

Hongyuan Green Energy Co., Ltd. (also known as HY Solar; and Hoyuan Green Energy Co. Ltd. and formerly known as Wuxi Shangji CNC Co., Ltd.; Wuxi Shangji Automation Co., Ltd.; and Wuxi Shangji Grinding Machine Co., Ltd.)

Hongyuan New Materials (Baotou) Co., Ltd.

Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries

Huafu Fashion Co., Ltd.

Huangmei Xiaochi Yinfeng Cotton (formerly known as Hubei Provincial Cotton Corporation's Xiaochi Transfer Reserve)

Hubei Jingtian Cotton Industry Group Co., Ltd.

Hubei Qirun Investment Development Co., Ltd.

Hubei Yinfeng Cotton Co., Ltd.

Hubei Yinfeng Warehousing and Logistics Co., Ltd.

Hunan Aihua Group Co., Ltd. (also known as Aihua Group; and AiSHI)

Hunan Nanmo Biotechnology Co., Ltd. (also known as Hunan Nanmomo Technology Co., Ltd.)

Huyanghe Huafu Hongsheng Cotton Industry Co., Ltd.

Inner Mongolia Qileyuan Food Co., Ltd.

Inner Mongolia Xuanda Food Co., Ltd. (also known as Xuanda Food; and formerly known as Wuyuan County Xuanda Cereals, Oils and Foods Co., Ltd.)

Jiangsu Meike Solar Technology Co., Ltd. (also known as Meike Co. and formerly known as Jiangsu Gaozhao New Energy Development Co., Ltd.)

Jiangsu Tiangong Technology Co., Ltd.

Jiangsu Yinhai Nongjiale Storage Co., Ltd.

Jiangsu Yinlong Warehousing and Logistics Co., Ltd.

Jiangyin Lianyun Co. Ltd. (also known as Jiangyin Intermodal Transport Co. and Jiangyin United Transport Co.)

Jiangyin Xiefeng Cotton and Linen Co., Ltd.

Jiangyin Xinren Aluminum Foil Technology Co., Ltd. (also known as Xinren Aluminum Foil)

Jiangyin Xinren Aluminum Technology Co., Ltd. (also known as Xinren Aluminum)

Jinan Haihong International Trade Co., Ltd. (formerly known as Jinan Haifang Trading Co., Ltd.)

Jining Pengjie Trading Co., Ltd.

Junan Jinsheng Import & Export Co., Ltd. (also known as Junan County Jinsheng Import and Export Co., Ltd.)

Juye Cotton and Linen Station of the Heze Cotton and Linen Corporation
 Kashgar Aodu Sugar Industry Co., Ltd.
 Kashgar Jiangguoguo Agricultural Technology Co., Ltd. (also known as Jiangguoguo)
 Kingherbs Limited (also known as Changsha Jinciao Biotechnology Co., Ltd.)
 Kuche Zongheng Cotton Industry Co., Ltd.
 Kuitun Jinfu Textile Co., Ltd.
 Lanxi Huachu Logistics Co., Ltd.
 Linxi County Fangpei Cotton Buying and Selling Co., Ltd.
 Lop County Hair Product Industrial Park
 Lop County Meixin Hair Products Co., Ltd.
 Nanjing Lilai Pharmaceutical Technology Co., Ltd.
 Nanyang Hongmian Logistics Co., Ltd. (also known as Nanyang Red Cotton Logistics Co., Ltd.)
 Ningbo Huafu Donghao Industrial Co., Ltd.
 Ninghai Huafu Textile Co., Ltd.
 No. 4 Vocation Skills Education Training Center (VSETC)
 Qingdao Vital Nutraceutical Ingredients BioScience Co., Ltd. (also known as Qingdao Weiyikang Biotechnology Co., Ltd.)
 Rare Earth Magnesium Technology Group Holdings, Ltd.
 SDIC Xinjiang Lithium Industry Co., Ltd.
 SDIC Xinjiang Luobupo Potash Co., Ltd. (also known as SDIC Xinjiang Lop Nur Potash Co., Ltd.)
 Shandong Gold Mining Co., Ltd. (also known as Shandong Gold)
 Shandong Gold Smelting Co., Ltd.
 Shandong Weiqiao Pioneering Group Co., Ltd. (also known as Shandong Weiqiao Chuangye Group Co., Ltd.; Shandong Weiqiao Venture Co., Ltd.)
 Shandong Weiqiao Textile Technology Co., Ltd.
 Shanghai JUMP Machinery & Technology Co., Ltd. (also known as Shanghai Jiapai Machinery Technology Co., Ltd.; and formerly known as Shanghai Chituma Food Machinery Technology Co., Ltd.)
 Shaya Yinhua Cotton Industry Co., Ltd.
 Shihezi Huafu Hongfeng Cotton Industry Co., Ltd.
 Shihezi Huafu Hongsheng Cotton Industry Co., Ltd.
 Shihezi Standard Fiber Co., Ltd.
 Shihezi Xinren Battery Aluminum Foil Technology Co., Ltd.
 Shuangliang Silicon Materials (Baotou) Co., Ltd.
 Sichuan Yuan'an Pharmaceutical Co., Ltd. (also known as Sichuan Yuanan Pharmaceutical Co., Ltd.)
 Taiyuan Weishan International Economic Business Co., Ltd. (also known as Taiyuan Weishan International Trade Co., Ltd.)
 TBEA Co., Ltd.
 Tefeng Pharmaceutical Co., Ltd. (also known as Tefeng Pharmaceutical; and formerly known as Tefeng Health Technology Co., Ltd.)
 Tianshan Aluminum Group Co., Ltd. (formerly known as Shinge Pump Industry Group Co., Ltd.)
 The TNN Development Limited (also known as Dehui (Dalian) International Trade Co., Ltd.)
 Tianjin Dunhe International Trade Co., Ltd. (also known as Dunhe Foods)

Tianjin Kunyu International Co., Ltd. (also known as China Kunyu Industrial Co., Ltd.)
 Tianjin Tianwei Food Co., Ltd. (formerly known as Tianjin Sanhe Fruit and Vegetable Co., Ltd.)
 Turpan Esquel Textile Co., Ltd.
 Weifang Alice Food Co., Ltd.
 Wugang Zhongchang Logistics Co., Ltd.
 Xinjiang Baiyin Mining Development Co., Ltd.
 Xinjiang Biochemical Pharmaceutical Co., Ltd.
 Xinjiang Cotton Industry Group Jiashi Cotton Industry Co., Ltd.
 Xinjiang Cotton Industry Group Yuepu Lake Cotton Industry Co., Ltd.
 Xinjiang Daqo New Energy Co., Ltd. (also known as Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
 Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)
 Xinjiang Huafu Color Spinning Group Co., Ltd.
 Xinjiang Huafu Cotton Industry Group Co., Ltd.
 Xinjiang Huafu Hengfeng Cotton Industry Co., Ltd.
 Xinjiang Huafu Hongfeng Agricultural Development Co., Ltd.
 Xinjiang Huafu Textile Co., Ltd.
 Xinjiang Huashidan Pharmaceutical Co., Ltd.
 Xinjiang Jinchuan Mining Industry Co., Ltd. (also known as Xinjiang Jinchuan Company)
 Xinjiang Junggar Cotton and Linen Co., Ltd.
 Xinjiang Liufu Textile Industrial Park Co., Ltd.
 Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)
 Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
 Xinjiang Production and Construction Corps Eighth Division Tianshan Aluminum Co., Ltd. (also known as Tian Aluminum Co., Ltd.)
 Xinjiang Shengfu Cotton Industry Co., Ltd.
 Xinjiang Tefeng Pharmaceutical Industry Co., Ltd.
 Xinjiang Tengxiang Magnesium Products Co., Ltd.
 Xinjiang Tianchi Energy Co., Ltd.
 Xinjiang Tianfu Cotton Supply Chain Co., Ltd.
 Xinjiang Tianhong Xinba Cotton Industry Co., Ltd. (also known as Xinjiang Tianhong New Eight Cotton Industry Co., Ltd.)
 Xinjiang Tianhongji Technology Co., Ltd. (formerly known as Xinjiang Tianhongji Silicon Industry Co., Ltd.)
 Xinjiang Tianshan Snow Lotus Pharmaceutical Co., Ltd.
 Xinjiang Tianshan Yingda Carbon Co., Ltd.
 Xinjiang Tianyun Organic Agriculture Co., Ltd.
 Xinjiang Tianzhan New Material Technology Co., Ltd.
 Xinjiang Yinlong Agricultural International Cooperation Co.
 Xinjiang Zefu Cotton Co., Ltd.
 Xinjiang Zijin Nonferrous Metals Co., Ltd.
 Xinjiang Zijin Zinc Industry Co., Ltd.
 Yili Chuanning Biotechnology Co., Ltd. (also known as Twinings Bio; and CN BIO)

Yili Zhuowan Garment Manufacturing Co., Ltd.
 Zhangzhou Hang Fat Import & Export Co., Ltd. (also known as Zhangzhou Hengfa Import and Export Co., Ltd.)
 Zhejiang Weixin Trading Co., Ltd.
 Zijin Mining Group Co., Ltd.

[FR Doc. 2026-15628 Filed 7-31-26; 8:45 am]

BILLING CODE 9110-9M-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: TSA Customer Comment Card

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0030 abstracted below, that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection allows customers to provide feedback to TSA about their experiences with TSA's processes and procedures, to request information or request assistance at the TSA checkpoint, and to report security threats and vulnerabilities.

DATES: Send your comments by October 2, 2026.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer Information Technology, TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information

collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0030; TSA Customer Comment Card. TSA provides airport passengers with paper and electronic methods of providing feedback to TSA regarding their experiences with TSA security procedures. The collection of information allows TSA to evaluate and address customer concerns about security procedures and policies.

Passengers may request paper TSA Customer Comment Cards to provide feedback, complaints, or compliments. For passengers who deposit their cards in the designated drop-boxes, TSA staff at airports collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as appropriate. If the passenger voluntarily provides contact information, TSA will use the contact information to respond to the passenger's comments.

In addition, passengers may make comments or requests, or file complaints, via online submission forms available at www.tsa.gov/contact/contact-forms. The electronic forms, which the TSA Contact Center handles, include the following forms:

- *Complaint and Compliment.* Like the paper comment card, the electronic Complaint and Compliment form is intended to allow passengers to provide feedback to TSA regarding their experiences with TSA security procedures. Passengers may also use this form to file Disability or Civil Rights and Civil Liberties complaints.

- *TSA PreCheck®.* This electronic form allows passengers to share concerns about not receiving TSA PreCheck on their boarding pass or other concerns.

- *Request for Information.* This electronic form allows passengers to submit an inquiry about TSA policies and procedures, such as traveling with

medical conditions, prohibited and permitted items, or security screening.

- *TSA Cares.* This electronic form allows passengers to request assistance at the TSA screening checkpoint. The program was developed for passengers with disabilities, medical conditions, and other special circumstances who may need additional assistance during the security screening process.¹

- *Security Issue.* This electronic form allows passengers to play a critical role in identifying and reporting suspicious activities and threats.

The TSA Contact Center provides a receipt to any person who submits an electronic form or email to TSA as required by 49 CFR 1503.3(a).

TSA is revising the TSA Cares information collection to include the question, "Are you a veteran?" TSA is adding this question to better support veteran-related initiatives and enhance TSA's ability to track and report on the utilization of programs designed for veterans. By collecting this information, TSA aims to identify veterans who may benefit from specialized resources, services, or assistance, and ensure these programs are meeting their intended goals. Additionally, the data gathered will enable TSA to assess program effectiveness, identify areas for improvement, and fulfill reporting requirements related to veteran engagement and participation.

TSA estimates it will receive 12,304 paper customer comment card submissions, 292,943 electronic comment submissions, and 3,178 Disability and Civil Rights complaints annually.

The following provides TSA's estimates for time needed to complete these forms:

- Approximately 3 minutes to complete the comment card submission.
- Approximately 5 minutes to complete the electronic comment submission.
- Approximately 8 minutes to complete the Disability and Civil Rights complaint.

Over a 3-year period, TSA estimates there will be an average of 308,425 respondents per year, resulting in a 3-year total of 925,275 respondents. TSA estimates an average annual hour burden of 25,451 hours, for a 3-year total of 76,353 hours.

¹ The program is available to all members of the public and is separate from the Military Severely Injured Joint Support Operations Center and the Travel Protocol Office programs which support and facilitate the movement of wounded warriors, severely injured military personnel, veterans and other travelers requiring an escort through the airport security screening process.

Dated: July 30, 2026.

Christina A. Walsh,

*Paperwork Reduction Act Officer,
Information Technology, Transportation
Security Administration.*

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BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6191-N-07]

Section 8 Housing Choice Vouchers: Revisions to Study Enrollment, Treatment Arms and Funding Guidance for the Community Choice Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice provides updates to the Community Choice Demonstration (CCD), formerly known as the Housing Choice Voucher (HCV) mobility demonstration by removing the Selected Mobility-Related Services (SMRS) treatment arm, revising the study (CCD evaluation) enrollment timeline, and clarifying the recapture and reallocation of funding. This notice also discusses reallocation of Mobility Demonstration Vouchers (MDV) and guidance about the use of funds after the end of study enrollment.

DATES: Study enrollment ended on June 30, 2026. The new study enrollment end date superseded prior notices, including the Implementation Notice (85 FR 42890), which stated that PHAs would enroll families through April 30, 2027, and the Additional Implementation Guidance (89 FR 59144), which authorized extending enrollment through December 31 2027, or April 30 2028, at the discretion of the PHA to meet PHA enrollment commitments. Service delivery tracking under the CCD evaluation will end December 31, 2026; however, PHAs will continue to provide mobility-related services to families who enroll outside of the CCD evaluation through October 1, 2028, the statutory end date of the demonstration.

FOR FURTHER INFORMATION CONTACT: Ryan Jones, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, HUD, 451 7th Street SW, Washington, DC 20415, (202) 402-2677. HUD encourages submission of questions about the CCD to be sent to: HousingMobility@hud.gov. HUD welcomes and is prepared to receive

calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

The CCD was authorized by section 235 of division G of the Consolidated Appropriations Act, 2019, Public Law 116–6, 133 Stat. 13, 465 (42 U.S.C. 1437f note) to provide voucher assistance and mobility-related services to families with children to encourage such families to move to lower-poverty areas, to expand access to opportunity areas, and to evaluate the effectiveness of the strategies pursued under the CCD. Additionally, the Consolidated Appropriations Act, 2019, and the Further Consolidated Appropriations Act, 2020, provided a total of \$50 million in funding for services and new vouchers and also made available \$3 million under a separate heading for a research evaluation. HUD awarded \$45.7 million to nine lead and four partner public housing agencies (PHAs), including \$35.9 million in service funding and \$9.8 million in Housing Assistance Payments (HAP) funding for MDVs. Due to several PHA withdrawals, HUD has recaptured approximately \$7.4 million in service funding and \$3 million in HAP funding. The Further Consolidated Appropriations Act, 2020 provided funding for the demonstration but did not provide any additional programmatic authority.

HUD's **Federal Register** notice published on July 15, 2020 (85 FR 42890) implemented the CCD. Subsequent notices clarified and updated the Implementation Notice, including "Implementation of the Housing Choice Voucher Mobility Demonstration, Restrictions on Participating in the Mobility Demonstration and the Moving to Work Demonstration Expansion" published on January 6, 2021 (86 FR 558), "Implementation of the Housing Choice Voucher Mobility Demonstration for Awarded PHAs, Supplementary Notice for Demonstration Participants" published on April 4, 2022 (87 FR 19522), "Announcement of Funding Awards" published on July 17, 2023 (88 FR 45458), and "Additional Implementation Guidance of the Housing Choice Voucher Mobility Demonstration for Awarded PHAs" published on July 22, 2024 (89 FR 59144).

This notice provides updates to the CCD, cancels the SMRS treatment arm, revises the study enrollment timeline, and clarifies the recapture and reallocation of funding. This notice also discusses reallocation of MDVs and guidance about the use of funds after the end of study enrollment.

II. Changes to Study Enrollment Implementation and Timeline

a. Cancellation of Selected Mobility-Related Services

HUD's original plan was to implement the CCD in two phases. Phase 1 would run for 2 years (2022 to 2024) and would implement Comprehensive Mobility-Related Services (CMRS). CMRS included a comprehensive set of services aimed to address the principal obstacles that HCV participants experience accessing lower-poverty areas, including financial barriers, knowledge and skill gaps, hesitancy on the part of families to move to opportunity areas, hesitancy on the part of property owners in opportunity areas to participate in the HCV program, and challenges that affect families' ability to stay in opportunity areas once there. Phase 2 was expected to run for 3 additional years (2025 to 2028). It would continue to implement CMRS and would add a second treatment arm of SMRS. SMRS was expected to test up to three smaller bundles of services selected from the broader CMRS suite to determine whether they could effectively assist families in accessing opportunity areas at a lower cost.

In 2024, HUD received preliminary results from the CCD evaluation that demonstrated significant benefits of CMRS.¹ An analysis of 12 months of data showed that almost 24 percent of HCV families with children who received CMRS moved to an opportunity area, compared to 4 percent of HCV families in the control group. The offer of CMRS resulted in a nearly 20 percentage point increase in the share of families moving to an opportunity area within 12 months of study enrollment. This preliminary result was encouraging and was based on a sample of about 600 families. Despite this impact and other clear benefits of the CCD, sites had only enrolled about 3,200 families between August 2022 and August 2024, which was 67 percent of the target for that point in time. Some sites struggled to reach their original enrollment projections, which led to the relatively low overall enrollment figure. Finally,

while the evaluation showed that CMRS was implemented with fidelity, HUD and the CCD sites needed to do more to improve processes, service delivery, data collection and recording. A Rapid Cycle Evaluation report detailing the early implementation of the CCD also acknowledged the significant effort across sites required to implement CMRS in the context of the CCD evaluation.

In early 2025, HUD was concerned that adding SMRS could undermine the impact of CMRS and put too much pressure on sites that were already struggling to meet enrollment targets and serve families. HUD made the decision to drop the implementation of SMRS and focus instead on improving CMRS by improving the CMRS guide and to the service delivery tool and adding staff to sites that needed it, while also offering additional training and resources.

b. Revisions to the CCD evaluation timeline

As discussed in prior notices, the CCD includes an evaluation required by section 235(g) of division G of the Consolidated Appropriations Act, 2019. The evaluation uses a randomized controlled trial at all CCD sites. Families with children who agree to participate in the CCD are randomly assigned to a treatment group that receives mobility-related services or to a control group that receives HCV standard services.

After the decision to drop SMRS in 2025, HUD and its evaluation contractor analyzed the sample size needed to answer the CCD's research questions. With only one treatment arm, the CCD would not require a sample as large as the original sample size nor enrollment as large as the original enrollment target. Monthly enrollment projections were adjusted to be more conservative and reflect the level of enrollment that sites could meet with their CMRS staffing levels. Based on these analyses, HUD decided to end study enrollment by June 30, 2026. The new study enrollment end date superseded prior notices, including the Implementation Notice which stated that PHAs would enroll families through April 30, 2027, and the Additional Implementation Guidance which authorized extending enrollment through December 31, 2027, or April 30, 2028, at the discretion of the PHA to meet PHA enrollment commitments. PHAs will provide CMRS outside of the CCD evaluation to families who sign up after June 30, 2026.

¹ See Rapid Cycle Evaluation Report <https://www.huduser.gov/portal/publications/Rapid-Cycle-Evaluation-Report.html>.

III. Post-CCD Evaluation Operations and Site Requirements

HUD will work with CCD sites to transition to post-CCD evaluation operations following the conclusion of study enrollment on June 30, 2026.

PHAs may begin signing up new families to receive CMRS outside of the CCD evaluation on or about September 1, 2026. This pause between enrolling study families and post-study families is to ensure continued fidelity to the CCD evaluation. As new families sign up to receive CMRS, HUD expects sites to reach and maintain similar sized caseloads to those observed during the CCD evaluation, with a potential ramp down period about 90 days prior to the end of the CCD for sites who will not continue their mobility programs beyond the term of the CCD. Until October 1, 2028, PHAs are strictly prohibited from providing CMRS to families who were assigned to the control group during the CCD evaluation. This will ensure the control group is not contaminated and continues to receive only standard HCV services until the end of the demonstration period.

Participation in CCD is authorized through October 1, 2028. HUD expects that all sites will continue to provide mobility-related services to families with children through October 1, 2028, or until funds have been expended.

HUD provided criteria for withdrawal in the Additional Implementation Guidance. Participating PHAs that wish to request to voluntarily withdraw from CCD prior to October 1, 2028, must submit a letter in writing, with an associated board resolution, stating the key reasons for withdrawal from CCD and a proposed plan for mitigating the impact on participating families and landlords.

Sites continuing to participate in the demonstration will be required to continue reporting through October 1, 2028. This includes final reporting in the Voucher Management System (VMS) and Inventory Management System/PIH Information Center (IMS/PIC), invoicing, and service delivery/lease outcomes in a format determined by HUD.

V. Funding and Reallocation

PHAs participating in CCD must recruit and enroll families into the study. Each CCD site is authorized to continue to use up to \$80,000 each year for staff time and expenses related to recruitment and enrollment. Since the study enrollment period has ended, PHAs will no longer conduct certain study-related activities during

enrollment, including informed consent and baseline questionnaires. However, recruitment and enrollment will still be necessary with the added requirement to monitor embargoed families during the term of the Demonstration.

PHAs currently report enrollment and CCD evaluation-related information in enrollment and service delivery tools. Once study enrollment and subsequent service delivery tracking ends, these tools will no longer be available to PHAs. Sites may propose use of their mobility related services fees for additional tools or resources in their projected budget and narrative for HUD review. HUD will reallocate approximately \$7.4 million in service funding based on demonstrated need. HUD will prioritize funding year 6 budgets (May 1, 2026–April 30, 2027). PHAs will be required to submit proposed budgets, along with a narrative, for the remainder of CCD. HUD will review proposed budgets for year 7 through the end of the CCD (May 1, 2027 through October 1, 2028), and reallocate funds based on need.

IV. Mobility Demonstration Vouchers

Each PHA participating in the demonstration has an allocation of MDVs to issue to waitlist families. MDVs are issued to families with children selected from the HCV waitlist that enroll in CCD and are randomly assigned to a treatment group that receives housing mobility-related services. Any MDVs not issued by June 30, 2026, when study enrollment ended, will be recaptured by HUD in accordance with the Implementation Notice, which requires that all MDVs be used for new admissions for the CCD treatment groups. MDVs issued prior to June 30, 2026, may still lease a unit after June 30, 2026, however if the family's MDV expires without leasing a unit, it may not be issued to a new family and HUD will recapture that MDV.²

VI. Regional Project-Based Voucher (PBV) Plan

PHAs awarded funding for a Regional PBV Plan may withdraw from this optional component of the demonstration. Requests to withdraw must be submitted to HousingMobility@hud.gov before May 1, 2027. Withdrawal is only permitted if the PHA has not yet incurred more than 60 percent of the awarded Regional PBV funds.

² If the PHA adopted a policy on voucher search terms, such as a policy on extensions of initial search term, the MDV expiration date must comply with the policy. See Implementation Notice, July 15, 2020 (85 FR 42890).

VII. Continued Housing Mobility-Related Services at CCD End

Upon October 1, 2028, statutory end date of the demonstration, HUD will work with CCD sites to process final invoices, complete reporting in VMS and IMS/PIC and service delivery/lease outcomes in the format determined by HUD. After CCD ends, sites will be allowed to use remaining mobility-related services funds to continue providing any CMRS services, as described in the Implementation Notice and subsequent notices, to any family participating in a housing mobility program at the site. HUD will provide guidance to sites on invoicing procedures for these funds. Any waivers and/or alternative requirements implemented by HUD, specific to CCD, will terminate upon the October 1, 2028, end date and the provision of services must be in accordance with normal HCV program rules.

VIII. National Environmental Policy Act

This notice provides operating instructions and procedures in connection with activities under a **Federal Register** document, 24 CFR part 982, Section 8 Tenant-Based Assistance, that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Benjamin Hobbs,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2026–15643 Filed 7–31–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket No. USGS–2026–0364; OMB Control Number 1028–0070; GX26LR000F60100]

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Consolidated Consumers' Report

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 and its implementing regulations, the U.S. Geological Survey (USGS) proposes

to renew an information collection without change.

DATES: Interested persons are invited to submit comments. To be considered, we must receive your comments on or before October 2, 2026.

ADDRESSES: You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Search for and submit comments on Docket No. USGS–2026–0364.

▪ *U.S. Mail:* USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne by email at sosborne@usgs.gov, or by telephone at 703–648–7960. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the Information Collection Request (ICR) at <https://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, as part of our continuing effort to reduce paperwork and respondent burdens, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

We are soliciting comments on the proposed ICR described below. We are especially interested in public comments addressing the following issues:

(1) if the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to this form supply the USGS with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical, to assist in determining Defense National Stockpile Center goals. These data and derived information will be published as chapters in USGS Minerals Yearbooks, monthly USGS Mineral Industry Surveys, annual USGS Mineral Commodity Summaries, and special publications for use by Government agencies, industry education programs, and the general public.

Title of Collection: Consolidated Consumers' Report.
OMB Control Number: 1028–0070.
Form Number: USGS Form 9–4117–MA.
Type of Review: Renewal with extension of a currently approved information collection.

Respondents/Affected Public: Businesses or other for-profit institutions; U.S. nonfuel minerals consumers.

Total Estimated Number of Annual Respondents: 251.
Total Estimated Number of Annual Responses: 1,373.
Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 1,030.
Respondent's Obligation: Voluntary.
Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: There are no “non-hour cost” burdens associated with this ICR.
An agency may not conduct or sponsor, nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.
The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), and the Strategic and Critical

Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Braden Harker,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2026–15607 Filed 7–31–26; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7385; NPS–WASO–NAGPRA–NPS0043401; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Michigan has completed an inventory of an associated funerary object and has determined that there is a cultural affiliation between the associated funerary object and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary object in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the associated funerary object in this notice to Dr. Ben Secunda, NAGPRA Office Managing Director, University of Michigan, Office of the Vice President for Research, Suite G269, Lane Hall, Ann Arbor, MI 48109–1274, email bsecunda@umich.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Michigan, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one associated funerary object has been identified. The one associated funerary object is one lot of various archaeological materials. The seeds were removed from the T.M. Sanders site (41LR2) from Lamar County, Texas, in 1931. They were acquired from Mr. A.T. Jackson in 1941 and sent to the Ethnobotanical Laboratory at the University of Michigan

Museum of Anthropological Archaeology for analysis. Dating for the site is to the Mississippian 1000 AD–1450 AD, based on diagnostic artifacts.

The University of Michigan has no record of, nor do its officials have any knowledge of, any treatment of the associated funerary object with pesticides, preservatives, or other substances that represent a potential hazard to the collection or to persons handling the collection.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the associated funerary object described in this notice.

Determinations

The University of Michigan has determined that:

- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual Ancestral remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the associated funerary object described in this notice and the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the associated funerary object in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the associated funerary object described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the University of Michigan must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary object are considered a single request and not competing requests. The University of Michigan is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian

organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15703 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7393; NPS–WASO–NAGPRA–NPS0043409; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Archaeological Survey of Idaho Western Repository, Idaho State Historical Society, Boise, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Survey of Idaho Western Repository (ASI–WR) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Shannon M. Vihlene, Deputy State Historic Preservation Officer, Archaeological Survey of Idaho, Idaho State Historic Preservation Office, 210 Main Street, Boise, ID 83702, email Shannon.vihlene@shpo.idaho.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the ASI–WR, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least, two individuals have been identified.

No associated funerary objects were definitively identified, but 368 items were collected in close proximity to the remains, including glass, stone, wood, metal, fabric, and ceramics. The individuals were identified in 2019 and exhumed by the Coeur d'Alene Police Department. The remains were then transferred to the ASI–WR.

Human remains representing, at least, one individual has been identified. No associated funerary objects were identified. The individual was identified during construction activities in 2019 in Coeur d'Alene, Kootenai County, Idaho. The remains were exhumed by the Coeur d'Alene Police Department and transferred to the ASI–WR.

Human remains representing, at least, one individual has been identified. No associated funerary objects are present. The remains were acquired by the ASI–WR in 2020 from St. Maries High School in Benewah County, Idaho. No information was available concerning how the high school originally obtained the remains. The school is within the exterior boundaries of the Coeur d'Alene Reservation.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The ASI–WR has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 368 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Coeur D'Alene Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the ASI-WR must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The ASI-WR is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15711 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7398; NPS-WASO-NAGPRA-NPS0043399; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Stanford University, Stanford, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Stanford University intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Laura Jones, Stanford University, 477 Oak Road, Stanford, CA 94305, email repatriation@stanford.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the

sole responsibility of Stanford University, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 14 lots of objects have been requested for repatriation. The 14 lots of unassociated funerary objects are: four lithics from Richardson Bay; one lithic from Nicasio; one mortar from San Rafael; six lots of beads from site MRN-20/Strawberry Point; and two lots of bone implements (22), pendants (four), lithics (13), and flaked obsidian (21) from site MRN-20/Strawberry Point.

Strawberry Point in Marin County was excavated in 1950-51 by D.J. McGeein (Douglas McGeein) and W.C. Mueller, the objects were mailed to Professor Bert Gerow at Stanford at an unknown date. An article published in 1955 in *American Antiquity* noted the removal of several burials; Stanford does not hold the ancestral remains, it is currently unknown where the Ancestors were removed to. Stanford has no record of any material being treated with hazardous substances.

Determinations

Stanford University has determined that:

- The 14 lots of unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Federated Indians of Graton Rancheria, California

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any

lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, Stanford University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Stanford University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15701 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7389; NPS-WASO-NAGPRA-NPS0043405; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: University of Kansas, Lawrence, KS, and University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Kansas (KU) and the University of Tennessee, Knoxville, Department of Anthropology (UTK) have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and

associated funerary objects in this notice to Katie McClure, the University of Kansas, Biodiversity Institute & Natural History Museum, Division of Archaeology, 1340 Jayhawk Blvd., Lawrence, KS 66045, email repatriation@ku.edu and Dr. Ellen Lofaro, University of Tennessee, Office of Repatriation, 5723 Middlebrook Pike, Knoxville, TN 37996, email nagpra@utk.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of KU and UTK, and additional information on the determinations in this notice, including the results of consultation, can be found in their inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 21 individuals have been identified from Osage County, Kansas. The 35 associated funerary objects are ceramics, faunal material, lithics, soils, and other cultural materials. These individuals and associated funerary objects were removed during an Inter-Agency Archaeological Salvage Program project. All human remains and associated funerary objects were taken to KU after they were removed, and William Bass, formerly a professor at KU, also transported remains from this location to UTK when he began teaching there in 1971. Inventory records at KU indicate that many of the remains are treated with preservative and/or adhesive. To the best of our knowledge, these substances are not hazardous.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

KU and UTK have determined that:

- The human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- The 35 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite ceremony.
- There is a connection between the human remains described in this notice

and the Kaw Nation, Oklahoma; Pawnee Nation of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15707 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7387; NPS-WASO-NAGPRA-NPS0043403; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of sacred

objects/objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, email mark.wheeler@csus.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation. The five sacred objects/objects of cultural patrimony are five miniature baskets. The baskets were purchased by Joel S. and Evelyn A. Cotton and donated to the University by their son Norman Cotton in 1962. It is not known when or where the baskets were acquired by the Cottons. They were found inside a larger basket after the donation had been made. Consulting tribes have suggested they may have been made by Mable McKay due to their size and style, though no documentation has been found to confirm this. The baskets have been curated since their donation under accession 1974-32-2-2-a-e. The University is unaware of any treatment of the sacred objects/objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

Determinations

The California State University, Sacramento has determined that:

- The five sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native

American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).

- There is a connection between the cultural items described in this notice and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15705 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7384; NPS-WASO-NAGPRA-
NPS0043400; PPWOCRADNO-
PCU00RP14.R50000]

Notice of Inventory Completion: Staten Island Institute of Arts and Sciences, Staten Island, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), the Staten Island Institute of Arts and Sciences (SIAS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Colleen Evans, Staten Island Institute of Arts and Sciences, 1000 Richmond Terrace Building A, Staten Island, NY 10301, email cevans@statenislandmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SIAS, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. The five lots of associated funerary objects are one lot lithic projectile points, one lot lithic spear points, one lot flint chips, one lot knives, one lot scrapers. In the late 19th century, human remains and associated funerary objects were removed from a mound location(s) in Florida, by Mr. J.H. Fry of Palatka, Florida. In 1884, the human remains and associated funerary objects were donated to the Staten Island Institute of Arts and Sciences by William Chorlton, a Staten Island resident. Donation records indicate that the Ancestor and funerary belongings were collected from mound site(s) in Florida, the names and locations of which are not documented

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The SIAS has determined that:

- The human remains described in this notice represent the physical

remains of one individual of Native American ancestry.

- The five lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the SIAS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The SIAS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15702 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7392; NPS-WASO-NAGPRA-NPS0043408; PPWOCRADNO-PCU00RP14.R50000]

Notice of Proposed Transfer or Reinterment: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh (UWO) proposes to transfer human remains and associated funerary objects listed in a notice of inventory completion published in the **Federal Register** on June 27, 2025.

DATES: Repatriation, transfer, or reinterment of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written request for repatriation of the human remains and associated funerary objects to Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Blvd., Oshkosh, WI 54901, email friea@uwosh.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UWO, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

This notice follows publication of a Notice of Inventory Completion in the **Federal Register** (90 FR 27668, June 27, 2025). Human remains representing, at least, 18 individuals have been identified. The three associated funerary objects are one lot of faunal material and two unmodified natural stones. The human remains and associated funerary objects were identified through an investigation of all University of Wisconsin Oshkosh campuses for any potential NAGPRA-related material. Many were flagged in the Anthropology teaching collections at the campuses and identified as Native American. No associated provenience was identified during this review, classifying the remains as being from unknown geographic locations.

Consultation

Invitations to consult were sent to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-E-Be-Nash-She-Wish Band of Pottawatomini (previously listed as Match-E-Be-Nash-She-Wish Band of Pottawatomini Indians of Michigan); Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the

Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; The Osage Nation; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Yankton Sioux Tribe of South Dakota.

UWO also invited non-federally recognized Indian groups: Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Between February 2021 and December 2024, UWO held bi-monthly intertribal consultations. The following Indian Tribes participated in at least one intertribal consultation: the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Kickapoo Tribe of Oklahoma; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Match-E-Be-Nash-She-Wish Band of Pottawatomini (previously listed as Match-E-Be-Nash-She-Wish Band of Pottawatomini Indians of Michigan); Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Oneida Indian Nation; Oneida Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of

Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sokaogon Chippewa Community, Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; and the Winnebago Tribe of Nebraska.

Non-federally recognized Indian groups that participated: the Brother Town Indian Nation.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains and associated funerary objects in this notice are available: biological. The information, including the results of consultation, identified:

1. No earlier group connected to the human remains or associated funerary objects.
2. No Indian Tribe or Native Hawaiian organization connected to the human remains or associated funerary objects.
3. No relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

Determinations

UWO has determined that:

- The human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No known lineal descendant who can trace ancestry to the human remains and associated funerary objects in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains and associated funerary objects in this notice has been clearly or reasonably identified.
- The Ho-Chunk Nation of Wisconsin has requested transfer of the human remains and associated funerary objects described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary

objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation, transfer, or reinterment of the human remains and associated funerary objects described in this notice may occur on or after September 2, 2026. If requests for repatriation are received, UWO must evaluate the requests and respond in writing to the requestors. UWO is responsible for sending a copy of this notice to the Indian Tribes or Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15709 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7397; NPS-WASO-NAGPRA-
NPS0043413; PPWOCRADNO-
PCU00RP14.R50000]

Notice of Intended Repatriation: Franklin County Historical Society, Ottawa, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Franklin County Historical Society intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural item in this notice to Ashley Brannan, Franklin County Historical Society, P.O. Box 145, Ottawa, KS 66067, email brannana@olddepotmusum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Franklin County Historical Society, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one of object of cultural patrimony is stone projectile point. The projectile point is a white stone point labeled as being from "The Plains of Oregon". It was identified through consultation as being a "Cascade" point. It came into our collection from a donation from the William McCall Family.

Determinations

The Franklin County Historical Society has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural item described in this notice and the Burns Paiute Tribe.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the Franklin County Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Franklin County Historical Society is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian

organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15715 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7390; NPS-WASO-NAGPRA-
NPS0043406; PPWOCRADNO-
PCU00RP14.R50000]

Notice of Inventory Completion: Lost City Museum, Overton, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Lost City Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Virginia Lucas, Lost City Museum, 721 S Moapa Valley Blvd., Overton, NV 89040, email vlucas@nevadaculture.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Lost City Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 20 individuals have been identified. This is the result of a detailed re-examination by Lost City Museum Staff. The eight lots of associated funerary objects are pottery sherds, dog burials,

bone dice, turquoise beads, and shell beads. These human remains and associated funerary objects are in addition to human remains and associated funerary objects listed in a Notice of Inventory Completion published in the **Federal Register** on November 21, 2000 (65 FR 69960).

At an unknown date in the 1930s, human remains representing six individuals were removed from the Anasazi-2 site (26CK2037) in the vicinity of Overton, Nevada, by an unknown person. The one lot of associated funerary objects includes pottery, shell beads, turquoise beads, and bone dice. Archeological investigations have identified the Anasazi-2 site as a known Ancestral Puebloan site.

In the 1980's, human remains representing one additional individual and two lots of associated funerary objects were removed from the Lewis Site (26CK2036), Sand Beach, Overton, Nevada, by Lost City Museum staff. The landowner donated the remains and objects to the Lost City Museum at the time of excavation. The two lots of associated funerary objects include three dog burials, an amaranth seed cake, and mule deer antler. Archeological investigations have identified the Lewis Site (also known as Anasazi-1) as a known Ancestral Puebloan site. The remains were found in a room in a house.

In 1987, human remains representing an additional three individuals were removed during salvage excavations during construction at the Bunker Hill Site (26CK2020), Sand Beach, Overton, Nevada, by Lost City Museum staff. The remains were donated to the Lost City Museum by the landowner. Archeological investigations have identified the Bunker Hill Site as a known Ancestral Puebloan site.

In 1982, human remains representing one individual were removed during salvage excavations at the Adam 2 Site (26CK2059), Overton, Nevada, by University of Nevada, Las Vegas staff. The remains were returned to the Lost City Museum, which owns the property on which the site is located, in 2000. The two lots of associated funerary objects represent two dog burials excavated from the site. Archeological investigations have identified the Adam 2 Site as affiliated with the Ancestral Puebloan culture.

In 1979, human remains representing four individuals were excavated from Keo Site #1 (26CK2039) and later renamed Yamashita-7 in Overton, Nevada and brought to the Lost City Museum by Lost City Museum staff. In addition, there are two associated

funerary objects, a grayware jar and a buffware jar. Archaeological excavations have identified Keo Site #1 as a known Ancestral Puebloan site.

At an unknown date before 1970, an additional two individuals were removed from an unknown location in the vicinity of Overton, Nevada by an unknown person. These remains were then donated to the Lost City Museum at an unknown date after 1970 by an unknown person. (These two individuals are in addition to the previous four reported in the 2000 Notice of Inventory Completion). No known individuals were identified, and no associated funerary objects are present.

In 1979, human remains representing one individual were excavated from Cappelappa #1 (26CK2048) in Overton, Nevada and brought to the Lost City Museum. This individual was brought to the museum by Lost City Museum staff. There are no associated funerary objects with this individual.

Archaeological excavations have identified Cappelappa #1 as a known Ancestral Puebloan site.

In 1978, human remains representing one individual were collected from Robison #1 (26CK2413) in Overton, Nevada. The site had been disturbed. The one lot of associated funerary objects consists of pottery sherds. Archaeological excavations have identified Robison #1 as a known Ancestral Puebloan site.

At an unknown date before 1980, the remains from one individual were removed from a Pueblo II ruin at an unknown location in Overton, Nevada. There are no associated funerary objects with this individual.

On the basis of archeological context, the human remains listed above are determined to be Native American. Based on the geographical locality and probable age of the burials, the remains are determined to be affiliated with the archeologically defined Virgin Branch Ancestral Puebloan Culture, dated to circa 300 B.C.–A.D. 1250. Although the locations from which these remains were removed are within the historic territory of the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada, joint consultations with representatives of the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada and with representatives of the Hopi Tribe of Arizona produced evidence agreed to by both parties that the Ancestral Puebloan remains from this area are ancestral to the modern Hopi Tribe of Arizona. Archaeological evidence supports this conclusion.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Lost City Museum has determined that:

- The human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- The eight lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Hopi Tribe of Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the Lost City Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Lost City Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15708 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7386; NPS–WASO–NAGPRA–NPS0043402; PPWOCRADNO–PCU00RP14.R50000]

Notice of Intended Repatriation: Denver Art Museum, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Denver Art Museum intends to repatriate a certain cultural item that meets the definition of a sacred object/object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural item in this notice to Jennie Trujillo, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80203, email jtrujillo@denverartmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Denver Art Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred object/object of cultural patrimony is a beaded umbilical cord amulet. The Denver Art Museum purchased the object from Delbert Orr (Orley), of Orr's Trading Post in Englewood, Colorado in June 1969. Orr relayed that he purchased the object from a Ute woman who walked into his shop in 1969. There are no known hazardous materials present on the object.

Determinations

The Denver Art Museum has determined that:

- The one sacred object/object of cultural patrimony described in this notice is, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).

- There is a connection between the cultural item described in this notice and the Ute Mountain Ute Tribe.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the Denver Art Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Denver Art Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15704 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7396; NPS–WASO–NAGPRA–
NPS0043412; PPWOCRADN0–
PCU00RP14.R50000]

**Notice of Intended Repatriation:
Museum of Ventura County, Ventura,
CA**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Ventura County intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Deya Terrafranca, Museum of Ventura County, 100 E. Main Street, Ventura, CA 93001, email dterrafranca@venturamuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Ventura County, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. The two objects of cultural patrimony are baskets. They were owned by Adelina Gonsman who obtained them from an unknown source and donated by her son George Gonsman in 1981. Museum of Ventura County has no records that would indicate contact with any known hazardous substances.

Determinations

The Museum of Ventura County has determined that:

- The two objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band,

clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Twenty-Nine Palms Band of Mission Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the Museum of Ventura County must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Museum of Ventura County is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15714 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7381; NPS–WASO–NAGPRA–
NPS0043396; PPWOCRADN0–
PCU00RP14.R50000]

**Notice of Inventory Completion: St.
Joseph Museums, Inc., St. Joseph, MO**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the St. Joseph Museums, Inc. has completed an inventory of human remains and

associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Tori Zieger, St. Joseph Museums, Inc., 3406 Frederick Avenue, St. Joseph, MO 64506, email tori@stjosephmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the St. Joseph Museums, Inc. and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, three individuals have been identified. The 101 associated funerary objects are one piece of wood, 41 faunal remains (worked and unworked), five rocks/pebbles, 10 lithics/lithic fragments, 12 shells, 29 pottery sherds, two geodes, and one metal sword. These individuals and the associated funerary objects in this notice are part of a single collection held by the museum. The collection was donated in 1957 by H.C. McWilliams of Easton, Missouri. The individuals and the associated funerary objects were collected at an unknown date from Bruce Cave, also known as Goats Bluff Cave, and has the archaeological site identification number 23PU44. It is not believed that these individuals and the associated funerary objects were collected as part of an organized archaeological excavation. There are no known hazardous materials used to treat the individuals or the associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the geographical location of the human remains and associated funerary objects described in this notice.

Determinations

The St. Joseph Museums, Inc. has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The 101 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the St. Joseph Museums, Inc. must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The St. Joseph Museums, Inc. is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15698 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7391; NPS-WASO-NAGPRA-NPS0043407; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: University of California, San Diego, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California San Diego intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Eva Trujillo, Repatriation Coordinator, University of California San Diego, 9500 Gilman Drive, La Jolla, CA 92093, email e7trujillo@ucsd.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California San Diego and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 176 lots of cultural items have been requested for repatriation. In 1965 and 1966, these items were excavated and removed from unknown sites in Lyon, Nye, and White Pine Counties in Nevada by University of California San Diego associates Dr. C.L. Hubbs and party. The cultural items were subsequently incorporated into what became known as the "Hubbs Collection." In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection

and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

Determinations

The University of California San Diego has determined that:

- The 176 lots of objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the University of California San Diego must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of California San Diego is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15710 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7394; NPS-WASO-NAGPRA-NPS0043410; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, St. Louis District, St. Louis, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, St. Louis District, has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Jenna Domeischel, U.S. Army Corps of Engineers, St. Louis District, 1222 Spruce Street, ATTN: CEMVS-EC-Z, St. Louis, MO 63103, email jenna.domeischel@usace.army.mil.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, St. Louis District, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, eight individuals have been identified. The 371 associated funerary objects are: 116 faunal remains, 109 chipped stone, 102 ceramic sherds, 15 shells, two groundstone, 17 charcoal, one stone, seven lots of lithics and ceramics, one lot of wood or burned bone, and one lot of soil and rocks.

The proposed Meramec Park Lake Project was in the Meramec River Basin in Crawford and Washington Counties, Missouri, approximately 65 miles southwest of St. Louis. The project was originally authorized in 1966; cultural resources surveys and excavations followed and resulted in the current

collections from Crawford and Washington Counties, Missouri. After public debate, the project was formally deauthorized in 1981 (Pub. L. 97-128) and the lake was never constructed.

The human remains and funerary objects originate from seven archaeological sites from this land (23CR80, Smith Shelter; 23CR14, Huzzah Country Club Cave; 23CR22, Lincoln Cave; 23CR54, Meramec Spring Village Site; 23CR58, Boulder Cave 1; 23CR115, Reeves Cave; and 23WA61, Merkel Cave). The materials are currently located at the Illinois State Museum in Springfield, Illinois. The St. Louis District has no knowledge of any hazardous materials being used to treat the Ancestors or cultural items.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The U.S. Army Corps of Engineers, St. Louis District, has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- The 371 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the U.S. Army

Corps of Engineers, St. Louis District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The U.S. Army Corps of Engineers, St. Louis District, is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15712 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7383; NPS-WASO-NAGPRA-NPS0043398; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Stanford University, Stanford, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Stanford University intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural item in this notice to Laura Jones, Stanford University, 477 Oak Road, Stanford, CA 94305, email repatriation@stanford.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Stanford University, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one of object of cultural patrimony is a large redwood canoe from the Klamath River area. The canoe came to the university in the late 1800s via collector John Daggett. Stanford University has no record of the canoe being treated with any hazardous substances.

Determinations

Stanford University has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural item described in this notice and the Hoopa Valley Tribe, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, Stanford University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Stanford University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15700 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7382; NPS–WASO–NAGPRA–NPS0043397; PPWOCRADN0–PCU00RP14.R50000]

**Notice of Intended Repatriation:
Stanford University, Stanford, CA**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Stanford University intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural item in this notice to Laura Jones, Stanford University, 477 Oak Road, Stanford, CA 94305, email repatriation@stanford.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Stanford University and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a stone pestle. The pestle is recorded as being donated by a Mrs. R.D. McFarland. Several McFarlands are associated with the Sacramento area and Wilton Rancheria's traditional territory. Stanford University has no record of the pestle being treated with any hazardous substance.

Determinations

Stanford University has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the

Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural item described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, Stanford University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Stanford University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15699 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N7388; NPS–WASO–NAGPRA–NPS0043404; PPWOCRADN0–PCU00RP14.R50000]

**Notice of Intended Repatriation:
California State University,
Sacramento, Sacramento, CA**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or

Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, email mark.wheeler@csus.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 20 cultural items have been requested for repatriation. The 20 sacred objects are one walrus tusk necklace, 15 Kapa (tapa) samples, three flaked stone tools collected from a quarry site on the slopes of Mauna Kea, and one wood cargo hook found in a rock cleft along the coast of the Island of Hawai'i near Kalapana. The necklace and Kapa samples were donated to the University in 1956 by George F. and Alice W. Beardsley and have since been curated under accession 1974–2. The Beardsley's traveled widely and purchased many items during their travels. It is not known when or where these specific objects were purchased. The flaked stone tools and wood cargo hook were donated to the University by N.L. Wilson sometime after 1956 and have since been curated under accession 1974–09. No other information is known about the donor or the objects. The University is unaware of any treatment of the sacred objects with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

Determinations

The California State University, Sacramento has determined that:

- The 20 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional

knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Hui Iwi Kuamo'o.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–15706 Filed 7–31–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7395; NPS–WASO–NAGPRA–NPS0043411; PPWOCRADNO–PCU00RP14.R50000]

Notice of Intended Repatriation: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Michigan State University intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural

affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 2, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Judith Stoddart, Michigan State University, 287 Delta Court, East Lansing, MI 48824, email stoddart@msu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Michigan State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 141 cultural items have been requested for repatriation. The 141 unassociated funerary objects are 34 groundstone tools, 34 projectile point, 14 stone tools, 12 pipes and pipe bowls, six pendants, four flat round stones, four drills, five bird and boat stones, three pottery pieces, three effigy, two bar atlatl weight, two knives, two copper celts, one copper adze, one spear head, one stone with carved face, one stone with crossing lines, one worked pebble, one spindle whorl, one carved stone canoe, one spear, one bone awl, one carved rectangular stone, one metal axe and one harpoon from various locations in Berrien, Cass, St. Joseph, and Van Buren Counties, Michigan; three lots of artifacts from Moccasin Bluff (20BE8); and one lot of artifacts from near the Fort St. Joseph site (20BE23).

A total of 49 items are from the Chamberlain Memorial Museum collection, which was donated to Michigan State University by the Chamberlain Warren Museum of Three Rivers, Michigan, in 1952. A total of 84 items are from the Donald Boudeman collection, an avocational collector whose collection was donated to Michigan State University in 1961 by Donna Boudeman after his passing. The remaining eight items were donated pre-1920, and for which we do not have detailed records. Based on the geographic location from which these objects were collected, they are culturally affiliated with the Potawatomi. No known hazardous

substances have been used to treat the objects.

Determinations

Michigan State University has determined that:

- The 141 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-E-Be-Nash-She-Wish Band of Pottawatomi (previously listed as Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan); Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, Michigan State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Michigan State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian

organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15713 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7374; NPS-WASO-NAGPRA-NPS0043395; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Louisiana Division of Archaeology, Office of Cultural Development, Baton Rouge, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Louisiana Division of Archaeology has completed an inventory of human remains and has determined that there is no lineal descendant and no Indian Tribe or Native Hawaiian organization with cultural affiliation.

DATES: Upon request, repatriation of the human remains in this notice may occur on or after September 2, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Karla Oesch, Collections Manager, Louisiana Division of Archaeology, P.O. Box 44247, Baton Rouge, LA 70804, email koesch@crt.la.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Louisiana Division of Archaeology, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least two individuals have been identified. No associated funerary objects are present. On October 28, 2018, remains of two individuals were seized by Louisiana Department of Wildlife and

Fisheries from a vehicle search in Chatham, LA, in Jackson Parish. On November 27, 2018, the individuals were transported by Louisiana State Police to LSU FACES Laboratory in Baton Rouge for identification. On June 26, 2020, the individuals were escorted to Louisiana Division of Archaeology. These individuals were seized during criminal investigation; it is unknown where they were being transported from and there were no associated materials. Additional osteological research could not provide any further information.

Human remains representing at least one individual has been identified. No associated funerary objects are present. The human remains were given to the University of Louisiana Monroe at an unknown time in the past. No documents were collected. In 2019, Diana Greenlee escorted the remains to Louisiana Division of Archaeology. This individual was transferred to the university at some point prior to 2019 with no associated materials or records. Additional osteological research could not provide any further information.

Human remains representing at least one individual have been identified. No associated funerary objects are present. The human cranium fragment was collected at an unknown time in the past by a member of the Watkins family. In September 2021, Nancy Watkins donated her family's artifact collection to Louisiana Division of Archaeology. There is no indication of when or where this individual was collected, though notes from other locations indicate the collector was recording some trips ca. 1950-1960. Additional osteological research could not provide any further information.

Consultation

Invitations to consult were sent to the Alabama-Coushatta Tribe of Texas; Caddo Nation of Oklahoma; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; Quapaw Nation; Seminole Tribe of Florida; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Osage Nation; The Seminole Nation of Oklahoma; and the Tunica-Biloxi Indian Tribe.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains in this notice are available: none. The information, including the results of consultation, identified.

1. No earlier group connected to the human remains.

2. No Indian Tribe or Native Hawaiian organization} connected to the human remains.

3. No relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

Determinations

The Louisiana Division of archaeology has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- No known lineal descendant who can trace ancestry to the human remains in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains described in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Upon request, repatriation of the human remains described in this notice to a requestor may occur on or after September 2, 2026. If competing requests for repatriation are received, the Louisiana Division of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Louisiana Division of Archaeology is responsible for sending a copy of this notice to the Indian Tribes or Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 24, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-15697 Filed 7-31-26; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-469 and 731-TA-1168 (Third Review)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930, as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 3, 2026. To be assured of consideration, the deadline for responses is September 2, 2026. Comments on the adequacy of responses may be filed with the Commission by October 16, 2026.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202-205-3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On November 10, 2010, the Department of Commerce ("Commerce") issued antidumping and countervailing duty orders on imports of certain seamless carbon and alloy steel standard, line, and pressure pipe from China (75 FR 69050). Commerce issued a continuation of the antidumping and countervailing duty orders on imports of certain seamless carbon and alloy steel standard, line, and pressure pipe from China following Commerce's and the Commission's first five-year reviews,

effective March 16, 2016 (81 FR 14089) and second five-year reviews, effective September 14, 2021 (86 FR 51118). The Commission is now conducting its third five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of all certain seamless carbon and alloy steel standard, line, and pressure pipe less than or equal to 16 inches in outside diameter, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of certain seamless carbon and alloy steel standard, line, and pressure pipe less than or equal to 16 inches in outside diameter.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign

manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties

authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on September 2, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on October 16, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this

time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–701. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a

U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2020.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2025, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic*

Like Product accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*,

provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2020, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These proceedings are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026–15646 Filed 7–31–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0109]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Procurement Collusion Strike Force Complaint Form

AGENCY: Antitrust Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Antitrust Division (ATR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 2, 2026.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sarah Oldfield, Deputy Chief Legal Advisor, Antitrust Division, United States Department of Justice, 950 Pennsylvania Street NW, Room 3304, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Procurement Collusion Strike Force Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Antitrust Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary respondents will be individuals or households. The Procurement Collusion Strike Force (PCSF) complaint form facilitates reporting by the public of complaints, concerns, and tips regarding potential antitrust crimes affecting government procurement, grants, and program funding. Respondents will be able to complete and submit information electronically through the PCSF complaint form on the Antitrust Division's website.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* average of 100 respondents annually and 30 minutes for an individual to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* estimate 50 annual burden hours associated with this collection.

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two

Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: July 30, 2026.

Darwin Arceo,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2026–15645 Filed 7–31–26; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2014–06; Application Number D–11981]

Amendment to Exemption for Certain Prohibited Transactions Involving AT&T Inc. (Together With AT&T Inc.'s Affiliates, AT&T or the Applicant) Located in Dallas, Texas

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Exemption Amendment.

SUMMARY: Prohibited Transaction Exemption (PTE) 2014–06 provided an exemption for AT&T to contribute approximately \$9.21 billion of employer securities (the Preferred Interests) and other assets to the AT&T Pension Benefit Plan (the Plan). This notice amends PTE 2014–06 to permit certain modifications (the Modifications) that were made with respect to the terms and provisions governing the Plan's holding and disposition of the Preferred Interests. Absent this amendment to PTE 2014–06 (Exemption Amendment), the Modifications would have resulted in violations of the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code).

DATES: *Exemption date:* Pursuant to this Exemption Amendment: Sections I, II and III of PTE 2014–06 are in effect from September 9, 2013, through October 14, 2018; and Sections IV, V, VI, and VII of PTE 2014–06, which are added by this Exemption Amendment, are in effect from October 15, 2018, through April 5, 2023.

FOR FURTHER INFORMATION CONTACT: Anna Vaughan, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Benefits of the Exemption Amendment

The Plan received \$80 million for accepting the Modifications. Further,

the Modifications increased the transferability of the Preferred Interests.

Background

On March 17, 2026, the Department published a proposed amendment to PTE 2014–06 to permit the Modifications (the Proposed Exemption Amendment).¹ In general, the Modifications: (1) provide that the Preferred Interests are transferable by the Plan and all subsequent holders of the Preferred Interests without AT&T's prior approval; (2) provide that any holder of the Preferred Interests can exercise a put option requiring AT&T to purchase the Preferred Interests; (3) update AT&T's ability to exercise the redemption option for the Preferred Interests; (4) modify the exercise periods of the put option and redemption option so that during each calendar quarter, they may be exercised only during specific periods; and (5) modify the terms of AT&T's obligations to register additional AT&T common stock in the event AT&T pays for the exercise of the put option or redemption option in kind with common stock. A complete description of the Modifications and the circumstances surrounding the Modifications is set forth in the Proposed Exemption Amendment.

In the Proposed Exemption Amendment, the Department invited all interested persons to submit written comments and/or requests for a public hearing. All comments and requests for a hearing were due to the Department by June 17, 2026. The Department received no substantive comments and no requests for a public hearing.²

Based on the entire record attributable to D–11981, including the representations made by the Applicant, the Department has determined to grant the Proposed Exemption Amendment. This Exemption Amendment provides only the relief specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA or the Code. If any material statement in the record attributable to this Exemption Amendment is not, or may no longer be, completely and factually accurate, AT&T must immediately alert the Department.

The complete application file (D–11981) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution

Avenue NW, Washington, DC 20210 reachable by telephone at 1–866–444–3272. For a more complete statement of the facts and representations supporting the Department's decision to grant this Exemption Amendment, please refer to the Proposed Exemption published on March 17, 2026, at 91 FR 12817.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) As required by ERISA section 408(a), the Department hereby finds that this Exemption Amendment exemption is (1) administratively feasible for the Department, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The Exemption Amendment is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this amended exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Amendment to PTE 2014–06

The Department hereby amends PTE 2014–06 (79 FR 43072, July 24, 2014) by adding Sections IV, V, VI, and VI as follows:

Section IV. Definitions

For purposes of Sections V and VI:

(a) The term “Affiliate” means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person;

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

For the purposes of clause (a)(1) above, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term “AT&T Mobility” means AT&T Mobility II LLC.

(c) The term “AT&T Shares” means shares of AT&T Inc. common stock.

(d) The term “Call Option” means the right of AT&T under the Contribution Agreement to purchase all or any portion of the Preferred Interests from the Trust, from September 1, 2013, through October 14, 2018. Effective October 15, 2018, the Call Option was replaced by the Redemption Option, described below.

(e) The term “Change of Control” means: (i) the occurrence of any merger, reorganization or other transaction that results in AT&T Inc., directly or indirectly, owning less than fifty percent of the capital or profits interests (where AT&T Mobility remains taxable as a partnership), or equity (if AT&T Mobility becomes taxable as a corporation), of AT&T Mobility exclusive of the Preferred Interests and/or (ii) solely for purposes of the Contribution Agreement, a transfer of fifty percent or more of the Plan liabilities and Trust assets to an entity not under common control with AT&T Inc.

(f) The term “Committee” means the AT&T Inc. Benefit Plan Investment Committee, which has been delegated the power and authority to appoint and remove trustees and investment managers, and to enter into and amend trust agreements and other agreements relating to the management of Plan assets and, in respect of such power and authority, has been designated by AT&T Services, Inc. as a “named fiduciary” of the Plan.

(g) The term “Contingent Event” means (1) the first date that the Issuer's “debt-to-total-capitalization ratio” (as defined in the Contribution Agreement and the LLC Agreement, as applicable) exceeds that of AT&T, (2) the date on which AT&T is rated below investment grade for two consecutive calendar

¹ 91 FR 12817.

² All information submitted by the Applicant to the Department in connection with this Exemption Amendment is available through the Department's Public Disclosure Room, by referencing D–11981.

quarters by at least two of the following rating agencies: (x) S&P Global Ratings, (y) Moody's, or (z) Fitch Group, or (3) a Change of Control.

(h) The term "Contribution Agreement" means the Amended and Restated Contribution Agreement between Brock Fiduciary Services LLC, JPMorgan Chase Bank, N.A., as Directed Trustee of the Trust, AT&T Inc. and AT&T Mobility II LLC, dated October 15, 2018.

(i) The term "Distributions" means distribution rights carried by the Preferred Interests of \$1.75 per Preferred Interest, for a total of \$560 million per year in cash payable to the Trust as measured on the date of the Contribution, in accordance with the terms of the Contribution Agreement.

(j) The term "Exercise Period" means, with respect to the Put Option, the period comprised of the first 15 business days and the last 15 business days of any fiscal quarter of AT&T; and with respect to the Redemption Option, the period beginning on the 26th business day of any fiscal quarter of AT&T and ending on the 35th business day of such quarter.

(k) The term "Fair Market Value of the Preferred Interest" means (1) in cases of the exercise of the Put Option on or after September 9, 2020 (other than an exercise prior to September 9, 2022 as the result of a Contingent Event) OR upon the exercise of the Redemption Option on or after September 9, 2022, an amount determined based upon \$25.00 per Preferred Interest plus any accrued and unpaid Distributions and market conditions at the time; and (2) in cases of the exercise of the Put Option prior to September 9, 2022 as the result of a Contingent Event OR upon the exercise of the Redemption Option prior to September 9, 2022, an amount determined based upon the sum of: (x) \$25.00 per Preferred Interest plus any accrued and unpaid Distributions, and (y) the present value of future Distributions through and ending on September 9, 2022 (excluding accrued and unpaid Distributions accounted for in (x) immediately above).

(l) The term "Investment Management Agreement" means the Investment Management Agreement by and between AT&T Services, Inc., the AT&T Benefit Plan Investment Committee, AT&T Inc. and Brock Fiduciary Services LLC, amended as of October 15, 2018.

(m) The term "Independent Appraiser" means an individual or entity meeting the definition of a "Qualified Independent Appraiser" under 29 CFR 2570.31(i) retained to determine, on behalf of the Plan, the Fair Market Value of the Preferred

Interests as of the date of the Contribution and while the Preferred Interests are held on behalf of the Plan. For avoidance of doubt, the Independent Appraiser may be the Independent Fiduciary, provided it qualifies as a Qualified Independent Appraiser.

(n) The term "Independent Fiduciary" means Brock Fiduciary Services LLC and any other fiduciary who: (1) is independent or unrelated to AT&T Inc. and its Affiliates and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA); and (2) if relevant, succeeds Brock Fiduciary Services LLC pursuant to the terms of the Investment Management Agreement, Independent Fiduciary Agreement, or other relevant agreement. The Independent Fiduciary will not be deemed to be independent of and unrelated to AT&T Inc. and its Affiliates if: (i) such fiduciary directly or indirectly controls, is controlled by or is under common control, with AT&T and its Affiliates; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this amendment other than for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from AT&T Inc. and its Affiliates, exceeds two percent (2%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. For the purposes of this Section IV(n), the term "control" has the meaning set forth in Section IV(a) above.

(o) The term "Independent Fiduciary Agreement" means the Independent Fiduciary Agreement dated May 1, 2012, as amended, by and among AT&T Services, AT&T Inc. and Brock Fiduciary Services LLC.

(p) The term "Issuer" means AT&T Mobility II LLC.

(q) The term "LLC Agreement" means the Fourth Amended and Restated Limited Liability Company Agreement of AT&T Mobility II LLC, effective October 15, 2018.

(r) The term "Modifications" means the modifications negotiated and approved by the Independent Fiduciary that became effective on October 15, 2018, that, in general: (1) provide that the Preferred Interests are transferable by the Trust and all subsequent holders of the Preferred Interests without the Issuer's prior approval; (2) provide that the Put Option may be exercised by any holder of the Preferred Interests; (3) remove the Call Option from the Contribution Agreement, and add the Redemption Option to the LLC Agreement, whereby AT&T Mobility has the right to redeem the Preferred Interests; and (4) preserve all of the Trust's rights with respect to the Preferred Interests, except for the following: (i) the Put Option was modified so that during each calendar quarter, it may be exercised only during specific periods that alternate with the periods during which the Redemption Option may be exercised, and (ii) the Registration Rights Agreement was modified to change the consequences to AT&T if it were to fail to register AT&T Inc. common stock received by the Trust as a result of the exercise of the Put Option or the Redemption Option.

(s) The term "Option Price" means an amount equal to the greater of: (1) the Fair Market Value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter preceding the date of exercise of the Redemption Option or the Put Option, as the case may be, or for the portion of Preferred Interests that are not immediately purchased by AT&T or the Issuer pursuant to the Redemption Option or the Put Option because of the limitation on AT&T's obligation to purchase the Preferred Interests pursuant to the Put Option to no more than 106,666,667 Preferred Interests in any twelve month period, (except in the event of a Change of Control) the Fair Market Value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter immediately preceding the date such portion of the Preferred Interest is actually purchased by AT&T Inc.; and (2) the sum of \$25.00 (i.e., \$8 billion in the aggregate) plus any accrued and unpaid Distributions.

(t) The term "Plan" means the AT&T Pension Benefit Plan.

(u) The term "Preferred Interests" means the Series A Cumulative Perpetual Preferred Membership Interests in AT&T Mobility, an indirect wholly owned limited liability company subsidiary of AT&T Inc., as such Preferred Interests were modified effective October 15, 2018, pursuant to the Contribution Agreement, the LLC

Agreement and the Registration Rights Agreement.

(v) The term “Put Option” means the right of the Independent Fiduciary on behalf of the Trust to require AT&T to purchase the Preferred Interests pursuant to the terms and conditions set forth in the Contribution Agreement; or the right of any holder of the Preferred Interests (including the Independent Fiduciary on behalf of the Trust) to require the Issuer to purchase the Preferred Interests pursuant to the terms and conditions set forth in the LLC Agreement, as applicable, at the Option Price per Preferred Interest, at any time and from time to time on or after the earliest of: (1) the first date that the Issuer’s debt-to-total-capitalization ratio exceeds that of AT&T; (2) the date on which AT&T Inc. is rated below investment grade for two consecutive calendar quarters by at least two of the following rating agencies: (x) S&P Global Ratings, (y) Moody’s, or (z) Fitch Group; (3) a Change of Control; or (4) on or after September 9, 2020, as long as the exercise is within the Exercise Period.

(w) The term “Redemption Option” means the right of the Issuer to redeem the Preferred Interests in whole or in part pursuant to the terms and conditions set forth in the LLC Agreement, at the Option Price per Preferred Interest at any time and from time to time on or after the earliest of: (1) a Change of Control; or (2) September 9, 2022, the ninth anniversary of the date on which the Preferred Interests were contributed to the Trust, as long as such redemption is within the Exercise Period.

(x) The term “Registration Rights Agreement” means the Amended and Restated Registration Rights Agreement by and among AT&T Inc., the SBC Master Pension Trust and Brock Fiduciary Services LLC, as Independent Fiduciary and investment manager with respect to the AT&T Pension Benefit Plan, a participating plan in the SBC Master Pension Trust, dated October 15, 2018.

(y) The term “Trust” means the SBC Master Pension Trust, established and maintained pursuant to an agreement between AT&T Inc. and JPMorgan Chase Bank, N.A., as amended and restated effective as of February 1, 2012.

Section V. Covered Transactions

Effective October 15, 2018 through April 5, 2023, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) and the sanctions resulting from the application of Code section 4975 (a) and (b), by

reason of Code section 4975(c)(1)(A), 4975(c)(1)(B), 4975(c)(1)(D) and 4975(c)(1)(E), shall not apply to AT&T and the Plan with respect to the following transactions, provided that the conditions described in Section VI are satisfied:

(a) The holding of the Preferred Interests by the Trust on behalf of the Plan;

(b) The granting by the Trust to the Issuer of the Redemption Option, and the disposition of the Preferred Interests in connection with the exercise of the Redemption Option; and

(c) The holding by the Trust of the Put Option, and the disposition by the Trust of the Preferred Interests in connection with the Trust’s exercise of the Put Option.

Section VI. Conditions

(a) The Preferred Interests had a liquidation value of \$25 per Preferred Interest and carried distribution rights of \$1.75 per Preferred Interest (*i.e.*, the Distributions), for a total of \$560 million per year in cash payable to the Trust as measured on the date of the Contribution, in accordance with the terms of the Contribution Agreement;

(b) The Plan did not incur fees, costs or other charges in connection with the transactions described in Section V, other than fees and expenses of the Independent Fiduciary for duties required by this exemption, as amended, as described herein;

(c) For the duration of the Investment Management Agreement, an Independent Fiduciary acted solely on behalf of the Plan and the Trust, represented the Plan’s interests for all purposes with respect to the Preferred Interests, and determined, prior to entering into any of the transactions described in Section V, that each such transaction was in the interest of the Plan;

(d) The selection of the Independent Fiduciary was based solely on the Independent Fiduciary’s qualifications to serve as a qualified independent fiduciary and was made after a prudent process that included a determination that the Independent Fiduciary was qualified to perform the work required in connection with this exemption, and that the Independent Fiduciary did not have any interests in any party in interest involved in the covered transactions or in the covered transactions themselves which could affect the exercise of such fiduciary’s best judgment as a fiduciary;

(e) For the duration of the Investment Management Agreement, the Independent Fiduciary had complete discretion regarding the disposition of

any AT&T Shares received in exchange for Preferred Interests, in accordance with the Investment Management Agreement, as further defined below, and the Registration Rights Agreement;

(f) The Independent Fiduciary negotiated and approved, on behalf of the Plan and the Trust, the terms and conditions of the Contribution Agreement, including the terms of the Preferred Interests and the Call Option set forth in the Contribution Agreement, as well as the terms of the Redemption Option and the Put Option set forth in the LLC Agreement, and terms of the Investment Management Agreement and the Registration Rights Agreement, and any modification of the Plan’s rights and obligations under any term, definition or condition of the amendment, including the Modifications, in advance of such term, condition or modification;

(g) The Independent Fiduciary managed the holding and disposition of the Preferred Interests and took whatever action it deemed necessary to protect the rights of the Plan with respect to the Preferred Interests or the AT&T Shares received in connection with the exercise of the Redemption Option or the Put Option;

(h) The Independent Fiduciary monitored AT&T and the Issuer to determine whether a Change of Control, or a different Contingent Event, had occurred that permitted the Trust to dispose of the Preferred Interests;

(i) The Independent Fiduciary: did not enter into any agreement, arrangement, or understanding that included any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary’s work; or waive any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transactions that are the subject of this exemption;

(j) An Independent Appraiser, acting on behalf of the Plan, determined the Fair Market Value of the Preferred Interests contributed to the Trust on behalf of the Plan as of the date of the Contribution and while the Preferred Interests were held on behalf of the Plan, and for all purposes under this exemption, consistent with sound principles of valuation. The Independent Appraiser: did not enter into, any agreement, arrangement, or understanding that included any provision that provides for the direct or indirect indemnification or reimbursement of the Independent

Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Appraiser's work; or waive any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Independent Appraiser with respect to the transactions that are the subject of this exemption;

(k) The terms of any transactions between the Plan and a purchaser of Preferred Interests or any AT&T Shares received in connection with the Preferred Interests were no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties determined by the Independent Fiduciary at the time the contractual terms with respect to such transactions, including without limitation, the Put Option and the Redemption Option, were entered into;

(l) The Preferred Interests ranked senior to any other equity holders of the Issuer in respect of: the right to receive Distributions; and the right to receive Distributions or payments out of the assets of the Issuer upon liquidation of the Issuer, in accordance with the terms of the Contribution Agreement;

(m) In the event that the Distributions were in arrears, AT&T was restricted from making certain transfers of cash out of the Issuer or declaring dividends on and repurchasing AT&T Shares, in accordance with the terms of the Contribution Agreement;

(n) AT&T was not permitted to declare any dividends on, or make any repurchases of, AT&T Shares during any time there remained any unregistered AT&T Shares held by the Trust that were received in exchange for the Preferred Interests;

(o) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the later of (1) the latest date that exemptive relief under this exemption, as amended, is necessary to avoid engaging in a non-exempt prohibited transaction, or (2) the date of publication of this exemption, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (p)(1) below to determine whether conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest

other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (p) below;

(p) (1) Except as provided in section (2) of this paragraph and not withstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (o) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) AT&T or any duly authorized representative of AT&T;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) the Committee or any duly authorized representative of the Committee; and

(v) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (p)(1) (iii) or (v) shall be authorized to examine the trade secrets of AT&T or commercial or financial information that is privileged or confidential, and should AT&T refuse to disclose information on the basis that such information is exempt from disclosure, AT&T shall by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information;

(q) Notwithstanding any provision in this exemption, as amended, to the contrary, the Preferred Interests were transferable by the Trust and all subsequent holders of the Preferred Interests at the holder's sole discretion in accordance with the terms of the LLC Agreement;

(r) AT&T made an additional cash payment to the Trust of \$80 million dollars no later than October 15, 2018, solely in connection with the Modifications described herein;

(s) All the material facts and representations set forth in the Summary of Facts and Representation must be true and accurate and the Applicant will promptly inform the Department in the event that it becomes aware that any material fact or representation is no longer true and accurate; and

(t) AT&T must provide to the Department the records necessary to

demonstrate that the conditions of this exemption, as amended, have been met, within 30 days from the date the Department requests such records.

Section VII. Exemption Dates

(a) Sections I, II and III of PTE 2014–06 are in effect between September 9, 2013, through October 14, 2018.

(b) Sections IV, V and VI of PTE 2014–06, which are added by this amendment, are in effect October 15, 2018, through April 5, 2023.

Signed at Washington, DC, this 21st day of July 2026.

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026–15620 Filed 7–31–26; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate Updates for Non-Range Occupations

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing this notice to announce updates to the Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services in non-range occupations. AEWRs are the minimum wage rates that must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment to ensure that the wages and working conditions of workers in the United States similarly employed are not adversely affected.

DATES: These rates are effective August 3, 2026. However, for entities and states subject to the court order in *Kansas et al. v. U.S. Dep't of Labor* (749 F. Supp. 3d 1363 (S.D. Ga. 2024)), these rates are effective August 17, 2026.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification (OFLC), email: ETA.OFLC.Forms@dol.gov.

SUPPLEMENTARY INFORMATION: Consistent with the methodology established in the interim final rule, *Adverse Effect Wage*

Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States (2025 AEWIR IFR),¹ this notice updates AEWIRs using wage data from the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) survey as the basis for all non-range AEWIR determinations. This methodology establishes AEWIRs based on two skill-based categories, with corresponding housing adjustments that only apply when compensating H-2A workers under temporary agricultural labor certifications, consistent with regulatory requirements. In this notice, DOL also announces an update to the average AEWIR, which is used to calculate adjustments to required bond amounts for H-2A Labor Contractors.

The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H-2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

DOL H-2A regulations at 20 CFR 655.120 and 655.122(l) provide that, for non-range occupations, employers must pay their H-2A workers and workers in corresponding employment at least the highest of various specified wage sources, including the AEWIR. Further, when the AEWIR is updated during a work contract, the employer must pay at least that updated AEWIR upon the effective date of the new AEWIR, if the updated AEWIR is higher than the highest of the previous AEWIRs, a prevailing rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate. See 20 CFR 655.120(b)(5). Similarly, when the AEWIR is updated during a work contract and is lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least

the wage rate guaranteed on the job order. See 20 CFR 655.120(b)(6).

Pursuant to the 2025 AEWIR IFR, AEWIRs for non-range agricultural occupations are determined using wage data from the BLS OEWS survey. This methodology determines the AEWIRs for H-2A job opportunities using the annual average hourly gross wage for each U.S. state or territory, differentiated by two skill or qualification levels: Skill Level I (Entry-Level) and Skill Level II (Experience-Level). A Skill Level I AEWIR applies to job opportunities with minimum qualifications consistent with entry-level positions, in which workers are not required to possess formal education or specialized training credentials. A Skill Level II AEWIR applies to job opportunities requiring qualifications commensurate with experienced or otherwise fully proficient workers, who through education, training, or experience, have demonstrated the skills or knowledge necessary to perform the duties of the H-2A job opportunity. AEWIRs for most job opportunities will continue to be classified within the five Standard Occupational Classification (SOC) codes comprising the field and livestock workers (combined) category.²

Current regulation requires the OFLC Administrator to publish a **Federal Register** notice at least once in each calendar year to establish each set of AEWIRs and corresponding housing compensation adjustments. See 20 CFR 655.120(b)(4).

AEWIR Determinations Using OEWS Data

In accordance with 20 CFR 655.120(b)(1)(i), AEWIRs for occupations within the field and livestock workers (combined) category are calculated using statewide³ annual average hourly wages reported by the OEWS survey for the relevant SOC codes. Where a statewide annual average hourly gross wage in the U.S. state or territory at either skill level is not reported by the OEWS, the AEWIR for the field and livestock workers (combined) category shall be the national annual average

hourly gross wage at that skill level, as reported by the OEWS survey.

Similarly, and consistent with 20 CFR 655.120(b)(1)(ii), AEWIRs for all other occupations are determined using the statewide annual average hourly gross wage for the SOC code for the State, or equivalent district or territory, as reported by the OEWS survey. Where a statewide annual average hourly gross wage in the State at either skill level is not reported by the OEWS survey, the AEWIR for each SOC shall be the national annual average hourly gross wage for that occupation at that skill level, as reported by the OEWS survey.

Based on the most recently published OEWS survey,⁴ the OFLC Administrator is publishing the statewide hourly AEWIRs applicable to all non-range H-2A job opportunities. Additionally, DOL is updating and disclosing the statewide downward compensation adjustments to the applicable AEWIRs that can only be applied to H-2A workers who are provided with housing at no cost pursuant to 20 CFR 655.120(b)(3). All hourly AEWIRs determined under 20 CFR 655.120(b) are available for each SOC code and geographic area at the following URL: <https://flag.dol.gov/wage-data/adverse-effect-wage-rates>. At the URL, DOL provides a searchable spreadsheet and other resources that enable interested parties to search by U.S. state or territory and SOC code for the OEWS-based AEWIR applicable to an H-2A job opportunity.

Average AEWIR Determination

Section 20 CFR 655.103(b) defines "average AEWIR" as "the simple average of the [AEWIR] applicable to the SOC45–2092 . . . and published by the OFLC Administrator in accordance with § 655.120." Accordingly, the calculation of the average AEWIR requires the simple average of the AEWIRs applicable to SOC45–2092 across all U.S. states and territories, as reported by the OEWS survey, and published by the OFLC Administrator. Because the regulatory text specifies that the simple average must be taken across the AEWIRs "applicable to the SOC45–2092," the calculation encompasses the sum of the complete set of applicable AEWIRs across both skill levels without any standardized adjustments referenced above divided by the number of AEWIRs applicable to SOC 45–2092 included in the published searchable spreadsheet at the aforementioned URL. Therefore, the current average AEWIR determined

² The OEWS reports the annual average hourly gross wage for each U.S. state or territory aggregated across the following SOC codes contained within the field and livestock (combined) category: 45–2041 Graders and Sorters, Agricultural Products; 45–2091 Agricultural Equipment Operators; 45–2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse; 45–2093 Farmworkers, Farm, Ranch, and Aquacultural Animals; and 53–7064 Packers and Packagers, Hand.

³ See 20 CFR 655.120(b)(1)(iv) ("For purposes of paragraphs (b)(1)(i) and (ii) of this section, the term State and state include the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.")

⁴ See Bureau of Labor Statistics, Occupational Employment and Wage Statistics (OEWS) data, OEWS Databases (May 15, 2026), available at <https://www.bls.gov/oes/data.htm>. Note that the OEWS data released represent May 2025 estimates.

¹ See 90 FR 47914 (Oct. 2, 2025).

under 20 CFR 655.103(b), which is used to calculate the bond amounts required under 20 CFR 655.132(c)(2)(ii), is \$15.96 and is also available at the following URL: <https://flag.dol.gov/wage-data/adverse-effect-wage-rates>.

(Authority: 20 CFR 655.120(b)(4); 20 CFR 655.103(b))

Marek Laco,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026-15673 Filed 7-31-26; 8:45 am]

BILLING CODE 4510-FP-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures for Participant Directed Individual Account Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 2, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Department published a final regulation under ERISA section 404(a), with conforming amendments to the regulations under ERISA section 404(c), that requires plan fiduciaries to disclose plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (e.g., 401(k)-type plans) for plan years that began on or after November 1, 2011, and at least annually thereafter (defined by regulation as at least once in any 14-month period, without regard to

whether the plan operates on a calendar or fiscal year basis).

The final rule, 29 CFR 2550.404a-5(c), requires three sub-categories of plan-related information to be provided to participants and beneficiaries. The first sub-category is general plan information, which includes how participants may give investment instructions or exercise proxy voting or tendering rights, restrictions on transferring account assets among investment alternatives, and identification of the plan’s designated investment alternatives and designated investment managers (29 CFR 2550.404a-5(c)(1)). The second sub-category of plan-related information is administrative expense information, which refers to explanations of any fees and expenses for general plan administrative services (e.g., legal, accounting, recordkeeping) charged to individual accounts and the basis for allocating such charges among the accounts (e.g., pro-rata, per capita). (29 CFR 2550.404a-5(c)(2)). The third sub-category of plan-related information is individual expense information, which describes expenses assessed against accounts based on the actions taken by individual participants or beneficiaries. This would include charges for processing participant loans and qualified domestic relations orders. (29 CFR 2550.404a-5(c)(3)). Changes to this information must be disclosed at least 30 days but no more than 90 days before the effective date of the change except for unforeseen events or circumstances beyond the plan administrator’s control.

The rule also requires plan administrators to disclose three sub-categories of investment-related information to participants and beneficiaries on or before their date of eligibility, which relates to the plans designated investment alternatives. The first sub-category of information is information required to be provided automatically (29 CFR 2550.404a-5(d)(1)). For each designated investment alternative, the plan must disclose specified identifying information, past performance data, comparable benchmark returns, fee and expense information, and an internet website address that is sufficiently specific to lead participants and beneficiaries to specified supplemental information for each investment alternative. Investment-related information must be furnished in a chart or similar format designed to help participants compare the plan’s investment alternatives across each category of information. (29 CFR 2550.404a-5(d)(2)). To facilitate compliance, the rule includes a model chart that may be used by plan

fiduciaries to satisfy this requirement. The second sub-category of investment-related information is post-investment information. Following a participant’s investment in an alternative, the plan administrator must provide any materials it receives regarding voting, tender or similar rights in the alternative (“pass-through materials”) to the extent such rights are passed through to the participant or beneficiary (29 CFR 2550.404a-5(d)(3)). The third sub-category of investment-related information is information to be provided upon request (29 CFR 2550.404a-5(d)(4)). Participants may request the plan to provide prospectuses, financial reports, as well as statements of valuation and a list of assets held by an investment alternative. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 18, 2026 (91 FR 7528).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Disclosures for Participant Directed Individual Account Plans.

OMB Control Number: 1210-0090.

Affected Public: Private sector.
Total Estimated Number of Respondents: 72,1061.
Total Estimated Number of Responses: 629,131,459.
Total Estimated Annual Time Burden: 4,339,144 hours.
Total Estimated Annual Other Costs Burden: \$25,981,640.
 (Authority: 44 U.S.C. 3507(a)(1)(D).)

Michael Howell,
Senior Paperwork Reduction Act Analyst.
 [FR Doc. 2026–15668 Filed 7–31–26; 8:45 am]
BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this the Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 2, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 (this is not a toll-free number), or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Consistent with 40 U.S.C. 581(h)(2), Federal Management Regulation (FMR) Part 102, Public Law 102–74, Subpart D, and the GSA Delegation under which the Department of Labor (DOL) operates the Frances Perkins Building (FPB), DOL allows the use of public space within the FPB for non-commercial purposes. As provided by FMR 102–74, Subpart D, (41 CFR 102–74–460) any person or entity that wishes to use public space in a Federal building is required to submit an application for a permit. To capture the nature of the request, information such as the requester, description of event, date, time, and approvals are collected in order to review the appropriateness of the request and make a determination of the availability of the requested public space. DOL experience shows that the agency receives fewer than 10 non-DOL Agency requests to use FPB public space in any given year; however, as the information is contained in a rule of general applicability, the information collection is deemed to involve 10 or more persons. See 5 CFR 1320.3(c)(4)(ii). DOL, consequently, must maintain PRA authority to conduct this information collection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 6, 2026 (91 FR 17309).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Type of Review: Extension.

Agency: DOL—OASAM.

Title of Collection: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

OMB Number: 1225–0087.
Affected Public: Private Sector, not-for-profit institutions.
Number of Respondents: 10.
Number of Responses: 10.
Annual Burden Hours: 1 hour.
Annual Respondent or Recordkeeper Cost: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nora Hernandez,
Departmental Clearance Officer.
 [FR Doc. 2026–15669 Filed 7–31–26; 8:45 am]
BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0048]

Powered Platforms for Building Maintenance Standard; Extension of the Office of Management and Budget’s (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget’s (OMB) approval of the information collection requirements specified in the Powered Platforms for Building Maintenance standard.

DATES: Comments must be submitted (postmarked, sent, or received) by October 2, 2026.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA

docket number (OSHA–2010–0048) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA’s estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements: This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA’s estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes

information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

Paragraph (e)(9) of the Standard requires that employers develop and implement a written emergency action plan for each type of powered platform operation. The plan must explain the emergency procedures that workers are to follow if they encounter a disruption of the power supply, equipment failure, or other emergency. Prior to operating a powered platform, employers must notify workers how they can inform themselves about alarm systems and emergency escape routes, and emergency procedures that pertain to the building on which they will be working. Employers are to review with each worker those parts of the emergency action plan that the worker must know to ensure their protection during an emergency; these reviews must occur when the worker receives an initial assignment involving a powered platform operation and after the employer revises the emergency action plan.

According to paragraph (f)(5)(i)(C), employers must affix a load rating plate to a conspicuous location on each suspended unit that states the unit’s weight and the rated load capacity. Paragraph (f)(5)(ii)(N) requires employers to mount each emergency electric operating device in a secured compartment and label the device with instructions for its use. After installing a suspension wire rope, paragraphs (f)(7)(vi) and (f)(7)(vii) mandate that employers attach a corrosion-resistant tag with specified information to one of the wire rope fastenings if the rope is to remain at one location. In addition, paragraph (f)(7)(viii) requires employers who re-socket a wire rope to either stamp specified information on the original tag or put that information on a supplemental tag and attach it to the fastening.

Paragraphs (g)(2)(i) and (g)(2)(ii) require that building owners, at least annually, have a competent person inspect the supporting structures of their buildings; inspect and, if necessary, test the components of the powered platforms, including control systems; inspect/test components

subject to wear (*e.g.*, wire ropes, bearings, gears, and governors); and certify these inspections and tests. Under paragraph (g)(2)(iii), building owners must maintain and, on request, disclose to OSHA a written certification record of these inspections/tests; this record must include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the building support structure and equipment inspected/tested.

Paragraph (g)(3)(i) mandates that building owners use a competent person to inspect and, if necessary, test each powered platform facility according to the manufacturer’s recommendations every 30 days, or prior to use if the work cycle is less than 30 days. Under paragraph (g)(3)(ii), building owners must maintain and, on request, disclose to the agency a written certification record of these inspections/tests; this record is to include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the powered platform facility inspected/tested.

According to paragraph (g)(5)(iii), building owners must use a competent person to thoroughly inspect suspension wire ropes for a number of specified conditions once a month, or before placing the wire ropes into service if the ropes are inactive for 30 days or longer. Paragraph (g)(5)(v) requires building owners to maintain and, on request, disclose to OSHA a written certification record of these monthly inspections; this record must consist of the date of the inspection, the signature of the competent person who performed it, and the number/identifier of the wire rope inspected.

Upon completion of this training, paragraph (i)(1)(v) specifies that employers must prepare a written certification that includes the identity of the worker trained, the signature of the employer or the trainer, and the date the worker completed the training. In addition, the employer must maintain a worker’s training certificate for the duration of their employment and, on request, make it available to OSHA.

Emergency action plans allow employers and workers to anticipate, and effectively respond to, emergencies that may arise during powered platform operations. Affixing load rating plates to suspended units, instructions to emergency electric operating devices, and tags to wire rope fasteners prevent workplace accidents by providing information to employers and workers regarding the conditions under which

they can safely operate these system components.

Requiring building owners to establish and maintain written certification of inspections and testing conducted on the supporting structures of buildings, powered platform systems, and suspension wire ropes provides employers and workers with assurance that they can operate safely from the buildings using equipment that is in safe operating condition.

The training requirements increase worker safety by allowing them to develop the skills and knowledge necessary to effectively operate, use, and inspect powered platforms, recognize and prevent safety hazards associated with platform operation, respond appropriately under emergency conditions, and maintain and use their fall protection arrest system. In addition, the paperwork requirements specified by the Standard provide the most efficient means for an OSHA compliance officer to determine whether or not employers and building owners are providing the required notification and certification.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Powered Platforms for Building Maintenance Standard. The agency is seeking to decrease the current burden from 130,776 hours to 130,469 hours, a difference of 307 hours. This decrease is due to a reduction in the number of employees receiving training annually.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Powered Platforms for Building Maintenance Standard.

OMB Control Number: 1218–0121.

Affected Public: Business or other for-profits.

Number of Respondents: 900.

Number of Responses: 175,483.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 130,469.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2010–0048). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY) (877) 889–5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 7–2025 (90 FR 27878).

Signed at Washington, DC, on July 23, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–15672 Filed 7–31–26; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; EAXX–429–00–000–1778044870; NRC–2026–1719]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Draft Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft environmental assessment (EA) and draft finding of no significant impact (FONSI) regarding the evaluation of the reasonably foreseeable environmental effects from proposed Federal actions related to reauthorizing power operations at Duane Arnold Energy Center (DAEC). Specifically, the NRC is considering issuance of an exemption and three license amendments, which were requested by NextEra Energy Duane Arnold, LLC (NEDA) to support the potential reauthorization of power operations at DAEC. The U.S. Department of Energy Office of Energy Dominance Financing is a cooperating agency on the draft EA.

DATES: Submit comments by September 2, 2026. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–1719. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email:** Comments may be submitted to the NRC electronically using the email address DAECRestartEnvironmental@nrc.gov.

- **Mail comments to:** Office of Nuclear Material Safety and Safeguards, Mail

Stop: TWFN-5-A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Guidance and Publications Branch.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kim Conway, telephone: 301-415-1335; email: Kimberly.Conway@nrc.gov, or Kevin Folk, telephone: 301-415-6944; email: Kevin.Folk@nrc.gov. Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2026-1719 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2026-1719.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

- *Public Library:* A copy of the draft EA and draft FONSI is available for public review at the following public library location: Hiawatha Public Library, 150 West Willman Street, Hiawatha, Iowa 52233.

- *NRC Public Project Website:* The draft EA and draft FONSI along with

information regarding DAEC, including licensing, operation, decommissioning, and potential restart, is available at <https://www.nrc.gov/info-finder/reactors/duan>.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2026-1719 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

DAEC consists of a single boiling water nuclear reactor located in Linn County, Iowa. Originally licensed for operation on February 22, 1974, the NRC issued a renewed facility license (RFL) for DAEC on December 10, 2010, with the license term expiring on February 21, 2034.

On August 27, 2020, and October 12, 2020, NEDA submitted certifications that it had permanently ceased operations at DAEC and had permanently removed fuel from the reactor vessel, respectively, in accordance with paragraph 50.82(a)(1) of title 10 of the *Code of Federal Regulations* (10 CFR). Upon the NRC's docketing of these certifications, the RFL no longer authorized operation of the reactor or emplacement or retention of fuel into the reactor vessel, as provided by 10 CFR 50.82(a)(2).

NEDA is seeking to return DAEC to power operations and has submitted for NRC approval an exemption request and three license amendment requests (LARs) in support of allowing the resumption of power operations through February 21, 2034, the previous expiration date of the facility's RFL.

A notice of opportunity to request a hearing and petition for leave to intervene was published in the **Federal Register** on April 22, 2026, regarding the three LARs. Consistent with the Atomic Energy Act of 1954, as amended, and the NRC's regulations, the NRC did not publish a notice of opportunity for hearing on the exemption request.

The NRC staff has prepared a draft EA and draft FONSI documenting its environmental review of the proposed actions related to reauthorizing power operations at DAEC. Based on its environmental review, the NRC staff has made the preliminary determination that the proposed actions will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has made the preliminary determination that it will not prepare an environmental impact statement (EIS) for the proposed actions and that a FONSI is warranted.

The NRC staff will consider comments on the draft EA and draft FONSI received over a 30-day public comment period from Federal, State, local, and Tribal officials and members of the public. After consideration of these comments, the NRC staff will make a final determination regarding whether it will prepare an EIS for the proposed actions or whether a FONSI is warranted.

The environmental review included fulfillment of the NRC's obligations related to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101, *et seq.*) (NHPA). The regulation in section 800.8 of title 36 of the *Code of Federal Regulations* (36 CFR), "Coordination with the National Environmental Policy Act," allows agencies to use their National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) process to fulfill the requirements of Section 106 of the NHPA. Therefore, pursuant to 36 CFR 800.8(c), the NRC used its process for the preparation of the EA on the proposed actions to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

III. Summary of Draft Environmental Assessment

Description of the Proposed Federal Actions and Need

The NRC's proposed actions are decisions on whether to grant or deny NEDA's interdependent, connected licensing and regulatory requests, including any revisions or supplements thereto or other regulatory or licensing requests submitted to the NRC, that are necessary to support the reauthorization

of power operations and refueling of the DAEC reactor.

The need for the NRC's proposed actions, which would collectively support the reauthorization of power operations and refueling of the DAEC reactor under the existing RFL, is to provide 610 megawatts-electric of baseload power generation capability through February 21, 2034. In support of its decision to pursue the resumption of power operations at DAEC, NEDA cites a 25-year power purchase agreement signed in 2025 with Google to supply carbon-free energy from DAEC to Google's cloud and artificial intelligence infrastructure in Iowa.

Environmental Impacts of the Proposed Federal Actions

In the draft EA, the NRC staff assessed the potential reasonably foreseeable environmental effects (impacts) from the proposed actions associated with the following relevant resource areas: land use and visual resources; meteorology, air quality, and noise; surface water resources; groundwater resources, ecological resources (terrestrial and aquatic); Federally protected ecological resources, historic and cultural resources; socioeconomic conditions; radiological and nonradiological human health; waste management; uranium fuel cycle and transportation; and postulated accidents. The NRC staff also considered decommissioning impacts as well as greenhouse gas emissions and climate change effects. The NRC staff determined that the environmental

impacts of the proposed actions would be NOT SIGNIFICANT for each potentially affected environmental resource area. In addition, the NRC staff determined that the projected effects of climate change would not alter any of the impact determinations described in the EA.

Environmental Impacts of Alternatives to the Proposed Federal Actions

The NRC staff considered a reasonable range of alternatives to the proposed actions, including an analysis of any environmental impacts of not implementing the proposed actions (*i.e.*, the no-action alternative). The NRC staff determined that there are no alternatives that meet the need for the proposed actions. For the no-action alternative, the NRC staff determined that the environmental impacts could potentially be SIGNIFICANT. In contrast, the potential environmental impacts from the proposed actions of reauthorizing power operations at the existing DAEC would be NOT SIGNIFICANT for each potentially affected environmental resource area. Therefore, the NRC staff concluded that there are no environmentally preferable alternatives to the proposed actions.

IV. Draft Finding of No Significant Impact

The proposed Federal actions before the NRC are whether to grant requests for an exemption and license amendments to support reauthorizing power operations at DAEC through the remainder of its RFL term (to February

21, 2034). The NRC staff has conducted an environmental review of these actions and prepared a draft EA. This draft FONSI incorporates by reference the draft EA summarized in Section III of this notice and referenced in Section V of this notice. Based on its preliminary determination in the draft EA that the environmental impacts of the proposed actions would be NOT SIGNIFICANT for each potentially affected resource area, the NRC staff is issuing a draft determination that the proposed Federal actions will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has made a draft determination not to prepare an EIS for the proposed Federal actions and that a FONSI is warranted.

This draft FONSI and the related environmental documents are available for public inspection as discussed in the draft EA and Section I of this notice. Before making its final determination, the NRC staff will consider comments on the draft EA and draft FONSI received over a 30-day public comment period from Federal, State, Tribal, and local officials and members of the public. Once the NRC staff makes its final determination, the NRC will publish the final EA and final FONSI or proceed to prepare an EIS.

V. Availability of Documents

The documents identified in the following table are available to interested parties through ADAMS, as indicated.

Document description	Adams accession No./ Federal Register notice
Draft Environmental Assessment and Draft Finding of No Significant Impact for the Duane Arnold Energy Center Reauthorization of Power Operations Project, dated July 27, 2026.	ML26159A001.
NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Applications for Amendments to Renewed Facility License Involving Proposed No Significant Hazards Consideration Determination and Containing Safeguards Information and Order Imposing Procedures for Access to Safeguards Information; License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures, dated April 22, 2026.	ML26091A203; 91 FR 21514.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: July 28, 2026.

For the Nuclear Regulatory Commission.

Stephen Koenick,

Chief, License Renewal Environmental Branch, Division of Licensing Projects II, Office of Nuclear Reactor Regulation.

[FR Doc. 2026-15629 Filed 7-31-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on August 17, 2026, to discuss and provide recommendations from the

subcommittee on Regulatory Guide 8.39, "Release of Patients Administered Radioactive Material" review of proposed patient release revisions in the Reforming and Modernizing the NRC's Radiation Protection Framework proposed rulemaking and draft revisions to Regulatory Guide 8.39. Meeting information, including a copy of the agenda and handouts, will be available on the ACMUI's Meetings and Related Documents web page at <https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2026> or by

emailing Ms. Sarah Hoenig at the contact information below.

Date and Time for Open Session:
August 17, 2026, from 2:30 p.m. to 4:30 p.m. EST.

DATES:

Date	Webinar information (Microsoft Teams)
August 17, 2026	Link: https://teams.microsoft.com/meet/26121850805993?p=ShplU5y6zoCOpalpVF . Meeting ID: 261 218 508 059 93. Passcode: eq3se9fs. Call in number (audio only): +1 301–576–2978, United States, Silver Spring. Phone conference ID: 871 786 031#.

Public Participation: Any member of the public who wishes to participate in the meeting via Microsoft Teams or via phone should contact Ms. Sarah Hoenig using the information below.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Hoenig, email: sarah.hoenig@nrc.gov phone: 301–415–3284.

SUPPLEMENTARY INFORMATION:

Purpose: Discuss recommendations from the subcommittee on Regulatory Guide 8.39, “Release of Patients Administered Radioactive Material” review of proposed patient release revisions in the Reforming and Modernizing the NRC’s Radiation Protection Framework proposed rulemaking and draft revisions to Regulatory Guide 8.39.

Conduct of the Meeting

The ACMUI Chair, Hossein Jadvar, M.D., Ph.D., will preside over the meeting. Dr. Jadvar will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Sarah Hoenig using the contact information listed above. All submittals must be received by the close of business on August 12, 2026, and must only pertain to the topics on the agenda.
2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the ACMUI Chair.
3. The draft transcript and meeting summary will be available on ACMUI’s website <https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/> 2026 on or about September 17, 2026.
4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Sarah Hoenig of their planned participation.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the

Commission’s regulations in Title 10 of the *Code of Federal Regulations*, Part 7.

Dated at Rockville, Maryland this 30th day of July 2026.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,
Federal Advisory Committee Management Officer.

[FR Doc. 2026–15631 Filed 7–31–26; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–325 and K2025–320; MC2026–326 and K2026–321; MC2026–329 and K2026–324]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service’s request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

None. *See* Section III for summary proceedings.

III. Summary Proceeding(s)

1. *Docket No(s)*: MC2026–325 and K2026–320; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1054, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 29, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s)*: MC2026–326 and K2026–321; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1055, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 29, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s)*: MC2026–329 and K2026–324; *Filing Title*: USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1056, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 29, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–15651 Filed 7–31–26; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106008; File No. SR–ICC–2026–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

July 29, 2026.

I. Introduction

On May 12, 2026, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to clear additional credit default swap (“CDS”) contracts. The proposed rule change was published for comment in the **Federal Register** on May 21, 2026.³ The Commission received comments regarding the proposed rule change.⁴ For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC’s CDS Clearing Rules covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS (“SES”) contracts and Asia/Pacific Sovereign Single Name CDS (“SAS”).

The purpose of the proposed rule change is to amend ICC’s CDS Clearing Rules to permit ICC to clear additional SES contracts and an additional SAS contracts, specifically, SES contracts on the Republic of Ecuador, the Republic of Guatemala, the Republic of El Salvador, the Republic of Uruguay, the Republic of Costa Rica, the Republic of Kenya, and the Republic of Angola and an SAS contract on the Islamic Republic of Pakistan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 34–105533 (May 21, 2026), 91 FR 31481 (May 27, 2026) (File No. ICC–2026–003) (“Notice of Filing”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in ICC’s CDS Clearing Rules, as applicable.

⁴ Comments on the proposed rule change are available at <https://www.sec.gov/rules-regulations/public-comments/sr-icc-2026-003>.

To carry out this change, the proposed rule change would amend Subchapter 26D and Subchapter 26E of Chapter 26. In Rule 26D–102 (Definitions), “Eligible SES Reference Entities,” the proposed rule change would add the Republic of Ecuador, the Republic of Guatemala, the Republic of El Salvador, the Republic of Uruguay, the Republic of Costa Rica, the Republic of Kenya, and the Republic of Angola to the list of specific Eligible SES Reference Entities to be cleared by ICC. In Rule 26E–102 (Definitions), “Eligible SAS Reference Entities,” the proposed rule change would add the Islamic Republic of Pakistan.

As discussed below, these additional SES and SAS contracts have terms consistent with the other contracts that ICC already clears. Likewise, to clear these additional contracts, ICC will rely on its existing risk management framework and other policies and procedures without making any changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁵ Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [“SRO”] that proposed the rule change.”⁶

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.⁸ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁷ *Id.*

⁸ *Id.*

Commission approval of a proposed rule change.⁹

After carefully considering the proposed rule change and the comment letters received, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICC. Specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act¹⁰ and Rules 17Ad–22(e)(1) and 17Ad–22(e)(4)(ii) thereunder,¹¹ as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹²

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹³ The terms and conditions of the additional contracts proposed for clearing are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D and Subchapter 26E of ICC's CDS Clearing Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. The underlying reference obligations will be issuances by the Republic of Ecuador, the Republic of Guatemala, the Republic of El Salvador, the Oriental Republic of Uruguay, the Republic of Costa Rica, the Republic of Kenya, and the Republic of Angola, in the case of the SES contracts, and the Islamic Republic of Pakistan, in the case of the SAS contract.

A review of the Notice and ICC's CDS Clearing Rules, policies, and procedures shows that ICC would be able to clear the additional contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Furthermore, a review of data on volume, open interest, and the number of ICC Clearing Participants ("CPs") that currently trade in SES and SAS contracts, as well as certain model parameters for the additional contracts, show that ICC's CDS Clearing Rules, policies, and procedures are reasonably designed to price and measure the

potential risk presented by the additional contracts, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional contracts and other credit default swap transactions.

Therefore, clearance of the additional contracts promotes the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.¹⁴

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.¹⁵

The proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on the Republic of Ecuador, the Republic of Guatemala, the Republic of El Salvador, the Oriental Republic of Uruguay, the Republic of Costa Rica, the Republic of Kenya, and the Republic of Angola. By amending Rule 26D–102 to add the Republic of Ecuador, the Republic of Guatemala, the Republic of El Salvador, the Oriental Republic of Uruguay, the Republic of Costa Rica, the Republic of Kenya, and the Republic of Angola to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on those countries pursuant to its existing rules in Subchapter 26D. The revised Subchapter 26D would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).¹⁶

Similarly, the proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SAS contracts on the Islamic Republic of Pakistan. By amending Rule 26E–102 to add the Islamic Republic of Pakistan to the list of specific Eligible SAS Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SAS contracts on the Islamic Republic of Pakistan

pursuant to its existing rules in Subchapter 26E. The revised Subchapter 26E would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).¹⁷

Accordingly, the proposed rule change is consistent with the requirements of and Rule 17Ad–22(e)(1).¹⁸

C. Consistency With Rule 17Ad–22(e)(4)(ii)

Rule 17Ad–22(e)(4)(ii) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, by, among other things, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions.¹⁹

As discussed above, the proposed rule change amends Subchapter 26D and Subchapter 26E of ICC's CDS Clearing Rules to allow ICC to clear the additional contracts. The proposed rule change does not modify ICC's current approach to maintaining the additional financial resources required by Rule 17Ad–22(e)(4)(ii).²⁰ A commenter suggested that the proposed rule change nevertheless could affect ICC's ability to maintain the additional financial resources required by the rule due to certain risks which the commenter asserted could affect the countries referenced by the additional contracts.²¹

The commenter described these risks as "sovereign credit deterioration scenarios" and "cross-docket enforcement risk." While the commenter agreed that, overall, the additional contracts have terms consistent with the other contracts approved for clearing at ICC, the commenter questioned whether ICC's existing risk management framework

⁹ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

¹⁰ 15 U.S.C. 78q–1(b)(3)(F).

¹¹ 17 CFR 240.17Ad–22(e)(1) and (e)(4)(ii).

¹² 15 U.S.C. 78q–1(b)(3)(F).

¹³ 15 U.S.C. 78q–1(b)(3)(F).

¹⁴ 15 U.S.C. 78q–1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad–22(e)(1).

¹⁶ 17 CFR 240.17Ad–22(e)(1).

¹⁷ 17 CFR 240.17Ad–22(e)(1).

¹⁸ 17 CFR 240.17Ad–22(e)(1).

¹⁹ 17 CFR 240.17Ad–22(e)(4)(i) and (ii).

²⁰ 17 CFR 240.17Ad–22(e)(4)(i) and (ii).

²¹ See Comment for the Record, In the Matter of: File No. SR–ICC–2026–003, submitted by James Hunter Poole, Executive Chairman and CEO, Obelisk Tech Systems, Inc. (May 27, 2026) ("Obelisk Comment"). The commenter provided, in total, five different submissions as part of the comment, some of which was unrelated to the substance of the filing.

adequately captured and managed these potential risks.²² The commenter therefore requested additional analysis of whether: (1) ICC's existing risk management framework adequately captured the sovereign credit deterioration scenarios outlined in Appendix H to the comment letter and (2) ICC's Cover-2 stress scenarios, required under Rule 17Ad-22(e)(4)(ii),²³ reflected appropriate consideration of the cross-docket enforcement risk.²⁴

In response, ICC provided additional information in support of the proposed rule change.²⁵ ICC explained that the commenter's Appendix H contained a Sixty-Economy Commercial Injury Record that covered a broader group of countries than those referenced by the additional contracts proposed for clearing.²⁶ ICC noted that the additional contracts proposed for clearing may be cleared by ICC under its existing risk management framework and clearing procedures, because the additional contracts have terms consistent with the other contracts currently approved for clearing at ICC.²⁷

Regarding its Cover-2 stress scenarios, ICC noted that the commenter had not explained the meaning of "cross-docket enforcement risk."²⁸ ICC noted, however, that it managed credit risk, liquidity risk, operational risk, legal risk, custody and investment risk, and general business risk, among other risks, as required by Commission Rule 17Ad-22.²⁹ Because the additional contracts are substantially similar to contracts already cleared by ICC, ICC asserted that clearance of the additional contracts did not require ICC to change its stress testing framework or financial resource requirements.³⁰ Moreover, ICC asserted that it would continue to maintain sufficient financial resources, consistent with Commission Rule 17Ad-22(e)(4)(ii).³¹

In considering these comments, the Commission carefully reviewed the commenter's submission and ICC's response. With respect to whether ICC's existing risk management framework adequately captures certain "sovereign credit deterioration scenarios" the commenter outlined in an Appendix H, the Commission finds that ICC's existing risk management framework is

adequate. At the outset, the Commission notes that Appendix H does not contain any sovereign credit deterioration scenarios. Rather, Appendix H is a table of countries, each accompanied by a short summary of evidence. The commenter suggested that this evidence showed that the relevant country has acknowledged or documented instances of forced labor, trafficking, or labor exploitation. Even if we assume Appendix H provides evidence of instances of forced labor, trafficking, or labor exploitation, there is no evidence that such instances affect the price of sovereign credit instruments issued by the relevant governments, the price of CDS contracts referencing those sovereign credit instruments, or that ICC's existing risk management approach could not adequately capture and respond to any such potential effects on the price of such sovereign credit instruments or the related CDS contracts.

With respect to ICC's Cover-2 stress scenarios, the commenter did not explicitly define the term cross-docket enforcement risk. The commenter appeared to connect cross-docket enforcement risk to the possibility that the value of a government's sovereign credit instruments will be affected by enforcement actions against that government related to forced-labor practices.

Without further explanation of the sovereign credit deterioration scenarios and cross-docket enforcement risk, how these potential risks affect CDS prices, or why ICC's existing risk management cannot account for these potential risks, it is unclear why ICC's risk management could not account for the risks of clearing the additional contracts. As the commenter agreed, the additional contracts proposed for clearing have terms consistent with other contracts currently approved for clearing at ICC and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections, and risk management procedures, which should take into account any potential change in the value of a government's sovereign credit instruments resulting from potential enforcement actions. The clearing of the additional contracts will not require any changes to ICC's risk management or other policies and procedures. Therefore, ICC's existing risk management, including its margin methodology and stress testing framework, will continue to account for the risks and particular attributes of the additional contracts. Finally, ICC's existing stress testing scenarios will continue to ensure that it maintains the financial resources required by with

Rule 17Ad-22(e)(4)(ii)³² while clearing the additional contracts. Thus, even assuming cross-docket enforcement risk does affect the price of sovereign credit instruments issued by a government and the price of CDS contracts referencing those sovereign credit instruments, ICC's existing risk management approach can adequately capture and respond to any such potential effects on the price of such sovereign credit instruments and the related CDS contracts.

Accordingly, the proposed rule change is consistent with the requirements of and Rule 17Ad-22(e)(4)(ii).³³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act³⁴ and Rules 17Ad-22(e)(1) and 17Ad-22(e)(4)(ii) thereunder.³⁵

It is therefore ordered pursuant to Section 19(b)(2) of the Act³⁶ that the proposed rule change (SR-ICC-2026-003), be, and hereby is, approved.³⁷

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-15621 Filed 7-31-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106011; File No. SR-CboeBZX-2026-061]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing, and Order Granting Accelerated Approval of, a Proposed Rule Change To Amend Rule 14.11(e)(4) (Commodity-Based Trust Shares)

July 29, 2026.

On July 23, 2026, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

²² Obelisk Commenter at 10.

²³ 17 CFR 240.17Ad-22(e)(4)(ii).

²⁴ Obelisk Commenter at 10.

²⁵ See letter from Stanislav Ivanov, President, ICE Clear Credit (June 16, 2016) ("ICC Response").

²⁶ ICC Response at 2.

²⁷ ICC Response at 2.

²⁸ ICC Response at 2.

²⁹ ICC Response at 2.

³⁰ ICC Response at 3.

³¹ ICC Response at 3.

³² 17 CFR 240.17Ad-22(e)(4)(ii).

³³ 17 CFR 240.17Ad-22(e)(4)(ii).

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

³⁵ 17 CFR 240.17Ad-22(e)(1) and (e)(4)(ii).

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁸ 17 CFR 200.30-3(a)(12).

of 1934 (“Act”)¹ and Rule 19b–4 thereunder (“Rule 19b–4”),² a proposed rule change to amend BZX Rule 14.11(e)(4) to modify the generic listing standards for Commodity-Based Trust Shares. The proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change (the “Proposal”), on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to amend Rule 14.11(e)(4) to modify the generic listing standards for Commodity-Based Trust Shares to: (1) allow for a buffer of up to 15% of the net asset value (“NAV”) of the Commodity-Based Trust Shares holdings to consist of certain assets that do not meet the eligibility criteria under the generic listing standards; (2) add a definition for digital commodity; and (3) allow for actively-managed strategies. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange previously received approval to adopt generic listing standards (“GLS”) for Commodity-Based Trust Shares under Rule 14.11(e)(4).³ The Exchange now proposes to amend Rule 14.11(e)(4) to modify the GLS for Commodity-Based Trust Shares to (1) allow for a buffer of up to 15% of the NAV of the Commodity-Based Trust Shares holdings to consist of certain assets that do not meet the GLS eligibility criteria; (2) add a definition for digital commodity; and (3) allow for actively-managed Commodity-Based Trust Shares.⁴ Each change is discussed in detail below.

15% Buffer and Digital Commodity

Today, the GLS in Rule 14.11(e)(4)(C)(i) contemplates that Commodity-Based Trust Shares may hold one or more commodities or Commodity-Based Assets,⁵ and, in addition to such commodities or Commodity-Based Assets, may hold securities, cash, and Cash Equivalents. Rule 14.11(e)(4)(D) sets forth specific eligibility requirements that the commodity, Commodity-Based Asset, and security holdings of Commodity-Based Trust Shares must meet on an initial and, except for the exchange-traded fund criterion described below, continuing basis. In particular, Rule 14.11(e)(4)(D)(i) sets forth the eligibility requirements for commodity and Commodity-Based Asset holdings of Commodity-Based Trust Shares. Specifically, each commodity or commodity that underlies a Commodity-Based Asset held by the Trust must meet at least one of the following criteria: (a) the commodity trades on a market that is an Intermarket Surveillance Group (“ISG”) member, provided that the Exchange may obtain information about trading in such

commodity from the ISG member; (b) the commodity underlies a futures contract that has been made available to trade on a Designated Contract Market for at least six months, provided that the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG, with such Designated Contract Market; or (c) on an initial basis only, an Exchange-Traded Fund designed to provide economic exposure of no less than 40% of its NAV to the commodity lists and trades on a national securities exchange.

These criteria are generally designed to ensure that the Exchange can obtain information regarding trading in the commodities or commodities underlying Commodity-Based Assets held by the Trust issuing the Commodity-Based Trust Shares, which would assist in monitoring trading in such Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws, thereby making the Commodity-Based Trust Shares less readily susceptible to fraud and manipulation. In addition, Rule 14.11(e)(4)(D)(ii) sets forth the eligibility requirements for the Trust’s security holdings. Specifically, if the Trust holds any securities, each security held by the Trust must meet the criteria of Rule 14.11(i) (Managed Fund Shares), paragraphs (4)(C)(i) and (ii), or, if the security is a listed option, trades on an ISG market. The Commission previously found that the generic listing standards for Managed Fund Shares are consistent with the Act, including the requirements relating to component equity and fixed income securities underlying Managed Fund Shares.⁶ Further, with respect to listed options, ISG membership would help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Commodity-Based Trust Shares less readily susceptible to manipulation.

The Exchange now proposes to amend Rule 14.11(e)(4)(D) to allow up to 15% of the NAV of the Commodity-Based Trust Shares holdings to consist of certain assets that do not meet the GLS eligibility criteria in Rule 14.11(e)(4)(D)(i) and (ii) as described above. Specifically, new Rule 14.11(e)(4)(D)(iii) will provide that, notwithstanding the eligibility requirements described above, up to 15% of the NAV of the Commodity-

³ See Securities Exchange Act Release No. 103995 (September 17, 2025), 90 FR 45414 (September 22, 2025) (SR-CboeBZX-2025-104; SR-NASDAQ-2025-056; SR-NYSEARCA-2025-54) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to Adopt Generic Listing Standards for Commodity-Based Trust Shares) (“Prior Approval”).

⁴ The Exchange notes that this proposal is substantially the same as proposed rule changes submitted by The Nasdaq Stock Market LLC (“Nasdaq”) and NYSE Arca, Inc. (“Arca”). See Securities Exchange Act Nos. 105672 (June 9, 2026) 91 FR 36185 (June 16, 2026) (SR-NASDAQ-2026-032); 105311 (April 27, 2026) 91 FR 23327 (April 30, 2026) (SR-NYSEARCA-2026-42).

⁵ See Exchange Rule 14.11(e)(4)(C)(iii).

⁶ See Securities Exchange Act Release No. 78396 (July 22, 2016) 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (approving BZX’s generic listing standards for Managed Fund Shares).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Based Trust Shares holdings in the aggregate may consist of (1) digital commodities that do not meet the criteria in Rule 14.11(e)(4)(D)(i), or (2) securities that do not meet the criteria in Rule 14.11(e)(4)(D)(ii). For purposes of calculating the 15% limitation, any derivative held by the Trust will be calculated based on its gross notional value.⁷

In connection with the proposed adoption of the 15% buffer, the Exchange also proposes to add a definition for “digital commodity” in new Rule 14.11(e)(4)(C)(v). As proposed, the term “digital commodity” will mean a commodity that is a digital asset and is intrinsically linked to and derives its value from the programmatic operation of a functional crypto system, as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others. The Exchange is adopting this definition to make clear what types of digital assets may be included within the 15% buffer described above. The Exchange notes that the proposed definition of digital commodity is informed by the joint interpretive guidance issued by the SEC and the Commodity Futures Trading Commission (“CFTC”), effective March 23, 2026.⁸ The Exchange represents that, to the extent legislation is enacted defining “digital commodity” or a substantially similar term, the Exchange will submit a rule filing to conform the definition in the GLS to the statutory definition. The proposed changes would effectively exclude other commodities, such as non-fungible assets or non-fungible collectibles, from being included in the 15% buffer for generically listed Commodity-Based Trust Shares. However, this would not preclude the Exchange from submitting a rule filing pursuant to Section 19(b) of the Act to seek the listing and trading of a Commodity-Based Trust Share that holds other commodities, including commodities that fall outside of the definition of digital commodity, if it determines to do so at a later date. The Exchange notes that generic listing standards are generally intended to apply to products that were known and contemplated at the time of adoption (e.g., Commodity-Based Trust Shares

holding digital commodities). They are not intended to apply to novel products or materially distinct structures that were not considered when the standards were adopted. The Exchange therefore believes it is appropriate to delineate the scope of what can be included in the 15% buffer to digital commodities.

As proposed, the GLS will still require that at least 85% of the NAV of the Commodity-Based Trust Shares holdings be comprised of assets that are already allowed under the GLS.⁹ Further, the Trust must otherwise comply with all applicable requirements of the GLS (e.g., the website disclosure requirements of Rule 14.11(e)(4)(E)) in order for the Commodity-Based Trust Share to be generically listed. The sponsor of the Commodity-Based Trust Share must monitor compliance with this 85% threshold daily and must promptly notify the Exchange if the Commodity-Based Trust Share breaches this requirement.¹⁰

The following examples illustrate how the 15% buffer will be applied:

1. A Commodity-Based Trust Share (“CBTS”) holds \$95 million in market value of Bitcoin, Ether, Solana, and XRP, which all presently qualify as eligible commodities under Rule 14.11(e)(4)(D)(i)(b) and (c) (i.e., each commodity underlies a futures contract that has been trading on an ISG market for at least six months, and has an Exchange-Traded Fund that provides at least 40% economic exposure to the commodity). The CBTS also holds \$5 million in market value in several digital commodities that do not presently qualify as eligible commodities under the GLS. Because at least 95% of the Trust’s NAV (\$95 million/\$100 million = 95%) meets the eligibility criteria under Rule 14.11(e)(4)(D)(i)(b) and (c), and the additional 5% consists of digital commodities that do not meet the eligibility criteria, consistent with the 15% buffer, the CBTS would qualify under the proposed generic criteria.

2. A CBTS holds gold and gold futures contracts. Both assets presently qualify as an eligible commodity or Commodity-Based Asset under Rule 14.11(e)(4)(D)(i)(b) because the commodity (gold) underlies gold futures

contracts that are listed and trading on an ISG market for at least six months. The gold held by the Trust has a market value of \$80 million. The gold futures contract trading unit size is 100 troy ounces and an ounce of gold is currently worth \$4,000. The Trust holds 100 gold futures contracts with a gross notional value of \$40 million (100 contracts * 100 troy ounces * \$4,000). Both the gold and gold futures holdings of \$120 million in total (100% of NAV) would meet the eligibility criteria under Rule 14.11(e)(4)(D)(i)(b). As such, the CBTS would qualify under the proposed generic criteria.

3. A CBTS holds bitcoin and OTC call options on a bitcoin ETF. Bitcoin presently qualifies as an eligible commodity under Rule 14.11(e)(4)(D)(i)(b) and (c) (i.e., bitcoin underlies a futures contract that has been trading on an ISG market for at least six months, and has an Exchange-Traded Fund that provides at least 40% economic exposure to bitcoin). The bitcoin held by the Trust currently has a market value of \$100 million. The Trust also holds 5,000 OTC call options (with each option contract representing 100 shares) on a bitcoin ETF with a current market price of \$80 per share, resulting in a gross notional value of \$40 million (5,000 option contracts * 100 option contract multiplier * \$80 share price). Because these options are traded over-the-counter rather than on an ISG market, they do not meet the GLS eligibility criteria for securities under Rule 14.11(e)(4)(D)(ii). Accordingly, only the bitcoin holdings of \$100 million, or approximately 71% of NAV (\$100 million/\$140 million = 71.42%), would meet the GLS eligibility criteria under Rule 14.11(e)(4)(D)(i)(b) and (c). While the CBTS could hold up to 15% of OTC options under the 15% buffer, here, the OTC options exceed the 15% limitation. Accordingly, the CBTS would not qualify under the proposed generic criteria.

The Exchange notes that the proposed 15% buffer for Commodity-Based Trust Shares is consistent with the thresholds recently approved by the Commission for similar digital commodity-based ETPs.¹¹ In those filings, the Commission

⁷ Today, the Exchange similarly calculates percentage limitations on listed and over-the-counter (“OTC”) derivatives in its Managed Fund Shares rule based on the aggregate gross notional value of the listed and OTC derivatives. See Rule 14.11(i)(4)(C).

⁸ See “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” 91 FR 13714 (March 23, 2026).

⁹ Specifically, the Exchange will still require that at least 85% of the NAV of the Commodity-Based Trust Shares holdings consist of (i) commodities, Commodity-Based Assets, and securities that meet the eligibility criteria in Rule 14.11(e)(4)(D)(i) and (ii), and/or (iii) cash and Cash Equivalents.

¹⁰ The Commodity-Based Trust Shares rule requires that an issuer of Commodity-Based Trust Shares must notify the Exchange of any failure to comply with the continued listing requirements. See Interpretation and Policy .01 to Rule 14.11(e)(4).

¹¹ See Securities Exchange Act Release No. 103996 (September 17, 2025), 90 FR 45440 (September 22, 2025) (SR-NYSEARCA-2024-87) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.500-E (Trust Units) and to List and Trade Shares of the Grayscale Digital Large Cap Fund LLC under Amended NYSE Arca Rule 8.500-E (Trust Units)) (“Grayscale Order”). See Securities Exchange Act Release No. 104212 (November 18, 2025), 90 FR 52724 (November 21, 2025) (SR-

approved the listing and trading of digital commodity-based ETPs holding a diversified portfolio of underlying digital commodities that tracked transparent, rules-based indexes. There, the Commission found that the requirement that the Trusts hold at least 85% of their investments in assets approved by the Commission to underlie an ETP as primary investments (and the rest of their assets in other digital commodities) would enable adequate surveillance of the Shares on the Exchange, and found that the applicable exchange's rules were designed to prevent fraud and manipulation. Although the ETPs in the Grayscale Order and the Bitwise Order were listed under a different listing rule for Trust Units, the Exchange believes that the policy rationale applies with equal force to Commodity-Based Trust Shares listed under Rule 14.11(e)(4). Here, the Exchange is proposing to require that at least 85% of the NAV of the Trust's holdings be composed of assets that already qualify under the GLS (*i.e.*, commodities, Commodity-Based Assets, and securities that meet the eligibility criteria in Rule 14.11(e)(4)(D), as well as cash and Cash Equivalents). These eligibility criteria are designed to assist the Exchange in monitoring trading in such Shares on the Exchange, thereby mitigating risks around fraud and manipulation. The Exchange is also proposing to limit the 15% buffer to just digital commodities and securities that do not meet the eligibility criteria. The Exchange therefore believes that its proposal strikes an appropriate balance between ensuring that the primary exposure of the ETP is to assets meeting established eligibility standards approved by the Commission, and allowing limited exposure to certain additional assets that enhance diversification and flexibility without undermining market integrity or investor protection.

Actively-Managed Commodity-Based Trust Shares

Rule 14.11(e)(4)(C)(i) currently requires Commodity-Based Trust Shares to be designed to reflect the performance of one or more reference assets or an index of reference assets, less expenses and other liabilities. In other words, Commodity-Based Trust Shares are required to be passively managed under the GLS. The Exchange

now proposes to delete this provision, and a similar provision, in the definition of Commodity-Based Trust Shares in order to allow for both passively- and actively-managed strategies. The Exchange will also make non-substantive changes to renumber the paragraphs in the definition of Commodity-Based Trust Shares to reflect the deletion. The Exchange also proposes to add the phrase "consistent with the Trust's investment objective and policies" to align with language in the Exchange's Managed Fund Shares rule in Rule 14.11(i), which governs the listing of actively-managed ETFs today.

The Exchange also proposes to implement additional requirements around material non-public information in Rule 14.11(e)(4)(M) that would apply specifically to actively-managed Commodity-Based Trust Shares. In particular, proposed Rule 14.11(e)(4)(M)(iii) will provide that any person associated with, or an agent of (including a Reporting Authority), the Trust who has access to non-public information regarding the portfolio of the Commodity-Based Trust Shares, including any change thereto, must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. In connection with this change, the Exchange proposes to add a definition for Reporting Authority in proposed Rule 14.11(e)(4)(C)(xii), which would provide that the term "Reporting Authority" with respect to Commodity-Based Trust Shares means an institution or reporting service designated by the Exchange or the Trust as the official source for calculating and reporting information relating to the Commodity-Based Trust Shares, including, but not limited to, its portfolio, the amount of any cash distribution to holders of Commodity-Based Trust Shares, net asset value, or other information relating to the issuance, redemption or trading of Commodity-Based Trust Shares. Each Commodity-Based Trust Shares may have more than one Reporting Authority, each having different functions. In connection with the foregoing changes, the Exchange proposes non-substantive changes to renumber the existing firewall provisions of Rule 14.11(e)(4)(M). These additional requirements are substantively rooted in the current prohibitions against the use and dissemination of material non-public information within the Exchange's rules governing actively-managed ETFs, and would apply to anyone associated with, or is an agent of, the Trust who has

access to non-public information regarding the Trust's portfolio. These proposed requirements would apply in addition to what is already required under Rule 14.11(e)(4)(M).¹² The proposed requirements would provide additional protection against the potential misuse of material, non-public information relating to the Trust's actively-managed portfolio.

Additionally, while actively-managed Commodity-Based Trust Shares would remain subject to the existing trading halt requirements of Rule 14.11(e)(4)(J), the Exchange proposes to amend Rule 14.11(e)(4)(J) to provide that if the Exchange becomes aware that the information required by Rule 14.11(e)(4)(E)(i) is not disseminated to all market participants at the same time, it will halt trading in the Commodity-Based Trust Shares until such time as the information is available to all market participants.¹³ This additional trading halt requirement will help ensure that all market participants have transparency relating to the Trust's

¹² See Rule 14.11(i) (Managed Fund Shares) (providing that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a 'fire wall' between the investment adviser and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio, and that personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio). See also Rule 14.11(l) (Exchange-Traded Fund Shares) (providing that, if the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a 'fire wall' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio, and that, for actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio). Rule 14.11(l) defines 'Reporting Authority,' with respect to a particular series of ETF Shares, to mean the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares.

¹³ This additional trading halt requirement is substantively identical to the Exchange's rule governing the listing and trading of actively-managed ETFs, and would apply in addition to what is otherwise required under Rule 14.11(e)(4)(J). See Rule 14.11(i)(4)(B)(iii).

NYSEARCA-2024-98) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.500-E (Trust Units) and to List and Trade Shares of the Bitwise 10 Crypto Index ETF under Amended NYSE Arca Rule 8.500-E (Trust Units)) ("Bitwise Order").

underlying portfolio, which information is key to pricing the Commodity-Based Trust Shares, and that no market participant has an unfair informational advantage. Ensuring such transparency relating to the Trust's underlying portfolio for all market participants will help facilitate a fair and orderly market for the Commodity-Based Trust Shares, as well as help to ensure that the Commodity-Based Trust Shares are not susceptible to manipulation.

Actively-managed ETFs have become a significant and growing segment of the U.S. and global ETF markets. For example, in 2024, around 49% of all ETFs launched globally were active, and in the U.S., active ETF launches outnumbered index launches by nearly 4:1.¹⁴ Active ETFs in the U.S. represent the vast majority of total ETF launches in 2025,¹⁵ with over a third of U.S. ETF inflows coming from active strategies over the past two years.¹⁶ By the end of 2025, approximately 83% of the year's new ETFs were actively managed.¹⁷ The Exchange believes that these figures demonstrate substantial market demand for actively-managed strategies, and that this proposal would benefit investors by providing a transparent, regulated investment vehicle as an alternative to less regulated avenues that investors could use to obtain commodity (including digital commodity) exposure.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Commodity-Based Trust Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. As discussed above, the Exchange is requiring at least 85% of the NAV of the Trust's holdings to be composed of assets that already qualify under the GLS (*i.e.*, cash and Cash Equivalents, as well as commodities, Commodity-Based Assets, and securities that meet the eligibility criteria in Rule 14.11(e)(4)(D)). By requiring that the primary exposure of Commodity-Based Trust Shares be in assets meeting established eligibility criteria under this Rule, the Exchange believes that its proposal will ensure flexibility for product innovation while maintaining robust investor protections. As discussed above, these eligibility criteria are generally designed to ensure that the Exchange can obtain information regarding trading in the assets held by the Trust issuing the Commodity-Based Trust Shares. This, in turn, would assist in monitoring the trading in such Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws, thereby making Commodity-Based Trust Shares less readily susceptible to fraud and manipulation.

The Exchange also believes it is consistent with the Act to add the definition of digital commodity in the GLS, and to clearly delineate that the proposed 15% buffer could only include digital commodities that do not meet the GLS eligibility criteria as well as securities that do not meet the GLS eligibility criteria. As discussed above, this approach provides appropriate specificity as to the types of assets that may be included in the buffer, while maintaining flexibility for product innovation. With novel products that were not contemplated at the time of

adoption, the Exchange may submit an individual rule filing pursuant to Section 19(b) of the Act to seek the listing and trading of such Commodity-Based Trust Shares if it determines to do so at a later date. The Exchange believes that the 15% buffer is consistent with the Act for the reasons discussed above and because the Commission has approved comparable 85%/15% thresholds for similar digital commodity-based ETPs.²¹

The Exchange also believes that the proposed expansion of the GLS to allow for actively-managed Commodity-Based Trust Shares is consistent with the Act. The Exchange notes that the Commission has approved individual rule filings for the listing and trading of actively-managed Commodity-Based Trust Shares.²² In approving those products, the Commission found that the applicable generic listing standards, coupled with additional firewall and trading halt representations regarding the listing and trading of the actively-managed product, were designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest consistent with Section 6(b)(5) of the Act. Notably, the Commission cited a prior approval order where it had stated, in the context of ETFs, that "the mere addition of active management to a portfolio that would otherwise qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the ETF and its underlying portfolio."²³ The Exchange agrees that this principle holds true for Commodity-Based Trust Shares as well, and believes that the proposed amendments to the GLS to permit actively-managed Commodity-

²¹ See Grayscale Order and Bitwise Order.

²² See Securities Exchange Act Release No. 105582 (May 29, 2026), 91 FR 33252 (June 3, 2026) (SR-NASDAQ-2025-085) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the iShares Bitcoin Premium Income ETF under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)) ("iShares Approval Order"). See Securities Exchange Act Release No. 105681 (June 12, 2026), 91 FR 36629 (June 17, 2026) (SR-NYSEARCA-2025-77) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To List and Trade Shares of the T. Rowe Price Active Crypto ETF under NYSE Arca Rule 8.201-E (Generic) Commodity-Based Trust Shares) ("T. Rowe Price Approval Order").

²³ See iShares Approval Order at 33253 (citing to Securities Exchange Act Release Nos. 78396 (July 22, 2016), 81 FR 49698, 49702 (July 28, 2016) (SR-BATS-2015-100) (Order Approving Generic Listing Standards for Managed Fund Shares); and 78397 (July 22, 2016), 81 FR 49320, 49324-25 (July 27, 2016) (SR-NYSEArca-2015-110) (Order Approving Generic Listing Standards for Managed Fund Shares)).

¹⁴ See "Decoding Active ETFs," BlackRock, available at <https://www.ishares.com/us/literature/whitepaper/decoding-active-etfs.pdf>.

¹⁵ See "How Active ETFs Are Unlocking Innovation and Opportunity for Investors," BlackRock, available at <https://www.ishares.com/us/insights/active-etf-investors/>.

¹⁶ (see "Monthly Active ETF Monitor (August 31, 2025)," J.P. Morgan, available at <https://am.jpmorgan.com/content/dam/jpm-am-aem/americas/us/en/insights/etf-insights/monthly-active-etf.pdf>).

¹⁷ See "2025 ETF & ETP Market Trends: Flow and Tell Year in Review," BlackRock, available at <https://www.ishares.com/us/insights/2025-etf-market-trends-record-flows>.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ *Id.*

Based Trust Shares are therefore consistent with the Act. As discussed above, the Exchange is adopting safeguards around trading halts and material non-public information that are already in place for other actively-managed products listed and trading on the Exchange today. Further, these actively-managed Commodity-Based Trust Shares would be subject to the same requirements under the GLS that are currently applicable to passively-managed strategies, including requirements related to portfolio transparency, valuation, and dissemination. As the Commission stated in the Prior Approval, consistently applying listing standards across products with economic exposures to the same underlying commodities levels the playing field between issuers, which should promote competition and would more readily afford investors greater investment options. The Exchange believes that extending the GLS to accommodate actively-managed strategies would further this objective by enabling additional issuers to bring innovative products to market through a transparent, regulated framework.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change would enhance competition by facilitating the listing and trading of additional types of Commodity-Based Trust Shares pursuant to generic listing standards, provided that the applicable requirements are satisfied. Accordingly, the proposal is designed to facilitate product innovation and efficient listing processes, thereby enhancing competition among issuers and listing venues, to the benefit of investors and the marketplace. The Exchange also believes that the proposed change would enhance competition among Commodity-Based Trust Shares by ensuring the application of uniform listing standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comment letters on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2026-061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeBZX-2026-061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2026-061 and should be submitted on or before August 24, 2026.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Proposal is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the Proposal is consistent with Section 6(b)(5) of the

Act,²⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Since the Prior Approval, which established generic listing standards²⁶ for Commodity-Based Trust Shares on the Exchange, the Commission has approved Commodity-Based Trust Shares that hold up to 15% of the portfolio in digital assets not previously approved by the Commission as permissible investments of an exchange-traded product ("ETP").²⁷ In each of the Grayscale Order and the Bitwise Order, the Commission stated that the risks associated with fraud and manipulation are sufficiently mitigated if an ETP holds at least 80% of the investments in assets that do not raise concerns relating to fraud and manipulation.²⁸ Accordingly, the Commission found that the requirement that each ETP holds at least 85% of its investments in commodities approved by the Commission to underlie an ETP as primary investments will enable adequate surveillance of the shares on the listing exchange.²⁹

Likewise, since the Prior Approval, the Commission has approved Commodity-Based Trust Shares that are not "designed to reflect the performance of one or more reference assets or an index of reference assets, less expenses and other liabilities," but are actively managed.³⁰ In each of the iShares Approval Order and the T. Rowe Price Approval Order, the Commission stated that, in the context of exchange-traded

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ Generic listing standards for Commodity-Based Trust Shares permit the Exchange, pursuant to Rule 19b-4(e) under the Act ("Rule 19b-4(e)"), to list and trade Commodity-Based Trust Shares without first submitting a proposed rule change with the Commission pursuant to Section 19(b) of the Act. See 17 CFR 240.19b-4(e). The Exchange, however, is required to submit a rule filing with the Commission when seeking to list and trade Commodity-Based Trust Shares that do not meet the generic listing standards set forth in BZX Rule 14.11(e)(4)(A).

²⁷ See Grayscale Order, *supra* note 11; Bitwise Order, *supra* note 11.

²⁸ See Grayscale Order at 45443; Bitwise Order at 52726.

²⁹ See *id.* In each case, 85% of the ETP's holdings were in bitcoin and/or ether and the remainder of its holdings were in other digital assets.

³⁰ See iShares Approval Order, *supra* note 22; T. Rowe Price Approval Order, *supra* note 22.

²⁴ In approving the Proposal, the Commission has considered the Proposal's impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

funds (“ETFs”) registered under the 1940 Act, the mere addition of active management to a portfolio that would otherwise qualify for generic listing as an index-based ETF does not affect the portfolio’s susceptibility to manipulation or the availability of arbitrage between the ETF and its underlying portfolio.³¹ The Commission stated that this principle also holds true for Commodity-Based Trust Shares.³² Further, the Commission stated that consistently applying listing standards across products with economic exposures to the same underlying commodities levels the playing field between issuers, which should promote competition and would more readily afford investors greater investment options.³³

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a national securities exchange shall not be deemed a proposed rule change pursuant to paragraph (c)(1) of Rule 19b–4³⁴ if the Commission has approved, pursuant to Section 19(b) of the Act,³⁵ the exchange’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the exchange has a surveillance program for the product class.³⁶ The Exchange proposes to amend its generic listing standards for Commodity-Based Trust Shares to include the 15% buffer and active-management that the Commission has previously considered and approved in separate Rule 19b–4 filings. Accordingly, the Proposal fulfills the intended objective of Rule 19b–4(e) by permitting Commodity-Based Trust Shares that satisfy the requirements previously found to be consistent with the Act to commence trading without public comment and Commission approval.³⁷ The Exchange’s ability to

rely on Rule 19b–4(e) to list and trade additional Commodity-Based Trust Shares that meet the applicable requirements and minimum standards will reduce the time frame for bringing the shares to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition.³⁸

Similarly, the Exchange’s proposed additional trading halt and firewall provisions are consistent with the Act.³⁹ Because BZX Rule 14.11(e)(4) currently contemplates only passive management,⁴⁰ the Exchange proposes changes designed to address active management of Commodity-Based Trust Shares, namely provisions related to (1) trading halts if Commodity-Based Trust Shares’ portfolio information⁴¹ is not disseminated to all market participants at the same time,⁴² and (2) procedures designed to prevent the use and dissemination of material non-public portfolio information.⁴³ The Exchange’s proposed changes are substantively identical to BZX’s rule governing the listing and trading of actively managed ETFs,⁴⁴ and apply in addition to what

is already required under BZX Rule 14.11(e)(4)(J) and (M). The additional trading halt provision will help to ensure that all market participants have transparency relating to the Commodity-Based Trust Shares’ underlying portfolio, which information is key to pricing the shares and that no market participant has an unfair informational advantage. Ensuring such transparency relating to the underlying portfolio for all market participants will help facilitate a fair and orderly market for the Commodity-Based Trust Shares, as well as help to ensure that the Commodity-Based Trust Shares are not susceptible to manipulation. Likewise, the additional firewall provision will provide additional protection against the potential misuse of material, non-public information relating to a Commodity-Based Trust Share’s actively-managed portfolio.

Finally, Commodity-Based Trust Shares listed pursuant to BZX Rule 14.11(e)(4), as modified by the Proposal, would be required to comply with all applicable requirements of BZX Rule 14.11(e)(4). In addition, all Commodity-Based Trust Shares listed under BZX Rule 14.11(e)(4) will be subject to the rules and procedures of the Exchange that currently govern the trading of equity securities on the Exchange.⁴⁵ The Exchange would continue to be required to submit a rule filing with the Commission when seeking to list and trade Commodity-Based Trust Shares that do not meet the generic listing standards under BZX Rule 14.11(e)(4), as proposed to be modified.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the

³⁸ BZX Rule 14.11(e)(4), as modified by the Proposal, also continues to require the Exchange to maintain surveillance procedures for Commodity-Based Trust Shares, consistent with the requirements of Rule 19b–4(e). 17 CFR 240.19b–4(e). See BZX Rule 14.11(e)(4)(I).

³⁹ 15 U.S.C. 78f(b)(5).

⁴⁰ See, e.g., BZX Rules 14.11(e)(4)(I)(iv) and 14.11(e)(4)(J)(i)(a), requiring the Exchange to initiate delisting procedures and halt trading if the value of the underlying reference asset(s) or index is not made widely available on at least a 15-second basis from a source unaffiliated with the sponsor or the trust; BZX Rule 14.11(e)(4)(M)(i), requiring that if the value of a Commodity-Based Trust Share is based on an index that is maintained by a broker-dealer, the broker-dealer erect and maintain a firewall around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index; and BZX Rule 14.11(e)(4)(M)(ii), requiring that any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index.

⁴¹ BZX Rule 14.11(e)(4)(E)(i) requires that the trust disclose prominently on its website, which is publicly available and free of charge, before the opening of regular trading on the Exchange, for the trust’s commodities, commodity-based assets, securities, cash and cash equivalent, to the extent applicable: (i) ticker symbol; (ii) identifier; (iii) description of the holding; (iv) the quantity of each commodity, commodity-based asset, security, cash, and cash equivalent held; and (v) percentage weighting of the trust’s assets.

⁴² See *supra* note 13 and accompanying text.

⁴³ See *supra* note 12 and accompanying text.

⁴⁴ See BZX Rules 14.11(i)(4)(B)(iii) (Managed Fund Shares) (setting forth trading halt requirement if certain information with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time);

14.11(m)(4)(B)(v)(b) (Tracking Fund Shares) (setting forth trading halt requirement if certain information with respect to a series of Tracking Fund Shares is not being made available to all market participants at the same time). See also BZX Rules 14.11(i)(7) (Managed Fund Shares) (setting forth firewall and procedure requirements that apply to the investment adviser to the investment company issuing Managed Fund Shares and to personnel who make decisions on the investment company’s portfolio composition); 14.11(l)(4)(A) (Exchange-Traded Fund Shares) (setting forth firewall requirements that apply to the investment adviser to an actively-managed Exchange-Traded Fund and to personnel who make decisions on the Exchange-Traded Fund’s portfolio composition); and 14.11(m)(2)(E) (Tracking Fund Shares) (setting forth procedure and firewall requirements that apply to any person or entity, including a Reporting Authority, who has access to nonpublic information regarding the fund’s portfolio). Further, these requirements are substantially similar to requirements applicable to actively-managed Commodity-Based Trust Shares previously approved by the Commission. See iShares Approval Order at 33253–4; T. Rowe Price Approval Order at 36630–1.

⁴⁵ See BZX Rule 14.11(e)(4)(B).

³¹ See iShares Approval Order at 33252–3; T. Rowe Price Approval Order at 36630. See also Securities Exchange Act Release Nos. 78396 (July 22, 2016), 81 FR 49698, 49702 (July 28, 2016) (SR–BATS–2015–100) (Order Approving Generic Listing Standards for Managed Fund Shares); and 78397 (July 22, 2016), 81 FR 49320, 49324–25 (July 27, 2016) (SR–NYSEArca–2015–110) (Order Approving Generic Listing Standards for Managed Fund Shares).

³² See iShares Approval Order at 33253; T. Rowe Price Approval Order at 36630.

³³ See *id.* See also Prior Approval at 45419.

³⁴ 17 CFR 240.19b–4(c)(1).

³⁵ 15 U.S.C. 78s(b).

³⁶ See 17 CFR 240.19b–4(e). See also *supra* note 26.

³⁷ The failure of any particular Commodity-Based Trust Shares to satisfy the proposed generic listing standards pursuant to Rule 19b–4(e) would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b) to list and trade those Commodity-Based Trust Shares. See BZX Rule 14.11(e)(4)(A).

Act,⁴⁶ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Proposal conforms to the Exchange's rules to the changes the Commission previously considered and approved for generic listing standards for Commodity-Based Trust Shares.⁴⁷ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁸ to approve the Proposal on an accelerated basis.

V. Conclusion

This approval order is based on all of the Exchange's representations and descriptions in the Proposal, which the Commission has evaluated as discussed above. For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Act,⁴⁹ that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.⁵⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵¹ that the proposed rule change (SR-CBOEBZX-2026-061) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-15618 Filed 7-31-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106010; File No. SR-NASDAQ-2026-060]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq General 4, Rule 1210

July 29, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 21, 2026, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq General 4, Rule 1210, Registration Requirements.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations at Supplementary Material .06 to General 4, Rule 1210 (Waiting Periods for

Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210 at Supplementary Material .06.³

Nasdaq General 4, Rule 1210 requires each person engaged in the securities business of a member to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in General 4, Rule 1220 (Registration Categories), unless exempt from registration pursuant to General 4, Rule 1230 (Associated Persons Exempt from Registration). Pursuant to Supplementary Material .03 to General 4, Rule 1210 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Supplementary Material .06 to General 4, Rule 1210 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials ("SIE") examination and the representative and principal examinations specified under General 4, Rule 1220.

FINRA amended its Rule 1210 at Supplementary Material .06 to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁴ As described in SR-FINRA-2026-014, since the current waiting periods were adopted in 1989, FINRA's qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in SR-FINRA-2026-014 that today's high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test

⁴⁶ 15 U.S.C. 78s(b)(2).

⁴⁷ See Securities Exchange Act Release Nos. 105995 (July 27, 2026) (SR-NASDAQ-2026-032) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)); 106001 (July 28, 2026) (SR-NYSEArca-2026-42) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Generic) Commodity-Based Trust Shares).

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ 15 U.S.C. 78f(b)(5).

⁵¹ 15 U.S.C. 78s(b)(2).

⁵² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 105885 (July 13, 2026) ("SR-FINRA-2026-014") (not yet published).

⁴ See *id.*

taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in SR-FINRA-2026-014 that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA's ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁵ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on individuals seeking to enter the securities industry.⁶ Similar feedback regarding these challenges was received by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the organization and operation of member workplaces.⁷ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, Nasdaq proposes to amend General 4, Rule 1210, Supplementary Material .06 to conform to FINRA Rule 1210 at Supplementary Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA's amended requirements will promote consistency and reduce potential confusion for member firms and their associated persons. Because Nasdaq members and their associated persons are also subject to FINRA's registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by reducing the waiting periods for retaking FINRA qualification examinations to align with FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange's qualification examination waiting periods to FINRA's amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for member firms and their associated persons. As described in detail in SR-FINRA-2026-014, changes to the FINRA qualification program have reduced the risks that originally informed the current waiting periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange's qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not impose an undue burden on competition; rather, it conforms the Exchange's qualification examination waiting periods to FINRA's amended requirements and does not impose any new obligations or restrictions on members. The proposed rule change may benefit all members by allowing them to more quickly make personnel

decisions regarding their associated persons' qualification examination retake timing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵ See *id.*

⁶ See *id.*

⁷ See FINRA Regulatory Notice 25-07 (April 2025).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Commission, 100 F Street NE,
Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2026-060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2026-060 and should be submitted on or before August 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-15616 Filed 7-31-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106009; File No. SR-IEX-2026-24]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Timeframe of a Recent Rule Filing

July 29, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that on July 28, 2026, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposal to extend the implementation timeframe of a recent rule filing. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is filing this proposal to extend the implementation timeframe of the rule changes proposed in SR-IEX-2026-14.⁷ Pursuant to the Original Rule Filing, the Exchange will announce the implementation date of the proposed rule change by Trading Alert at least ten days in advance of such implementation date and within 90 days of effectiveness of the proposed rule change.⁸ The Original Rule Filing was immediately effective on the date of filing, April 30, 2026, which means the Trading Alert should issue no later than 90 days later, *i.e.*, on July 29, 2026. In order to complete all steps in IEX's standard deployment schedule, IEX has determined that it requires slightly more time than provided for by the Original Rule Filing to determine the

implementation date and issue a Trading Alert announcing such date. Thus, IEX now proposes extending the July 29, 2026 Trading Alert deadline by 30 days, to Friday, August 28, 2026.

As proposed, on or before August 28, 2026, IEX will still announce the implementation date by Trading Alert at least ten days in advance of such implementation date. Besides this change, the Exchange is not proposing to make any changes to the terms of the Original Rule Filing.

2. Statutory Basis

IEX believes that its proposal is consistent with the provisions of Section 6(b) of the Act⁹ in general, and with Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal is consistent with the Act because it is designed to protect investors and the public interest because it will enable the Exchange to determine the implementation date of the Original Rule Filing following completion of all steps in its standard deployment schedule in a thorough and risk averse manner, before issuance of a Trading Alert announcing such date.

Further, the ten days' notice to market participants of the implementation date for the Original Rule Filing's proposed rule change is consistent with the Act because it will provide appropriate transparency to market participants and the Commission regarding the change. Finally, as noted in the Purpose section, the Exchange is not proposing to make any changes to the terms of the Original Rule Filing other than the implementation timeframe.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the issuance of the Trading Alert announcing the planned implementation of the Original Rule Filing with appropriate notice to inform market participants and the Commission of the change. The implementation delay will impact all market participants equally. The Exchange does not expect the implementation date

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ See Securities Exchange Act Rel. No. 105383 (May 6, 2026), 91 FR 25638 (May 11, 2026) (SR-IEX-2026-14) ("Original Rule Filing").

⁸ See *id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

change to place any burden on competition. Rather, postponing implementation will allow the Exchange to implement the original rule change in a thorough and risk averse manner and is not designed for any competitive purpose.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. According to the Exchange, waiving the 30-day delay would permit the Exchange to implement this proposal on or prior to July 29, 2026, the date by which the Original Rule Filing requires the Exchange to issue a Trading Alert. Waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal provides clarity

and prevents potential confusion for market participants about the implementation timeframe of the rule changes proposed in SR-IEX-2026-14, and does not introduce any novel regulatory issues. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2026-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-IEX-2026-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is

obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2026-24 and should be submitted on or before August 24, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-15619 Filed 7-31-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36275; 812-16049]

Baillie Giffords Funds, et al.

July 29, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 18(f)(1), 18(i), 22(d) and 22(e) of the Act and rule 22c-1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order ("Order") that would permit a registered open-end management investment company to offer one class of exchange-traded shares that operates as an exchange-traded fund (an "ETF Class," and such shares, "ETF Shares") and one or more classes of shares that are not exchange-traded (each such class, a "Mutual Fund Class," and such shares, "Mutual Fund Shares," and each such fund, a "Multi-Class ETF Fund"). The Order would provide Multi-Class ETF Funds with two broad categories of relief: (i) the relief necessary to permit standard exchange-traded fund ("ETF") operations consistent with Rule 6c-11 under the Act ("ETF Operational Relief") and (ii) the relief necessary for a fund to offer an ETF Class and one or more Mutual Fund Classes ("ETF Class Relief").

APPLICANTS: Baillie Gifford Funds, Baillie Gifford ETF Trust, and Baillie Gifford Overseas Limited.

FILING DATES: The application was filed on July 2, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on August 24, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Gareth Griffiths, Calton Square, 1 Greenside Row, Edinburgh, Scotland, United Kingdom EH1 3AN; George Raine, Esq., Ropes & Gray LLP, george.raine@ropesgray.com, 800 Boylston Street, Boston, Massachusetts 02199

FOR FURTHER INFORMATION CONTACT: Toyin Momoh, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, filed July 2, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/search-filings>. You may also call the SEC's Office of Investor Education and Assistance at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–15604 Filed 7–31–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106005; File No. SR–Phlx–2025–50]

In the Matter of Nasdaq PHLX LLC; Order Granting Petition for Review and Scheduling Filing of Statements Regarding an Order Approving, on an Accelerated Basis, a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Nasdaq Bitcoin Index Options

July 29, 2026.

This matter comes before the Securities and Exchange Commission ("Commission") on petition to review the approval, pursuant to delegated authority, of Nasdaq PHLX LLC's ("Phlx") proposed rule change (File No. SR-Phlx-2025–50) to list and trade Nasdaq Bitcoin Index options.

On September 23, 2025, Phlx filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b–4 thereunder,² the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on September 29, 2025.³ On November 3, 2025, the Division of Trading and Markets ("Division"), for the Commission pursuant to delegated authority,⁴ designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On December 23, 2025, the Division, for the Commission pursuant to delegated authority,⁶ instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.⁸ On March 20, 2026, the Division, for the Commission pursuant to delegated authority,⁹ designated a longer period for Commission action on the proposed rule change.¹⁰ The Commission

received comments regarding the proposed rule change.¹¹

On May 15, 2026, Phlx filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. On May 22, 2026, after consideration of the record in the proposed rule change, the Division, for the Commission pursuant to delegated authority,¹² published notice of Amendment No. 1 and approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis ("Approval Order").¹³

Pursuant to Rule 430 of the Commission's Rules of Practice,¹⁴ on June 11, 2026, CME Group Inc. ("CME") filed a notice of intention to petition for review of the Approval Order,¹⁵ and on June 18, 2026, CME filed a petition for review of the Approval Order.¹⁶ Pursuant to Rule 431(e) of the Commission's Rules of Practice, notice of intention to petition for review results in an automatic stay of the action by delegated authority until the Commission orders otherwise.¹⁷

Pursuant to Rule 431 of the Commission's Rules of Practice,¹⁸ CME's petition for review of the Approval Order is granted. Further, the Commission hereby establishes that any party or other person may file a written statement in support of or in opposition to the Approval Order on or before August 24, 2026.

For the reasons stated above, it is hereby:

Ordered that CME's petition for review of the Division's action made pursuant to delegated authority is *granted*; and

It is further *ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before August 24, 2026.

It is further *ordered* that the Approval Order shall remain stayed pending further order of the Commission.

¹¹ Comments received on the proposal are available at <https://www.sec.gov/comments/sr-phlx-2025-50/srphlx202550.htm>.

¹² See 17 CFR 200.30–3(a)(12).

¹³ See Securities Exchange Act Release No. 105549 (May 22, 2026), 91 FR 31769 (May 28, 2026).

¹⁴ 17 CFR 201.430.

¹⁵ See Notice of Intention to Petition for Review (June 11, 2026), available at <https://www.sec.gov/comments/SR-Phlx-2025-50/srphlx202550-909180-2781413.pdf>.

¹⁶ See Petition for Review (June 18, 2026), available at <https://www.sec.gov/comments/SR-Phlx-2025-50/srphlx202550-843099-2584187.pdf>.

¹⁷ 17 CFR 201.431(e).

¹⁸ 17 CFR 201.431.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 104038 (Sept. 24, 2025), 90 FR 46706 (Sept. 29, 2025).

⁴ See 17 CFR 200.30–3(a)(31).

⁵ See Securities Exchange Act Release No. 104173 (Nov. 3, 2025), 90 FR 51424 (Nov. 17, 2025).

⁶ See 17 CFR 200.30–3(a)(57).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 104506 (Dec. 23, 2025), 90 FR 61452 (Dec. 31, 2025).

⁹ See 17 CFR 200.30–3(a)(57).

¹⁰ See Securities Exchange Act Release No. 105057 (Mar. 20, 2026), 91 FR 14613 (Mar. 25, 2026).

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–15615 Filed 7–31–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 6, 2026.

PLACE: The meeting will be held via remote means and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 30, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–15667 Filed 7–30–26; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106006; File No. SR–LTSE–2026–15]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend its Rules Related to Market Makers

July 29, 2026.

On June 2, 2026, Long-Term Stock Exchange, Inc. (“LTSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to establish a comprehensive market maker registration framework, formalize the registration and oversight of individuals who perform market making activities on behalf of Exchange members, and create a new Assigned Market Maker Program for Non-LTSE-Primary-Listed Securities traded on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 18, 2026.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 2, 2026. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time

to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates September 16, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–LTSE–2026–15).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–15617 Filed 7–31–26; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Transition Plan to Unleaded Aviation Gasoline V1.0

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: The FAA is releasing an updated FAA Transition Plan to Unleaded Aviation Gasoline (Version 1.0). This updated version reflects input that FAA received during a 60-day public comment period beginning January 12, 2026, on a draft Transition Plan to Unleaded Aviation Gasoline. The FAA has updated the Plan based on the public comments and included additional details and clarification throughout the document.

ADDRESSES: The FAA Transition Plan to Unleaded Aviation Gasoline document, V1.0 can be viewed through the FAA's unleaded aviation gasoline website at https://www.faa.gov/unleaded/Transition_Plan_to_UL_Avgas_20260728_V1.pdf in the *Progress Toward a Lead-Free Aviation System* section.

FOR FURTHER INFORMATION CONTACT: Paul Wrzesinski, Ph.D., Senior Technical Specialist, FAA Office of Senior Technical Experts, Aircraft Certification Service, 800 Independence Avenue SW, Washington, DC 20591. Email Paul.J.Wrzesinski@faa.gov.

SUPPLEMENTARY INFORMATION: Section 827 of the FAA Reauthorization Act of 2024 directed FAA to develop a transition plan to safely enable the transition of the piston-engine aircraft fleet to unleaded aviation gasoline by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 105693 (June 15, 2026), 91 FR 36919.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30–3(a)(31).

2030, to the extent practicable. In response, the FAA developed a draft Transition Plan to Unleaded Aviation Gasoline. This Transition Plan outlined strategies to safely eliminate lead aviation fuels, approve unleaded alternatives for piston-engine aircraft, ensure continued availability of aviation gasoline, and promote widespread access to unleaded aviation gasoline at airports. FAA provided a 60-day comment period on this draft, between January 12, 2026 and March 13, 2026, published at 91 FR 1230 on January 12, 2026 and corrected at 91 FR 2268 on January 16, 2026.

After reviewing comments, FAA is now releasing an updated FAA Transition Plan to Unleaded Aviation Gasoline document, V1.0. In response to comments, this update adds more information and clarification throughout the Transition Plan. Also, FAA identified four significant areas for future updates:

- (1) Progress update on Phase I, Fuels Evaluation and Authorization,
- (2) Commitment to release an updated Transition Plan, V2.0, at the conclusion of Phase 1, to inform subsequent transition phases,
- (3) Development of frequently asked questions (FAQs), and
- (4) Publishing a document summarizing public comments.

Building on years of collaborative efforts through the government-industry initiative, Eliminate Aviation Gasoline Lead Emissions (EAGLE), this plan aims to transition to lead-free aviation fuels for piston-engine aircraft in a safe and efficient manner. The 2024 FAA Reauthorization Act Section 827 reinforces the critical need for this transition, mandating that FAA continue collaborations with industry and federal stakeholders to eliminate lead emissions from aviation gasoline.

Issued in Washington, DC, on July 30, 2026.

Caitlin Locke,

Associate Administrator for Aviation Safety Oversight and Certification.

[FR Doc. 2026-15644 Filed 7-31-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0030]

Massachusetts Bay Transportation Authority's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on July 22, 2026, the Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP).

DATES: FRA will consider comments received by August 24, 2026. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA-2010-0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system, or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment, in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. This notice informs the public that, on July 22, 2026, MBTA submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II, which seeks FRA's approval to implement a separate PTC system, Interoperable Train Control (ITC), on MBTA's North Side Fitchburg and Haverhill lines for a tenant railroad, CSX Transportation, Inc. That RFA is available in Docket No. FRA-2010-0030.

Interested parties are invited to comment on MBTA's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. See 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See <https://www.regulations.gov/privacy-notice> for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2026-15674 Filed 7-31-26; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION**Great Lakes St. Lawrence Seaway Development Corporation****Notice of Adoption of Tennessee Valley Authority Categorical Exclusion Under the National Environmental Policy Act**

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of Adoption of Categorical Exclusion.

SUMMARY: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) is adopting the Tennessee Valley Authority's (TVA's) siting, construction, and use of buildings and associated infrastructure Categorical Exclusion (CE) under the National Environmental Policy Act to use in GLS construction projects. This notice identifies TVA's categorical exclusions, describes the categories of proposed actions for which GLS intends to use TVA's CE, the consultation between the agencies, and announces GLS has adopted them for the agency's use pursuant to Section 109 of the National Environmental Policy Act.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Donna O'Berry, Chief Counsel, Great Lakes St. Lawrence Seaway Development Corporation, 1200 New Jersey Ave. SE, Washington, DC 20590; (202) 366-6136; donna.o'berry@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Background***National Environmental Policy Act and Categorical Exclusions*

The National Environmental Policy Act (NEPA), as amended at, 42 U.S.C. 4321-4347, requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331.

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or categorical

exclusion (CE). A Federal agency can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2).

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023,¹ allows a Federal agency to “adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established.” 42 U.S.C. 4336(c). To adopt another agency's CEs under section 109, the adopting agency must: (1) identify the CE listed in another agency's (“establishing agency”) NEPA procedures that cover its category of proposed actions or related actions; (2) consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; (3) identify to the public the CE that the agency plans to use for its proposed actions; and (4) document adoption of the CE. *Id.*

This notice documents GLS's adoption of TVA CE for siting, construction, and use of buildings and associated infrastructure under section 109 of NEPA for use by GLS in construction projects and activities.

II. Identification of the Categorical Exclusion

TVA is a federal agency that owns, operates, and maintains generating and transmission facilities to serve customers throughout the Tennessee Valley. GLS has identified TVA CE 38 to be adopted for use by GLS. CE 38 is codified in the NEPA procedures of the TVA at 18 CFR part 1318, subpart C, Appendix A. CE 38 is related to new buildings. It covers:

38. Siting, construction, and use of buildings and associated infrastructure (e.g., utility lines serving the building), physically disturbing generally no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed.

The CE was designed to address activities for siting, construction, and operation of buildings, structures (including, but not limited to, trailers and modular buildings) and associated infrastructure such as utility connections, access roads, and parking areas on no more than 10 acres at an undisturbed site and no more than 25 acres at a previously disturbed site. TVA noted that they had hundreds of individual construction and siting of buildings, structures, trailers, and modular buildings. One project involved a facility including a one-story building with office space, storage and shop areas, a covered vehicle shed, and a large, paved parking and material storage area—Huntsville, Alabama Customer Service Center EA and FONSI. While the categorical exclusion package contained several other projects, the Huntsville project is the closest to the types of buildings and infrastructure that would be needed by GLS.

Proposed DOT Category of Actions

GLS intends to apply this CE to siting and construction products, building operations, and associated infrastructure use undertaken directly by GLS and in a manner consistent with TVA's application. However, use of TVA CE 38 by GLS would not be limited to actions like this example and could be used in other circumstances for which use is appropriate.

III. Consideration of Extraordinary Circumstances

TVA applies a categorical exclusion checklist for their CEs. The CE checklist looks at Project Characteristics, Natural and Cultural Features Affected, Potential Pollutant Generation, Social and Economic Effects, and other Environmental Compliance and Reporting Issues. GLS has reviewed the CE checklist that TVA uses and has determined that the extraordinary circumstances contained in DOT Order 5610.1 are similar in nature to those that TVA reviewed. Because DOT will also have to apply Section 4(f) review, GLS has determined to apply the list of extraordinary circumstances in the DOT Order so that a Section 4(f) evaluation will be considered in addition to the other extraordinary circumstances that TVA applies. GLS has also evaluated the proposed actions in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*)

¹ Fiscal Responsibility Act of 2023, Public Law 118-5, 137 Stat. 10 (June 3, 2023).

IV. Consultation With TVA and Determination of Appropriateness

GLS and TVA consulted on the appropriateness of GLS's adoption of the CE from June 2026 through early July 2026. GLS's and TVA's consultation included a review of TVA's experience developing and applying the CE, as well as the types of actions for which GLS plans to utilize the CE. The consultation concluded that GLS's actions are similar to the type of TVA projects that are covered under TVA's CE; therefore, the impacts of GLS projects will be similar to the impacts of TVA projects that have been shown to not be significant absent the existence of extraordinary circumstances. Based on this, GLS is adopting the CE from TVA to apply to future GLS activities. Additional documentation of TVA's and GLS's consultation is available upon request.

V. Notice to the Public and Documentation of Adoption

This notice identifies to the public and documents adoption by GLS of TVA's CE for siting, construction, and use of buildings and associated infrastructure in accordance with 42 U.S.C. 4336c(4). The notice identifies the types of actions to which GLS will apply the CE, as well as the considerations that GLS will use in determining whether an action is within the scope of the CE.

James McCoshen,
Administrator.

[FR Doc. 2026-15649 Filed 7-31-26; 8:45 am]

BILLING CODE 4910-61-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Export Exemption Certificate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before October 2, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or

by email to pra.comments@irs.gov. Include "OMB Control No. 1545-0685" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Kerry Dennis, (202) 317-5751.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Export Exemption Certificate.

OMB Control Number: 1545-0685.

Form Number: 1363.

Abstract: Internal Revenue Code section 4272(b)(2) exempts exported property from the excise tax on transportation of property. Treasury Regulation § 49.4271-1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

Current Actions: There is no change to the previously approved information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time per Response: 4 hours, 15 minutes.

Estimated Total Annual Burden Hours: 425,000 hours.

Dated: July 30, 2026.

Kerry Dennis,
Tax Analyst.

[FR Doc. 2026-15641 Filed 7-31-26; 8:45 am]

BILLING CODE 4831-GV-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on U.S. Tax-Exempt Organization Returns and Related Forms.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Information Collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before October 2, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include "OMB Control No. 1545-0047" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: View the latest drafts of the tax forms related to the information collection listed in this notice at <https://www.irs.gov/draft-tax-forms>. Requests for additional information or copies of this collection should be directed to Marcus McCrary, (470) 769-2001.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

Proposed PRA Submission to OMB

Title: U.S. Tax-Exempt Organization Returns and Related Forms, Schedules, Attachments, and Published Guidance.

OMB Control Number: 1545-0047.

Form Numbers and Published Guidance: Forms 990, 990-EZ, 990-N, 990-PF, 990-T, and all related forms, schedules, and attachments.

Abstract: These forms, schedules, and attachments are used by tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations to provide the IRS with statutorily required information. Some members of the public rely on these forms as their primary or sole source of information about a particular organization. This information collection covers the burden associated with preparing and submitting tax-exempt organization returns and related forms, schedules, and attachments, and complying with published guidance.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There have been additions and removals of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates

requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release of the 30-day comment notice from Treasury. This approval package is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Tax-Exempt Organizations.

Preliminary Estimated Number of Respondents: 1,706,000.

Preliminary Estimated Total Time (Hours): 76,091,000.

Preliminary Estimated Time per Respondent (Hours): 44 hours, 36 minutes.

Preliminary Estimated Monetized Time (\$): 4,358,787,000.

Preliminary Estimated Out-of-Pocket Costs (\$): 2,134,343,000.

Preliminary Estimated Total Monetized Burden (\$): 6,493,131,000.

Note: Total Monetized Burden = Out-of-Pocket Costs + Monetized Time

Dated: July 29, 2026.

Marcus W. McCrary,
Tax Analyst.

Appendix-A: Forms and Schedules

Product	Title
T (Timber)	Forest Activities.
1023	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1023-EZ	Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1024	Application for Recognition of Exemption Under Section 501(a).
1024-A	Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.
1028	Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.
1062	Deferral of Tax on Gain From the Sale or Exchange of Qualified Farmland Property to Qualified Farmers.
1062 Sch A	Section 1062 Gain From the Sale or Exchange of Qualified Farmland Property to a Qualified Farmer.
1116 Sch B	Foreign Tax Carryover Reconciliation Schedule.
1116 Sch C	Foreign Tax Redeterminations.
1116	Foreign Tax Credit.
1118	Foreign Tax Credit—Corporations.
1118 Sch I	Reduction of Foreign Oil and Gas Taxes.
1118 Sch J	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions.
1118 Sch K	Foreign Tax Carryover Reconciliation Schedule.
1118 Sch L	Foreign Tax Redeterminations.
1120-POL	US Income Tax Return for Certain Political Organizations.
1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
1128	Application to Adopt, Change, or Retain a Tax Year.
2220	Underpayment of Estimated Tax by Corporations.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3800	General Business Credit.
3800 Sch A	Transfer Election Statement.
4136	Credit for Federal Tax Paid on Fuels.
4136 Sch A	Business Activity Report for Credit for Federal Tax Paid on Fuels.
4255	Recapture of Investment Credit.
4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
4562	Depreciation and Amortization (Including Information on Listed Property).
4562-B	Amortization.
461	Limitation on Business Loss.
4626	Alternative Minimum Tax—Corporations.
4684	Casualties and Thefts.

Product	Title
4720	Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.
4797	Sale of Business Property.
4952	Investment Interest Expense Deduction.
5227	Split Interest Trust Information Return.
5471 Sch E	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
5471 Sch G-1	Cost Sharing Arrangement.
5471 Sch H	Current Earnings and Profits.
5471 Sch I-1	Information for Global Intangible Low-Taxed Income.
5471 Sch J	Accumulated Earnings & Profits (E&P) of Controlled Foreign Corporation.
5471 Sch M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 Sch O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
5471 Sch P	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
5471 Sch Q	CFC Income by CFC Income Groups.
5471 Sch R	Distributions From a Foreign Corporation.
5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
5578	Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
5713	International Boycott Report.
5713 Sch A	International Boycott Factor.
5713 Sch B	Specifically Attributable Taxes and Income.
5713 Sch C	Tax Effect of The International Boycott Provisions.
5884	Work Opportunity Credit.
5884-C	Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.
5884-D	Employee Retention Credit for Certain Tax-Exempt Organizations Affected by Qualified Disasters.
6069	Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953.
6198	At-Risk Limitations.
6252	Installment Sale Income.
6497	Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.
6765	Credit for Increasing Research Activities.
6781	Gains and Losses From Section 1256 Contracts and Straddles.
7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
7203	S Corporation Shareholder Stock and Debt Basis Limitations.
7204	Consent to Extend the Time to Assess Tax Related to Contested Foreign Income Taxes—Provisional Foreign Tax Credit Agreement.
7205	Energy Efficient Commercial Buildings Deduction.
7207	Advanced Manufacturing Production Credit.
7210	Clean Hydrogen Production Credit.
7211	Clean Electricity Production Credit.
7213	Nuclear Power Production Credit.
7217	Partner's Report of Property Distributed by a Partnership.
7218	Clean Fuel Production Credit.
7220	Prevailing Wage and Apprenticeship (PWA) Verification and Corrections.
8038	Information Return for Tax-Exempt Private Activity Bond Issues.
8038-B	Information Return for Build America Bonds and Recovery Zone.
8038-CP	Return for Credit Payments to Issuers of Qualified Bonds.
8038-CP Sch A	Specified Tax Credit Bonds Interest Limit Computation.
8038-G	Information Return for Tax-Exempt Governmental Bonds.
8038-GC	Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.
8038-R	Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.
8038-T	Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.
8038-TC	Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.
8050	Direct Deposit of Tax Exempt or Government Entity Tax Refund.
8275	Disclosure Statement.
8275-R	Regulation Disclosure Statement.
8282	Donee Information Return.
8283	Noncash Charitable Contributions.
8283-V	Payment Voucher for Filing Fee Under Section 170(f)(13).
8328	Carryforward Election of Unused Private Activity Bond Volume Cap.
8330	Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).
8453-TE	Tax Exempt Entity Declaration and Signature for Electronic Filing.
8453-X	Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.
851	Affiliations Schedule.
8582	Passive Activity Loss Limitations.
8586	Low-Income Housing Credit.
8594	Asset Acquisition Statement.
8621	Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621-A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
8697	Interest Computation Under the Look-Back Method of Completed Long-Term Contract.
8718	User Fee for Exempt Organization Determination Letter Request.
8810	Corporate Passive Activity Loss and Credit Limitations.
8820	Orphan Drug Credit.

Product	Title
8824	Like-Kind Exchanges.
8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
8825 Sch A	Rental Real Estate Other Deductions.
8826	Disabled Access Credit.
8827	Credit for Prior Year Minimum Tax—Corporations.
8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
8838	Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.
8838–P	Consent to Extend the Time to Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
8844	Empowerment Zone and Renewal Community Employment Credit.
8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8858	Information Return of U.S. Persons With Respect To Foreign Disregarded Entities.
8858 Sch M	Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.
8864	Biodiesel, Renewable Diesel, or Sustainable Aviation Fuels Credit.
8865 Sch G	Statement of Application of the Gain Deferral Method under Section 721(c).
8865 Sch H	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
8865 Sch K–1	Partner's Share of Income Deductions Credits, etc.
8865 Sch K–2	Partners' Distributive Share Items—International.
8865 Sch K–3	Partner's Share of Income, Deductions, Credits, etc.—International.
8865 Sch O	Transfer of Property to a Foreign Partnership.
8865 Sch P	Acquisitions, Dispositions, and Changes of Interest in a Foreign Partnership.
8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8868	Application for Extension of Time to File and Exempt Organization Return.
8870	Information Return for Transfers Associated With Certain Personal Benefit Contracts.
8871	Political Organization Notice of Section 527 Status.
8872	Political Organization Report of Contributions and Expenditures.
8873	Extraterritorial Income Exclusion.
8874	New Markets Credit.
8879–TE	IRS e-file Signature Authorization for a Tax-Exempt Entity.
8881	Credits for Small Employer Pension Plan Startup Costs, Contributions, Auto-Enrollment, and Military Spouse Participation.
8882	Credit for Employer-Provided Childcare Facilities and Services.
8883	Asset Allocation Statement Under Section 338.
8886	Reportable Transaction Disclosure Statement.
8886–T	Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.
8896	Low Sulfur Diesel Fuel Production Credit.
8899	Notice of Income From Donated Intellectual Property.
8900	Qualified Railroad Track Maintenance Credit.
8903	Domestic Production Activities Deduction.
8906	Distilled Spirits Credit.
8908	Energy Efficient Home Credit.
8911	Alternative Fuel Vehicle Refueling Property Credit.
8911 Sch A	Alternative Fuel Vehicle Refueling Property.
8912	Credit to Holders of Tax Credit Bonds.
8925	Report of Employer-Owned Life Insurance Contracts.
8932	Credit for Employer Differential Wage Payments.
8933	Carbon Dioxide Sequestration Credit.
8933 Sch A	Disposal or Enhanced Oil Recovery Owner Certification.
8933 Sch B	Disposal Operator Certification.
8933 Sch C	Enhanced Oil Recovery Operator Certification.
8933 Sch D	Recapture Certification.
8933 Sch E	Election Certification.
8933 Sch F	Utilization Certification.
8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
8936 Sch A	Clean Vehicle Credit Amount.
8940	Request for Miscellaneous Determination.
8941	Credit for Small Employer Health Insurance Premiums.
8949	Sales and Other Dispositions of Capital Assets.
8964–ELE	Section 987 Elections.
8964–TRA	Section 987 Transition Information.
8974	Qualified Small Business Payroll Tax Credit for Increasing Research Activities.
8975	Country-by-Country Report.
8975 Sch A	Tax Jurisdiction Information.
8976	Notice of Intent to Operate Under Section 501(c)(4).
8990	Limitation on Business Interest Expense Under Section 163(j).
8891	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
8992	U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
8992 Sch A	Schedule of Controlled Foreign Corporation (CFC) Information To Compute Global Intangible Low-Taxed Income (GILTI).
8995	Qualified Business Income Deduction Simplified Calculation.
8995–A Schedule A	Specified Service Trades or Businesses.

Product	Title
8995–A Schedule B	Aggregation of Business Operations.
8995–A Schedule C	Loss Netting and Carryforward.
8995–A Schedule D	Special Rules for Patrons of Agricultural or Horticultural Cooperatives.
8995–A	Qualified Business Income Deduction.
8997	Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
965–B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts.
970	Application to Use LIFO Inventory Method.
990	Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990 Schedule A	Public Charity Status and Public Support.
990 Schedule B	Schedule of Contributors.
990 Schedule C	Political Campaign and Lobbying Activities.
990 Schedule D	Supplemental Financial Statements.
990 Schedule E	Schools.
990 Schedule F	Statement of Activities Outside the United States.
990 Schedule G	Supplemental Information Regarding Fundraising or Gaming Activities.
990 Schedule H	Hospitals.
990 Schedule I	Grants and Other Assistance to Organizations, Governments, and Individuals in the United States.
990 Schedule J	Compensation Information.
990 Schedule K	Supplemental Information on Tax-Exempt Bonds.
990 Schedule L	Transactions With Interested Persons.
990 Schedule M	Noncash Contributions.
990 Schedule N	Liquidation, Termination, Dissolution, or Significant Disposition of Assets.
990 Schedule O	Supplemental Information to Form 990 or 990–EZ.
990 Schedule R	Related Organizations and Unrelated Partnerships.
990–EZ	Short Form Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990–N	Form 990–N Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990–EZ.
990–PF	Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.
990–T	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)).
990–T Schedule A	Unrelated Business Taxable Income From an Unrelated Trade or Business.
990–W	Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (and on Investment Income for Private Foundations).
15644	Supplemental Group Ruling Information.

Appendix-B—Guidance Documents

Guidance	Title/description
Announcement 2004–38	Election of Alternative Deficit Reduction Contribution.
Announcement 2004–43	Election of Alternative Deficit Reduction Contribution.
Notice 2002–27	IRA Required Minimum Distribution Reporting.
Notice 2004–59	Plan Amendments Following Election of Alternative Deficit Reduction Contribution.
Notice 2005–41	Guidance Regarding Qualified Intellectual Property Contributions.
Notice 2006–105	Extension of Election of Alternative Deficit Reduction Contribution.
Notice 2006–107	Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.
Notice 2006–109	Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.
Notice 2007–70	Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).
Notice 2008–113	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a) in Operation.
Notice 2009–26	Build America Bonds and Direct Payment Subsidy Implementation.
Notice 2009–31	Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.
Notice 2010–6	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2010–80	Modification to the Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2011–43	Transitional Relief under Internal Revenue Code § 6033(j) for Small Organizations.
Notice 2012–48	Tribal Economic Development Bonds.
Notice 2014–4	Interim Guidance Regarding Supporting Organizations.
Notice 2015–83	Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans.
Notice 2017–9	De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties.
Notice 2021–56	Standards that an LLC must Satisfy to be Exempt.
Notice 2023–38	Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.
Notice 2025–8	First Updated Elective Safe Harbor modifying Notice 2024–41.
Notice 2025–10	Section 45Z Clean Fuel Production Credit; Request for Public Comments.
Notice 2025–75	Transition Rule for Applying Section 951(a)(2)(B).
Notice 2026–11	Interim Guidance on Additional First Year Depreciation Deduction under Section 168(k).

Guidance	Title/description
Notice 2026–15	Guidance to Apply Interim Safe Harbors for Purposes of Determining a Taxpayer's Material Assistance from a Prohibited Foreign Entity; Other Prohibited Foreign Entity Guidance.
Notice 2026–16	Administrative, Procedural and Miscellaneous Interim Guidance on Special Depreciation Allowance for Qualified Production Property.
Notice 97–45	Highly Compensated Employee Definition.
Publication 1075	Tax Information Security Guidelines for Federal, State and Local Agencies.
Publication 4839	Annual Form 990 Filing Requirements for Tax-Exempt Organizations (Forms 990, 990–EZ, 990–PF, 990–BL and 990–N (e-Postcard)).
Revenue Procedure 80–27	Group exemption letters.
Revenue Procedure 98–19	Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).
Revenue Procedure 2004–15	Waivers of Minimum Funding Standards.
Revenue Procedure 2008–62 and 2017–55.	Substitute Mortality Tables for Single Employer Defined Benefit Plans.
Revenue Procedure 2009–43	Revocation of Elections by Multiemployer Defined Benefit Pension Plans to Freeze Funded Status under section 204 of WRETA.
Revenue Procedure 2010–52	Extension of the Amortization Period for Plan Sponsor of a Multiemployer Pension Plan.
Revenue Procedure 2014–11	Procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under section 6033(j)(1) of the Internal Revenue Code ("Code") for failure to file required Annual Returns or notices for three consecutive years.
Revenue Procedure 2014–40	Procedures for applying for and for issuing determination letters on the exempt status under § 501(c)(3) of the Internal Revenue Code (Code) using Form 1023–EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
Revenue Procedure 2014–55	Election Procedures and Information Reporting with Respect to Interests in Certain Canadian Retirement Plans.
Revenue Procedure 2015–21	Rulings and determination letters.
Revenue Procedure 2016–27	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–43	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–57	Procedures for Requesting Approval for a Change in Funding Method.
Revenue Procedure 2018–4	Updating Procedures for Guidance on Matters Under IRS TE/GE Division.
Revenue Procedure 2018–38	Returns by exempt organizations and returns by certain non-exempt organizations.
Revenue Procedure 2021–37	Pre-Approved Pension Plans.
Revenue Procedure 2021–48	Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
Revenue Procedure 2022–14	List of Automatic Changes.
Revenue Procedure 2023–1	Rulings and Determination Letters.
Revenue Procedure 2023–4	Types of Advice Available to Taxpayers.
Revenue Procedure 2024–5	Procedures for Issuing Determination Letters.
Revenue Procedure 2023–24	Changes in Accounting Periods and in Methods of Accounting.
Revenue Procedure 2023–38	Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.
Revenue Procedure 2025–8	Changes in Accounting Periods and in Methods of Accounting.
Revenue Procedure 2025–23	Changes in Accounting Periods and in Method of Accounting.
Revenue Procedure 2025–28	Changes in Accounting Periods and in Method of Accounting.
Revenue Procedure 2026–5	Rulings and Determination Letters.
Revenue Procedure 2026–8	26 CFR 601.201: Rulings and Determination Letters (Also Section 501).
Revenue Procedure 2027–1	Rulings and Determination Letters.
Revenue Procedure 2027–4	Types of Advice Available to Taxpayers.
Revenue Procedure 2027–5	Rulings and Determination Letters.
Revenue Procedure 2027–8	Rulings and Determination Letters.
Revenue Ruling 2000–35	Automatic Enrollment in Section 403(b) Plans.
TD 7845	Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.
TD 7852	Registration Requirements with Respect to Debt Obligations.
TD 7898	Employers Qualified Educational Assistance Programs.
TD 7918	Income, war profits, or excess profits tax paid or accrued.
TD 7952	Indian Tribal Governments Treated As States For Certain Purposes.
TD 8002	Substantiation of Charitable Contributions.
TD 8019	Public Inspection of Exempt Organization Return.
TD 8033	Tax Exempt Entity Leasing.
TD 8069	Qualified Conservation Contributions.
TD 8073	Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.
TD 8086	Election for \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR–185–84 Final).
TD 8124	Time and Manner of Making Certain Elections Under the Tax Reform Act of 1986.
TD 8357	Certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.
TD 8376	Qualified Separate Lines of Business.
TD 8396	Regulations relating to a bank's determination of worthlessness of a debt.
TD 8400	Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).
TD 8459	The Taxation of Settlement Funds and Related Transfers and Distributions.
TD 8476	Arbitrage Restrictions on Tax-Exempt Bonds.

Guidance	Title/description
TD 8540	Final regulations relating to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests.
TD 8619	Final regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities.
TD 8635	Nonbank Trustee Net Worth Requirements.
TD 8690	Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.
TD 8697	Classifying Certain Business Organizations Under Elective Regime.
TD 8712	Definition of Private Activity Bonds.
TD 8718	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8769	Permitted Elimination of Pre-retirement Optional Forms of Benefit.
TD 8791	Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts.
TD 8801	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8802	Certain Asset Transfers to a Tax-Exempt Entity.
TD 8814	Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.
TD 8816	Roth IRAs.
TD 8861	Private Foundation Disclosure Rules.
TD 8865	Amortization of Intangible Property.
TD 8929	Accounting for Long-Term Contracts.
TD 8933	Qualified Transportation Fringe Benefits.
TD 8978	Excise Taxes on Excess Benefit Transactions (REG-246256-96).
TD 8987	Required Distributions from Retirement Plans.
TD 8995	Mid-Contract Change in Taxpayer.
TD 9075	Compensation Deferred Under Eligible Deferred Compensation Plans.
TD 9076	Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates.
TD 9079	Ten or More Employer Plan Compliance Information.
TD 9083	Golden Parachute Payments.
TD 9088	Compensatory Stock Options Under Section 482.
TD 9092	Split-Dollar Life Insurance Arrangements.
TD 9097	Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments.
TD 9099	Disclosure of Relative Values of Optional Forms of Benefit.
TD 9137	Partnership Transactions Involving Long-Term Contracts.
TD 9142	Deemed IRAs in Qualified Retirement Plans.
TD 9169	Retirement plans; Cash or deferred arrangements under section 401(k) and matching contributions or employee contributions under section 401(m) Regulations.
TD 9237	Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).
TD 9324	Designated Roth Contributions Under Section 402A.
TD 9334	Requirement of Return and Time for Filing.
TD 9340	Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.
TD 9447	Automatic Contribution Arrangements.
TD 9472	Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.
TD 9492	Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements with Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing.
TD 9495	Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions.
TD 9549	Implementation of Form 990.
TD 9641	Reduction or Suspension of Safe Harbor Contributions.
TD 9708	Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return.
TD 9724	Summary of Benefits and Coverage, Uniform Glossary for ACA Group Health Plans.
TD 9741	General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds.
TD 9765	Suspension of Benefits under the Multiemployer Pension Reform Act of 2014.
TD 9777	Arbitrage Guidance for Tax-Exempt Bonds.
TD 9801	Issue Price Definition for Tax-Exempt Bonds.
TD 9845	Public Approval of Tax-Exempt Private Activity Bonds.
TD 9846	Regulations Regarding the Transition Tax Under Section 965 and Related Provisions.
TD 9855	Regulations To Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and To Update the Abatement Rules for Section 4966 and 4967 Taxes.
TD 9866	Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits.
TD 9873	Regulations on the Requirement To Notify the IRS of Intent To Operate as a Section 501(c)(4) Organization.
TD 9898	Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.
TD 9902	Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax.
TD 9917	Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Colleges and Universities.
TD 9933	Unrelated Business Taxable Income Separately Computed for Each Trade or Business.
TD 9938	Tax on Excess Tax-Exempt Organization Executive Compensation.
TD 9972	Electronic-Filing Requirements for Specified Returns and Other Documents.
TD 9975	Pre-Filing Registration Requirements for Certain Tax Credit Elections.
TD 9979	Additional Guidance on Low-Income Communities Bonus Credit Program.

Guidance	Title/description
TD 9981	Requirements for Type I and Type III Supporting Organizations.
TD 9988	Elective Payment of Applicable Credits; Elective Payment of Advanced Manufacturing Investment Credit; Final Rules; Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships.
TD 9998	Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements.

[FR Doc. 2026–15608 Filed 7–31–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Application for Certificate Discharging Property Subject to Estate Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before October 2, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include “OMB Control No. 1545–0328” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Kerry Dennis, (202) 317–5751.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C.

3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Application for Extension of Time to File Information Returns.

OMB Control Number: 1545–0328.

Form Number: 4422 and 15056.

Abstract: Form 4422 is completed by either an executor, administrator, or

other interested party for requesting release of any or all property of an estate from the Estate Tax Lien. Form 15056 is a contractual agreement between three parties (the IRS, Taxpayer, and Escrow agent) to hold funds from property sales subject to the federal estate tax lien. The only information it requires is a quarterly statement reflecting the balance in the escrow account as proof that the funds are being held in accordance with the agreement.

Current Actions: There is no change to the previously approved information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Gov’t.

Form 4422:

Estimated Number of Responses: 1,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Form 15056:

Estimated Number of Responses: 20.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10 hours.

Dated: July 30, 2026.

Kerry Dennis,
Tax Analyst.

[FR Doc. 2026–15638 Filed 7–31–26; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 Parts 412 and 414

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2027 and Updates to the IRF Quality Reporting Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 414

[CMS–1845–F]

RIN 0938–AV76

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2027 and Updates to the IRF Quality Reporting Program

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

ACTION: Final rule.

SUMMARY: This final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2027. As required by statute, this final rule includes the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2027. It also finalizes the third and final of the 3-year phaseout of the rural adjustment, which began in FY 2025. This final rule includes a solicitation for public comments on alternative data sources for the IRF PPS wage index; requires all therapy treatments and/or therapy evaluations to begin no later than 36 hours from midnight on the day of admission; finalizes requirements for the initial Interdisciplinary Team meeting to occur on or before 4 days from the date the patient is admitted; and summarizes a request for information on potential future IRF PPS payment reform. Additionally, this final rule includes updates to the IRF Quality Reporting Program and changes to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program.

DATES: These regulations are effective on October 1, 2026.

FOR FURTHER INFORMATION CONTACT:

IRFcoverage@cms.hhs.gov, for general information.

Kimberly Schwartz, (410) 786–2571, for information about the IRF payment policies, payment rates and coverage policies.

Patricia Taft, (410) 786–4561, for readers who experience problems accessing online IRF–PPS documents.

Lauren Blum, (410) 786–9464, for information about the IRF quality reporting program.

Austin Gutowski, (410) 786–1643, for information about the DMEPOS CBP.

SUPPLEMENTARY INFORMATION:

Availability of Certain Information Through the Internet on the CMS Website

The IRF prospective payment system (IRF PPS) Addenda, along with other supporting documents and tables referenced in this final rule, are available on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation>. The technical reports that describe the analyses CMS conducted are referenced in the payment reform RFI (section IX. of this final rule) and can be found at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation/research>.

We note that prior to 2020, each rule or notice issued under the IRF PPS included a detailed reiteration of the various regulatory provisions that have affected the IRF PPS over the years. That discussion, which has been updated to reflect subsequent years, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/files/document/irf-regulatory-legislative-history-updated-06-16-2025.pdf>.

I. Executive Summary

A. Purpose

This final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for fiscal year (FY) 2027 (that is, for discharges occurring on or after October 1, 2026, and on or before September 30, 2027) under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this final rule includes the classification and weighting factors for the IRF PPS case-mix groups (CMGs), and a description of the methodologies and data used in computing the prospective payment rates for FY 2027. In addition, this final rule revises § 412.622(a)(3)(ii) to require all therapy treatments and/or therapy evaluations begin no later than 36 hours from midnight on the day of admission (hereafter referred to as the 36-hour requirement); and finalizes requirements for the initial

Interdisciplinary Team (IDT) by revising § 412.622(a)(5) to require the initial meeting to occur on or before 4 days from the date the patient is admitted to align with the Plan of Care (POC) timeframe. We also provide summaries of the comments received in response to a Request for Information (RFI) on options to modernize and revise the primary diagnosis and comorbidity score methodology under the Skilled Nursing Facility Patient Driven Payment Model (PDPM) for the IRF PPS.

For the IRF Quality Reporting Program (QRP), this final rule revises the IRF QRP data submission deadlines beginning with the FY 2029 IRF QRP. Finally, we provide summaries of the comments received in response to an RFI on future measure concepts for the IRF QRP.

For the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP), this rule finalizes a higher bid surety bond amount for a bidding entity submitting a bid in a Remote Item Delivery (RID) competitive bidding area.

B. Summary of Major Provisions

In this final rule, we use the methods described in the FY 2026 IRF PPS final rule (90 FR 37678) to update the prospective payment rates for FY 2027 using the most current and complete data available at this time, which is FY 2025 IRF claims and FY 2024 IRF cost report data, as discussed in section VI. of this final rule. In addition, this final rule revises the 36-hour requirement at § 412.622(a)(3)(ii) to require all therapy treatments and/or therapy evaluations begin no later than 36-hours from midnight on the day of admission; and it revises § 412.622(a)(5)(ii) to require that an initial IDT meeting must occur on or before 4 days from the date the patient is admitted to align with the POC timeframe.

We include summaries of comments received in response to an RFI on options to modernize the IRF PPS by leveraging and revising the primary diagnosis model and comorbidity score model used under the Skilled Nursing Facility Patient Driven Payment Model (SNF PDPM). Additionally, we include summaries of comments received on whether we should consider using alternative data sources to construct an IRF-specific wage index for potential use in future years to align with other CMS payment systems.

C. Summary of Impact

TABLE 1: Cost and Transfers

Provision Description	Transfers/Costs
FY 2027 IRF PPS payment rate update	The overall economic impact of this final rule is an estimated \$340 million increase in payments from the Federal Government to IRFs during FY 2027.
FY 2027 IRF QRP changes	This final rule will not result in any costs or savings to IRFs related to the IRF QRP during FY 2027.

II. Background

A. Statutory Basis and Scope for IRF PPS Provisions

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057). A general description of the IRF PPS for FYs 2020 through 2026, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation>.

Under the IRF PPS from FYs 2002 through 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across

all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 and 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the

Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area market definitions; modifications to the CMGs, tier comorbidities, and CMG relative weights; implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket used to update IRF payments; and updates to the rural, low-income percentage (LIP) and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2026, is available on the CMS website at <https://www.cms.gov/files/document/irf-regulatory-legislative-history-updated-06-16-2025.pdf>.

B. Provisions of the Affordable Care Act and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient

Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the “Affordable Care Act”.

The Affordable Care Act included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the Affordable Care Act also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a “productivity adjustment” for FY 2012 and each subsequent FY). The productivity adjustment for FY 2027 is discussed in section VI. of this final rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket percentage increase may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Section 3004(b) of the Affordable Care Act and section 411(b) of the MACRA (Pub. L. 114–10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b) of Affordable Care Act reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction to the IRF market basket percentage increase otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2-percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being lower than payment rates for the preceding FY. Reporting-based reductions to the IRF market basket percentage increase are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare

Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762) and the FY 2010 IRF PPS correction notice (74 FR 50712). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number. A free download of the Grouper software is available on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation/software>. The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at <https://www.cms.gov/medicare/health-safety-standards/quality-safety-oversight-general-information/internet-quality-improvement-evaluation-system-iqies>.

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, 110 Stat. 1936 August 21, 1996) compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once an MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit to their MAC an informational-only bill (type of bill (TOB) 111) that includes Condition Code 04. This will ensure that the MA days are included in the hospital’s Supplemental Security

Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the “Medicare Program; Electronic Submission of Medicare Claims” final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c25.pdf>.

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at <https://www.cms.gov/medicare/coding-billing/electronic-billing/> and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the “Pricer” software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF’s prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF’s wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in

the FY 2006 IRF PPS final rule (70 FR 47880).

III. Summary of Provisions of the Final Rule

In this FY 2027 IRF PPS final rule, we are finalizing our proposal to update the IRF PPS for FY 2027 and the IRF QRP for FY 2027 and FY 2029.

The finalized policy changes and updates to the IRF prospective payment rates for FY 2027 will be as follows:

- Update the CMG relative weights and average length of stay values for FY 2027 in a budget neutral manner, as discussed in section IV. of this final rule.

- Update the IRF PPS payment rates for FY 2027 by the IRF market basket percentage increase, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V. of this final rule.

- Update the FY 2027 IRF PPS payment rates by the FY 2027 wage index, applying the final year of the phase-out of the rural adjustment for IRFs transitioning from rural to urban, and the labor-related share in a budget-neutral manner, as discussed in section V. of this final rule.

- Summarize public comments received on alternative data sources for the wage index, as discussed in section V. of this final rule.

- Describe the calculation of the IRF standard payment conversion factor for FY 2027, as discussed in section V. of this final rule.

- Update the outlier threshold amount for FY 2027, as discussed in section VII. of this final rule.

- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2027, as discussed in section VII. of this final rule.

- Require all therapy treatments and/or therapy evaluations to begin no later than 36-hours from midnight on the day of admission (§ 412.622(a)(3)(ii)), as discussed in section VII. of this final rule.

- Not finalize the proposal to require the patient's current functional status is documented in the preadmission screening (§ 412.622(a)(4)(i)(B)), as discussed in section VII. of this final rule.

- Require the initial IDT meeting to occur on or before 4 days from the date the patient is admitted and align with the POC timeframe (§ 412.622(a)(5)(ii)), as discussed in section VII. of this final rule.

- Summarize public comments on the RFI on updating the IRF payment system to explore options to modernize the IRF PPS by leveraging the existing

clinical classification and comorbidity score methodology used by the SNF PDP to group patients by case mix, as discussed in section VIII. of this final rule.

The finalized policy change and update to the IRF QRP for FY 2029 is as follows:

- Revise the IRF QRP data submission deadlines.

The finalized policy change and update to the DMEPOS Competitive Bidding Program (CBP) is as follows:

- Update the bid surety bond requirement to require a higher bid surety bond amount for a bidding entity submitting a bid under a Remote Item Delivery competitive bidding program.

IV. Analysis and Responses to Public Comments

We received 103 timely pieces of correspondence from the public, many of which contained multiple comments on the FY 2027 IRF PPS proposed rule (91 FR 17195). We received comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, healthcare industry organizations, healthcare consulting and patient advocacy firms, technology vendors, academic institutions, and anonymous persons. The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses.

A. General Comments on the FY 2027 IRF PPS Proposed Rule

In addition to the comments we received on specific proposals contained within the proposed rule (which we address later in this final rule), commenters also submitted more general observations on the IRF PPS and IRF care generally.

Comment: We received a couple of comments on the facility-level payment adjustments that recommend CMS revise the adjustments. A commenter stated that the current low-income patient (LIP) adjustment does not adequately support high-share low-income patient facilities, citing continued negative Medicare margins for facilities with high LIP share, and requested CMS reexamine and report on the adjustment's effectiveness for FY 2028. Another commenter expressed that CMS should update the LIP and Rural coefficients using a rolling 3-year average, cap the teaching adjustment at IPPS levels, and phase in any changes over 2 to 3 years if implemented in FY 2027. Overall, both commenters stated that the current payment adjustments may not accurately reflect cost pressures

faced by low-income and teaching IRFs, which necessitates the need for recalibration to better align payments with patient mix and resource needs.

Response: We thank the commenters regarding the facility level adjustments and their effect on IRFs serving low-income and teaching IRFs. As discussed in the FY 2015 IRF PPS final rule (79 FR 45883), we finalized freezing the facility-level adjustment factors for FY 2014 and all subsequent years (unless and until we propose to update them again through future notice and comment rulemaking). Specifically, the rural adjustment of 14.9 percent, a LIP adjustment factor of 0.3177, and a teaching status adjustment factor of 1.0163 have been frozen since FY 2014. We will consider potential policy refinements as we monitor the adjustment going forward. The low-income patient (LIP) and rural adjustment will continue to be applied according to current policy for FY 2027 as we did not propose to change these adjustments in this rule.

V. Updates to the CMG Relative Weights and Average Length of Stay (ALOS) Values for FY 2027

As specified in § 412.620(b)(1), an appropriate weight is assigned to each CMG that measures the relative difference in facility resource intensity among the various case-mix groups. In other words, we calculate a relative weight for each CMG that is proportional to the resources needed for an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this final rule, we update the CMG relative weights and average length of stay (ALOS) values for FY 2027. Typically, we use the most recent available data to update the CMG relative weights and ALOS values. For FY 2027, we use the FY 2025 IRF claims and FY 2024 IRF cost report data (CMS Form 2552–10, OMB No 0938–0050). These data are the most current and complete data available at the time of this final rule. Currently, only a small portion of the FY 2025 IRF cost report data is available for analysis, but the majority of the FY 2025 IRF claims data are available for analysis.

In the FY 2027 IRF PPS proposed rule, we proposed that if more recent

data became available after the publication of the proposed rule and before the publication of the final rule, we would use such data to determine the FY 2027 CMG relative weights and ALOS values in the final rule.

We proposed to apply these data using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology. The detailed CCR data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate the operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this final rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in Step 1.

Step 3. We use the adjusted costs from Step 2 to calculate CMG relative

weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2027 CMG relative weights using a normalization factor that results in the average CMG relative weights in FY 2027 being the same as the average CMG relative weights in the FY 2026 IRF PPS final rule (90 FR 37678).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we are updating the CMG relative weights for FY 2027 in such a way that total estimated aggregate payments to IRFs for FY 2027 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2027 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2027 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2027 by applying the proposed changes to the CMG relative weights (as discussed in the proposed rule).

Step 3. Divide the amount calculated in Step 1 by the amount calculated in Step 2 to determine the budget neutrality factor of 0.9990 that would maintain the same total estimated aggregate payments in FY 2027 with and without the proposed changes to the final CMG relative weights.

Step 4. Apply the budget neutrality factor from Step 3 to the FY 2027 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V. of this final rule, we discuss the use of the existing methodology to calculate the proposed standard payment conversion factor for FY 2027.

In Table 2, "Relative Weights and Average Length of Stay Values for Case-Mix Groups," we present the CMGs, the comorbidity tiers, the corresponding relative weights, and the ALOS values for each CMG and tier for FY 2027. The ALOS for each CMG is used to determine when an IRF discharge meets the definition of a short stay transfer, which results in a per diem case level adjustment.

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TABLE 2: Relative Weights and Average Length of Stay Values for the Case-Mix Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0101	Stroke M >=72.50	0.9840	0.8444	0.7705	0.7390	9	9	9	8
0102	Stroke M >=63.50 and M <72.50	1.2541	1.0761	0.9820	0.9418	11	11	10	10
0103	Stroke M >=50.50 and M <63.50	1.6068	1.3788	1.2582	1.2067	13	14	13	13
0104	Stroke M >=41.50 and M <50.50	2.0342	1.7456	1.5929	1.5277	17	17	16	16
0105	Stroke M <41.50 and A >=84.50	2.5889	2.2216	2.0272	1.9443	21	22	19	19
0106	Stroke M <41.50 and A <84.50	2.9548	2.5356	2.3137	2.2190	24	24	22	22
0201	Traumatic brain injury M >=73.50	1.1165	0.8808	0.8082	0.7579	10	9	9	8
0202	Traumatic brain injury M >=61.50 and M <73.50	1.3798	1.0885	0.9988	0.9366	11	12	11	10
0203	Traumatic brain injury M >=49.50 and M <61.50	1.7322	1.3664	1.2539	1.1758	14	14	13	12
0204	Traumatic brain injury M >=35.50 and M <49.50	2.1428	1.6903	1.5511	1.4545	17	17	15	15
0205	Traumatic brain injury M <35.50	2.7719	2.1865	2.0065	1.8815	27	22	19	18
0301	Non-traumatic brain injury M >=65.50	1.2273	0.9413	0.8841	0.8178	10	9	9	9
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5788	1.2109	1.1373	1.0521	13	12	11	11
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.9169	1.4702	1.3808	1.2774	15	14	13	13
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.2496	1.7254	1.6205	1.4991	18	16	15	15
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.4408	1.8720	1.7582	1.6265	20	18	17	16
0401	Traumatic spinal cord injury M >=56.50	1.3059	1.1286	1.0544	0.9613	13	12	11	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.6279	1.4070	1.3144	1.1984	14	13	14	13
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	2.0643	1.7841	1.6667	1.5196	18	17	17	16
0404	Traumatic spinal cord injury M <31.50 and A <61.50	3.1280	2.7035	2.5256	2.3027	24	31	25	18
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.5612	2.2136	2.0679	1.8854	23	21	20	20
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.2074	2.7722	2.5897	2.3611	26	28	24	25
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.4884	3.8793	3.6240	3.3041	53	37	32	32
0501	Non-traumatic spinal cord injury M >=60.50	1.2680	1.0034	0.9438	0.8786	12	10	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.5561	1.2314	1.1582	1.0783	13	12	12	12

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.7552	1.3890	1.3064	1.2162	14	14	13	13
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.1116	1.6710	1.5717	1.4632	19	16	15	15
0505	Non-traumatic spinal cord injury M <39.50	2.9563	2.3396	2.2005	2.0486	24	22	21	20
0601	Neurological M >=64.50	1.3670	1.0009	0.9320	0.8547	10	10	9	9
0602	Neurological M >=52.50 and M <64.50	1.7012	1.2456	1.1598	1.0636	13	12	11	11
0603	Neurological M >=43.50 and M <52.50	1.9963	1.4617	1.3610	1.2481	15	14	13	13
0604	Neurological M <43.50	2.5173	1.8432	1.7162	1.5738	19	17	16	15
0701	Fracture of lower extremity M >=61.50	1.2512	0.9661	0.9064	0.8400	10	10	10	9
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.5542	1.2000	1.1258	1.0434	12	12	12	11
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.9322	1.4919	1.3997	1.2972	15	15	14	13
0704	Fracture of lower extremity M <41.50	2.3857	1.8420	1.7282	1.6016	19	18	17	16
0801	Replacement of lower-extremity joint M >=63.50	1.2013	0.9653	0.8845	0.8402	10	9	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.3646	1.0965	1.0047	0.9543	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.5066	1.2106	1.1093	1.0536	12	11	11	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.7149	1.3780	1.2627	1.1993	14	13	12	12
0805	Replacement of lower-extremity joint M <42.50	2.1041	1.6907	1.5492	1.4715	17	16	15	14
0901	Other orthopedic M >=63.50	1.2051	0.9364	0.8840	0.8192	10	10	9	9
0902	Other orthopedic M >=51.50 and M <63.50	1.5311	1.1898	1.1232	1.0408	12	12	11	11
0903	Other orthopedic M >=44.50 and M <51.50	1.8068	1.4040	1.3254	1.2282	14	13	13	13
0904	Other orthopedic M <44.5	2.1986	1.7085	1.6129	1.4945	17	16	16	15
1001	Amputation lower extremity M >=64.50	1.2123	1.0256	0.9170	0.8331	10	11	10	9
1002	Amputation lower extremity M >=55.50 and M <64.50	1.4955	1.2651	1.1312	1.0277	13	12	12	11
1003	Amputation lower extremity M >=47.50 and M <55.50	1.8249	1.5438	1.3804	1.2540	15	14	14	13
1004	Amputation lower extremity M <47.50	2.3320	1.9727	1.7640	1.6025	18	19	17	16
1101	Amputation non-lower extremity M >=58.50	1.2244	1.0493	1.0088	0.8971	10	11	11	9
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.5710	1.3463	1.2943	1.1510	12	13	13	10

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1103	Amputation non-lower extremity M <52.50	1.9470	1.6685	1.6041	1.4265	18	15	16	12
1201	Osteoarthritis M ≥61.50	1.1403	0.9834	0.8936	0.8380	10	10	9	9
1202	Osteoarthritis M ≥49.50 and M <61.50	1.4187	1.2235	1.1118	1.0426	12	14	11	11
1203	Osteoarthritis M <49.50 and A ≥74.50	1.8950	1.6343	1.4851	1.3926	15	16	15	14
1204	Osteoarthritis M <49.50 and A <74.50	1.8825	1.6235	1.4753	1.3834	16	15	15	13
1301	Rheumatoid other arthritis M ≥62.50	1.1941	0.9173	0.9079	0.8282	10	7	9	9
1302	Rheumatoid other arthritis M ≥51.50 and M <62.50	1.5770	1.2114	1.1990	1.0938	13	12	11	11
1303	Rheumatoid other arthritis M ≥44.50 and M <51.50 and A ≥64.50	1.8230	1.4004	1.3860	1.2644	15	13	13	13
1304	Rheumatoid other arthritis M <44.50 and A ≥64.50	2.2795	1.7510	1.7331	1.5810	16	18	16	15
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.1614	1.6603	1.6433	1.4991	16	15	16	15
1401	Cardiac M ≥68.50	1.1244	0.9033	0.8245	0.7556	10	9	9	8
1402	Cardiac M ≥55.50 and M <68.50	1.4297	1.1485	1.0484	0.9607	12	11	10	10
1403	Cardiac M ≥45.50 and M <55.50	1.7412	1.3988	1.2769	1.1701	14	13	12	12
1404	Cardiac M <45.50	2.1229	1.7054	1.5568	1.4266	18	16	15	14
1501	Pulmonary M ≥68.50	1.3297	1.0507	0.9939	0.9370	12	10	9	9
1502	Pulmonary M ≥56.50 and M <68.50	1.6569	1.3093	1.2384	1.1676	13	12	11	11
1503	Pulmonary M ≥45.50 and M <56.50	1.8972	1.4991	1.4180	1.3369	14	13	13	12
1504	Pulmonary M <45.50	2.3451	1.8531	1.7528	1.6525	19	17	15	15
1601	Pain syndrome M ≥65.50	1.1594	0.8862	0.8052	0.7377	9	9	9	8
1602	Pain syndrome M ≥58.50 and M <65.50	1.3972	1.0681	0.9704	0.8891	11	11	10	10
1603	Pain syndrome M ≥43.50 and M <58.50	1.8108	1.3842	1.2576	1.1522	13	14	13	13
1604	Pain syndrome M <43.50	2.3324	1.7830	1.6199	1.4841	15	16	16	15
1701	Major multiple trauma without brain or spinal cord injury M ≥57.50	1.4146	1.0364	0.9600	0.8916	11	10	10	10
1702	Major multiple trauma without brain or spinal cord injury M ≥50.50 and M <57.50	1.7530	1.2844	1.1896	1.1049	14	14	12	12
1703	Major multiple trauma without brain or spinal cord injury M ≥41.50 and M <50.50	2.0456	1.4988	1.3882	1.2893	16	15	14	13
1704	Major multiple trauma without brain or spinal cord injury M ≥36.50 and M <41.50	2.3387	1.7135	1.5871	1.4740	18	17	15	15

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.7867	2.0417	1.8911	1.7564	22	19	18	17
1801	Major multiple trauma with brain or spinal cord injury M >=67.50	1.1494	0.9172	0.8529	0.7868	10	11	9	9
1802	Major multiple trauma with brain or spinal cord injury M >=55.50 and M <67.50	1.4488	1.1561	1.0750	0.9918	13	12	11	11
1803	Major multiple trauma with brain or spinal cord injury M >=45.50 and M <55.50	1.8351	1.4644	1.3617	1.2562	14	15	14	13
1804	Major multiple trauma with brain or spinal cord injury M >=40.50 and M <45.50	2.0710	1.6526	1.5367	1.4177	17	16	15	15
1805	Major multiple trauma with brain or spinal cord injury M >=30.50 and M <40.50	2.5062	1.9999	1.8597	1.7156	22	20	18	17
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.5548	2.8366	2.6378	2.4334	38	27	24	23
1901	Guillain-Barré M >=66.50	1.0733	0.9529	0.8489	0.8266	13	11	9	9
1902	Guillain-Barré M >=51.50 and M <66.50	1.5683	1.3924	1.2404	1.2078	18	15	13	12
1903	Guillain-Barré M >=38.50 and M <51.50	2.2393	1.9881	1.7711	1.7245	23	19	17	18
1904	Guillain-Barré M <38.50	3.3989	3.0177	2.6883	2.6175	37	29	25	25
2001	Miscellaneous M >=66.50	1.2079	0.9497	0.8735	0.8112	10	10	9	9
2002	Miscellaneous M >=55.50 and M <66.50	1.4961	1.1763	1.0819	1.0048	12	11	11	10
2003	Miscellaneous M >=46.50 and M <55.50	1.7739	1.3947	1.2828	1.1913	14	14	13	12
2004	Miscellaneous M <46.50 and A >=77.50	2.1382	1.6811	1.5462	1.4360	17	16	15	15
2005	Miscellaneous M <46.50 and A <77.50	2.2762	1.7895	1.6460	1.5286	18	17	16	15
2101	Burns M >=52.50	1.6233	1.3063	1.2264	1.0448	11	15	13	11
2102	Burns M <52.50	2.4574	1.9776	1.8566	1.5817	14	20	18	15
5001	Short-stay cases, length of stay is 3 days or fewer	0.0000	0.0000	0.0000	0.1759	0	0	0	3
5101	Expired, orthopedic, length of stay is 13 days or fewer	0.0000	0.0000	0.0000	0.8653	0	0	0	8
5102	Expired, orthopedic, length of stay is 14 days or more	0.0000	0.0000	0.0000	1.9494	0	0	0	18
5103	Expired, not orthopedic, length of stay is 15 days or fewer	0.0000	0.0000	0.0000	0.9515	0	0	0	9
5104	Expired, not orthopedic, length of stay is 16 days or more	0.0000	0.0000	0.0000	2.2711	0	0	0	20

estimate that the application of the proposed revisions for FY 2027 would affect particular CMG relative weight values, which would affect the overall distribution of payments within CMGs

and tiers. We note that, because we implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2027

would not be affected as a result of the CMG relative weight revisions. However, the revisions will affect the distribution of payments within CMGs and tiers.

TABLE 3: Distributional Effects of the Changes to the CMG Relative Weights

Percentage Change in CMG Relative Weights	Number of Cases Affected	Percentage of Cases Affected
Increased by 15% or more	128	0.0%
Increased by between 5% and 15%	1,824	0.4%
Changed by less than 5%	470,128	99.4%
Decreased by between 5% and 15%	633	0.1%
Decreased by 15% or more	44	0.0%

As shown in Table 3, 99.4 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the revisions for FY 2027. The changes in the ALOS values for FY 2027, compared with the FY 2026 ALOS values, are small and do not show any particular trends in IRF length of stay patterns.

The methodology that we use to update the CMG relative weights uses the most recent cost data reported by IRFs to compute relative weights that reflect the relative costliness of different IRF cases in a budget neutral manner. We increase or decrease relative weights of the CMGs annually, including for those CMGs associated with the 13 conditions that qualify for the 60 percent rule, under 42 CFR 412.29(b)(2), based only on the cost data reported to us by IRFs each year. We believe that these data accurately reflect the severity of the IRF patient population and the associated costs of caring for these patients in the IRF setting. The CMG relative weights are updated each year based on the most recent available data for the full population of IRF Medicare fee-for-service beneficiaries. This ensures that the IRF case-mix system is as reflective as possible of changes in the IRF patient populations and the associated coding practices and ensures that IRF payments appropriately reflect the relative costs of caring for all types of IRF patients.

We received public comments on our proposed updates to the CMG relative weights and ALOS values for FY 2027. The following is a summary of the comments we received and our responses.

Comment: A few commenters submitted feedback on the updates to the CMG relative weights and ALOS values, all in support of the proposed

updates. Commenters encouraged continued updates in the final rule, supported using most recent available data, and stated that the vast majority of IRF cases would not be changed by the proposed update.

Response: We appreciate these commenters' support for updating the relative weights and ALOS values for FY2027. We have updated our data between the FY 2027 IRF PPS proposed and this final rule to ensure that we use the most recent available data in calculating IRF PPS payments.

As discussed earlier in this section of this final rule, the methodology that we use to update the CMG relative weights uses the most recent cost data reported by IRFs to compute relative weights that reflect the relative costliness of different IRF cases in a budget neutral manner. We increase or decrease relative weights of the CMGs annually, including for those CMGs associated with the 13 conditions that qualify for the 60 percent rule, under 42 CFR 412.29(b)(2) based only on the cost report data reported to us by IRFs each year.

We believe that these data accurately reflect the severity of the IRF patient population and the associated costs of caring for these patients in the IRF setting. The CMG relative weights are updated each year based on the most recent available data for the full population of IRF Medicare fee-for-service beneficiaries. This ensures that the IRF case-mix system is as reflective as possible of changes in the IRF patient population and the associated coding practices and ensures IRF payments appropriately reflect the relative costs of caring for all types of IRF patients.

After consideration of the comments we received, we are finalizing our proposal to update the CMG relative weights and ALOS values for FY 2027 using the same methodologies that we have used to update the CMG relative

weights and ALOS values for each FY since we implemented an update to the methodology in FY 2009, as shown in Table 3 of this final rule. These updates are effective for FY 2027, that is, for discharges occurring on or after October 1, 2026, and on or before September 30, 2027. CMS is finalizing Table 2: Relative Weights and Average Length of Stay Values for Case-Mix Groups and Table 3: Distributional Effects of the Changes to the CMG Relative Weights as proposed with the most recent available data.

VI. FY 2027 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, we are updating the IRF PPS payments for FY 2027 by a market basket percentage increase as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

Beginning with FY 2024, we finalized a rebased and revised IRF market basket to reflect a 2021 base year. The FY 2024 IRF PPS final rule (88 FR 50966 through 50988) contains a complete discussion

of the development of the 2021-based IRF market basket.

B. FY 2027 Market Basket Update and Productivity Adjustment

1. FY 2027 Market Basket Update

For FY 2027 (that is, beginning October 1, 2026, and ending September 30, 2027), we proposed to update the IRF PPS payments by a market basket percentage increase as required by section 1886(j)(3)(C) of the Act, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. For FY 2027, we proposed to use the same methodology described in the FY 2026 IRF PPS final rule (90 FR 37687 through 37691).

Consistent with historical practice, we proposed to estimate the market basket update for the IRF PPS for FY 2027 based on the most recently available data at the time of rulemaking. Based on IHS Global Inc.'s (IGI) fourth quarter 2025 forecast with historical data through the third quarter of 2025 the proposed 2021-based IRF market basket percentage increase for FY 2027 was projected to be 3.2 percent. IGI is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets. We also proposed that if more recent data became available after the publication of the proposed rule and before the publication of this final rule (for example, a more recent estimate of the market basket percentage increase or productivity adjustment), we would use such data, if appropriate, to determine the FY 2027 IRF market basket update in the final rule. Based on IGI's second quarter 2026 forecast with historical data through the first quarter of 2026, the 2021-based IRF market basket percentage increase for FY 2027 is 3.2 percent.

2. FY 2027 Productivity Adjustment

Section 1886(j)(3)(C)(ii) of the Act requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost

reporting period, or other annual period; the "productivity adjustment").

The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the U.S. economy. The productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is published by BLS as private nonfarm business total factor productivity (TFP) previously referred to as multifactor productivity.¹ We refer readers to <https://www.bls.gov/productivity/> for the BLS historical published TFP data. A complete description of IGI's TFP projection methodology is available on the CMS website at <https://www.cms.gov/data-research/statistics-trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information>.

As stated in the proposed rule, using IGI's fourth quarter 2025 forecast, the 10-year moving average growth of TFP for FY 2027 was projected to be 0.8 percent. In accordance with section 1886(j)(3)(C) of the Act, we proposed to base the FY 2027 IRF market basket percentage increase, which is used to determine the applicable percentage increase for the IRF payments, on IGI's fourth quarter 2025 forecast of the 2021-based IRF market basket. We proposed to then reduce the market basket percentage increase by the proposed productivity adjustment for FY 2027 of 0.8 percentage point (the 10-year moving average growth of TFP for the period ending FY 2027 based on IGI's fourth quarter 2025 forecast). Therefore, the proposed FY 2027 IRF market basket update was 2.4 percent (3.2 percent IRF market basket percentage increase reduced by the 0.8 percentage point productivity adjustment). Furthermore, we proposed that if more recent data became available after the publication of the proposed rule and before the publication of this final rule (for example, a more recent estimate of the market basket percentage increase and productivity adjustment), we would use such data, if appropriate, to determine the FY 2027 IRF market basket percentage increase and productivity adjustment in this final rule.

Thus, using IGI's second quarter 2026 forecast, the 10-year moving average growth of TFP for FY 2027 is projected to be 0.9 percent. Thus, in accordance with section 1886(j)(3)(C) of the Act, the FY 2027 market basket percentage increase, which is used to determine the applicable percentage increase for the IRF payments, is equal to 3.2 percent using IGI's second quarter 2026 forecast

of the 2021-based IRF market basket. We then reduce this percentage increase by the estimated productivity adjustment for FY 2027 of 0.9 percentage point (the 10-year moving average growth of TFP for the period ending FY 2027 based on IGI's second quarter 2026 forecast). Therefore, more recent data would provide a FY 2027 IRF update equal to 2.3 percent (3.2 percent IRF market basket percentage increase reduced by the 0.9 percentage point productivity adjustment).

In its March 2026 Report to Congress, MedPAC recommended that Congress should reduce the IRF PPS base payment rate by 7 percent for FY 2027.² As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary proposed to update the IRF PPS payment rates for FY 2027 by the proposed IRF market basket update of 2.4 percent. Based on more recent data, the current estimate of the productivity-adjusted IRF market basket increase factor for FY 2027 is 2.3 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2027.

We invited public comments on our proposals for the FY 2027 market basket percentage increase and productivity adjustment. The following is a summary of the public comments received and our responses.

Comment: Many commenters expressed concern that the FY 2027 proposed payment update is insufficient. Commenters stated that the proposed payment update does not reflect cost increases faced by IRFs over the last few years, specifically citing cost increases such as wages and contract labor, prescription drugs, medical supplies, technology PPE, and capital investment. Other challenges highlighted by commenters included inflation, staffing shortages, recruitment and retention challenges, documentation demands, payer-related administrative burden and increased patient acuity.

Several commenters appreciated the proposed update, with some commenters stating that the proposed update does not resolve the broader fiscal pressures facing IRFs. Some commenters supported finalizing the FY 2027 IRF PPS payment update as proposed. Many of the commenters encouraged CMS to continue monitoring whether future payment updates

¹ <https://www.bls.gov/productivity/notices/2021/mfp-to-tfp-term-change.htm>.

² Medicare Payment Advisory Commission. *March 2026 Report to the Congress: Medicare Payment Policy*. Accessed at: https://www.medpac.gov/wp-content/uploads/2026/03/Mar26_MedPAC_Report_To_Congress_SEC.pdf.

adequately reflect sustained real-world cost pressures facing IRFs. A commenter also urged CMS to monitor the financial viability of IRFs and take additional steps to support their sustainability.

Several commenters urged CMS to finalize a higher payment update for FY 2027 or consider adjustments to reconsider the proposed update. Some commenters encouraged CMS to consider recommendations to Congress, as appropriate, or to evaluate all available data sources and policy options to better align payment updates with providers' actual cost experience.

A commenter claimed that a significant contributor to fiscal instability is the persistent gap between Medicare reimbursement and the actual cost of care. The commenter stated that closer alignment between the market basket update and the actual cost of furnishing care to Medicare beneficiaries is essential to meeting CMS' statutory obligation to ensure payment adequacy. Some commenters stated that the CMS IRF rate setting file suggests that over 33 percent of IRFs would be projected to face negative Medicare profit margins for FY 2027.

Some commenters encouraged CMS to continue evaluating whether the IRF market basket adequately reflects the current cost structure associated with furnishing modern inpatient rehabilitation care. A commenter stated that the IRF market basket relies on projected growth in generalized hospital goods and services, which does not consider the specialized training and experience required by therapists, nurses, and other clinicians in IRFs. Additionally, the commenter noted that IRFs often incur higher costs for advanced rehabilitation technologies and specialized drugs, which may not be adequately reflected in the market basket. The commenter urged CMS to explore all available avenues to update IRF PPS payments in a manner that addresses rising costs and reductions in reimbursement to ensure there are no disruptions in access to IRF services for Medicare beneficiaries.

A commenter requested that CMS, in the final rule, make use of the most current available data when finalizing the market basket forecast and clearly explain in the final rule the basis on which CMS concludes the update is sufficient to preserve beneficiary access to medically appropriate IRF placement, particularly for high-acuity patients discharged from hospitals. A commenter urged CMS to revisit its market basket forecast and to work with Congress to reduce the magnitude of the productivity adjustment, as well as consider their combined effect on

reimbursements for hospitals. Another commenter urged CMS to carefully review inflation trends in light of recent growth and projected volatility so as to avoid a significant understatement of market-basket changes in FY 2027, much like occurred in FY 2022.

Response: We acknowledge and appreciate commenters' concerns regarding recent trends in inflation. We are required to update IRF PPS payments by the market basket update adjusted for productivity, as directed by section 1886(j)(3)(C) of the Act. Specifically, section 1886(j)(3)(C)(i) of the Act states that the increase factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made. In the FY 2024 IRF PPS final rule, we rebased the IRF market basket to reflect a 2021 base year (88 FR 50966 through 50982). We believe the increase in the 2021-based IRF market basket adequately reflects the average change in the price of goods and services hospitals purchase to provide IRF medical services and is technically appropriate to use as the IRF payment update factor.

The IRF market basket is a fixed-weight, Laspeyres-type index that measures the change in price over time of the same mix of goods and services purchased by IRFs in the base period. As we discussed in response to similar comments in the FY 2024 IRF PPS final rule (88 FR 50983), the FY 2025 IRF PPS final rule (89 FR 64286), and the FY 2026 IRF PPS final rule (90 FR 37689), the IRF market basket update would reflect the prospective price pressures described by the commenters as increasing during a high inflation period but would inherently not reflect other factors that might increase the level of costs (such as increases in volume or intensity). We note that cost changes (that is, the product of price and quantities) would only be reflected when a market basket is rebased and the base year weights are updated to a more recent time period.

We disagree that the IRF market basket does not consider the specialized costs faced by IRFs, as the market basket weights are derived directly from IRF cost report data, which inherently captures and reflects the specific cost structures of inpatient rehabilitation facilities, including expenditures for specialized rehabilitation technologies, advanced therapeutic equipment, and the unique staffing mix required for IRF services, ensuring that these facility-specific costs are appropriately represented in the market basket calculation. Additionally, we note that

the IRF market basket is designed to reflect national-level inflationary price pressures affecting IRFs, and separate payment adjustments, such as rural add-on payments and wage index adjustments, exist to address geographic cost variations and specific challenges faced by rural facilities. Therefore, we believe the 2021-based IRF market basket appropriately reflects IRF cost structures.

To measure price growth for IRF wages and salaries costs in the IRF market basket, since IRF-specific information is unavailable, we use the Employment Cost Index (ECI) for Wages and Salaries for All Civilian workers in Hospitals. As stated in the FY 2024 IRF final rule (88 FR 50978), FY 2025 IRF final rule (89 FR 64286), and FY 2026 IRF final rule (90 FR 37690) we believe that this ECI is the best available price proxy to account for the occupational skill mix within IRFs and in the absence of an IRF-specific ECI, we believe that the highly skilled hospital workforce captured by the ECI for Wages and Salaries for All Civilian workers in Hospitals (inclusive of therapists, nurses, other clinicians, etc.) is a reasonable price proxy for the compensation components of the IRF market basket. The FY 2024 IRF and FY 2025 IRF final rules provide a detailed discussion as it relates to contract labor in IRFs and their share of overall IRF compensation costs and hours.

To reflect expected price growth for each of the cost categories in the IRF market basket, we rely on impartial economic forecasts of the price proxies used in the market basket from IGI, which is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets. At the time of the FY 2027 IRF PPS proposed rule, based on IGI's fourth quarter 2025 forecast with historical data through the third quarter of 2025, the 2021-based IRF market basket update was forecasted to be 3.2 percent for FY 2027, reflecting forecasted compensation price growth of 3.3 percent. We also note that when developing its forecast for labor prices, IGI considers overall labor market conditions (including rise in contract labor employment due to tight labor market conditions) as well as trends in contract labor wages, which both have an impact on wage pressures for workers employed directly by the hospital.

As is our general practice, in the FY 2027 IRF PPS proposed rule, we proposed that if more recent data became available, we would use such data, if appropriate, to derive the final

FY 2027 IRF market basket update for the final rule. For this final rule, we now have an updated forecast of the price proxies underlying the market basket that incorporates more recent historical data and reflects a revised outlook regarding the U.S. economy and expected price inflation for FY 2027. Based on IGI's second quarter 2026 forecast with historical data through the first quarter of 2026, we are projecting a FY 2027 IRF market basket percentage increase of 3.2 percent (reflecting forecasted compensation price growth of 3.2 percent), which is the same as in the proposed rule. Based on IGI's second quarter 2026 forecast, we are also projecting a productivity adjustment of 0.9 percent that is 0.1 percentage point higher than in the proposed rule, primarily due to the incorporation of historical TFP data from BLS. Therefore, for FY 2027 a final IRF market basket update of 2.3 percent (3.2 percent less 0.9 percentage point) will be applicable, which is slightly lower than the proposed IRF market basket update of 2.4 percent.

Regarding whether IRF PPS payments are adequate to cover costs, MedPAC's analysis and recommendations as published in MedPAC's March 2026 Report to Congress³ concluded that Medicare's current payment rates for IRFs are more than adequate based on aggregate Medicare margins above 13 percent since 2015. With respect to the commenters' concern about payments to non-profits, MedPAC acknowledged that margins continued to vary widely across types of IRFs, with higher margins in IRFs that were freestanding, for profit, urban, larger, and with a greater share of FFS Medicare days.

Comment: Several commenters had concerns regarding the application and magnitude of the productivity adjustment. Some commenters requested that CMS use its "special exceptions and adjustments" authority to eliminate or reduce the 0.8 percentage point productivity cut for FY 2027.

Some commenters requested that CMS work with Congress to reduce the magnitude of the productivity adjustment. A commenter noted that they find it troubling that the productivity adjustment appears to be applied only when it reduces Medicare payments. Another commenter requested that CMS carefully monitor the impact that the productivity adjustments have on the inpatient

rehabilitation hospital sector, provide feedback to Congress as appropriate, and consider modifying the productivity adjustment consistent with the actual experiences of IRFs. While another commenter urged CMS to provide clarification in order for interested parties to provide feedback on the productivity adjustment. Another commenter requested that CMS in the final rule carefully reassess whether the 0.8 percentage-point productivity adjustment is supportable in light of the post-pandemic operating environment.

A commenter urged CMS to reexamine whether the productivity adjustment is consistent with the agency's own findings on hospital sector productivity. The commenter recognized that the productivity adjustment is required by section 1886(j)(3)(C)(ii)(I) of the Social Security Act, and that the statute does not provide CMS unilateral authority to set the adjustment at zero. The commenter stated that the statute does not, however, require CMS to disregard the documented mismatch between the offset and OACT's own analysis of hospital sector productivity. The commenter urged CMS to work with Congress to modify the statute to focus on adjustments based on productivity changes in hospitals rather than private nonfarm businesses. The commenter also urged CMS to engage OACT and the relevant offices within the Department of Health and Human Services in reexamining whether the methodology currently used to compute the productivity adjustment is consistent with the agency's own analytical findings about hospital sector productivity.

Response: Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment, described in section 1886(b)(3)(B)(xi)(II), to the IRF PPS market basket increase factor. As required by statute, the FY 2027 productivity adjustment is derived based on the 10-year moving average growth in economy-wide, private nonfarm business total factor productivity for the period ending FY 2027. We recognize the concerns of the commenters regarding the appropriateness of the productivity adjustment; however, as we explained in response to similar comments in the FY 2023, FY 2024, FY 2025, and FY 2026 IRF PPS final rules, we are required under section 1886(j)(3)(C)(ii)(I) of the Act to apply the specific productivity adjustment described here.

We have always made available on the CMS website the general method for calculating the productivity adjustment.

This includes providing a link (<https://www.bls.gov/productivity/>) to the most recent BLS historical TFP data, which currently allows interested parties to obtain historical TFP annual index levels for 1987 through 2025. We also provided the IGI projection model (https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/downloads/tfp_methodology.pdf), which for this final rule is used to derive annual TFP growth rates for 2026 and 2027. The annual index level derived from this method is then interpolated to quarterly levels, and the FY 2027 productivity adjustment is equal to the percent change in the 40-quarter moving average projected level for the period ending September 30, 2027, relative to the 40-quarter moving average projected level for the period ending September 30, 2026. We believe our methodology for the productivity adjustment is consistent with section 1886(b)(3)(B)(xi)(II) of the Act, which states that the productivity adjustment is equal to the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period).

At the time of this final rule, the 2027 productivity adjustment reflects BLS historical TFP data through 2025 (released on March 19, 2026) and IGI's forecasted TFP growth for 2026 and 2027. The average annual growth rate of historical TFP published by BLS for 2018 through 2025 is currently 1.0 percent and IGI is projecting average TFP growth of about 0.7 percent for 2026 and 2027 based on IGI's second-quarter 2026 forecast. Combining the historical and projected TFP data over the entire 10-year time period and interpolating into quarterly index levels results in a 10-year moving average growth rate of TFP of 0.9 percent for FY 2027. The productivity adjustment (based on the 10-year period ending with FY 2027) for the FY 2027 final rule is 0.1 percentage point higher than the FY 2027 IRF proposed rule mainly due to the incorporation of updated BLS historical data.

In response to commenters' concerns about the productivity adjustment only being applied if it reduces the payment update, as noted in the FY 2026 IRF final rule (90 FR 37691), the productivity adjustment was established under the Affordable Care Act with a specific policy intent to encourage efficiency improvements in healthcare

³ Medicare Payment Advisory Commission. March 2026 Report to the Congress: Medicare Payment Policy. Accessed at https://www.medpac.gov/wp-content/uploads/2026/03/Mar26_MedPAC_Report_To_Congress_SEC.pdf.

delivery by linking Medicare payment updates to economy-wide productivity gains. The statutory language in section 1886(j)(3)(C)(ii) of the Act requires that the Secretary reduce (not increase) the market basket percentage increase factor by changes in economy-wide productivity, therefore, only positive productivity adjustments are applied.

Comment: A commenter urged CMS to use its special exceptions and adjustments authority to implement a one-time, retrospective adjustment of 3.8 percentage points to account for the underpayments that occurred between FY 2022 and FY 2024, in addition to the proposed FY2027 market basket update.

Response: The IRF market basket updates are set prospectively, which means that the update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. For instance, the FY 2027 market basket update in this final rule reflects historical data through the first quarter of CY 2026 and forecasted data for the second quarter of CY 2026 through the third quarter of CY 2027.

The forecast error has been both positive and negative during past years, and over longer periods of time the cumulative forecast has not deviated significantly from the historical measures. Only considering the forecast error for years when the IRF market basket update was lower than the actual market basket update would not fully account for forecast error.

After consideration of the public comments received, we are finalizing a FY 2027 IRF productivity-adjusted market basket increase of 2.3 percent based on the most recent data available. This reflects a 3.2 percent market basket percentage increase, less the 0.9 percentage point productivity adjustment required by law.

C. FY 2027 IRF Labor-Related Share

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs that are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act, for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We proposed to continue

to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2021-based IRF market basket, we proposed to calculate the labor-related share for FY 2027 as the sum of the FY 2027 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-Related Services, and a portion of the Capital-Related relative importance from the 2021-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2021-based IRF labor-related share, see the FY 2024 IRF PPS final rule (88 FR 50985 through 50988).

The relative importance reflects the different rates of price change for these cost categories between the base year (2021) and FY 2027. We calculate the labor-related relative importance from the IRF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2027. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Based on IGI's fourth quarter 2025 forecast of the 2021-based IRF market basket, the sum of the FY 2027 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-Related Services was 70.8 percent. We proposed that the portion of Capital-Related costs that are influenced by the local labor market is 46 percent. Since the relative importance for Capital-Related costs was 8.1 percent of the 2021-based IRF market basket for FY 2027, we proposed to take 46 percent of 8.1 percent to determine the labor-related share of Capital-Related costs for FY 2027 which is 3.7 percent. Therefore, we proposed a total labor-related share for FY 2027 of 74.5 percent (the sum of 70.8 percent for the proposed labor-related share of operating costs and 3.7 percent for the proposed labor-related share of Capital-Related costs). We also proposed that if more recent data subsequently became available after publication of the proposed rule and before the publication of this final rule (for example, a more recent estimate of the

labor-related share), we would use such data, if appropriate, to determine the FY 2027 IRF labor-related share in this final rule.

Based on IGI's second quarter 2026 forecast for the 2021-based IRF market basket, the sum of the FY 2027 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-Related Services is 70.6 percent. The portion of Capital-Related costs that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2016-based IRF market basket (84 FR 39088 and 39089). Since the relative importance for Capital is 8.1 percent of the 2021-based IRF market basket in FY 2027, we took 46 percent of 8.1 percent to determine the labor-related share of Capital-Related costs for FY 2027 of 3.7 percent. Therefore, the total labor-related share for FY 2027 based on more recent data is 74.3 percent (the sum of 70.6 percent for the operating costs and 3.7 percent).

We invited public comments on the proposed labor-related share for FY 2027. The following is a summary of the public comments received and our responses.

Comment: A commenter appreciated CMS' continued evaluation of the labor-related share and encouraged CMS to consider the disproportionate impact of escalating workforce costs, including recruitment and retention challenges, on IRFs. Another commenter encouraged CMS to continue refining the labor-related share calculation as more recent base-year data become available and in particular to reflect the growing role of contract and agency labor that has become structurally embedded in IRF operations since the pandemic.

Response: We proposed to use the FY 2027 relative importance values for the labor-related cost categories from the 2021-based IRF market basket because it accounts for more recent data regarding price pressures and cost structure of IRFs. This methodology is consistent with the determination of the labor-related share since the implementation of the IRF PPS. As stated in the FY 2027 IRF proposed rule, we also proposed that if more recent data became available, we would use such data, if appropriate, to determine the FY 2027 labor-related share for the final rule. Based on IGI's second quarter 2026 forecast with historical data through the first quarter of 2026, the FY 2027 labor-related share for the final rule is 74.3 percent, reflecting expectations of a slight softening of the labor market cost

pressures since the proposed rule forecast. We note the FY 2027 labor-related share is slightly lower than the FY 2026 labor-related share. After consideration of the public comments

received, we are finalizing a FY 2027 labor-related share of 74.3 percent. Table 4 shows the estimate of the FY 2027 labor-related share and the FY 2026 final labor-related share using the

2021-based IRF market basket relative importance.

TABLE 4: FY 2027 IRF Labor-Related Share and FY 2026 IRF Labor-Related Share

	FY 2027 Final Labor-Related Share ¹	FY 2026 Final Labor-Related Share ²
Wages and Salaries	49.3	49.4
Employee Benefits	11.8	11.8
Professional Fees: Labor-Related ³	5.5	5.5
Administrative and Facilities Support Services	0.7	0.7
Installation, Maintenance, and Repair Services	1.5	1.5
All Other: Labor-Related Services	1.8	1.8
Subtotal	70.6	70.7
Labor-related portion of Capital-Related (46%)	3.7	3.7
Total Labor-Related Share	74.3	74.4

¹ Based on the 2nd quarter 2026 IHS Global Inc. forecast of the 2021-based IRF market basket.

² Published in the **Federal Register** (90 FR 37692); based on 2nd quarter 2025 IHS Global Inc. forecast of the 2021-based IRF market basket.

³ Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

D. Wage Adjustment for FY 2027

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities’ costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

In the FY 2023 IRF PPS final rule (87 FR 47054 through 47056), we finalized a policy to apply a 5-percent cap on any decrease to a provider’s wage index from its wage index in the prior year, regardless of the circumstances causing the decline. We amended IRF PPS regulations at § 412.624(e)(1)(ii) to reflect this permanent cap on wage index decreases. Additionally, we finalized a policy that a new IRF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied because a new IRF would not have a wage index in the prior FY. A

full discussion of the adoption of this policy is found in the FY 2023 IRF PPS final rule.

For FY 2027, we proposed to maintain the policies and methodologies described in the FY 2026 IRF PPS final rule (90 FR 37678) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we use the core based statistical areas (CBSAs) labor market area definitions and the FY 2027 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2027 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2022, and before October 1, 2023 (that is, FY 2024 cost report data).

In addition, we will continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas in which there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2027 IRF PPS wage index. For FY 2027, the only rural area without wage index data available is in North Dakota. For urban areas without specific hospital wage index data, we will continue using the average wage indexes of all urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA as established in FY 2006 (70 FR 47927). For FY 2027, the

only urban area without wage index data available is CBSA 25980, Hinesville Fort Stewart, Georgia.

For FY 2027, we proposed to continue to use the concurrent pre-floor, pre-reclassified Inpatient Prospective Payment System (IPPS) hospital wage index as the basis for the IRF wage index. We continue to consider this an appropriate source of wage index data to estimate costs per day, consistent with our wage index policy at § 412.624(e)(1).

We routinely assess whether more recent or alternative data sources may further enhance the accuracy and representativeness of our estimates. We note that other payment systems have explored and are exploring alternative wage index methodologies under their specific programmatic and statutory circumstances. For example, CMS finalized changes to the End-Stage Renal Disease (ESRD) PPS wage index using the Bureau of Labor Statistics (BLS) occupation-level wage data in the CY 2025 ESRD PPS final rule (89 FR 89084). While this approach was developed under the specific programmatic and statutory circumstances of the ESRD PPS and may not be directly transferable to the IRF PPS, CMS is interested in exploring whether similar methodologies using publicly available wage data could be adapted to reflect the geographic variation in labor costs for inpatient rehabilitation facilities.

In its 2023 Report to Congress,⁴ MedPAC discussed various conceptual approaches to Medicare wage indexes, including the use of county-level wage data from BLS with an occupational mix to construct wage indexes that are more specific to the payment setting. MedPAC has previously written about using all-employer, occupation-level wage data to establish different weights for setting-specific occupational labor mixes as one approach to geographic adjustments.

We solicited comments on whether we should consider using alternative data sources to construct an IRF-specific wage index for potential use in future years. CMS sought feedback to understand the potential advantages and limitations of using alternative data sources, such as BLS data and IRF cost reports, as well as other methodologies that interested parties believe could appropriately reflect the geographic variation in labor costs for IRFs. In addition, as discussed elsewhere in the **Federal Register**, we note that we are also considering the potential use of alternative data sources in other payment systems including the Inpatient Facilities PPS, Skilled Nursing Facilities PPS, and Hospice PPS. We sought feedback on the unique considerations applicable to IRFs that should inform how CMS considers the potential use of alternative data sources.

We invited public comments on our proposals regarding the Wage Adjustment for FY 2027 and on the potential use of alternative data sources for the IRF PPS Wage index. The following is a summary of the public comments received and our responses.

Comment: Most commenters supported CMS' proposal to maintain the current IRF wage index methodology for FY 2027. Many commenters raised concerns about aspects of the current methodology, particularly CMS' use of the pre-reclassification, pre-floor IPPS wage index. These commenters stated that because IRFs compete with hospitals for the same clinical workforce, they should benefit from the same wage index adjustments available under IPPS, including geographic reclassifications, rural floor policies, and out-migration adjustments. Commenters contended that relying on pre-reclassification and pre-floor wage index values understates actual labor costs for many IRFs and places them at a competitive disadvantage when recruiting and

retaining staff. Commenters encouraged CMS to continue evaluating reforms that would promote greater parity across provider types and better align IRF payments with local labor market conditions while maintaining payment stability. While there was general support for finalizing the proposed FY 2027 methodology, comments reflected ongoing concerns about whether the current implementation fully captures labor costs faced by IRFs in certain markets.

Response: We appreciate the commenters' suggestion to adopt the IPPS post-classification and post-floor hospital IPPS wage index and other IPPS wage index adjustments for the IRF wage index. We also acknowledge and appreciate the commenters' concerns regarding competition for labor resulting from different applicable wage index policies across different settings of care.

As most recently discussed in the FY 2026 IRF PPS final rule and correction notice (90 FR 37678⁵ and 90 FR 58509,⁶ respectively), the IRF wage index is derived from IPPS wage data, that is, the pre-reclassification and pre-floor IPPS wage index discussed in this final rule. We note that IPPS wage index values are based on historical data and typically lag by 4 years. Thus, to the extent that increasing wage index values under the IPPS for low wage index hospitals results in those hospitals increasing employee compensation, this increase would be reflected in the IPPS wage data that the IRF wage index is derived from and likely would result in higher wage indices for these areas under the IRF PPS. As such, any effects of this policy on the wage data of IPPS hospitals would be extended to the IRF setting, as this data would be used to establish the wage index for IRFs in the future.

We may take all of these concerns into consideration during future work on a potential payment system-specific wage index.

Comment: In response to our request for information on alternative data sources for the IRF PPS wage index calculation, commenters urge CMS to proceed cautiously before implementing any IRF-specific wage index. Commenters emphasized that any future methodology should be transparent, data-driven, administratively feasible, and developed with extensive interested party engagement. Although some believed implementation of an IRF-

specific wage index could eventually be beneficial if developed carefully, the commenters cautioned against making significant methodological changes without sufficient analysis and provider engagement.

Many commenters stated that the existing IPPS-based wage index remains the most appropriate proxy because IRFs compete with acute care hospitals for the same labor pool and face similar wage pressures. These commenters stated that developing an IRF-specific wage index would be challenging due to limitations in available data, particularly because IRF-specific wage information is often embedded within broader hospital cost reports and because most IRFs are hospital-based units whose labor costs cannot be easily separated from those of their parent hospitals. These commenters recommended updates to the current methodology, such as applying the 5 percent cap on a non-budget-neutral basis and aligning wage index policies like geographic reclassification and low-wage index floors between IRFs and IPPS hospitals. In making updates to the wage index methodology, commenters expressed caution and recommended that any future changes be phased in gradually, remain budget neutral, retain protections such as the 5 percent cap on annual wage index decreases, and be accompanied by extensive interested party engagement (for example, Technical Evaluation Panels), modeling, and impact analyses.

Commenters who supported the development of an IRF specific wage index stated that a wage index calculated by using Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) data would improve the accuracy of geographic labor costs that IRFs incur. They remarked that this data is publicly available and would reduce administrative burden compared to cost report data. MedPAC noted CMS could also consider modifying the current cost reports to include sector-specific occupation weights through BLS data or an episodic occupational mix survey (like IPPS hospitals). Additionally, MedPAC suggested that CMS also consider in their wage index updates MedPAC's prior suggestions of using additional data (for example, the Census Bureau's American Community Survey) to improve wage accuracy in metropolitan statistical areas and to smooth wage index differences across adjacent areas. Other commenters in favor of an IRF specific wage index also suggested that CMS consider combining multiple data sources, including BLS

⁴ <https://www.medpac.gov/document/june-2023-report-to-the-congress-medicare-and-the-health-care-delivery-system>, <https://www.medpac.gov/wp-content/uploads/2022/07/Wage-index-March-2023-SEC.pdf>.

⁵ <https://www.federalregister.gov/documents/2025/08/05/2025-14780/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal>.

⁶ <https://www.govinfo.gov/app/details/FR-2025-12-17/2025-23081>.

data, cost reports, occupational mix information, and geographic labor market adjustments, rather than relying on a single source. Many commenters expressed concerns about using BLS wage data as the primary basis for an IRF-specific wage index. Commenters stated that BLS data are not setting-specific, include employers outside the hospital sector, exclude employee benefits and other components of total compensation, may not adequately capture contract labor costs, and are based on surveys that are less transparent and auditable than Medicare cost reports. Many commenters also stated that BLS occupational categories may not accurately reflect the unique staffing mix of IRFs, including rehabilitation nurses, therapists, and other specialized personnel. Several commenters emphasized that providers currently have opportunities to review and correct Medicare cost report data used in wage index calculations, whereas BLS confidentiality rules would limit validation of the underlying data. Even among those open to reform, commenters generally expressed that CMS should develop and publicly test any new methodology before implementation, provide detailed impact analyses, and phase in significant changes over multiple years to avoid payment disruptions.

Response: We greatly appreciate commenters' thoughtful comments and suggestions for the use of alternative data from cost reports or BLS to calculate an IRF PPS wage index, modifying the existing methodology, and anticipated limitations of a setting-specific wage index. We may take these into consideration if CMS develops an IRF specific wage index. After consideration of the comments we received, we are finalizing the updates to the wage index as proposed for FY 2027.

2. Core-Based Statistical Areas (CBSAs) for the FY 2027 IRF Wage Index

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor hospital wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and

Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010, **Federal Register** (75 FR 37246 through 37252). We refer readers to the FY 2016 IRF PPS final rule (80 FR 47068 through 47076) for a full discussion of our use of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012, and July 1, 2013.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for

July 1, 2014, and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>.

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) beginning October 1, 2020, including a 1 year transition for FY 2021 under which we applied a 5-percent cap on any decrease in an IRF's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the IRF PPS. OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>). However, we determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, we did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022 through FY 2024.

On July 21, 2023, OMB issued OMB Bulletin No. 23–01 (available at <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>) which updates and supersedes OMB Bulletin No. 20–01 based upon the 2020 Standards for Delineating Core Based Statistical Areas (“the 2020 Standards”) published by OMB on July 16, 2021 (86 FR 37770). OMB Bulletin No. 23–01 revised CBSA delineations that are comprised of counties and

equivalent entities (for example, boroughs; a city and borough; and a municipality in Alaska; planning regions in Connecticut; parishes in Louisiana; municipios in Puerto Rico; and independent cities in Maryland, Missouri, Nevada, and Virginia). As discussed in the FY 2025 IRF PPS final rule (89 FR 64291 through 64304), we adopted the revised OMB delineations identified in OMB Bulletin No. 23–01.

3. Final Year of the 3-Year Phase Out of the Rural Adjustment

For FY 2027, CMS is continuing the 3-year budget-neutral phase-out of the rural adjustment for FY 2024 IRFs transitioning from rural to urban status in FY 2025 under the revised CBSA delineations. Consistent with the transition policy adopted in the FY 2006 IRF final rule (70 FR 47923⁷ through 47927⁸), we finalized in the FY 2025 IRF PPS final rule (89 FR 64276) a budget neutral 3-year phase-out of the rural adjustment for existing FY 2024 rural IRFs that became urban in FY 2025. The purpose of this gradual phase-out of the rural adjustment for these facilities was to reduce the potential negative financial impacts associated with this reclassification. We refer readers to the FY 2025 IRF final rule for additional discussion of this policy (89 FR 64302 through 64304). In FY 2027, the final year of this phase-out, affected IRFs will receive the full FY 2027 wage index with no further FY 2024 rural adjustment. Furthermore, this policy does not apply to urban IRFs transitioning to rural status, as they will receive the full rural adjustment.

The following is a summary of the public comments received and our responses to the proposal regarding the final year of the 3-year phase out of the rural adjustment.

Comment: Comments were supportive of CMS' proposal to complete the final year of the rural-to-urban adjustment phase-out as previously adopted. Commenters stated that the phased reduction helps facilities adjust gradually, maintain financial and operational stability, and protect staffing and access to rehabilitation services, particularly in communities that may still rely on these providers despite reclassification. However, commenters also encouraged CMS to continue monitoring the policy's effects on provider financial stability and access to rehabilitation care, particularly for rural

communities that may be vulnerable to reductions in reimbursement.

Response: We appreciate the commenters' feedback on the continued phase-out policy for IRFs that were redesignated from rural to urban CBSAs. We believe the 3-year phase-out of the rural adjustment provides a sufficient transition for IRFs previously designated in rural CBSAs that received the rural adjustment. However, we will continue to monitor future CBSA delineation updates to assess whether CBSA delineation changes disproportionately impact certain provider populations, such as low-income patients.

After consideration of the comments we received, we are finalizing the final year of the 3-year budget-neutral phase-out of the rural adjustment for FY 2024 IRFs transitioning from rural to urban status in FY 2027 under the revised CBSA delineations as proposed.

4. IRF Budget-Neutral Wage Adjustment Factor Methodology

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted Federal payment rate for IRFs by the FY 2027 labor-related share based on the 2021-based IRF market basket relative importance (74.3 percent) to determine the labor-related portion of the standard payment amount. (A full discussion of the calculation of the labor-related share appears in section VI.C. of this final rule). We then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation/rules-related-files>.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689) and codified at § 412.624(e)(1), as described in the steps below. We use the listed steps to ensure that the FY 2027 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2023 hospital cost report data) and the update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2026 (as published in the FY 2026 IRF PPS final rule (90 FR 37678)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the

FY 2027 wage index values (based on updated hospital wage data and taking into account the permanent 5-percent cap on wage index decreases when applicable) and the FY 2027 labor-related share of 74.3 percent.

Step 3. Divide the amount calculated in Step 1 by the amount calculated in Step 2. The resulting quotient is the FY 2027 budget-neutral wage adjustment factor of 1.0036.

Step 4. Apply the budget neutrality factor from Step 3 to the FY 2027 IRF PPS standard payment amount after the application of the market basket percentage increase to determine the FY 2027 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2027 in section VI.E. of this final rule.

We invited public comments on our proposals regarding the wage adjustment for FY 2027. The following is a summary of the public comments received and our responses.

Comment: Many commenters expressed support for retaining current wage index policies, particularly the permanent 5-percent cap on wage index decreases. However, some expressed that CMS should apply that cap on a non-budget-neutral basis.

Response: We appreciate the commenters' support of the permanent cap on wage index decreases. We realize that the 5-percent cap on annual decreases in the wage index values does not eliminate the effects of annual changes in the wage index, but we believe that it does substantially reduce the financial impact on IRFs of these annual changes. The wage index tables for IRF PPS are provided at the CBSA level. The 5-percent cap policy is applied at the provider level. Hence, when the 5-percent cap is applicable, each IRF should work directly with its Medicare Administrative Contractor (MAC) to understand how the 5-percent cap is applied. MACs have more detailed information about the location of each IRF and the applicability of the 5-percent cap to each IRFs situation, and CMS has provided instructions to the MACs on applying the 5-percent cap policy (see publication 100–04 Medicare Claims Processing Manual, Chapter 3).

Adjustments for geographic variations in labor costs for a FY will continue to be made in a budget-neutral manner as required by the statute at section 1886(j)(6) of the Act. We refer readers to the FY 2023 IRF PPS final rule (87 FR

⁷ <https://www.federalregister.gov/citation/70-FR-47923>.

⁸ <https://www.federalregister.gov/citation/70-FR-47927>.

47054 ⁹ through 47056 ¹⁰) for a detailed discussion on the wage index cap policy.

We did not receive any comments on the proposed budget-neutral wage adjustment factor methodology, and therefore, we are finalizing as proposed.

E. Description of the IRF Standard Payment Conversion Factor Methodology and Payment Rates for FY 2027

To calculate the IRF standard payment conversion factor for FY 2027, as illustrated in Table 5, we begin by applying the IRF market basket update for FY 2027, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2026 (\$19,371). Applying the 2.3 percent IRF market basket update for FY 2027 to the standard payment conversion factor for FY 2026 of \$19,371 yields a FY 2027 standard payment amount of \$19,817. Then, we apply the

budget neutrality factor for the FY 2027 wage index (taking into account the policy placing a permanent 5-percent cap on decreases to a provider's wage index), and labor-related share of 1.0036, which results in an IRF standard payment amount of \$19,888. We next apply the budget neutrality factor for the CMG relative weights of 0.9990, which results in the IRF standard payment conversion factor of \$19,868 for FY 2027.

TABLE 5: Calculations to Determine the FY 2027 IRF Standard Payment Conversion Factor

Explanation for Adjustment	Calculations
FY 2026 IRF Standard Payment Conversion Factor	\$19,371
Market Basket Update for FY 2027 of 2.3 percent*	x 1.0230
Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	x 1.0036
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x 0.9990
FY 2027 Standard Payment Conversion Factor	= \$19,868

*Reflects a FY 2027 3.2 percent IRF market basket percentage increase reduced by 0.9 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We then apply the CMG relative weights described in section V.E of this final rule to the FY 2027 standard payment conversion factor (\$19,868), to

determine the unadjusted IRF prospective payment rates for FY 2027. The unadjusted IRF prospective

payment rates for FY 2027 are shown in Table 6.

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⁹ <https://www.federalregister.gov/documents/2022/08/01/2022-16225/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal#page-47054>.

¹⁰ <https://www.federalregister.gov/documents/2022/08/01/2022-16225/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal#page-47056>.

TABLE 6: FY 2027 IRF PPS Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	\$ 19,550.11	\$ 16,776.54	\$ 15,308.29	\$ 14,682.45
0102	\$ 24,916.46	\$ 21,379.95	\$ 19,510.38	\$ 18,711.68
0103	\$ 31,923.90	\$ 27,394.00	\$ 24,997.92	\$ 23,974.72
0104	\$ 40,415.49	\$ 34,681.58	\$ 31,647.74	\$ 30,352.34
0105	\$ 51,436.27	\$ 44,138.75	\$ 40,276.41	\$ 38,629.35
0106	\$ 58,705.97	\$ 50,377.30	\$ 45,968.59	\$ 44,087.09
0201	\$ 22,182.62	\$ 17,499.73	\$ 16,057.32	\$ 15,057.96
0202	\$ 27,413.87	\$ 21,626.32	\$ 19,844.16	\$ 18,608.37
0203	\$ 34,415.35	\$ 27,147.64	\$ 24,912.49	\$ 23,360.79
0204	\$ 42,573.15	\$ 33,582.88	\$ 30,817.25	\$ 28,898.01
0205	\$ 55,072.11	\$ 43,441.38	\$ 39,865.14	\$ 37,381.64
0301	\$ 24,384.00	\$ 18,701.75	\$ 17,565.30	\$ 16,248.05
0302	\$ 31,367.60	\$ 24,058.16	\$ 22,595.88	\$ 20,903.12
0303	\$ 38,084.97	\$ 29,209.93	\$ 27,433.73	\$ 25,379.38
0304	\$ 44,695.05	\$ 34,280.25	\$ 32,196.09	\$ 29,784.12
0305	\$ 48,493.81	\$ 37,192.90	\$ 34,931.92	\$ 32,315.30
0401	\$ 25,945.62	\$ 22,423.02	\$ 20,948.82	\$ 19,099.11
0402	\$ 32,343.12	\$ 27,954.28	\$ 26,114.50	\$ 23,809.81
0403	\$ 41,013.51	\$ 35,446.50	\$ 33,114.00	\$ 30,191.41
0404	\$ 62,147.10	\$ 53,713.14	\$ 50,178.62	\$ 45,750.04
0405	\$ 50,885.92	\$ 43,979.80	\$ 41,085.04	\$ 37,459.13
0406	\$ 63,724.62	\$ 55,078.07	\$ 51,452.16	\$ 46,910.33
0407	\$ 89,175.53	\$ 77,073.93	\$ 72,001.63	\$ 65,645.86
0501	\$ 25,192.62	\$ 19,935.55	\$ 18,751.42	\$ 17,456.02
0502	\$ 30,916.59	\$ 24,465.46	\$ 23,011.12	\$ 21,423.66
0503	\$ 34,872.31	\$ 27,596.65	\$ 25,955.56	\$ 24,163.46
0504	\$ 41,953.27	\$ 33,199.43	\$ 31,226.54	\$ 29,070.86
0505	\$ 58,735.77	\$ 46,483.17	\$ 43,719.53	\$ 40,701.58
0601	\$ 27,159.56	\$ 19,885.88	\$ 18,516.98	\$ 16,981.18
0602	\$ 33,799.44	\$ 24,747.58	\$ 23,042.91	\$ 21,131.60
0603	\$ 39,662.49	\$ 29,041.06	\$ 27,040.35	\$ 24,797.25
0604	\$ 50,013.72	\$ 36,620.70	\$ 34,097.46	\$ 31,268.26
0701	\$ 24,858.84	\$ 19,194.47	\$ 18,008.36	\$ 16,689.12
0702	\$ 30,878.85	\$ 23,841.60	\$ 22,367.39	\$ 20,730.27
0703	\$ 38,388.95	\$ 29,641.07	\$ 27,809.24	\$ 25,772.77
0704	\$ 47,399.09	\$ 36,596.86	\$ 34,335.88	\$ 31,820.59
0801	\$ 23,867.43	\$ 19,178.58	\$ 17,573.25	\$ 16,693.09
0802	\$ 27,111.87	\$ 21,785.26	\$ 19,961.38	\$ 18,960.03
0803	\$ 29,933.13	\$ 24,052.20	\$ 22,039.57	\$ 20,932.92
0804	\$ 34,071.63	\$ 27,378.10	\$ 25,087.32	\$ 23,827.69
0805	\$ 41,804.26	\$ 33,590.83	\$ 30,779.51	\$ 29,235.76
0901	\$ 23,942.93	\$ 18,604.40	\$ 17,563.31	\$ 16,275.87

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0902	\$ 30,419.89	\$ 23,638.95	\$ 22,315.74	\$ 20,678.61
0903	\$ 35,897.50	\$ 27,894.67	\$ 26,333.05	\$ 24,401.88
0904	\$ 43,681.78	\$ 33,944.48	\$ 32,045.10	\$ 29,692.73
1001	\$ 24,085.98	\$ 20,376.62	\$ 18,218.96	\$ 16,552.03
1002	\$ 29,712.59	\$ 25,135.01	\$ 22,474.68	\$ 20,418.34
1003	\$ 36,257.11	\$ 30,672.22	\$ 27,425.79	\$ 24,914.47
1004	\$ 46,332.18	\$ 39,193.60	\$ 35,047.15	\$ 31,838.47
1101	\$ 24,326.38	\$ 20,847.49	\$ 20,042.84	\$ 17,823.58
1102	\$ 31,212.63	\$ 26,748.29	\$ 25,715.15	\$ 22,868.07
1103	\$ 38,683.00	\$ 33,149.76	\$ 31,870.26	\$ 28,341.70
1201	\$ 22,655.48	\$ 19,538.19	\$ 17,754.04	\$ 16,649.38
1202	\$ 28,186.73	\$ 24,308.50	\$ 22,089.24	\$ 20,714.38
1203	\$ 37,649.86	\$ 32,470.27	\$ 29,505.97	\$ 27,668.18
1204	\$ 37,401.51	\$ 32,255.70	\$ 29,311.26	\$ 27,485.39
1301	\$ 23,724.38	\$ 18,224.92	\$ 18,038.16	\$ 16,454.68
1302	\$ 31,331.84	\$ 24,068.10	\$ 23,821.73	\$ 21,731.62
1303	\$ 36,219.36	\$ 27,823.15	\$ 27,537.05	\$ 25,121.10
1304	\$ 45,289.11	\$ 34,788.87	\$ 34,433.23	\$ 31,411.31
1305	\$ 42,942.70	\$ 32,986.84	\$ 32,649.08	\$ 29,784.12
1401	\$ 22,339.58	\$ 17,946.76	\$ 16,381.17	\$ 15,012.26
1402	\$ 28,405.28	\$ 22,818.40	\$ 20,829.61	\$ 19,087.19
1403	\$ 34,594.16	\$ 27,791.36	\$ 25,369.45	\$ 23,247.55
1404	\$ 42,177.78	\$ 33,882.89	\$ 30,930.50	\$ 28,343.69
1501	\$ 26,418.48	\$ 20,875.31	\$ 19,746.81	\$ 18,616.32
1502	\$ 32,919.29	\$ 26,013.17	\$ 24,604.53	\$ 23,197.88
1503	\$ 37,693.57	\$ 29,784.12	\$ 28,172.82	\$ 26,561.53
1504	\$ 46,592.45	\$ 36,817.39	\$ 34,824.63	\$ 32,831.87
1601	\$ 23,034.96	\$ 17,607.02	\$ 15,997.71	\$ 14,656.62
1602	\$ 27,759.57	\$ 21,221.01	\$ 19,279.91	\$ 17,664.64
1603	\$ 35,976.97	\$ 27,501.29	\$ 24,986.00	\$ 22,891.91
1604	\$ 46,340.12	\$ 35,424.64	\$ 32,184.17	\$ 29,486.10
1701	\$ 28,105.27	\$ 20,591.20	\$ 19,073.28	\$ 17,714.31
1702	\$ 34,828.60	\$ 25,518.46	\$ 23,634.97	\$ 21,952.15
1703	\$ 40,641.98	\$ 29,778.16	\$ 27,580.76	\$ 25,615.81
1704	\$ 46,465.29	\$ 34,043.82	\$ 31,532.50	\$ 29,285.43
1705	\$ 55,366.16	\$ 40,564.50	\$ 37,572.37	\$ 34,896.16
1801	\$ 22,836.28	\$ 18,222.93	\$ 16,945.42	\$ 15,632.14
1802	\$ 28,784.76	\$ 22,969.39	\$ 21,358.10	\$ 19,705.08
1803	\$ 36,459.77	\$ 29,094.70	\$ 27,054.26	\$ 24,958.18
1804	\$ 41,146.63	\$ 32,833.86	\$ 30,531.16	\$ 28,166.86
1805	\$ 49,793.18	\$ 39,734.01	\$ 36,948.52	\$ 34,085.54
1806	\$ 70,626.77	\$ 56,357.57	\$ 52,407.81	\$ 48,346.79
1901	\$ 21,324.32	\$ 18,932.22	\$ 16,865.95	\$ 16,422.89
1902	\$ 31,158.98	\$ 27,664.20	\$ 24,644.27	\$ 23,996.57

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1903	\$ 44,490.41	\$ 39,499.57	\$ 35,188.21	\$ 34,262.37
1904	\$ 67,529.35	\$ 59,955.66	\$ 53,411.14	\$ 52,004.49
2001	\$ 23,998.56	\$ 18,868.64	\$ 17,354.70	\$ 16,116.92
2002	\$ 29,724.51	\$ 23,370.73	\$ 21,495.19	\$ 19,963.37
2003	\$ 35,243.85	\$ 27,709.90	\$ 25,486.67	\$ 23,668.75
2004	\$ 42,481.76	\$ 33,400.09	\$ 30,719.90	\$ 28,530.45
2005	\$ 45,223.54	\$ 35,553.79	\$ 32,702.73	\$ 30,370.22
2101	\$ 32,251.72	\$ 25,953.57	\$ 24,366.12	\$ 20,758.09
2102	\$ 48,823.62	\$ 39,290.96	\$ 36,886.93	\$ 31,425.22
5001	\$ -	\$ -	\$ -	\$ 3,494.78
5101	\$ -	\$ -	\$ -	\$ 17,191.78
5102	\$ -	\$ -	\$ -	\$ 38,730.68
5103	\$ -	\$ -	\$ -	\$ 18,904.40
5104	\$ -	\$ -	\$ -	\$ 45,122.21

BILLING CODE 7169–69–C*F. Example of the Methodology for Adjusting the Prospective Payment Rates*

Table 7 illustrates the methodology for adjusting the prospective payments (as described in section V. of this final rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified as CMG 0104 (without comorbidities). The unadjusted prospective payment rate for CMG 0104 (without comorbidities) appears in Table 6.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8604, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital,

has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454), a wage index of 0.9326, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the prospective payment, we begin by taking the FY 2027 unadjusted prospective payment rate for CMG 0104 (without comorbidities) from Table 6. Then, we multiply the labor-related share for FY 2027 (74.3 percent) described in section VI. of this final rule by the unadjusted prospective payment rate. To determine the non-labor portion of the prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted prospective payment.

To compute the wage-adjusted prospective payment, we multiply the labor portion of the Federal payment by the appropriate wage index located in the applicable wage index table. This table is available on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/>

inpatient-rehabilitation/rules-related-files.

The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the Federal payment.

Adjusting the wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 7 illustrates the components of the adjusted payment calculation.

TABLE 7: Example of Computing the FY 2027 IRF Prospective Payment Rate

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Payment		\$ 30,352.34		\$ 30,352.34
2	Labor-Related Share	X	0.743	X	0.743
3	Labor Portion of Payment	=	\$22,551.79	=	\$22,551.79
4	CBSA-Based Wage Index	X	0.8604	X	0.9326
5	Wage-Adjusted Amount	=	\$19,403.56	=	\$21,031.80
6	Non-Labor Amount	+	\$ 7,800.55	+	\$ 7,800.55
7	Wage-Adjusted Payment	=	\$ 27,204.11	=	\$ 28,832.35
8	Rural Adjustment	X	1.149	X	1.000
9	Wage- and Rural-Adjusted Payment	=	\$31,257.52	=	\$28,832.35
10	LIP Adjustment	X	1.0156	X	1.0454
11	Wage-, Rural- and LIP-Adjusted Payment	=	\$31,745.14	=	\$30,141.34
12	Wage- and Rural-Adjusted Payment		\$31,257.52		\$28,832.35
13	Teaching Status Adjustment	X	0	X	0.0784
14	Teaching Status Adjustment Amount	=	\$0.00	=	\$2,260.46
15	Wage-, Rural-, and LIP-Adjusted Payment	+	\$31,745.14	+	\$30,141.34
16	Total Adjusted Payment	=	\$31,745.14	=	\$32,401.79

Thus, the adjusted payment for Facility A would be \$31,745.14 and the adjusted payment for Facility B would be \$32,401.79.

VII. Update to Payments for High-Cost Outliers Under the IRF PPS for FY 2027

A. Update to the Outlier Threshold Amount for FY 2027

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall Cost-to-Charge Ratio (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2026 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, 85 FR 48444, 86 FR 42362, 87 FR 47038, 88 FR 50956, 89 FR 64276 and 90 FR 37678, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 through 46385) that we

would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2027, we proposed to use FY 2025 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2026. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2027, we estimated the amount of FY 2027 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2025) and the FY 2027 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an

analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 2.6 percent in FY 2026. Therefore, we proposed to update the outlier threshold amount from \$10,141 for FY 2026 to \$8,689 for FY 2027 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2027.

We note that, with our longstanding practice when developing previous IRF PPS fiscal year rules, we update our data between the FY 2027 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments.

We invited public comments on the proposed update to the IRF outlier threshold for FY 2027. The following is a summary of the public comments received and our responses.

Comment: Commenters were broadly supportive of CMS' proposal to reduce the IRF high-cost outlier threshold to maintain a target of 3 percent of total payments. However, they also discussed ongoing challenges related to patient complexity, labor costs, and operating expenses and suggested CMS continue monitoring the outlier methodology to ensure payments remain adequate for the most complex and costly IRF cases. Commenters also expressed a desire for increased transparency regarding the outlier threshold calculation methodology.

Although many commenters acknowledged and affirmed the current outlier payment policy's role in compensating IRFs for high-cost patients, others opined that the high-cost outlier payment policy should provide even greater compensation. According to some commenters, options for this include further lowering the outlier threshold (either in FY 2027 or future years), carving out special payments for high-cost conditions not explicitly accounted for by the CMG system (for example, cancer or transplant recovery), and/or increasing the share of estimated costs covered by outlier payments.

Several commenters expressed concern over the uneven distribution of outlier payments across providers and shared some potential solutions. Two potential solutions sought to impose limits on the amount of outlier payments IRFs could receive by: (1) capping outlier payments at 10 percent of IRFs' PPS revenue, and (2) reducing the outlier pool to less than 3 percent of total payments. Other solutions sought to reduce the influence of atypical IRFs on the final threshold calculation by

incorporating outlier reconciliation dollars into payment projections and/or dropping IRFs that have costs exceeding three standard deviations (SDs) from the mean when calculating the outlier threshold. Lastly, some commenters recommended that CMS conduct a detailed analysis of the drivers of fluctuations and concentrations of payments across IRFs.

Multiple commenters also expressed concern over the year-to-year volatility of the outlier threshold and recommended that CMS adopt a multi-year averaging approach as a remedy. Commenters suggest that smoothing the volatility would help them budget more accurately for future years. Commenters also requested that CMS allow individual IRFs to work with MACs to obtain hospital-specific CCRs.

Response: We thank the commenters for their support for the outlier threshold update. We continue to believe that maintaining the outlier pool at 3 percent of aggregate IRF payments optimizes the extent to which we can reduce financial risk to IRFs caring for the highest-cost patients, while still providing for adequate payments for all other non-outlier cases. We continue to monitor our approach to ensure that IRFs who treat medically complex patients are adequately reimbursed.

We acknowledge the suggestion to modify the outlier threshold methodology to use a multi-year average; however, it has been our longstanding practice to utilize the most recent full fiscal year of data to update the prospective payment rates and determine the outlier threshold amount, as this data is generally considered to be the best overall predictor of experience in the upcoming fiscal year. Any future consideration given to imposing a limit on outlier payments or adjusting the outlier threshold to account for historical outlier reconciliation dollars would need to be carefully assessed and take into consideration the effect on access to IRF care for certain high-cost populations. We will continue to examine ways of enhancing the stability and predictability of the outlier threshold from year-to-year.

After considering the comments received and applying the most recent available data, we are finalizing the outlier threshold amount of \$8,857 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2027.

B. Update to the IRF Cost-to-Charge Ratio (CCR) Ceiling and Urban/Rural Averages for FY 2027

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from Medicare Cost Reports (MCRs). IRF-specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology described in the FY 2004 IRF PPS final rule (68 FR 45692 through 45694), we proposed to apply a ceiling to IRFs' CCRs. Using that methodology, we proposed to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2027, based on analysis of the most recent data available. We apply the national urban and rural CCRs to:

- New IRFs that have not yet submitted their first MCR.
- IRFs with an overall CCR that exceeds the national CCR ceiling for FY 2027, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2027, we proposed to estimate a national average CCR of 0.461 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we proposed to estimate a national average CCR of 0.386 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We applied weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For the proposed rule, we used the most recent available cost report data (FY 2024). This includes all IRFs whose cost reporting periods begin on or after October 1, 2023, and before October 1, 2024. If, for any IRF, the FY 2024 cost report was missing or had an "as submitted" status, we used the most recent FY for which a settled cost report was available (that is, from a FY between FY 2004 and FY 2024) for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2024 cost report data for this final rule, we estimate a national average CCR of 0.465 for rural IRFs and

a national average CCR of 0.386 for urban IRFs.

In accordance with past practice, we proposed to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we proposed a national CCR ceiling of 1.56 for FY 2027. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.56 for FY 2027, we will replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in Step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in Step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from Step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from Step 1.

We also proposed that if more recent data become available after the publication of the proposed rule and before the publication of the final rule, we would use such data to determine the FY 2027 national average rural and urban CCRs and the national CCR ceiling in the final rule. Using the FY 2024 cost report data for this final rule, we estimate a national average CCR ceiling of 1.56, using the same methodology.

We invited public comments on the proposed update to the IRF CCR ceiling and urban/rural averages for FY 2027. The following is a summary of the public comments received and our responses.

We did not receive any comments on the proposed updates to the FY 2027 IRF CCR ceiling and urban/rural averages; therefore, we are finalizing the CCR ceiling and urban/rural averages based on updated data for FY 2027.

VIII. Proposals To Revise the Basis of Payment Requirements

A. Initiation of Therapies No Later Than 36-Hours From Admission

In accordance with 42 CFR 412.622(a)(3)(ii), for an IRF claim to be considered reasonable and necessary, the patient's intensive rehabilitation therapy program must consist of at least 3 hours of therapy (physical therapy,

occupational therapy, speech-language pathology, or prosthetics/orthotics therapy) per day at least 5 days per week. Under certain well-documented cases when a patient is unable to receive 3 hours of therapy daily, such as during reduced therapy tolerance at the beginning of a patient's IRF stay or the occurrence of a medical procedure that interferes with the provision of therapy, this program might consist of at least 15 hours of intensive rehabilitation therapy provided per week. As discussed in the FY 2010 IRF PPS final rule, the 36-hour requirement was established to require IRFs to initiate rehabilitation therapies as soon as possible after admission to the IRF to ensure that patients are able to maximize their functional goals (74 FR 39796). To comply with the regulation, required therapy treatments for IRF patients must begin within 36 hours from midnight on the day of admission to the IRF. For example, if a patient is admitted to the IRF at 2:00 p.m. on Tuesday, therapy treatment must be initiated by 12:00 p.m. on Thursday.

We proposed to revise § 412.622(a)(3)(ii) to require that IRFs must provide all therapy treatments and/or therapy evaluations to IRF patients in accordance with the 36-hour requirement. We believe it is necessary to make this revision in regulatory text as there had been prior sub-regulatory guidance that was posted by CMS in 2010, which may have created ambiguous interpretation of § 412.622(a)(3)(ii) as to whether only one therapy or all therapies must be initiated within 36 hours from midnight on the day of admission. Though the 2010 guidance has been removed from the website for quite some time, some providers still mistakenly refer to it. We believe that this revision to the regulatory language at § 412.622(a)(3)(ii) from "[t]he required therapy" to "[a]ll required therapy" (emphasis added) makes it unambiguous that, for an IRF provider to meet the reasonable and necessary standard for IRF claims, the entirety of the required therapies (that is, all) must be initiated in accordance with the 36-hour requirement, and not only one of the required therapies by that deadline.

Therapy evaluations are generally considered to constitute the beginning of all required therapy services and may count towards meeting the 36-hour requirement. However, all therapies must be initiated to be considered reasonable and necessary, not just one therapy. In summary, we proposed to revise § 412.622(a)(3)(ii) to state that all therapy treatments and/or therapy evaluations must begin no later than 36

hours after midnight on the day of admission. An IRF claim will not be considered reasonable and necessary (in accordance with section 1862(a)(1) of the Act) if it does not comply with this coverage criteria.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: We received many comments that supported our discussion of, and accompanying revision of the regulatory text regarding the 36-hour requirement, but most requested clarifications and/or certain considerations by CMS. Commenters stated the policy would positively impact patient care since early intervention is important for recovery. Others remarked that the revised language would reduce ambiguity in how the current 36-hour requirement is interpreted across the industry.

Many commenters approved of the policy's intent of prompt therapy initiation but requested that CMS clearly differentiate in the policy whether the 36-hour requirement applies to therapies documented in the preadmission screening (PAS) or to therapies that are ordered by the rehabilitation physician following admission (such as after the patient's History and Physical). These commenters stated that the PAS is typically compiled during the preceding acute care stay before more comprehensive assessments and therefore may not reflect the most current patient status at admission. These commenters also stated that the PAS documentation is not appropriate for determining compliance, whereas therapies ordered by the rehabilitation physician upon or after admission (for example, during the History and Physical) are more accurate and aligned with the patient's care plan. We received a comment requesting that CMS consider modifying the 36-hour requirement so it applies to the order date of therapy at any point during the patient's stay, not only at admission to support timely initiation of therapies. Several commenters stated that CMS should ensure that if the policy is finalized, it is implemented consistently via Medicare Administrative Contractors (MACs) and the Review Choice Demonstration (RCD).

Many commenters also suggested that CMS consider the approach to implementation of this policy and provide for clinical flexibility. They stated that most therapies are initiated in accordance with the 36-hour requirement but expressed that CMS should allow for greater flexibility for

smaller IRFs or IRFs who are facing staffing shortages (for example, shortages of rehabilitation physician and/or therapy disciplines). Multiple commenters requested exceptions or clinical judgement to be allowed for instances when clinical circumstances arise that preclude safe initiation of therapies for a patient (for example, a change in patient's tolerance for therapy). Commenters suggested CMS allow for 48–72 hours, as the revised 36-hour requirement could result in reduced access for patients if an IRF's staffing shortage cannot accommodate additional patients to be compliant. We received a couple of comments that requested that instead of *all* therapies, the policy apply to a patient's *core* therapy program over concerns the policy will be interpreted too broadly. Multiple commenters expressed that CMS should consider a 1-year delay in implementing the revised policy.

A number of commenters requested additional clarification on the 36-hour requirement, including how “midnight on the day of admission” is defined, whether therapies ordered later than the PAS (when medically appropriate) fall under the 36-hour requirement, and how CMS will determine compliance. A commenter requested that CMS provide more information on the definition of “initiation,” such as whether a therapy evaluation started but not completed within 36 hours of admission would be compliant with the policy.

Commenters recommended that CMS consider additional disciplines as part of implementation of the 36-hour requirement. Commenters suggested that Physician Assistants (PAs) be allowed to perform rehabilitation physician's duties, when it is within the PA's scope of practice. They stated that the 36-hour requirement adds to the burden that CMS is placing on rehabilitation physicians. Another commenter expressed that CMS should allow for recreational therapy (when medically appropriate) to count towards the 36-hour requirement.

Response: We appreciate the commenters' support for the discussion of, and accompanying revision of the regulatory text regarding the 36-hour requirement. As described at § 412.622(a)(3), for an IRF claim to be considered reasonable and necessary under section 1862(a)(1) of the Act, the beneficiary must require active and ongoing therapeutic intervention of multiple therapy disciplines (physical therapy, occupational therapy, speech language pathology, or prosthetics/orthotics) and one of the therapies must be either physical therapy or occupational therapy. Since IRF patients

need multiple therapies, the 36-hour requirement in § 412.622(a)(3)(ii) states, the required therapy treatments must begin within 36 hours from midnight of the day of admission to the IRF. Therefore, the use of the plural form of “treatments” means that *all* treatments shall be included, which we are codifying through the revision to the regulatory text of the 36-hour requirement. In alignment with the discussion in the FY 2010 final rule (74 FR 39796) and added to Section 110.2.2 of the Medicare Benefit Policy Manual,¹¹ we are including “and/or evaluations” to the regulatory text to specify that therapy evaluations are generally considered to constitute the beginning of the required therapy services.

We respect the implementation suggestions raised by commenters and have taken these into consideration. IRFs are required to provide patients with access to an intensive rehabilitation program (including physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy) that consists of at least 3 hours of therapy at least 5 days per week in accordance with § 412.622(a)(3)(ii)¹² for an IRF claim to be considered reasonable and necessary. The 36-hour requirement ensures patients receive timely initiation of all therapies and/or evaluations to begin their recovery within an IRF. The 36-hour requirement ensures patients receive timely initiation of all therapies and/or evaluations to begin their recovery within an IRF.

We appreciate comments requesting clarification of the term “midnight” in the 36-hour requirement. We describe “midnight of the day of admission” as the midnight that follows admission to an IRF. This is clarified in the FY 2010 final rule (74 FR 39762)¹³ in the example: “a hypothetical patient admitted to the IRF at 4 p.m. on Friday would need to begin therapies by noon on Sunday.” Therefore, midnight of the day of admission in this case would be 12 a.m. on Saturday, and all therapies would need to start no later than 12 p.m. on Sunday (up to 36 hours later). Additionally, we continue to determine

compliance by conducting audits of IRFs' medical record documentation.

While several commenters suggested that we provide flexibilities for smaller IRFs and IRFs with staffing shortages, we did not propose to allow for flexibilities and are not finalizing any such flexibilities. We respectfully remind commenters, per 42 CFR 412.622(a)(3)(ii), CMS provides coverage for IRF patients who are expected to actively participate in and benefit from an intensive rehabilitation therapy program starting no later than 36 hours from midnight of the day of admission to the IRF. IRF claims for admitted IRF patients who cannot tolerate an intensive therapy program may be denied by CMS.

We agree that IRF patients have complex conditions that may evolve during a patient's stay after admission. As we have detailed in sub-regulatory guidance,¹⁴ CMS authorizes contractors to grant brief exceptions (no more than 3 consecutive days) to the intensity of therapy requirement for unexpected clinical events or medical procedures during an IRF stay, as long as the situation is well documented and justified. We will continue to consider other exceptions to the 36-hour requirement and may propose them in future rulemaking.

We proposed and are finalizing in this rule revisions to § 412.622(a)(3)(ii) to require that *all* therapy treatments and/or therapy evaluations must begin no later than 36 hours after midnight on the day of admission. The 36-hour requirement applies to all therapies and/or therapy evaluations that are ordered at admission, which may occur by a rehabilitation physician concurring with the PAS or ordering additional therapies at admission. Additional therapies that the rehabilitation physician may order after the 36 hours following midnight of the day of admission are not part of the 36-hour requirement. However, we strongly encourage IRFs to initiate ordered therapies as soon as possible to provide a high quality of care to their patients.

We did not propose changing the PAS requirements and their application to the 36-hour requirement. CMS expects that the PAS must be conducted or updated within the 48 hours preceding admission in order to adequately capture the needs of the patient. Per 42 CFR 412.622(a)(4)(i)(B), the PAS must provide a comprehensive review of the patient's condition and their expected level of improvement to request the appropriate therapies for recovery and

¹¹ Accessed at <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c01.pdf>.

¹² [https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-412/subpart-P/section-412.622#p-412.622\(a\)\(3\)\(ii\)](https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-412/subpart-P/section-412.622#p-412.622(a)(3)(ii)).

¹³ <https://www.federalregister.gov/documents/2009/08/07/E9-18616/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal#p-409>.

¹⁴ Medicare Benefit Policy Manual, Section 110.2.2—Intensive Level of Rehabilitation Services.

to avoid a delay in appropriate care. A rehabilitation physician is required to review a patient's PAS and provide their concurrence with the requested treatment *prior to admission*. The PAS determines whether or not the patient meets the requirements for an IRF admission to be considered reasonable and necessary.

CMS amended the IRF coverage requirements in the FY 2021 final rule (84 FR 39054)¹⁵ to allow non-physician practitioners (who are determined by the IRF to have specialized training and experience in IRFs) to perform one of the three weekly required face-to-face visits beginning during the patient's second week of care. However, we did not propose in this year's rule additional changes to duties that can be performed by a PA instead of a rehabilitation physician. Likewise, we did not propose the use of recreational therapy intervention as a possible therapy ordered through PAS. We will continue to monitor the role of PAs and recreational therapy in IRFs and to consider changes to policy via future public comment and rulemaking.

After consideration of public comments, we are finalizing our revision of the regulatory text for the 36-hour requirement to require that all therapy treatments and/or therapy evaluations must begin no later than 36 hours from midnight on the day of admission. All therapies must be initiated, not just one therapy, to be compliant with the policy. For example, if a patient is admitted to the IRF at 2:00 p.m. on Tuesday, all therapy treatments and/or therapy evaluations must be initiated by 12:00 p.m. on Thursday, or 36 hours after midnight (12 a.m.) following admission (in this example, midnight after admission is 12:00 a.m. on Wednesday). In response to comments, we are clarifying that, following the initial 36 hours after midnight of the day of admission (in this example after 12:00 p.m. on Thursday), any new therapy treatment and/or therapy evaluations that are ordered are not part of the 36-hour requirement. The 36-hour requirement is specific to therapies that have been ordered during the PAS and justifies the need for an IRF admission. We will provide guidance and training to assure the implementation of this policy is consistent across the industry and interested parties.

B. Updated Documentation of Current Functional Status in the PAS

IRFs are required to document a comprehensive PAS in accordance with 42 CFR 412.622(a)(4)(i) in order to indicate a patient meets the requirements for an IRF admission to be considered reasonable and necessary and ultimately, to be reimbursed for an IRF claim. As part of this policy (42 CFR 412.622(a)(4)(i)(B)), the PAS must "include a detailed and comprehensive review of each patient's condition and medical history, including the patient's level of function prior to the event or condition that led to the patient's need for intensive rehabilitation therapy, expected level of improvement, and the expected length of time necessary to achieve that level of improvement; an evaluation of the patient's risk for clinical complications; the conditions that caused the need for rehabilitation; the treatments needed (that is, physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics); and anticipated discharge destination."

While the patient's *prior* level of function is indicated as a requirement, we believe that for an appropriate POC to be developed for a patient, a patient's *current* functional status must also be documented in the PAS. The patient's current level of function provides important information to build a more complete picture of their rehabilitation trajectory and expected level of improvement while in the IRF.

We proposed to revise § 412.622(a)(4)(i)(B) to require that the patient's "current functional status" be documented in the patient's PAS in their medical record at admission and received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: Some commenters expressed support for requiring documentation of the patient's *current* functional status in the PAS. Commenters in support remarked that this would be clinically valuable as it would give health care providers more insight into a patient's rehabilitation trajectory and needs. They stated it would improve care planning and tracking of recovery.

The majority of commenters opposed the proposal to require current functional status in the PAS in its current form because of potential clinical and compliance risks if finalized as proposed. They expressed that CMS should provide additional detail on functional data collection and compliance requirements in a future

proposal. Commenters requested clarification on what type of assessment and level of detail would be required. We received a comment advising that therapeutic evaluations collected as part of the patient's POC are a more accurate baseline than the PAS and another comment we received stated the PAS represents a limited and time-specific snapshot of the patient's condition, typically based on referring medical personnel. Several commenters remarked that the PAS is used to determine IRF coverage and should not serve as a comprehensive functional assessment, such as the IRF-PAI. They expressed that CMS should make clear that if there were any differences between a patient's current functional status documented in the PAS and IRF admission assessments, an IRF claim would not be denied.

Commenters provided a range of suggestions about implementation of the current functional status requirement. We received a comment to consider greater flexibility in the policy's implementation for smaller IRFs or IRFs facing staffing shortages. Several commenters said that documentation of current functional status in the PAS should be used as a screening tool to inform IRF level of care, not as a comprehensive assessment that is used for payment or case-mix groupings. An additional comment expressed that CMS should consider utilizing IRF-PAI data elements for assessment in order to promote data standardization and enable valid comparisons of the patient's function in the PAS and later in their IRF stay. Other commenters were opposed to using the IRF-PAI to assess functional status. A couple of commenters stated that CMS should allow for flexibility in methods of collecting current functional status data on the PAS, including chart review or brief observation.

Response: We appreciate the commenters' input about our proposal to require current functional status to be documented in the PAS. We will not be finalizing this proposal as we pursue adding increased specificity to the policy. We may take into consideration the public comments received to inform future rulemaking on this topic.

C. Initial Interdisciplinary Team Meeting

1. Background

During the IDT meeting, all members of a patient's IRF care team review the patient's progress toward their rehabilitation goals, while making recommendations for therapy changes to support discharge goals

¹⁵ <https://www.cms.gov/medicare/medicare-fee-for-service-payment/inpatientrehabfacpps/list-of-irf-federal-regulations-items/cms-1710-f>.

(§ 412.622(a)(5)). These goals are part of the patient's individual POC which collates assessments from each therapy discipline treating the patient and includes the patient's medical prognosis, anticipated interventions, functional outcomes, and discharge destination. Per § 412.622(a)(4)(ii), the POC must be developed by a rehabilitation physician and documented in the patient's medical record or electronic health record by day 4 of the patient's admission to the IRF.

The current IDT meeting policy (42 CFR 412.622(a)(5)) states that IDT meetings must occur "at least once per week throughout the duration of the patient's stay," with a "week" defined as a period of 7 consecutive calendar days beginning with the date of admission to the IRF" (§ 412.622(c)). In 2010, CMS posted guidance to the IRF PPS website that was misinterpreted to indicate that the initial IDT meeting may occur on day 8 from the day of admission, which is not aligned with the regulatory text cited previously in this section. CMS removed this document in December 2023 and noted its removal in an announcement on the IRF PPS homepage, which pointed providers to reference more accurate resources provided by CMS.

2. Initial Interdisciplinary Team Meeting

Under the current IDT policy (§ 412.622(a)(5)), IRF patients may have only one IDT meeting occur prior to discharge, which raises concern about the level of coordinated interdisciplinary care a patient is receiving. The IDT meeting is a key aspect of the interdisciplinary care of an IRF patient as it provides the opportunity for the care team to review together the patient's care and progress, and to ensure the POC is updated as needed to accurately reflect the patient's needs. As a result of the prior guidance provided, it is possible for an IRF patient to receive up to 7 days of care in an IRF without their full care team coordinating their treatment or discussing progress towards the patient's goals as outlined in the POC. This could be particularly concerning as the patient is likely to experience rapid improvement or decline in functioning within the first 7 days.

By not providing a timely initial IDT meeting with the care team's input on the patient's progress, the team may be providing suboptimal treatment or

inadvertently worsening the patient's health outcomes. Also, given the average length of stay in an IRF is typically between 12 to 14 days, for a patient who has their first IDT meeting on day 7, it is likely that the IDT meeting would focus on discharge planning rather than making timely updates to the patient's POC based on their progress. Per § 412.622(a)(4)(ii), an individualized overall POC must be developed by a rehabilitation physician with input from the interdisciplinary team on or before 4 days of the patient's admission to the IRF and documented in the patient's medical record or electronic health record. By not making more timely checks and updates within the IDT meeting on the patient's progress, and related POC updates, patients are at risk for ineffective care that may lead to delayed improvements.

Patient example: A 68-year-old male patient is admitted to an IRF with an ischemic stroke causing mild hemiparesis, mild aphasia, and dysphagia. His admission goals were to increase his mobility, independence with activities of daily living (ADLs), and safety with swallowing in order to be discharged home to his family. The patient's POC includes: a physical therapist (PT) to work on gait training and balance; an occupational therapist (OT) to address his independence with self-care and dressing; and a speech-language pathologist (SLP) to manage the aphasia and swallowing. During the patient's course of stay, the PT, OT and SLP have limited communication with one another. By the time the patient's IDT meeting occurs on day 7 of his stay, the PT has noted the patient is steady with transfers using a walker and requires minimal assistance to ambulate with his walker. Despite the PT's notes, the OT is now training the patient on ADL tasks that require him to stand without support. The patient has been steady when performing these tasks for brief periods of time but needs to rest often by sitting down. The SLP is providing the patient with nectar-thick liquids per the swallowing plan but has not communicated the patient's fatigue levels or the patient's need for safety cues when swallowing to the rest of the team. The patient's IDT meeting on day 7 focuses on his discharge planning with the rehabilitation physician noting the patient can safely ambulate independently with his walker and ADLs as he is unaware of the inconsistencies in the patient's presentation across the OT, SLP, and PT

therapy sessions. As such, the patient returns home with his wife after 11 days in the IRF. Within two days, the patient sustains a fall while transferring from the toilet resulting in a hip fracture. He is readmitted to the acute care hospital with aspiration pneumonia due to coughing and choking during meals and hip fracture due to difficulty ambulating with his walker.

In the example, if the initial IDT meeting had occurred earlier than day 7, the patient's POC could have been adjusted to better match his functional progress. Additionally, his care team could have discussed ongoing concerns regarding his fatigue, balance, and swallowing to coordinate treatment. An earlier IDT meeting may have prevented this patient's fall and hospital readmission.

In an effort to continuously improve patient-centered care, we believe the first IDT meeting should occur earlier than day 7 of a patient's stay, which is current policy. This change will ensure patients are receiving coordinated, interdisciplinary care aligned with their POC and tailored in its intensity to the patient's recovery progress. We proposed to revise § 412.622(a)(5)(ii) to specify that the initial IDT meeting shall occur on or before the fourth day from midnight on the day the patient is admitted to implement appropriate treatment services; establish or review the patient's stated rehabilitation goals; and identify any problems that could impede goals. The initial IDT would be in coordination with admission and the POC. Following the initial IDT meeting, we proposed that a patient's subsequent IDT meetings occur weekly (for example, within 7 days from the prior IDT meeting). See Figure 1 that is revised in this final rule to clarify the requirements for the timeline of the IDT meeting. Table 8 for this final rule also provides examples of when IDT meetings occur based on the date the prior IDT was conducted. In addition to the revisions to § 412.622(a)(5)(ii), we proposed to redesignate paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and add a new paragraph (a)(5)(iii) to clarify that the initial IDT meeting shall determine the cadence of patient's subsequent IDT meetings. We also proposed to revise the definition of "Week" that appears in § 412.622(c) to specify that, for purposes of § 412.622, a "week" means a period of 7 consecutive calendar days.

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REVISED FIGURE 1: Initial Interdisciplinary Team Meeting Policy in Effect for FY 2027

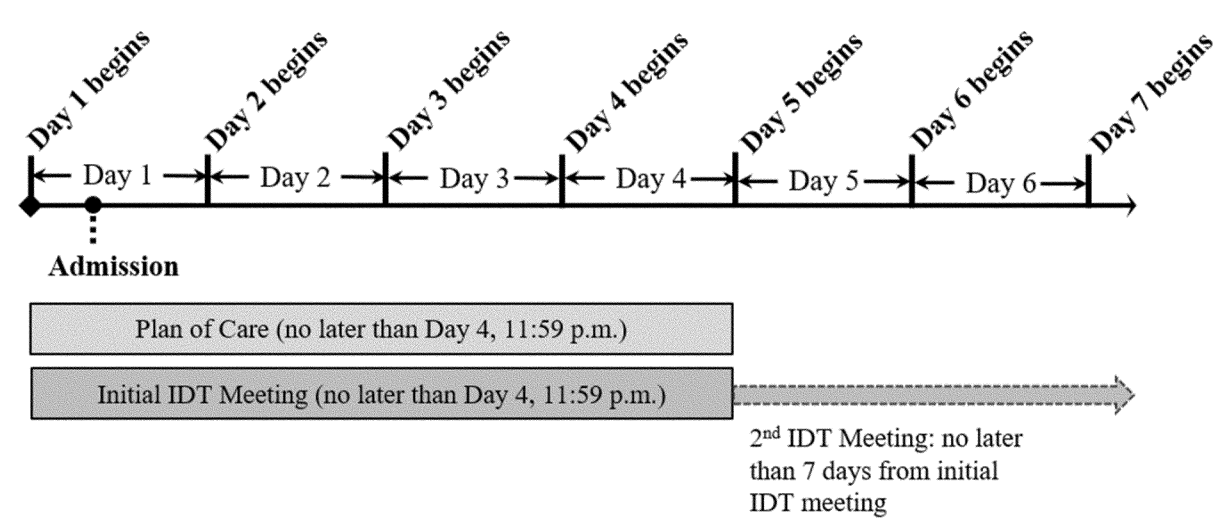


TABLE 8: Compliant and Non-Compliant IRF Patient Examples of IDT Timelines

Patient	Length of Stay	Initial IDT	IDT #2	IDT #3	Compliant?
A	4 days	day 2	N/A	N/A	Yes
B	10 days	day 4	day 9	N/A	Yes
C	6 days	day 2	day 5	N/A	Yes
D	14 days	day 2	day 11	N/A	No – the initial IDT is compliant, but IDT #2 is non-compliant as there are more than 7 days between the initial IDT and IDT #2.
E	20 days	day 4	day 11	day 19	No – IDT #3 is non-compliant as there have been more than 7 days since IDT #2. The initial IDT and IDT #2 are compliant.
F	16 days	day 6	day 13	N/A	No – the initial IDT is non-compliant as there were more than 4 days between admission and the initial IDT.

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In the proposed rule, we stated that in requiring the patient’s first IDT meeting to occur by day 4, we believe the interdisciplinary team can coordinate care and provide treatment updates more frequently than once during a patient’s stay, which may lead to improved quality of care and health outcomes. As discussed in the FY 2010 rule (74 FR 39762), conducting the IDT meeting “for each IRF patient within the first 4 days of admission to develop the overall plan of care would be good practice.”

To assess the impact of the proposed policy, we conducted a simulation exercise. If we assume that IRFs hold a formal IDT meeting on a weekly basis (per the current policy) to address their

caseload and the prognoses of their patients, an estimated range of 2.1 to 3.8 percent of IRF patients discharged between FY 2015 through FY 2023 experience zero IDT meetings during their stay. If we account for patients who were admitted on the day of the IDT meeting but too late to be discussed at the meeting, the number of cases with zero IDT meetings during the stay will increase from 4.2 to 4.8 percent. By CMS implementing a policy requiring that the patient’s first IDT meeting occurs by day 4 of their stay, the percentage of cases that did not have an IDT meeting would decrease to 1 percent. After the initial IDT meeting, IRFs will need to conduct subsequent IDT meetings beginning on the 7th day from when the last meeting occurred.

We conducted an estimated impact of the proposed initial IDT policy on IRFs. To determine the resources needed for one IRF meeting, we first identified the salaries of the key personnel who attend IDT meetings using the 2024 Bureau of Labor Statistics’ (BLS) national average wages per hour. For conservative estimation purposes, we assumed one of each of the following disciplines attend IDT meetings: rehabilitation physician, PT, OT, SLP, nurse coordinator (filled by an RN), social worker, and rehabilitation unit manager (filled by an NP). If the proposed initial IDT meeting policy is finalized, we assume that most IRFs (depending on the volume of patients) will increase the frequency of meetings to meet this change. For example, if an IRF has a patient

admitted on a Tuesday, but the team's usual IDT meetings occur on Mondays, then the IRF will have to meet again by the patient's day 4 (Friday in this example) to comply with the new policy. We estimated that a 1-hour IDT meeting would cover approximately 12 IRF patients (5 minutes per patient), resulting in \$399.06 per 60-minute IDT meeting. Assuming the IDT meetings would be 1-hour in duration, for IRFs that move from once to the twice weekly IDT meeting frequency will face an additional approximate cost of \$399.06 per week.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: Some commenters supported the 4-day initial IDT policy. Commenters remarked that the policy would codify best practices and improve coordination of care among the interdisciplinary team. They stated that the policy would enable earlier discharge planning and thereby avoid unnecessary longer lengths of stay. Additionally, commenters stated that the revised IDT policy would improve patient outcomes and health system throughput.

Response: We appreciate the commenters' support of the 4-day initial IDT policy. We agree with commenters that the proposal codifies best practices and promotes patient-centered care while also creating operational alignment with admission and the POC requirements.

Comment: Several commenters requested clarification from CMS regarding the timing requirements of the proposed initial IDT policy and stated that the provided timeline diagram was unclear. Commenters expressed that CMS should better define midnight and what is considered day 1 to begin the timeline for both the initial IDT policy and the POC to occur by day 4. We also received a comment that requested that the redesignated paragraph 42 CFR 412.622 (a)(5)(iii) that is now paragraph 42 CFR 412.622 (a)(5)(iv) be included in the regulation text in the final rule.

Response: The initial IDT meeting would be in coordination with admission and the POC. In response to commenters, we clarify that day 1 is the day of admission—hence, if a patient is admitted on a Thursday, they would have until end of day on Sunday (4 days from Thursday) to conduct the patient's initial IDT meeting (refer to the revised Figure 1). As with the initial IDT meeting, day 1 for the POC requirement also starts the day of admission to an IRF.

In response to the commenter who said CMS should include the paragraph 42 CFR 412.622(a)(5)(iii) that was redesignated as paragraph 42 CFR 412.622 (a)(5)(iv), we respectfully remind the commenter that the redesignated paragraph has no revisions. It will continue to read as follows, "The results and findings of the team meetings, and the concurrence by the rehabilitation physician with those results and findings, are retained in the patient's medical record."

Comment: Multiple commenters provided suggestions on how to implement the initial IDT policy. Many commenters stated that the documentation of the initial IDT meeting should replace the POC documentation. A comment was also submitted that expressed that CMS should allow the day of admission to be day 0 with regards to the timing of the initial IDT and POC as new patients are typically admitted late in the day from acute care hospitals. Multiple commenters stated CMS should allow all of the patient's care team to attend the IDT meetings remotely, not only the rehab physician, per the current policy.

We received many comments requesting flexibility in implementing the proposed policy for facilities facing staffing shortages and high patient volumes. Additionally, commenters requested that CMS provide exceptions in the case of situations that require the initial IDT meeting to occur later than day 4, as long as they document well the circumstance and provide details of other interdisciplinary coordination occurring. Other commenters suggested that CMS delay implementation (1 year or more) of the policy to enable providers to make necessary adjustments and provide training. Several commenters suggested CMS allow the initial IDT meeting to fall on the next business day in the instances when patients are admitted later in the week and day 4 is on the weekend or a holiday. These commenters voiced concern that not all of a patient's care team may be present on the weekend, which could result in less informed care decisions occurring during the IDT meeting. Additionally, they stated that, in these instances when meetings occurred on the weekend without the full care team, they be more for compliance reasons rather than providing clinical value to the patient. We also received a comment that expressed that CMS should allow PAs to conduct IDT meeting activities that are within their scope of practice under applicable state laws.

Response: We appreciate commenters' suggestions for implementing the

proposed initial IDT policy and may take these into consideration in the future. The documentation of the initial IDT meeting should be separate from documentation of a patient's POC in the medical record. The initial and subsequent IDT meetings will provide the opportunity for the care team to collaborate on the patient's POC and progress, and to ensure the POC is updated as needed to accurately reflect the patient's needs.

We consider the day of admission to be day 1 for the initial IDT policy in alignment with the POC. Both the initial IDT meeting and the patient's POC must be documented in the patient's medical record or electronic health record by day 4. We recognize day 4 may occur over a weekend or a holiday with admissions that occur later in the week. We understand commenters' concerns that the timeframe allotted for the initial IDT policy may not align with the standard clinical practices of both hospital-based and freestanding IRFs. While we continue to believe that the 4-day initial IDT policy (as compared to the currently-in-effect 7-day IDT policy) better ensures patient-centered, seamless provision of care for patients to enable their timely recovery and discharge from an IRF, in response to feedback from commenters, we are not finalizing our proposed regulatory revision to require that the first IDT meeting shall occur on or before the fourth day from midnight on the date the patient is admitted. We are, however, finalizing the proposed requirement that the first IDT meeting shall occur on or before the fourth day from the date the patient is admitted. As such, for admissions on or after October 1, 2026, for a patient admitted on a Thursday, the initial IDT meeting for that patient would need to occur before end of day on Sunday.

At this time, per § 412.622(a)(5)(i) we are only allowing rehabilitation physicians to participate in IDT meetings remotely—all other team members must attend in-person. We will monitor the implementation of the proposed initial IDT policy and possibly consider amending the remote policy, through notice and comment rulemaking, as appropriate.

In consideration of the comments that requested that PAs be allowed to perform medical duties that are currently only allowed to be performed by a rehabilitation physician, we believe the IDT meetings should be led by rehabilitation physicians who have greater expertise and training in inpatient rehabilitation than PAs. Rehabilitation physicians play an important role in decisions about

patients' plans of care and discharge, both of which require extensive experience.

Comment: Most commenters expressed concern about the proposed 4-day initial IDT policy. Commenters stated that the IDT meeting is one component of an already interdisciplinary approach to patient care beginning at admission. Commenters stated that current practice at IRFs provides ongoing collaboration and coordination of patient care which was unaccounted for in the proposed policy. The commenters remarked that the CMS' concerns mentioned about limited care team communication or POC updates were not based on the realities of care provision in IRFs.

Multiple commenters expressed that the policy would increase administrative burden by being duplicative to the coordination required for drafting the individualized POC and other forms of team communication that occur early in a patient's stay (for example, team huddles, meetings with the patient's family), without evidence of clinical benefit. The commenters remarked that the proposal contradicts CMS' goals of improved patient-centered care as the additional meetings would detract from time spent directly with patients. They stated that adding burden and procedural steps in an already tight initial timeframe is particularly concerning due to current staffing shortages and resource constraints that IRFs are facing, and could result in unintended consequences, claim denials, or reduce access for patients. Additionally, commenters remarked that the policy is not aligned with CMS' initiatives aimed at reducing burden in hospitals. A commenter stated that it is unclear why CMS is proposing this policy when current Medicare coverage criteria is highly detailed and already requires interdisciplinary coordination.

Many commenters in opposition to the initial IDT policy preferred the 7-day IDT policy remain. A commenter stated that the 7-day policy should be retained with provider flexibility allowed in certain circumstances (and when compliant with POC). Other commenters believed the current 7-day IDT timeframe aligns well with the 36-hour requirement and POC timeline. They stated it enables initiation of therapy and treatment so that clinicians can gauge patient recovery and necessary POC modifications in preparation for the IDT meeting.

Commenters voiced concerns that the initial IDT policy as proposed is overly rigid and would cause significant operational challenges and resource

burden without proven clinical benefit to the patient. Commenters stated if an initial IDT meeting has to occur over the weekend, it would be difficult to guarantee the patient's care team could be in attendance. Others remarked that the earlier timeline for the initial IDT policy meant that initial IDT meetings might have to be held before standard outreach to a patient's family or initial therapy evaluations have been conducted or cause a delay in more urgent medical priorities that may occur early in a patient's stay. A commenter discussed that the 3-day assessment period for completing the IRF-PAI admission is necessary for accurate case mix group assignments and estimated length of stay.

Multiple commenters stated the IDT policy would cause operational burden by requiring IRFs to hold 3–4 IDT meetings per week to be compliant. Additionally, they said the policy will add considerable strain to rehabilitation physicians' schedules, thereby detracting from direct patient care. Commenters stated that having a 2nd IDT meeting within 7 days of the initial IDT meeting could result in discussing the same patient more than once in 1 week.

Several commenters remarked that CMS' estimates of the amount of time required for each patient discussed in IDT meetings was inadequate to review the patient's clinical progress and make revisions to their goals or POC. They stated that IRF patients are often medically complex which may require intensive interdisciplinary coordination or attendance of additional care disciplines (for example, Registered Dietician Nutritionists), which last longer than the estimated average of five minutes per IDT meeting. As such, they commented that CMS' resource burden estimates as a result of the policy were flawed.

Response: The proposed initial IDT policy would require IRFs to conduct a patient's first IDT meeting on or before the fourth day from midnight on the day the patient is admitted. While additional documentation of the patient's recovery or changes to the patient's POC may be a result of this policy, we believe this burden is minimal compared to ensuring patients receive care aligned with their recovery progress which will lead to improved outcomes.

As proposed, the policy requires IRFs to conduct the first IDT meeting for a patient on or before the fourth day from midnight on the day of admission. Therefore, if some of the care team is unavailable on a weekend, the IRF can make appropriate arrangements to

convene the initial IDT meeting with the full care team on a weekday prior to the weekend, if it occurs on or before the fourth day. For example, for a patient admitted on a Thursday (whose initial IDT would be due by day 4, or Sun at 11:59 p.m.), the IRF could conduct the initial IDT meeting on Friday to accommodate the care team's schedule if they cannot be part of a weekend IDT meeting.

We do not believe the earlier timeline for the proposed 4-day initial IDT policy will cause initial IDT meetings to occur prior to therapy evaluations. By day 4, the patient's care team should have completed therapy evaluations, observed actual participation, identified barriers to treatment, assessed tolerance and endurance, and begun implementation of the rehab program; as such, the care team will have enough information about the patient to conduct the IDT meeting. Holding the initial IDT meeting by day 4 will allow for earlier identification of clinical, functional, or psychosocial barriers affecting the patient's progress and timely adjustments to their treatment plan.

As compared to smaller team huddles or individual communication between care team members, while these are important aspects of patient management, we believe the IDT meeting serves a different purpose by providing a structured meeting with the entire care team convened to review the patient's care and to collaboratively make care decisions or modifications. The IDT meeting enables the team to assess the patient's response to treatment, progress towards their goals, barriers to rehabilitation, and continued appropriateness of the treatment plan. In response to changes in the patient's medical presentation or recovery progress, an initial IDT meeting within 4 days of the day of admission enables timely updates to be made to the POC in response to the patient's needs.

We agree that the initial IDT meeting policy may result in additional IDT meetings occurring at IRFs each week. However, the improvement in quality of care and recovery trajectory that may result from the initial IDT meeting occurring earlier during the patient's stay (as compared to up to 7 days after admission) is vitally important for patient-centered care and aligning to the POC. Following a patient's initial IDT meeting, IRFs may conduct the subsequent IDT meeting up to 7 days after. Depending on the cadence of IDT meetings by an IRF, it is possible that a patient will be reviewed in an IDT meeting more than once per week or that IRFs will have to hold two IDT meetings on patients per week.

However, we believe more collaboration among a patient's care team regarding their recovery will be beneficial to the patient.

We respectfully remind commenters that our estimation of the resources needed for additional IDT meetings was conducted via a simulation exercise. Across IRFs, there will be variation in resource use by patient acuity and by different operational processes.

After consideration of public comments, we are finalizing the 4-day IDT policy with a clarification. We will revise § 412.622(a)(5)(ii) as proposed to specify that the initial IDT meeting shall occur on or before the fourth day the patient is admitted to implement appropriate treatment services; establish or review the patient's stated rehabilitation goals; and identify any problems that could impede goals. The initial IDT would be in coordination with the development and timing of the patient's start of therapy (per the 36-hour requirement) and the POC. To clarify, day 1 is considered the day of admission—hence, if a patient is admitted at 1 p.m. on a Thursday, they would have until Sunday at 11:59 p.m. (4 days after admission) to conduct the patient's initial IDT meeting (refer to the revised Figure 1). Similar to the initial IDT meeting, day 1 for the POC requirement also starts the day of admission to an IRF—therefore, if a patient is admitted at 3 p.m. on a Tuesday, the POC must be developed by 11:59 p.m. on Friday (4 days after admission). Following the initial IDT meeting, we are finalizing that a patient's subsequent IDT meetings occur weekly (for example, within 7 days from the prior IDT meeting). In addition to the revisions to § 412.622(a)(5)(ii), we will redesignate paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and add a new paragraph (a)(5)(iii) to clarify that the initial IDT meeting shall determine the cadence of patient's subsequent IDT meetings. We are finalizing the proposed revision to the definition of "Week" that appears in § 412.622(c) to specify that, for purposes of § 412.622, a "week" means a period of 7 consecutive calendar days. However, as discussed earlier in this section, we are not finalizing the requirement that the first IDT team meeting occur on or before 4 days from midnight of the date of admission; instead, the initial IDT team meeting must occur within 4 days of the date of admission.

IX. Request for Information Regarding Future IRF Payment Reform

CMS is exploring opportunities to modernize the IRF PPS established in 2002 (66 FR 41316) to better reflect

evolving clinical practice and align more closely with other post-acute care settings. This includes potential refinements to clinical categories and comorbidity. The recommended deadlines of 60 or 90 days after the end of the quarter would not achieve our goal of providing more timely data to consumers and IRFs, as posting of public reporting would fall into the same quarterly refresh that it is in currently. For example, for Q1 groupings. In this section, we provide an overview of the current IRF PPS patient classification system. In the proposed rule, we requested input on future payment reforms to enhance and modernize the IRF payment structure. We provide a summary of the comments we received and our responses in sections IX.B.1 and IX.B.2. of this final rule.

A. Background

Under the IRF PPS, providers report an Impairment Group Code (IGC) in Item 21A of the IRF-PAI to identify the primary reason the patient requires IRF care. Each IGC maps to a single Rehabilitation Impairment Category (RIC), which serves as the first level of classification in the payment system. The CMS grouper uses the RIC to assign the patient to a CMG based primarily on functional status at admission and, for certain CMGs, age.

Functional status is a key predictor of resource use under the IRF PPS. From FY 2002 through FY 2019, CMG assignment relied on motor and cognitive scores derived from the FIM™ instrument. In the FY 2019 final rule (83 FR 38514), CMS removed the FIM™ instrument and associated Function Modifiers and adopted IRF-PAI Quality Indicator items to reduce provider burden. Beginning in FY 2020, CMGs have been assigned using functional scores derived from these IRF-PAI assessment items.

CMGs are further refined to account for clinical complexity. Patients may be assigned to comorbidity tiers that adjust payment to reflect higher expected resource use. Additional payment adjustments apply for special circumstances, such as very short stays or death.

The IRF PPS currently includes 21 Rehabilitation Impairment Categories and 17 associated Impairment Group Codes, as established in the FY 2002 final rule (66 FR 41316). IGCs are represented by one or two-digit codes, sometimes extended with decimals to identify more specific subgroups.

Additional information is available in the FY 2002 (66 FR 41316), FY 2006 (70 FR 47880), FY 2007 (71 FR 48354), and

FY 2021 (85 FR 48424) IRF PPS final rules.

B. The Need for IRF Payment Reform

Experience from other Medicare payment reforms demonstrates the importance of aligning payment with patient characteristics and expected resource use, rather than service volume, while maintaining strong safeguards against unintended coding or behavioral responses. These reforms highlight the need for regular recalibration using current data, thoughtful and phased implementation of structural changes, and monitoring to protect beneficiary access. Applying these principles to IRF payment reform supports continued refinement of CMGs, functional scores, and comorbidity adjustments to improve payment accuracy and ensure program integrity.

CMS believes refinements to the IRF clinical categories and comorbidity groupings are necessary to support continued payment reform under section 1886(j) of the Act, which would contribute to overall payment reform. CMS must ensure that the IRF PPS reflects changes in patient complexity and advances in rehabilitation care since the system's implementation in 2002. These refinements are intended to better align payment with patient characteristics and resource use, strengthen the relationship between spending and value, and support CMS's broader goal of a more consistent and coordinated approach to post-acute care (PAC) payment and delivery.

As with any case-mix methodology, shifts in documentation, coding practices, or assessment completion may influence measured case-mix independent of true changes in patient acuity. By adopting more standardized, diagnosis-based classification approaches across PAC settings, CMS aims to improve consistency, support care delivery reform, and position the IRF PPS for future payment reforms that better reflect patient complexity and value. Furthermore, these potential refinements would move the IRF PPS toward diagnosis-driven grouping methods similar to those used in other Medicare payment systems, including the Inpatient Psychiatric Facility PPS (IPF PPS) and the SNF Patient-Driven Payment Model (PDPM) finalized in the FY 2019 SNF PPS final rule (83 FR 39162).

MedPAC's recent analyses further support the need for refinement. In multiple Reports to the Congress on Medicare Payment Policy (March 2023, March 2024, March 2025, and March 2026), MedPAC identified persistent

differences in profitability across clinical categories, which could provide incentives for admitting specific diagnoses to improve profitability. MedPAC also found that within RICs, higher patient severity—measured by functional status and comorbidities—is associated with higher payment-to-cost ratios, and that case mix varies meaningfully by IRF ownership and type, particularly for high-volume conditions such as stroke, other neurological conditions, and debility. These findings underscore the importance of refining IRF clinical categories and comorbidity groupings to better reflect patient severity and improve alignment between payments and resource use. In this RFI, we sought interested parties’ input on potential approaches to ensure that payments under a revised IRF PPS appropriately reflect underlying patient severity and costs, particularly in the event of systematic changes in coding or documentation that are not accompanied by corresponding changes

in clinical complexity or resource utilization.

1. Potential Changes to IRF Patient Clinical Classification

As previously discussed, the IRF PPS currently relies on 17 major category IGCs, comprising 85 specific IGCs, finalized in the FY 2002 IRF PPS final rule (66 FR 41316) to classify each patient into one of 21 distinct Rehabilitation Impairment Categories (RICs). Under this framework, up to three ICD–10–CM etiologic diagnosis codes are mapped through a multi-step process—from IGCs to RICs to CMGs—to determine payment. Over time, this layered classification approach has created opportunities for misalignment among the patient’s primary reason for IRF admission, the clinical care delivered, and the resulting payment, particularly as diagnostic coding practices and patient complexity have evolved.

To address these limitations, CMS is considering a fundamental refinement to IRF patient classification by

modifying how primary diagnoses are mapped to clinical categories. Specifically, CMS has leveraged the existing clinical categories recently implemented under the SNF PDPM to develop a preliminary set of IRF-specific clinical categories. These categories would modernize IRF patient classification by replacing the current mapping of etiologic diagnoses to IGCs and RICs with a comprehensive and exhaustive crosswalk from ICD–10–CM diagnosis codes directly to IRF PPS clinical categories. This approach would strengthen alignment between diagnosis, patient severity, and payment; improve consistency across post-acute care settings; and support CMS’s broader objectives of payment accuracy, transparency, and value-based care.

Table 9 provides the 15 valid IRF clinical categories for consideration. Using a complete ICD–10–CM to clinical category crosswalk, patients are classified into clinical categories by the ICD–10–CM code reflecting the primary reason for the IRF stay.

TABLE 9: Potential IRF Clinical Categories*

Potential IRF Clinical Categories
Acute Infections
Acute Neurologic - Brain/Cranial Nerve
Acute Neurologic - Peripheral Nerve/Muscle
Acute Neurologic - Spinal Cord
Cancer
Cardiovascular and Coagulations
Major Joint Replacement or Spinal Surgery
Medical Management
Non-Orthopedic Surgery
Non-Surgical Orthopedic/Musculoskeletal - Infection
Non-Surgical Orthopedic/Musculoskeletal - Injury
Non-Surgical Orthopedic/Musculoskeletal - Peripheral Nerve/Muscle
Non-Surgical Orthopedic/Musculoskeletal - Rheumatoid/Structural
Orthopedic Surgery (Except Major Joint Replacement or Spinal Surgery)
Pulmonary

* Note: these clinical categories align with the 10 SNF PPS clinical categories and expand on the Acute Neurologic and Non-Surgical Orthopedic/Musculoskeletal categories, as they accounted for a high proportion of IRF stays and were too broad, which prompted additional breakdown to better reflect IRF case-mix and allow for a more tailored and meaningful distribution of IRF stays.

We solicited public comments on the potential use of these clinical category assignments under the IRF PPS to classify a patient for payment purposes. CMS is exploring alternatives to how primary diagnoses are mapped to clinical categories in the current IRF

PPS, which is documented in a technical report available at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation/research>. The following is a summary of the public comments received and our responses.

Comment: Several commenters expressed conditional support for CMS’ efforts to improve payment accuracy and better reflect patient complexity, while emphasizing the need for additional analysis and interested party engagement before implementation.

Supportive commenters favored greater standardization of classification systems to improve consistency across post-acute care settings and better account for medically complex patients. They acknowledged limitations in the current IRF payment system and supported continued evaluation of reforms that could improve fairness, efficiency, and reimbursement accuracy. Some commenters also recommended refinements to clinical categories, including adding cancer as a distinct category and improving category definitions overall.

Supportive commenters still expressed many of the concerns described by commenters who unconditionally opposed the RFI on payment reform. Commenters expressed significant concerns regarding the underlying research, methodology, financial impact, and implementation approach. Commenters stated that CMS had not provided sufficient data, methodology, ICD-10 crosswalks, or operational guidance to evaluate the potential effects of the changes. They emphasized the need for collaboration with providers and technical experts prior to implementation and stated that CMS should provide adequate lead time for any future transition. Many commenters disagreed with aligning IRF payment methodologies with SNF PDPM-based clinical categories. They stated that IRFs serve a clinically distinct population requiring more intensive, interdisciplinary rehabilitation and that a SNF-based framework would fail to capture patient complexity, rehabilitation intensity, and functional needs. Commenters expressed concern that reliance on a single primary diagnosis and broad clinical categories could underrepresent the cumulative impact of multiple

conditions and inadequately reimburse providers caring for medically complex patients. They stated that these changes could reduce reimbursement and limit therapy services, potentially worsening patient outcomes. They also expressed concern that changes could restrict access to IRF care and shift costs elsewhere in the healthcare system. Some commenters suggested alternative approaches, including expanded RICs, greater reliance on motor and cognitive function measures, multidisciplinary intensity tiers, and modernization of the 60 percent rule.

Commenters also expressed confusion about the overall rationale and process underlying the potential reforms. Many stated that CMS had not clearly identified a policy problem, provided sufficient evidence to justify major structural changes, or engaged interested parties in the process. Additionally, commenters highlighted the significant coding, administrative, and information technology changes that would be required without clear evidence that the reforms would improve outcomes or payment accuracy.

Response: We appreciate the comments regarding the potential clinical category assignments to classify a patient under the IRF PPS for payment purposes. Commenters expressed a range of views that support and oppose CMS' initial concept to how primary diagnoses are mapped to clinical categories in the current IRF PPS. We will provide information throughout the development of the clinical category mapping and engage with interested parties. Commenters raised questions regarding the policy rationale, need to distinguish the difference between the IRF and SNF patient populations, and payment accuracy.

After consideration of the comments received, we recognize the importance

of further evaluating the issues raised by interested parties. We will continue to analyze the clinical category assignments, including its potential impacts on payment accuracy, beneficiary access, and provider behavior, and will consider interested party feedback as we assess potential future refinements to the IRF clinical categories.

2. Potential Changes to IRF PPS Comorbidities

Drawing on the comorbidity scoring methodology used by the SNF PDPM Non-Therapy Ancillary (NTA) component, CMS developed a preliminary comorbidity scoring and binning approach for the IRF PPS accounting for both the severity and the number of comorbid conditions. This would also support alignment across post-acute care payment systems. Under this framework, CMS identifies comorbidities associated with higher IRF costs using multiple sources, including Hierarchical Condition Categories (HCCs), Prescription HCCs (RxHCCs), IRF-PAI items, and selected custom conditions. Each comorbidity would contribute to a weighted score reflecting its relative impact on resource use, similar to the methodology applied under the SNF PDPM NTA system.

As shown in Table 10, comorbidity scores would then be grouped into one of 6 comorbidity score bins: a comorbidity score of 0, 1, 2, 3, 4–5, and 6 or higher. Each bin groups IRF stays by corresponding comorbidity score based on estimated similarities in costs. These scoring and grouping refinements would align spending and value through improved accuracy while also aligning IRF PPS more closely with other PAC payment systems.

TABLE 10: Potential Comorbidity Score Bins*

Potential Bins	Potential Comorbidity Scores in Each Bins
Bin 1	Comorbidity Score of 0
Bin 2	Comorbidity Score of 1
Bin 3	Comorbidity Score of 2
Bin 4	Comorbidity Score of 3
Bin 5	Comorbidity Score of 4 or 5
Bin 6	Comorbidity Score of 6+

*Note: Comorbidity bins group comorbidities by similarities in cost.

We solicited public comments on the potential use of comorbidity scores and score bins under the IRF PPS to

categorize comorbidities for payment purposes. CMS is exploring alternatives to the tier comorbidity methodology of

the current IRF PPS and relative performance to the current system, which is documented in a technical

report. For more details, including a list of the selected comorbidities and corresponding scores, this technical report is available at <https://www.cms.gov/medicare/payment/prospective-payment-systems/inpatient-rehabilitation/research>. The following is a summary of the public comments received and our responses.

Comment: Comments on the alternative to the IRF comorbidity scoring methodology were mixed, with limited support for the concept of modernization and substantial concern about the specific approach CMS described. Several commenters agreed with the broader goal of improving payment accuracy by better accounting for patient complexity and cumulative comorbidity burden. Supporters stated that a weighted comorbidity scoring system could potentially provide a more nuanced assessment of resource needs than the current 3-tier adjustment structure and could improve consistency across post-acute care payment systems.

Many commenters stated that CMS has not provided sufficient justification, methodological detail, or evidence that the alternative scoring approach would improve payment accuracy over the current comorbidity tier system. Commenters expressed caution against adopting a PDPM-based methodology derived from the SNF setting without demonstrating that it appropriately reflects the clinical complexity and resource requirements of IRF patients. They expressed that the alternative approach lacked transparency regarding the underlying methodology, ICD-10 crosswalks, and comorbidity groupings, making it difficult for interested parties to evaluate potential payment and operational impacts.

Many commenters expressed concern that the alternative scoring system could underrecognize important comorbidity burdens. Commenters stated that the methodology would exclude lower-cost comorbidities that score zero points individually, even though multiple lower-cost conditions may collectively drive substantial resource use. One analysis highlighted that more than one-third of IRF stays currently assigned to the lowest comorbidity tier would receive no adjustment under the alternative scoring approach, raising concerns that medically complex

patients could be inadequately reimbursed.

Several commenters further expressed that aligning IRF payment methodologies too closely with SNF payment systems could blur distinctions between the two settings and potentially support future site-neutral payment policies. They stated that IRFs serve patients with substantially higher acuity, staffing requirements, and rehabilitation intensity, and that a payment model derived from SNF methodologies may fail to capture those differences. Many commenters therefore recommended that CMS undertake additional interested party engagement, technical expert panels, transparency, impact analyses, and pilot testing before pursuing any major changes to comorbidity scoring or broader IRF payment reform.

Response: We appreciate the comments received regarding the alternative comorbidity scoring methodology. Commenters expressed a range of views, including support for efforts to modernize the IRF comorbidity adjustment methodology and improve the recognition of patient complexity, as well as concerns regarding the methodology's development, transparency, and potential effects on payment accuracy.

Commenters raised questions regarding the applicability of a methodology informed by the SNF setting to the IRF population, the treatment of lower-cost comorbidities, the potential impact on reimbursement for medically complex patients, and the need for additional methodological information and impact analyses. Many commenters recommended further interested party engagement and evaluation before implementation of any significant changes to the comorbidity adjustment methodology.

After consideration of the comments received, we recognize the importance of further evaluating the issues raised by interested parties. We will continue to analyze the alternative comorbidity scoring approach, including its potential impacts on payment accuracy, beneficiary access, and provider behavior, and will consider interested party feedback as we assess potential future refinements to the IRF comorbidity adjustment methodology.

X. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Section 1886(j)(7)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual increase factor for discharges occurring during a FY for any IRF that does not submit data in accordance with the IRF QRP requirements set forth in subparagraphs (C) and (F) of section 1886(j)(7) of the Act. We have codified our program requirements in our regulations at § 412.634.

We proposed to revise the IRF QRP data submission deadlines beginning with the FY 2029 IRF QRP. We also solicited public comments on one RFI on future measure concepts for the IRF QRP.

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 and 47084).

1. Quality Measures Currently Adopted for the IRF QRP

The IRF QRP currently has 15 adopted measures, which are listed in Table 11. For a discussion of the factors we use to evaluate whether a measure should be removed from the IRF QRP, we refer readers to our regulations at § 412.634(b)(2). We refer readers to the CY 2013 OPPI/ASC PPS final rule (77 FR 68502 and 68503) for discussion of our policy that allows any quality measure adopted for use in the IRF QRP to remain in effect until the measure is removed, suspended, or replaced; the FY 2018 IRF PPS final rule (82 FR 36276) which applied this policy to standardized patient assessment data we adopt for the IRF QRP; and the FY 2019 IRF PPS final rule (83 FR 38556 and 38557) for more information on the factors we consider for removing measures and standardized patient assessment data.

TABLE 11: Quality Measures Currently Adopted for the IRF QRP

Short Name	Measure Name & Data Source
Inpatient Rehabilitation Facility – Patient Assessment Instrument (IRF-PAI) Assessment-Based Measures	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay)
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients
DRR	Drug Regimen Review Conducted with Follow-Up for Identified Issues—Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)
TOH-Provider	Transfer of Health Information to the Provider—Post-Acute Care (PAC)
TOH-Patient	Transfer of Health Information to the Patient—Post-Acute Care (PAC)
DC Function	Discharge Function Score
National Healthcare Safety Network	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure
CDI	National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset <i>Clostridium difficile</i> Infection (CDI) Outcome Measure
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) IRF QRP
DTC	Discharge to Community—PAC IRF QRP
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs

C. IRF QRP Measure Concepts Under Consideration for Future Years—RFI

In the FY 2024 IRF PPS proposed rule (88 FR 21000 through 21003), we included an RFI on a set of principles for selecting and prioritizing IRF QRP measures, identifying measurement gaps and suitable measures for filling these gaps. We refer readers to the FY 2024 IRF PPS final rule (88 FR 51036 and 51037) for a summary of the public comments we received in response to the RFI.

In the FY 2027 IRF PPS proposed rule (91 FR 17195), we sought input on the importance, relevance, appropriateness, and applicability of the quality measure concepts related to advance care planning. Advance care planning (ACP) is a continuous process that supports people in understanding and communicating their goals, values, and preferences regarding future medical

decisions.¹⁶ The Patient Self Determination Act of 1990¹⁷ supports this process by requiring healthcare facilities to inform patients of their rights regarding medical decisions, including advance directives and end of life care.^{18 19} In PAC settings, where patients recover from acute illness, injury, or major procedures, their needs and goals may evolve as their condition changes. Factors such as clinical stability, functional status, therapy tolerance, cognition function, prognosis, and personal preferences can all shift

during recovery. Regular reassessment and transparent communication are essential to maintaining person-centered care, while ACP facilitates shared decision-making by documenting patient preferences and ensuring goal-concordant care throughout care transitions.²⁰ As we review new measure concepts, we would prioritize evidence-based outcome measures that promote person-centered care practices. We sought input on the relevant aspects of ACP and measures appropriate for the IRF setting.

We received public comments on this RFI. The following is a summary of the comments we received.

¹⁶ McMahan, R. D., Tellez, I., & Sudore, R. L. (2021). Deconstructing the Complexities of Advance Care Planning Outcomes: What Do We Know and Where Do We Go? A Scoping Review. *Journal of the American Geriatrics Society*, 69(1), 234–244. <https://doi.org/10.1111/jgs.16801>.

¹⁷ Public Law 101–508, sections 4206, 4751.

¹⁸ <https://www.congress.gov/bill/101st-congress/house-bill/4449>.

¹⁹ <https://www.congress.gov/bill/101st-congress/house-bill/5835>.

²⁰ McMahan RD, Tellez I, Sudore RL. Deconstructing the Complexities of Advance Care Planning Outcomes: What Do We Know and Where Do We Go? A Scoping Review. *J Am Geriatr Soc*. 2021 Jan;69(1):234–244. doi: 10.1111/jgs.16801. Epub 2020 Sep 7. PMID: 32894787; PMCID: PMC7856112.

Comments: Many commenters expressed support for an ACP measure, emphasizing the importance of discussing patients' goals and preferences as part of the interdisciplinary care provided in the IRF setting. A commenter stated that an ACP measure could improve care consistency, reduce avoidable conflict during transitions, and help ensure that rehabilitation plans reflect what matters most to patients.

Several commenters made recommendations for measure specification and development. A few of these commenters recommended engagement with IRF clinicians, including nurses and recreational therapists, during measure development. A commenter suggested explicitly including caregiver involvement in the measure framework. Another commenter recommended that an ACP measure should be sensitive to the IRF setting's short length of stay, allow flexibility in documentation as required by State law, and include an exception for individuals who refuse. A commenter recommended that CMS focus on plain-language and culturally responsive communication.

A few commenters stated that an ACP measure would be duplicative with other requirements and standards, including the IRF Conditions of Participation, Joint Commission, and CARF accreditation. A commenter recommended that CMS prioritize interoperability and the transfer of ACP information across care settings to reduce unnecessary duplication and support continuity of care.

Several commenters did not support the measure concept of ACP for the IRF QRP. A few commenters expressed concerns about the lack of measure specifications and limited applicability in the IRF setting. Specifically, they stated that patients typically have a short length of stay and are focused on functional improvement rather than long-term care planning. These commenters were concerned that an ACP measure would increase documentation burden without meaningfully improving patient outcomes or differentiating provider performance. Many commenters urged CMS to avoid process measures that may prioritize "checking a box" for documentation because the concept would be difficult to tie to a measurable outcome. Other commenters suggested CMS focus on goal-concordant processes rather than documentation completion alone. Another commenter did not believe this information would be valuable to the public.

In addition to comments received on the measure concepts of advance care planning, we also received comments on other future measure concepts. A few commenters recommended transitions of care measures, encouraging improved interoperability between care settings. Another commenter recommended considering patient-reported outcomes and patient-specific goal attainment measures.

Response: We thank all the commenters for responding to this RFI. While we are not responding to specific comments in response to the RFI in this final rule, we may take this feedback into consideration for our future measure development efforts for the IRF QRP.

D. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at § 412.634(b)(1) for information regarding the current policies for reporting specified data for the IRF QRP.

2. Revise IRF QRP Data Submission Deadlines Beginning With the FY 2029 IRF QRP

a. Background

Sections 1886(j)(7)(E), and 1899B(f) and (g) of the Act require CMS to provide feedback to IRFs and to publicly report their performance on IRF quality measures specified under section 1899B(c)(1) of the Act and resource use and other measures specified under 1899B(d)(1) of the Act. More specifically, section 1899B(f)(1) of the Act requires the Secretary to provide confidential feedback reports to IRFs on their performance on the quality, resource use, and other measures specified under sections 1899B(c)(1) and (d)(1) of the Act. Section 1899B(f)(2) of the Act provides that, to the extent feasible, the Secretary must make these confidential feedback reports available, not less frequently than on a quarterly basis, except in the case of measures reported on an annual basis, in which case confidential feedback reports may be made available annually. Additionally, sections 1886(j)(7)(E) and 1899B(g)(1) of the Act require the Secretary to provide for the public reporting of each IRF's performance on the quality measures, resource use, and other measures specified under section 1899B(c)(1) and (d)(1) of the Act by establishing procedures for making the performance data available to the public. Section 1899B(g)(2) of the Act specifically requires that such procedures must ensure that IRFs can review and submit corrections to the

data and other information before it is made public. Section 1886(j)(7)(C) of the Act provides the Secretary with discretion to prescribe the form and manner and the timeframes for IRFs to submit data as specified for reporting for the IRF QRP.

In the FY 2016 IRF PPS final rule (80 FR 47122), we finalized submission deadlines for IRFs to submit their IRF-PAI assessment-based measures data approximately 4.5 months (135 days) after the end of each quarter. We did not receive any comments on the 4.5-month data submission timeframe at that time. We also finalized data submission deadlines for IRF QRP measures that are submitted via the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN). In the FY 2014 IRF PPS final rule (78 FR 47917), we finalized that for the NHSN Catheter Associated Urinary Tract Infection (CAUTI) and the Facility-wide Inpatient Hospital-onset Clostridium difficile Infection (CDI) Outcome Measures, each facility's data must be entered into NHSN no later than 4.5 months after the end of the reporting quarter. We also finalized that the data collection period for the Influenza Vaccination Coverage among Healthcare Personnel (HCP) measure would be October 1 through March 31, with a data submission deadline of May 15th for each influenza season (78 FR 47917).

Public reporting of data collected under quality programs, such as the IRF QRP, is designed to provide consumers and their families with the most current information to empower them to make quality-informed decisions about where to receive their care. We have identified that the current time between when data on measures is submitted to us and when those data are publicly reported (approximately nine months) may be too long to provide the most accurate and up to date information for the public. For example, we have heard from interested parties that the IRF QRP measure results are not useful for their quality improvement efforts due to the aged data and the delay in when they receive these reports.²¹

Currently, the largest contributing factor to the nine-month lag between the end of the data collection period and when measures are publicly reported is the 4.5-month timeframe for data submission. Reducing the data submission timeframe from 4.5 months

²¹ McMahan RD, Tellez I, Sudore RL. Deconstructing the Complexities of Advance Care Planning Outcomes: What Do We Know and Where Do We Go? A Scoping Review. *J Am Geriatr Soc*. 2021 Jan;69(1):234–244. doi: 10.1111/jgs.16801. Epub 2020 Sep 7. PMID: 32894787; PMCID: PMC7856112.

to the 15th day of the second month after the end of the calendar quarter (45 days) could reduce this lag by up to three months, resulting in more timely public reporting of data for consumers and increasing the value of publicly reported data. Additionally, this time frame provides IRFs with more recent data in support of their quality improvement activities.

In the FY 2026 IRF PPS proposed rule, we included a request for information (RFI) on reducing the

assessment data submission deadline from 4.5 months to 45 days (90 FR 18554). We refer readers to the FY 2026 IRF PPS final rule (90 FR 37712) for a full summary of the public comments received.

b. Revision of the IRF QRP Assessment Data Submission Deadline

Beginning with the FY 2029 IRF QRP, we proposed that IRFs must complete their data submissions and make corrections to their IRF–PAI assessment

data where necessary no later than the 15th day of the second month after the end of the calendar quarter. However, if the 15th day of the second month falls on a Friday, weekend, or Federal holiday, the date is delayed until 11:59 p.m. EST on the next business day. We proposed that IRFs will follow the deadlines presented in Table 12 for the FY 2029 IRF QRP. We also proposed that similar calendar year data submission deadlines would apply to future years’ payment determinations.

TABLE 12: Data Collection Timeframe and Data Submission Deadlines for IRF–PAI Assessment Data Affecting the FY 2029 Payment Determination

Calendar Year (CY) Quarter	Data collection timeframe	Final data submission deadlines for FY 2029 payment determination*
CY 2027 Quarter 1	January 1–March 31, 2027	May 17, 2027
CY 2027 Quarter 2	April 1–June 30, 2027	August 16, 2027
CY 2027 Quarter 3	July 1–September 30, 2027	November 15, 2027
CY 2027 Quarter 4	October 1–December 31, 2027	February 15, 2028

* Data submission deadlines will follow a similar quarterly schedule for subsequent CYs.

We believe that requiring IRFs to submit IRF–PAI assessment data by the 15th day of the second month after the end of the calendar quarter is reasonable. We conducted an analysis on the potential impact of reducing the timeframe by determining how many assessments are currently being submitted by this deadline, which is approximately within 45 days of the end of the quarter. Using 2024 data, we identified that 99.08 percent of all IRF–PAI assessments were submitted to CMS within a 45-day timeframe. Of the remaining 0.92 percent submitted beyond 45 days, 0.20 percent were

submitted after the current 4.5-month data submission deadline and would not be further impacted by a change in the data submission deadline. Therefore, only 0.72 percent of IRF–PAI assessments would be impacted by changing the data submission deadline from 4.5 months to require data submission by the 15th day of the second month after the end of the calendar quarter.

c. Revision of the CDC NHSN Data Submission Deadlines

Beginning with the FY 2029 IRF QRP, we proposed that IRFs must complete

their data submissions and make corrections to their CDC NHSN data where necessary no later than the 15th day of the second month after the end of the calendar quarter. However, if the 15th day of the second month falls on a Friday, weekend, or Federal holiday, the date is delayed until 11:59 p.m. EST on the next business day. We proposed that IRFs would follow the deadlines presented in Table 13 for the FY 2029 IRF QRP. We proposed that similar calendar year data submission deadlines would apply to future years’ payment determinations.

TABLE 13: Proposed Data Collection Timeframe and Data Submission Deadlines for CDC NHSN IRF QRP Measures Affecting the FY 2029 Payment Determination

Measure	Data collection timeframe	Final data submission deadlines for FY 2029 payment determination*
CAUTI CDI	January 1–March 31, 2027	May 17, 2027
	April 1–June 30, 2027	August 16, 2027
	July 1–September 30, 2027	November 15, 2027
	October 1–December 31, 2027	February 15, 2028
Influenza Vaccination Coverage among HCP	October 1, 2027—March 31, 2028	May 15, 2028

* Data submission deadlines will follow a similar quarterly schedule for subsequent CYs.

We believe that requiring IRFs to submit CDC NHSN data by the 15th day of the second month after the end of the calendar quarter is a reasonable amount of time. In the FY 2014 IRF PPS final rule (78 FR 47917), we noted that the CDC recommends that a facility report Healthcare Acquired Infection (HAI) events such as CAUTI as close to the time of the event as possible, and certainly within 30 days after the event. We note that there would be no change in the data submission deadline for the Influenza Vaccination Coverage among HCP measure, as the previously finalized data submission date is May 15th for each influenza season.

We conducted an analysis on the potential impact of reducing the timeframe by determining how many IRFs are currently reporting data by this deadline, which is approximately within 45 days of the end of the quarter. Using FY 2025 data, we identified that 88.5 percent of all IRFs submitted CDC NHSN data within a 45-day timeframe.

On these bases, we believe requiring IRFs to complete their IRF QRP (IRF–PAI and CDC NHSN) data submissions, and make corrections where necessary, no later than the 15th day of the second month after the end of the calendar quarter (beginning with the FY 2029 IRF QRP) would improve the timeliness of public reporting by three months, which is beneficial to both consumers and IRFs, with no change in burden to IRFs.

We invited comment on this proposal. The following is a summary of the public comments received and our responses.

Comment: We received many comments in support of the proposal to revise the data submission deadline, stating that timelier public reporting would give patients and consumers access to more current IRF quality data

when making healthcare decisions. Another commenter also believed that it would allow administrative and clinical feedback to be returned to IRFs to improve care quality. A commenter agreed with the proposal, citing that their providers already submit data within 45 days.

Response: We thank commenters for their support and agree that this proposal would give patients and consumers more timely access to quality data and give IRFs better data for quality improvement.

Comment: We received many comments in support of the goal to shorten the data submission deadline, but with a different timeframe to better allow for complete and accurate data. The majority of commenters advocated for longer submission windows, ranging from 60 to 100+ days to support validation and correction of submission errors. Additionally, many commenters recommended a consistent deadline that will not shift due to weekends or federal holidays, to allow systems to be automated. Another commenter recommended requiring submission by the “last business day of the month,” rather than the “15th day of the month.”

Response: We considered the recommendations for alternative data submission deadlines. We disagree with the recommendations to adopt an alternate deadline, such as 60 or 90 days after the end of the quarter, because that would not allow us to close the 9-month lag between the end of the data collection period and when measures are publicly reported. CMS updates the publicly reported data on the *Medicare.gov* Compare tool on a quarterly basis (March, June, September, and December). As finalized in the FY 2017 IRF PPS final rule (81 FR 52129), IRFs have 30 days to preview their

quality measure results and request CMS review of the data should they believe the quality measure results to be inaccurate, prior to the data being publicly reported. The updated 45-day data submission deadline allows data to be publicly reported one quarter earlier while still allowing time for CMS to calculate measure results, provide confidential feedback reports, and give IRFs 30 days to preview and correct their data. Adopting a longer timeline would negate the primary benefit of this policy change, which is to provide more timely data to consumers and IRFs. Missing the cutoff for one refresh means data is held until the next refresh, adding approximately 3 additional months of delay.

For example, under the proposed 45-day deadline, data for Q1 CY 2027 submitted on May 17, 2027 could be published on the Compare tool on *Medicare.gov* in the September 2027 refresh. However, using the commenters’ suggested 90-day deadline, data would be submitted around June 29, 2027; for a 60-day deadline, data would be submitted around May 31, 2027. After allotting time for measure calculation, the 30-day provider preview period, and CMS validation efforts, data submitted under either of these recommended deadlines would not be published until the December 2027 Compare tool refresh. This is the same 9-month lag that exists under our current data submission deadline. By contrast, the proposed 45-day deadline allows Q1 2027 data to be published approximately three months earlier than under the current or commenter-suggested timelines, meaningfully improving the timeliness of information available to consumers and providers.

With regard to comments recommending a deadline that will not

shift due to weekends or federal holidays, we wish to clarify that this is not a new requirement, as our current policy already shifts the deadline for weekends and federal holidays. We have previously heard from interested parties that flexibility around these dates is appreciated, since administrative and support staff may not be in the IRF on those days to submit data. We also note that providers can submit the data at any time during the data submission timeframe. They do not need to alter their workflows if the deadline is moved due to a weekend or holiday, if they wish to submit data earlier, especially if they have automated workflows.

Comment: We received a few comments in support of the proposal's goal of a shorter submission deadline and timelier public reporting, but with concerns about the impact on IRF information technology (IT) infrastructure and workflow and on IRF QRP data. Some commenters were concerned that IRFs, particularly small or rural IRFs, may need to change existing workflows and update their IT systems, which may be costly. A few commenters were concerned that the proposed timeline may undermine data completeness and accuracy by reducing time for IRFs to complete internal reviews, ensure proper coding, or align with electronic health records before submission. A commenter was concerned that this reduction could result in misleading or inconsistent information on the Compare tool on *Medicare.gov*.

Response: We acknowledge the commenters' concerns about IT workflow and infrastructure, especially for small or rural IRFs. However, we are not adding any new requirements or additional data submission for IRFs but instead proposed to shift the time frame for this existing work. By proposing to implement this policy beginning in January 2027, we believe that we are giving IRFs enough time to make any updates to IT systems and workflow operations. Regarding concerns about data completeness and accuracy, we believe IRFs have time to shift their staffing and processes to ensure they validate data and make any corrections needed by the new deadline. In addition, our internal analysis (91 FR 17221 and 17222) showed that over 99 percent of IRFs already submit IRF-PAI assessment and CDC NHSN data within 45 days, which suggests that data submission within this timeframe is feasible. Because IRF-PAI assessments are tied to payment, providers are likely to submit assessments close to the date of service.

We disagree with the commenter's concerns that this proposal would result in misleading or inconsistent information being publicly reported. This proposal would allow for more timely data to be reported on the Compare tool on *Medicare.gov*, and we believe that IRFs will have enough time to implement workflow updates to allow them to complete reviews and check data prior to the updated deadline. We would also like to note that this proposal will benefit IRFs by allowing them to have access to more timely data for quality improvement efforts.

Comment: Several commenters expressed concerns about staffing. A few commenters expressed concerns that the proposal would increase administrative burden and strain facilities that continue to experience significant workforce shortages and staffing challenges, requiring facilities to divert clinical personnel away from direct patient care. A commenter was also concerned that the proposal would reduce flexibility for facilities that experience staffing shortages.

Response: We appreciate the commenters' concerns about staffing and burden challenges. However, we are not adding any new reporting requirements to the IRF QRP and do not believe this proposal would require IRFs to divert personnel away from direct patient care. This proposal does not change the expectations for assessing patients; rather, this proposal would shift the existing data submission workflow from 4.5 months after each quarterly data collection period to the 15th day of the second month after the end of the calendar quarter. As described in the proposed rule (91 FR 17221), our internal analysis showed that most IRFs already submit assessment and CDC NHSN data within 45 days.

Comment: Some commenters were opposed to revising the data submission deadlines for the CDC NHSN measures. A commenter stated that reducing the CAUTI and CDI reporting deadlines could pose difficulties for infection preventionists, particularly if their facility has a long backlog of reports or if their infection prevention team is understaffed. Other commenters were concerned about discordant reporting timelines for the same surveillance infrastructure and reporting teams since a new deadline would no longer align with CAUTI and CDI reporting requirements for the Hospital Inpatient Quality Reporting (IQR) Program.

Response: We appreciate concerns about the demands on infection prevention teams. However, we do not

believe that this proposal changes CDC's underlying guidance on infection reporting.

While there may be variation in the CDC NHSN data submission deadline for purposes of fulfilling CMS quality reporting requirements, CDC NHSN requires data submission for CAUTI²² and CDI²³ on a monthly basis and strongly encourages healthcare facilities to enter each month's data within 30 days of the end of the month in which it is collected. In the FY 2014 IRF PPS final rule (78 FR 47917), we noted that the CDC recommends that a facility report Healthcare Acquired Infection (HAI) events such as CAUTI as close to the time of the event as possible, and certainly within 30 days after the event. The IRF QRP proposal aims to align the reporting requirements with other post-acute care programs, including recent proposals for the LTCH and SNF QRPs, and to reach our goal of providing more timely data to consumers and IRFs.

Comment: We received several comments with recommendations for the implementation of this policy. A few commenters encouraged CMS to conduct stakeholder engagement and pilot testing prior to implementing this policy. Another commenter encouraged CMS to conduct impact analysis with a representative sample of IRFs. Several commenters supported the proposal but recommended a phased approach to implementation to evaluate workflows and address operational challenges.

A few commenters had recommendations about improving the internet Quality Improvement & Evaluation System (iQIES) and NHSN reporting infrastructure, including improved transparency and real-time feedback mechanisms. A commenter recommended that CMS provide enhanced technical assistance to IRFs to ensure successful transition to the new deadlines. Another commenter recommended targeted outreach to IRFs prior to the data submission deadline.

Response: We appreciate commenters' input and recommendations for implementation of this proposal. CMS conducted internal analysis before proposing the change to the deadline

²² Operational Guidance for Inpatient Rehabilitation Facilities to Report Catheter-Associated Urinary Tract Infection (CAUTI) Data to CDC's NHSN for the Purpose of Fulfilling CMS's Quality Reporting Requirements. <https://www.cdc.gov/nhsn/pdfs/cms/irfs/IRF-CAUTI-Guidance-508.pdf>.

²³ Operational Guidance for Inpatient Rehabilitation Facilities to Report Clostridioides difficile Infection (CDI) Laboratory-Identified (LabID) Event Data to CDC's NHSN for the Purpose of Fulfilling CMS's Quality Reporting Program Requirements. <https://www.cdc.gov/nhsn/pdfs/cms/irfs/irf-cdi-op-guidance.pdf>.

and is confident that IRFs will succeed in meeting the new timeline. We believe pilot testing or a phased implementation approach would add operational complexity, as providers would have to update workflows and modify staffing multiple times. We will continue to monitor data submission compliance rates as part of program monitoring.

We would like to note that we currently conduct general outreach (such as email communications) and targeted outreach to individual IRFs about upcoming data submission deadlines. We also provide guidance and technical manuals, data submission deadline documents, and training resources. We intend to make timely updates to our outreach processes, manuals, data submission deadline documents and training resources. Regarding technical assistance and support, we list resources and several help desks on our website at <https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-quality-reporting-help> and <https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-quality-reporting-faqs>. We plan to continue our routine program monitoring activities to evaluate impacts of this policy on data submission and compliance with QRP requirements.

Regarding recommendations about improving the internet Quality Improvement & Evaluation System (iQIES), we refer commenters to the iQIES Idea Portal,²⁴ which allows the public to submit, comment, vote, and follow ideas on how to improve or enhance iQIES. For recommendations for NHSN reporting infrastructure, we encourage IRFs to reach out to the CDC NHSN help desk directly at nhsn@cdc.gov.

Comment: A couple of commenters supported the proposal but recommended allowing IRFs to request reasonable extensions to submit data due to unforeseen circumstances and exercise enforcement discretion for any reasons for the first year. Another commenter expressed concerns about system outages and IT issues that may increase the risk of incomplete or invalidated submissions, especially close to the end of the quarter.

Response: We appreciate the commenters' requests for reasonable extensions due to unforeseen circumstances. Regarding the concerns about system outages and IT issues near

the end of the quarter, we wish to note that this concern is not new. IRFs are encouraged to be prepared for EHR and system outages. CMS currently provides IRFs with the opportunity to request an exception or extension from the program's reporting requirements in the event they were unable to submit quality data due to extraordinary circumstances beyond their control. IRFs affected by a natural or man-made disaster or other extraordinary circumstances may request an exception and extension using instructions found on the IRF QRP website: <https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-quality-reporting-reconsideration-and-exception-extension>.

Comment: We received a few comments opposed to the proposal to revise the data submission deadlines. A commenter was opposed to the proposal, citing administrative strain. Other commenters were opposed to the proposed revised deadlines, stating that IRFs require a minimum of 60 days after quarter close to complete data abstraction, validation, and internal quality checks. These commenters stated concerns including staffing variability, NHSN ticket resolution timelines, technical and system challenges, and increased administrative burden. Another commenter recommended that CMS implement a grace period for correcting technical issues with data.

Response: We appreciate the concerns about technical challenges, staffing variability, and administrative strain and burden. However, we note that we are not adding any new requirements or additional data submission for IRFs but rather proposed to shift the time frame for completing the existing requirements. By proposing to implement this policy beginning in January 2027, we believe that we are giving IRFs enough time to make any updates to IT systems, workflow operations, and staffing to allow them to validate data and make any corrections needed by the new deadline. We disagree with the commenter's statement that IRFs require a minimum of 60 days after quarter close for data abstraction, validation, and quality checks. To the extent commenters are referring to validation and quality checks being completed by third party vendors, third-party validation and quality checks are not a requirement for IRF QRP data. In addition, data submitted to CMS are available for IRFs to review and validate within the proposed data submission time frame, via the data submission portals in iQIES and NHSN. We also expect data

validation and quality checks to be complete with the initial data submission, with better proximity to the patient. IRFs have 30 days to preview their quality measure results and request CMS review of the data should they believe the quality measure results to be inaccurate, once the measure has been calculated.

We also note that delaying the data submission deadline would not allow us to reduce the 9-month lag between the end of the data collection period and when measures are publicly reported. With regard to comments about a grace period, we do not believe this is necessary since our internal analysis (91 FR 17221 and 17222) showed that over 99 percent of IRFs already submit IRF-PAI assessment and CDC NHSN data within 45 days. Allowing a grace period or a longer time frame for data submission would not allow us to reach our goal of providing more timely data to consumers and IRFs.

In response to the comments about NHSN ticket resolution timelines and system challenges, we encourage IRFs to reach out to the CDC NHSN help desk directly at nhsn@cdc.gov.

Comment: We received several comments that were outside the scope of the FY 2027 IRF PPS proposed rule. Specifically, we received comments recommending the removal of data collection requirements in the IRF QRP.

Response: We thank the commenters for bringing these issues to our attention and may take these comments into consideration for potential policy refinements.

After consideration of public comments, we are finalizing our proposal to require IRFs to submit their data and make corrections to their IRF-PAI assessment and CDC NHSN data where necessary no later than the 15th day of the second month after the end of the calendar quarter beginning with the FY 2029 IRF QRP.

E. Policies Regarding Public Display of Measure Data for the IRF QRP

We did not propose any new policies regarding the public display of measure data in the proposed rule. For a more detailed discussion about our policies regarding public display of IRF QRP measure data and procedures for the opportunity to review and correct data and information, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52128 through 52131).

²⁴ More information can be found at: <https://qtsa.cms.gov/system/files/qtsa/Idea%20Portal%20User%20Manual%20and%20FAQs%20FINAL%20v.2.0.pdf>.

XI. Change to the DMEPOS Competitive Bidding Program (CBP)

A. Bid Surety Bond Amount

1. Background

Section 522(a) of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) (MACRA) added a requirement under section 1847(a)(1)(G) of the Act requiring bidding entities to obtain a bid surety bond for each competitive acquisition area in which the entity submits the bid in a form specified by the Secretary and in an amount not less than \$50,000 and not more than \$100,000. CMS implemented this requirement as part of the final rule titled, “Medicare Program; End-Stage Renal Disease Prospective Payment System, Coverage and 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 Competitive Bidding Program Bid Surety Bonds, State Licensure and Appeals Process for Breach of Contract Actions, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program and Fee Schedule Adjustments, Access to Care Issues for Durable Medical Equipment; and the Comprehensive End-Stage Renal Disease Care Model,” published in the **Federal Register** on November 4, 2016 (81 FR 77834) (hereinafter referred to as the “2016 ESRD PPS & DMEPOS final rule”). Pursuant to the CY 2016 ESRD PPS and DMEPOS final rule, and as codified at 42 CFR 414.412(g), a bidding entity may not submit a bid(s) and be awarded a contract for a competition unless it obtains, in the amount of \$50,000, a bid surety bond for the competitive bidding area (CBA) (as defined at 42 CFR 414.402) from an authorized surety on the Department of the Treasury’s Listing of Certified Companies and provides proof of having obtained the bond by submitting a copy to CMS by the deadline for bid submission. These requirements first applied to Round 2021, the first round of competitive bidding following the passage of MACRA.

Section 1847(a)(1)(H)(i) of the Act provides that in the event that a bidding entity is offered a contract for any product category for a CBA, and its composite bid for such product category and area is at or below the median composite bid rate for all bidding entities included in the calculation of the single payment amount (SPA) for the product category and CBA, and the entity does not accept the contract offered, the bid surety bond for the

applicable CBA will be forfeited and the Secretary will collect on the bid surety bond. As implemented in regulation at § 414.412(g) (redesignated from § 414.412(h) (see 83 FR 57025)), CMS will collect on the bid surety bond via Electronic Funds Transfer from the respective bonding company. In instances where a bidding entity does not meet the bid surety bond forfeiture conditions for any product category for a CBA as specified in section 1847(a)(1)(H)(i) of the Act, section 1847(a)(1)(H)(ii) of the Act requires that the bid surety bond liability submitted by the entity for the CBA will be returned to the bidding entity within 90 days of the public announcement of the contract suppliers for such area.

The bid surety bond requirement deters bidding entities from submitting a low, disingenuous bid amount in order to increase the probability that they will be offered a DMEPOS contract, as they will forfeit the bid surety bond if the bid is at or below the median composite bid rate and the bidding entity does not accept the offered contract.

2. Current Issues

In the Calendar Year (CY) 2026 Home Health Prospective Payment System (PPS) Final Rule (see 90 FR 55342–55620) published in the **Federal Register** on December 2, 2025, CMS established the Remote Item Delivery (RID) Competitive Bidding Program (CBP). The term “remote item delivery competitive bidding program” is defined under § 414.402 to mean a competitive bidding program wherein contract suppliers are responsible for furnishing remote item delivery items under a product category to all Medicare beneficiaries regardless of where they live in the CBA. The CBA could be one nationwide CBA that includes all areas (all States, territories, and the District of Columbia) or a CBA covering a specific region of the country.

The term “remote item delivery item” is defined under § 414.402 to mean an item falling under a remote item delivery competitive bidding program that may be shipped or delivered to a beneficiary’s home, regardless of the method of delivery, or picked up at a local pharmacy or supplier storefront if the beneficiary or caregiver for the beneficiary chooses to pick the item up in person.

In the CY 2026 Home Health PPS final rule (90 FR 55342–55620), we stated that we plan to implement remote item delivery (RID) competitive bidding programs (CBPs) for certain items designated under the DMEPOS CBP, and further explained that competitions

for RID items may involve larger competitive bidding areas (CBAs), including nationwide CBAs. To discourage DMEPOS suppliers from submitting non-serious or disingenuous bids and to ensure genuine commitment from suppliers awarded contracts under a RID CBP, in the FY 2027 IRF PPS proposed rule (91 FR 17195 through 17230), we proposed requiring one bid surety bond at the maximum allowable amount of \$100,000 for any and all bids submitted by a bidding entity for RID CBAs in a round of the DMEPOS CBP. This maximum bond amount is justified because a RID CBA, even when structured as a regional competition, can span multiple States and serve beneficiaries across a vast geographic footprint, far exceeding the scope of a traditional CBA, which is typically confined to a single metropolitan statistical area (MSA) within one state. The significantly greater scale, complexity, and beneficiary population associated with a RID CBA warrant the highest available level of financial commitment from bidders. This higher amount would also provide a stronger incentive for suppliers bidding on a RID CBA to submit bona fide bids and accept contract offers, thereby supporting the core objective of the DMEPOS CBP to reduce the amount Medicare pays for competitively bid DMEPOS and bring payment amounts more in line with those of a competitive market. A higher bid surety bond amount is further supported by section 1847(b)(4)(A) of the Act, which directs CMS to consider whether bidders can furnish sufficient items or services to meet the anticipated needs of individuals within the contract’s geographic area on a timely basis—a standard that is particularly demanding given the broad, multi-state reach of a RID CBA.

We proposed to maintain the bid surety bond amount of \$50,000 for all non-RID competitions.

Rather than implementing hundreds of separate local CBPs and CBAs—which would impose unnecessary administrative burden on both the bidding program and suppliers—we believe the most practical approach is to consolidate RID competitions into one nationwide RID CBP or several large regional RID CBPs, covering all areas where a beneficiary resides or receives covered items under the applicable product categories, with limited exceptions as described in the CY 2026 Home Health PPS Final Rule (90 FR 29254). This approach is consistent with longstanding Federal guidance from a September 2004 GAO report (GAO–04–765), which recommended that CMS

exploremail delivery as a viable competitive bidding strategy for items provided directly to beneficiaries in the home, and noted that the Medicare Modernization Act (MMA) authorizes CMS to designate the entire country as a single competitive area for select items. The GAO further emphasized that a consolidated nationwide approach would allow CMS to implement competitive bidding more quickly and efficiently than a piecemeal strategy, enabling companies with nationwide mail-order capability to compete for Medicare beneficiaries' business. The maximum bond requirement, combined with this consolidated RID CBP framework, promotes accountability, reduces administrative complexity, and ensures that only capable and committed suppliers participate in RID competitive bidding.

B. Provisions of the Regulation

We proposed that for future rounds of the DMEPOS CBP, the bid surety bond amount in § 414.412(g)(2)(i)(H) would remain at \$50,000, and we proposed to revise § 412(g)(2)(i)(H) to no longer use the term "bid bond value" and instead use the more common term "bid surety bond amount." However, to submit a bid(s) and be awarded a contract for a RID CBP, we proposed under § 414.412(g)(2)(iii) that the bidding entity must obtain a bid surety bond of \$100,000. Additionally, we proposed under § 414.412(g)(2)(iii) that if submitting bids for multiple competitions under a RID CBP, only one bid surety bond is required, regardless of whether the RID CBP competitions have different CBAs. We solicited comments on these proposals. The following is a summary of the public comment received and our response.

Comment: We received a comment in support of the proposal to increase the bid surety bond for RID CBP from \$50,000 to \$100,000. The commenter noted how, under this proposal, a single \$100,000 bond would cover all bids a supplier submits in the RID CBP. Considering the upcoming implementation of a nationwide RID CBP for all product categories in the next round of the DMEPOS CBP, the commenter expressed support for the increase, believing it be reasonable and believing that the higher financial threshold will ensure bidder accountability reflecting the larger geographic scale of a nationwide delivery area. The commenter stated that this will only be true if the RID CBP is larger than a metropolitan statistical area, such as State/regional/nationwide. The commenter also noted how a bid

bond plays an important role in deterring bad-faith bidding and protecting the Medicare Trust Fund.

Response: We thank the commenter for their feedback and support.

After consideration of the public comments, we are finalizing as proposed that, under § 414.412(g)(2)(iii), to submit a bid(s) and be awarded a contract for a RID CBP, the bidding entity must obtain a bid surety bond of \$100,000; that, under § 414.412(g)(2)(iii), if submitting bids for multiple competitions under a RID CBP, only one bid surety bond is required, regardless of whether the RID CBP competitions have different CBAs; and that for non-RID competitions in future rounds of the DMEPOS CBP, the bid surety bond amount at § 414.412(g)(2)(i)(H) will remain at \$50,000. We are also finalizing as proposed to revise § 412(g)(2)(i)(H) to no longer use the term "bid bond value" and instead use the more common term "bid surety bond amount."

XII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520, we are required to provide notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, 44 U.S.C. 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comments on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs for Proposed Updates Related to the IRF QRP

An IRF that does not meet the requirements of the IRF QRP for a fiscal year will receive a 2-percentage point reduction to its otherwise applicable annual increase factor for that fiscal year. We estimate that the burden associated with the IRF QRP is the time and effort associated with complying with the requirements of the IRF QRP.

The IRF–PAI, in its current form, has been approved under OMB control number 0938–0842 (expiration 10/31/2027). In section X.D.2 of the proposed rule, we proposed to revise the data submission deadlines beginning with the FY 2029 IRF QRP. This requirement will not result in additional collection burden for the IRF QRP or revisions to the currently approved IRF–PAI.

We did not receive public comments on this provision.

If you comment on this information collection, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–1845–F.

Fax: (202) 395–6974; or

Email: OIRA_submission@omb.eop.gov.

XIII. Regulatory Impact Analysis

A. Statement of Need

This final rule updates the IRF prospective payment rates for FY 2027 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This final rule will also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2012 and subsequent years.

Furthermore, this final rule adopts policy changes to the IRF QRP under the statutory discretion afforded to the Secretary under section 1886(j)(7) of the Act.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, "Regulatory Planning and Review"; Executive Order 13132, "Federalism"; Executive Order 13563, "Improving Regulation and Regulatory Review"; Executive Order 14192, "Unleashing Prosperity Through Deregulation"; the Regulatory Flexibility Act (RFA) (Pub. L. 96–354); section 1102(b) of the Social Security Act; section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4); and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President’s priorities.

We estimated the total impact of the policy updates described in this final rule by comparing the estimated payments in FY 2027 with those in FY 2026. This analysis results in an estimated \$340 million increase for FY 2027 IRF PPS payments. Based on our estimates, OMB’s Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) of E.O. 12866 because it will have an effect on the economy of \$100 million or more in any 1 year. Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

C. Detailed Economic Analysis

We have estimated the impact of the final rule. This final rule updates the IRF PPS rates contained in the FY 2026 IRF PPS final rule (90 FR 37678). Specifically, this final rule updates the CMG relative weights and ALOS values, the wage index, and the outlier threshold for high-cost cases. This final rule would apply a productivity adjustment to the FY 2027 IRF market basket percentage increase in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.

1. Impact on IRFs

We estimate that the impact of the changes and updates described in this final rule will be a net estimated increase of \$340 million in payments to

IRFs for FY 2027. The impact analysis in Table 14 of this final rule represents the projected effects of the updates to IRF PPS payments for FY 2027 compared with the estimated IRF PPS payments in FY 2026. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2027, we are implementing the standard annual revisions described in this final rule (for example, the update to the wage index and market basket percentage increase used to adjust the Federal rates). We are also reducing the FY 2027 IRF market basket percentage increase by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We estimate that the total increase in payments to IRFs in FY 2027, relative to FY 2026, will be approximately \$340 million.

This estimate is derived from the application of the FY 2027 IRF market basket percentage increase, reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of \$285 million. In addition, there is an estimated \$50 million increase in aggregate payments to IRFs due to the update to the outlier threshold amount. We estimate that these updates would result in a net increase in estimated payments of \$340 million from FY 2026 to FY 2027.

The effects of the updates that impact IRF PPS payment rates are shown in Table 14. The following updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the update to the outlier threshold amount, from

approximately 2.6 percent to 3.0 percent of total estimated payments for FY 2027, consistent with section 1886(j)(4) of the Act.

- The effects of the annual market basket update (using the 2021-based IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.

- The effects of applying the budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act, accounting for the permanent cap on wage index decreases when applicable.

- The effects of the budget-neutral changes to the CMG relative weights and ALOS values under the authority of section 1886(j)(2)(C)(i) of the Act.

- The total change in estimated payments based on the FY 2027 payment changes relative to the estimated FY 2026 payments.

2. Description of Table 14

Table 14 shows the overall impact on the 1,178 IRFs included in the analysis. The next 12 rows of Table 14 contain IRFs categorized according to their geographic location, designated as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,037 IRFs located in urban areas included in our analysis. Among these, there are 647 IRF units of hospitals located in urban areas and 390 freestanding IRF hospitals located in urban areas. There are 141 IRFs located in rural areas included in our analysis. Among these, there are 127 IRF units of hospitals located in rural areas and 14 freestanding IRF hospitals located in rural areas. There are 540 for-profit IRFs. Among these, there are 501 IRFs in urban areas and 39 IRFs in rural areas. There are 543 non-profit IRFs. Among these, there are 459 urban IRFs and 84 rural IRFs. There are 95 government-owned IRFs. Among these, there are 77 urban IRFs and 18 rural IRFs.

The remaining four parts of Table 14 show IRFs grouped by geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Second, IRFs

located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this final rule to the facility categories listed are shown in the columns of Table 14. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2027 analysis file.
- Column (3) shows the number of cases in each category in our FY 2027 analysis file.
- Column (4) shows the estimated effect of the adjustment to the outlier threshold amount.
- Column (5) shows the estimated effect of the FY 2027 update to the IRF labor-related share, wage index with the 5-percent cap on wage index decreases when applicable, and final year of the 3-year phase-out of the rural adjustment finalized in the FY 2026 IRF PPS final rule, in a budget-neutral manner.
- Column (6) shows the estimated effect of the update to the CMG relative weights and ALOS values, in a budget-neutral manner.
- Column (7) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this final rule for FY 2027

to our estimated payments per discharge in FY 2026.

The average estimated increase in payments for all IRFs is approximately 2.7 percent. This estimated net increase includes the effects of the IRF market basket update for FY 2027 of 2.3 percent, which is based on an IRF market basket percentage increase of 3.2 percent, less a 0.9 percentage point productivity adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.4 percent overall increase in estimated IRF outlier payments from the update to the outlier threshold amount. Since we are updating the IRF wage index, labor-related share and the CMG relative weights in a budget-neutral manner, we estimate there is no expected impact to total estimated IRF payments in aggregate from these changes. However, as described in more detail in each section, we estimate there will be expected impacts to the estimated distribution of payments among providers.

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TABLE 14: IRF Impact for FY 2027 (Columns 4 through 7 in Percentages)

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2027 Labor-Related Share & FY 2027 Wage Index	CMG Weights	Total Percent Change ¹
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	1,178	475,801	0.4	0.0	0.0	2.7
Urban unit	647	149,666	0.9	0.1	0.0	3.4
Rural unit	127	16,835	0.7	0.4	-0.1	3.3
Urban hospital	390	300,932	0.1	-0.1	0.0	2.3
Rural hospital	14	8,368	0.1	0.8	-0.1	3.1
Urban For-Profit	501	300,739	0.2	-0.1	0.0	2.4
Rural For-Profit	39	12,217	0.3	0.6	-0.1	3.2
Urban Non-Profit	459	131,362	0.8	0.0	0.0	3.1
Rural Non-Profit	84	11,062	0.7	0.4	-0.1	3.3
Urban Government	77	18,497	0.9	0.5	0.0	3.8
Rural Government	18	1,924	0.6	0.5	-0.1	3.4
Urban	1,037	450,598	0.4	0.0	0.0	2.7
Rural	141	25,203	0.5	0.5	-0.1	3.2
Urban by region						
Urban New England	31	17,286	0.3	0.3	0.0	2.9
Urban Middle Atlantic	111	43,867	0.6	0.4	0.0	3.3
Urban South Atlantic	198	110,174	0.3	0.0	0.0	2.6
Urban East North Central	165	53,016	0.4	-0.2	0.0	2.5
Urban East South Central	55	30,724	0.2	-0.7	0.0	1.7
Urban West North Central	79	27,000	0.4	0.7	0.0	3.4
Urban West South Central	214	99,449	0.2	-0.3	0.0	2.2
Urban Mountain	85	39,741	0.3	-0.1	0.0	2.5
Urban Pacific	99	29,341	1.1	0.3	0.1	3.8
Rural by region						
Rural New England	5	1,043	0.6	2.5	0.0	5.5
Rural Middle Atlantic	11	1,437	0.5	0.5	-0.2	3.1
Rural South Atlantic	16	6,737	0.1	1.1	-0.2	3.4
Rural East North Central	22	3,010	0.7	0.7	-0.1	3.7
Rural East South Central	18	3,174	0.4	0.5	0.0	3.2
Rural West North Central	18	2,351	0.9	0.3	-0.1	3.5
Rural West South Central	44	7,084	0.6	-0.3	-0.1	2.5
Rural Mountain	5	254	1.3	-0.7	0.0	2.9
Rural Pacific	2	113	1.7	-0.7	-0.3	3.0
Teaching status						
Non-teaching	1,074	422,778	0.4	-0.1	0.0	2.6
Resident to ADC less than 10%	63	38,803	0.5	0.5	0.0	3.4
Resident to ADC 10%-19%	31	11,878	1.0	0.7	0.1	4.2
Resident to ADC greater than 19%	10	2,342	0.6	0.3	0.0	3.3

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2027 Labor-Related Share & FY 2027 Wage Index	CMG Weights	Total Percent Change ¹
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Disproportionate share patient percentage (DSH PP)						
DSH PP = 0%	42	8,467	0.8	0.0	0.0	3.1
DSH PP <5%	234	132,788	0.2	-0.1	0.0	2.3
DSH PP 5%-10%	286	121,549	0.3	0.0	0.0	2.5
DSH PP 10%-20%	372	146,003	0.5	0.2	0.0	3.0
DSH PP greater than 20%	244	66,994	0.7	-0.2	0.1	2.9

¹This column includes the impact of the updates in columns (4), (5), and (6) above, and of the IRF market basket update for FY 2027 of 3.2 percent, reduced by 0.9 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

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3. Impact of the Update to the Outlier Threshold Amount

The estimated effects of the update to the outlier threshold adjustment from FY 2026 to FY 2027 are presented in column 4 of Table 14.

For the FY 2027 proposed rule, we used preliminary FY 2025 IRF claims data and based on that preliminary analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF payments would be 2.6 percent in FY 2026. Thus, we are adjusting the outlier threshold amount in this final rule from \$10,141 in FY 2026 to \$8,857 in FY 2027 to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2027. The estimated change in total IRF payments for FY 2027, therefore, includes an approximate 0.4 percentage point increase in payments because the estimated outlier portion of total payments is estimated to increase from approximately 2.6 percent to 3.0 percent. The impact of this update to the outlier threshold amount (as shown in column 4 of Table 14) is to increase estimated overall payments to IRFs by 0.4 percentage point.

4. Impact of the Wage Index, Labor-Related Share, and Wage Index Cap

In column 5 of Table 14, we present the effects of the budget-neutral update of the wage index and labor-related share, taking into account the permanent 5-percent cap on wage index decreases when applicable. The changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related portion of payments, so the

changes in the two have a combined effect on payments to providers. As discussed in section V.C. of this final rule, the FY 2027 labor-related share is 74.3 percent, 0.1 percentage point lower than the labor-related share for FY 2026.

In the aggregate, since these final updates to the wage index and the labor-related share are applied in a budget-neutral manner as required under section 1886(j)(6) of the Act, we do not estimate that these updates will affect overall estimated payments to IRFs. However, we estimate that these changes will have distributional effects. For example, we estimate that the largest increase in payments from the update to the wage index and labor-related share to be 2.5 percent for rural IRFs in the New England region, contributing to the largest overall estimated payment increase of 5.5 percent for those providers. We estimate the largest decrease in payments from the update to the wage index and labor-related share to be a 0.7 percent decrease for urban IRFs in the East South Central region and for rural IRFs in the Rural Mountain and Rural Pacific regions.

5. Impact of the Update to the CMG Relative Weights and ALOS Values

In column 6 of Table 14, we present the effects of the budget-neutral update of the CMG relative weights and ALOS values. In the aggregate, we do not estimate that these final updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects between -0.3 percent to 0.1 percent.

6. Effects of Requirements for the IRF QRP

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section X.A. of the proposed rule, we discussed the method for applying the 2-percentage points reduction to IRFs that fail to meet the IRF QRP requirements. In section X.D.2. of the proposed rule, we proposed to revise the data submission deadlines beginning with the FY 2029 IRF QRP. This requirement will not result in additional collection burden for the IRF QRP.

7. DMEPOS Competitive Bidding Program

This rule changes the DMEPOS CBP to further enhance its effectiveness in achieving the objectives of the program as mandated by section 1847(a) of the Act. Specially, we are increasing the bid surety bond amount from \$50,000 to \$100,000 for any and all bids submitted by a bidding entity for remote item delivery (RID) competitive bidding program areas (CBAs) in a round of the DMEPOS CBP while maintaining \$50,000 for all other CBAs. The primary factor for surety bond premiums is the bidder's credit score, with premiums typically ranging from 1 percent to 10 percent of the bid surety bond amount. However, there is no reliable way to estimate the impact of program changes or market conditions because the last round may have impacted bidders' credit profiles. Importantly, the overall

financial burden may be reduced for many suppliers because Round 2021 included 130 competitive bidding areas (CBAs) requiring separate bid surety bonds for each CBA, whereas Round 2028 will include a nationwide RID CBA requiring one bid surety bond. While the cost of one RID bid surety bond would increase because of a \$50,000 increase in the bid surety bond amount, suppliers that previously bid in multiple CBAs would likely experience net savings by needing only one bid surety bond instead of multiple bid surety bonds. Suppliers that bid in non-RID CBAs will still require separate \$50,000 bonds for each CBA in which they submit a bid. The actual cost impact will vary significantly based on individual credit scores, past performance, and the number of CBAs a supplier would have participated in under a prior round of the DMEPOS CBP. Given these variables, the true impact cannot be precisely quantified and cost estimates should present a range using a 1 percent to 10 percent premium rate framework with caveats about individual variation and the offsetting effect of requiring fewer bid surety bonds.

D. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret the final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume at least one staff in IRFs would read the rule. The total number of IRFs would be the proxy of number of reviewers for this rule. We acknowledge that this assumption may understate or overstate the costs of reviewing the final

rule. We also assumed that each reviewer reads 100 percent of the rule.

Using the national median hourly wage data from the May 2025 BLS for Occupational Employment and Wage Statistics (OEWS) for medical and health service managers (SOC 119111), we estimated that the cost of reviewing this rule is \$119.10 per hour, including other indirect costs and fringe benefits (<https://www.bls.gov/oes/tables.htm>). Assuming an average reading speed, we estimate that it will take approximately 3 hours for the staff to review the final rule. For each reviewer of the rule, the estimated cost is \$357.30 (3 hours × \$119.10). Therefore, we estimated that the total cost of reviewing this regulation is \$420,899.40 (\$357.30 × 1,178 reviewers).

E. Alternatives Considered

1. IRF PPS

The following is a discussion of the alternatives considered for the IRF PPS updates contained in this final rule. As noted previously in this final rule, section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services and section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2027. Thus, in accordance with section 1886(j)(3)(C) of the Act, we are updating the IRF prospective payments in this final rule by 2.3 percent (which equals the 3.2 percent IRF market basket percentage increase for FY 2027 reduced by a 0.9 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act)).

We also considered making no changes to the current IDT meeting policy (42 CFR 412.622(a)(5)) and allow the initial IDT meetings to occur within 7 consecutive calendar days beginning with the date of admission to the IRF (42 CFR 412.622(c)). However, we declined to take this approach given the importance of the IDT meetings for coordinated patient care early in their stay and in shaping revisions to the plan of care if there are problems that could impede the patient's progress toward their rehabilitation goals.

2. IRF QRP

Regarding the proposal to revise the IRF QRP assessment data submission deadline from 4.5 months to no later than the 15th day of the second month after the end of each quarter, we considered keeping the deadline unchanged. We determined that the revised timeframe is a reasonable amount of time for IRFs to submit data and make any necessary corrections, and that the benefits of this shortened timeframe include making the data timelier and more actionable which increases the value of publicly reported data both for consumers and their families and for IRFs to use in their quality improvement activities.

F. Accounting Statement and Table

Consistent with OMB Circular A-4 (available at <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf>), in Table 15, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of the final rule. Table 15 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the updates presented in this final rule based on the data for IRFs in our database.

TABLE 15: Accounting Statement-Classification of Estimated Expenditure

	Category	Transfers
Change in Estimated Transfers from FY 2026 IRF PPS to FY 2027 IRF PPS	Annualized Monetized Transfers	\$340 million increase
	From Whom to Whom?	Federal Government to IRF Medicare Providers
Estimated Costs Associated with Review Cost for FY 2027 IRF PPS	Cost associated with regulatory review cost	\$420,899

G. Regulatory Flexibility Act (RFA)

1. Anticipated Effects on IRFs

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small

entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by having revenues of \$19.0 million to \$47.0

million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. The SBA defines small specialty hospitals (except Psychiatric and Substance Abuse) as businesses having less than \$47.0

million in total annual revenue. We believe NAICS code 622310 (Specialty Hospitals, except Psychiatric and Substance Abuse) is a reasonable proxy for IRFs for purposes of contextualizing industry structure where 40 percent of entities are small business (127 out of 327 entities) according to the Statistics of U.S. Businesses (SUSB) data. For more details, see the Small Business Administration’s final rule that set forth size standards for healthcare industries (65 FR 69432) and see the U.S. Small Business Administration Table of Small Business Size Standards, Matched to North American Industry Classification System Codes.²⁵

According to the MedPAC 2026 Report to Congress,²⁶ only 51 percent of IRF stays are Medicare fee-for-service

stays. Therefore, we estimate that Medicare constitutes approximately 51 percent of total revenue for all 1,178 IRFs. We invited feedback regarding this assumption.

As shown in Table 16, according to the 2022 Economic Census, all Specialty (except Psychiatric and Substance Abuse) Hospitals, the regulatory review cost is \$341 per entity. Table 14 presents the distribution of \$340 million increase in total annualized monetized transfers from the Federal Government and States to IRF providers in FY 2027.

The Department of Health and Human Services’ (HHS) uses a change in revenue of more than 3 to 5 percent as a measure of economic significant impact. The agency considers the rule to have a significant impact on a

substantial number of small businesses when more than 5 percent of impacted small entities meet the significant impact threshold. Although the rule may affect a substantial number of small entities, we do not expect the economic impact on those affected entities to be significant. Table 14 presents the detailed annual transfer payment change from FY 2026 to FY 2027. Taking into account Medicare revenue accounts for around 51 percent of IRFs revenue, the change would be less than 3 percent. As such, we believe even though a substantial number of small businesses might be affected, the impact would not be significant. Finally, the impact implies the increase of payment which is welcomed by small businesses.

TABLE 16: Impact per Entity (NAICS 622310) Specialty (except Psychiatric and Substance Abuse) Hospitals (\$47 Million Size Standard)

Firm Size (by Receipts)	Firm Count	% of Small Entities	Average Annual Revenue (\$1,000)	Cost per Entity(\$)	Percentage of Average Revenue
SMALL HOSPITALS (\$1,000)	127	100.0%	13,613	341	
<100	5	3.9	47	341	0.726
100 - 499	20	15.7	264	341	0.129
500 - 999	6	4.7	832	341	0.041
1,000 -2,499	3	2.4	1,270	341	0.027
2,500 - 4,999	5	3.9	3,987	341	0.009
5,000 - 7,499	4	3.1	6,251	341	0.005
7,500 - 9,999	6	4.7	8,555	341	0.004
10,000 - 14,999	23	18.1	11,115	341	0.003
15,000 - 19,999	18	14.2	16,332	341	0.002
20,000 - 24,999	11	8.7	21,741	341	0.002
25,000 - 29,999	10	7.9	24,600	341	0.001
30,000 - 39,999	8	6.3	28,107	341	0.001
40,000 - 49,999	8	6.3	44,833	341	0.001
LARGE HOSPITALS	198	NA	469,928	341	0.000

Source: 2022 Statistics of U.S. Businesses, available at <https://www.census.gov/programs-surveys/susb.html>.

H. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, enacted March 22, 1995) (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2026, that threshold was approximately \$193

million. This final rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. As stated, this final rule will not have

a substantial effect on State and local governments, preempt State law, or otherwise have a Federalism implication.

Section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For the purposes of section 1102(b) of the Act, we define a small

²⁵ https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20

²⁶ [%282%29.pdf](#), effective January 1, 2022, and updated on March 17, 2023.

²⁶ https://www.medpac.gov/wp-content/uploads/2026/03/Mar26_MedPAC_Report_To_Congress_SEC.pdf.

rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 14, we estimate that the net revenue impact of this final rule on rural IRFs is to increase estimated payments by approximately 3.2 percent based on the data of the 127 rural units and 14 rural hospitals in our database of 1,178 IRFs for which data were available. Considering Medicare revenue accounts for 51 percent of the total revenue, we estimate an overall impact for rural IRFs in all areas between 1.2 percent and 2.8 percent of total revenue. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural IRFs.

I. E.O. 14192 “Unleashing Prosperity Through Deregulation”

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation” was issued on January 31, 2025, and requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” We estimated that this final rule will generate approximately \$0.02 million in discounted costs relative to year 2024, over a perpetual time horizon. The Office of Information and Regulatory Affairs has determined that this rule is not an Executive Order 14192 regulatory action because it does not impose more than de minimis regulatory costs.

J. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2027 are projected to increase by 2.7 percent, compared with the estimated payments in FY 2026, as reflected in column 7 of Table 14.

IRF payments per discharge are estimated to increase by 2.7 percent in urban areas and 3.2 percent in rural areas, compared with estimated FY 2026 payments. Payments per discharge to rehabilitation units are estimated to increase 3.4 percent in urban areas and 3.3 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 2.3 percent in urban areas and 3.1 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the policies in this final rule. The largest payment increase is estimated to be 5.5 percent for IRFs in Rural New England. The previously noted analysis, together with the

remainder of this preamble, provides an RIA.

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Mehmet Oz, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 28, 2026.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

- 2. Section 412.622 is amended—
- a. By revising paragraphs (a)(3)(ii) and (a)(5)(ii);
- b. By redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv);
- c. By adding new paragraph (a)(5)(iii); and
- d. In paragraph (c) by revising the definition of “Week”.

The revisions and addition read as follows:

§ 412.622 Basis of payment.

- (a) * * *
- (3) * * *

(ii) Except during the emergency period described in section 1135(g)(1)(B) of the Act, patients generally require and can reasonably be expected to actively participate in, and benefit from, an intensive rehabilitation therapy program. Under current industry standards, this intensive rehabilitation therapy program generally consists of at least 3 hours of therapy (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy) per day at least 5 days per week. In certain well-

documented cases, this intensive rehabilitation therapy program might instead consist of at least 15 hours of intensive rehabilitation therapy per week. Benefit from this intensive rehabilitation therapy program is demonstrated by measurable improvement that will be of practical value to the patient in improving the patient's functional capacity or adaptation to impairments. All required therapy treatments and/or therapy evaluations ordered must begin no later than 36 hours from midnight on the day of admission to the IRF.

* * * * *

(5) * * *

(ii) The initial interdisciplinary team meeting must occur on or before 4 days from the date the patient is admitted to implement appropriate treatment services; establish or review the patient's stated rehabilitation goals; and identify any problems that could impede goals.

(iii) The date of the initial interdisciplinary team meeting must be used to determine the patient's subsequent team meetings. The remaining interdisciplinary team meetings must occur at least once per week after the date of the prior team meeting to implement appropriate treatment services; review the patient's progress toward stated rehabilitation goals; identify any problems that could impede progress towards those goals; and, where necessary, reassess previously established goals in light of impediments, revise the treatment plan in light of new goals, and monitor continued progress toward those goals.

(c) * * *

Week means a period of 7 consecutive calendar days.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 3. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

- 4. Section 414.412 is amended by—
- a. Revising paragraph (g)(2)(i)(H); and
- b. Adding paragraph (g)(2)(iii).

The revision and addition read as follows:

§ 414.412 Submission of bids under a competitive bidding program.

* * * * *

(g) * * *

(2) * * *

(i) * * *

(H) The bid surety bond amount of \$50,000.

* * * * *

(iii) Notwithstanding the above, to submit a bid(s) and be awarded a contract for a RID CBP, the bidding entity must obtain a bid surety bond of \$100,000. If submitting bids for multiple

competitions under a RID CBP, only one bid surety bond is required, regardless

of whether the RID CBP competitions have different CBAs.

* * * * *

Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.

[FR Doc. 2026–15652 Filed 7–30–26; 4:15 pm]

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Part III

Office of Personnel Management

5 CFR Part 731

Suitability Action Appeals; Final Rule

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 731****[Docket ID: OPM–2025–0173]****RIN 3206–AO97****Suitability Action Appeals****AGENCY:** Office of Personnel Management.**ACTION:** Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to revise how an applicant, appointee, or employee may appeal a suitability action taken under 5 CFR part 731. OPM will replace the Merit Systems Protection Board (MSPB) as the adjudicative agency for such appeals. The change will streamline suitability action appeals procedures, thereby improving the efficiency, rigor, and timeliness by which OPM and agencies resolve challenges to suitability actions and ensure the integrity and efficiency of the service.

DATES: Effective September 2, 2026. This rule does not apply to appeals filed with the MSPB before the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: For questions, contact Joe Knouff, Suitability Executive Agent Programs, by email at SuitEA@opm.gov or by phone at (202) 599–0090.

SUPPLEMENTARY INFORMATION: OPM is issuing this rule to improve the efficiency, rigor, and timeliness by which OPM and agencies resolve challenges to suitability actions and ensure the integrity and efficiency of the service. In February 2026, OPM proposed updates to 5 CFR part 731 to modernize suitability procedures that allow the Government to quickly resolve any risks discovered in the Federal workforce by returning the venue to hear suitability action appeals from the MSPB to OPM. *See* 91 FR 5352 (Feb. 6, 2026). OPM proposed new procedures by which an individual may appeal a suitability action to OPM. This final rule amends 5 CFR part 731 subpart E to align with 5 U.S.C. 7512(F) and the Fiscal Year 2016 National Defense Authorization Act (FY 2016 NDAA) excluding OPM suitability actions from the scope of chapter 75 and providing procedures to appeal suitability actions to OPM to improve the speed and effectiveness of Government personnel security, suitability, and credentialing reviews.

**I. Digest of Public Comments and
Summary of Changes From the
Proposed Rule**

In response to the proposed rule, OPM received 343 comments during the 30-day public comment period from multiple individuals and multiple labor organizations. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments on the rule change were mixed, with some expressing support, others expressing opposition, and many comments that were outside the scope of the rulemaking.

The comments included many suggestions for revisions that OPM considered and either adopted, adopted in part, or declined. For example, commenters were concerned with OPM's authority to establish the appeal process in this final rule; the relationship between suitability actions and MSPB review; procedural protections available to individuals subject to suitability actions; the independence and neutrality of OPM's appeal process; the treatment of discrimination claims, prohibited personnel practice allegations, and other claims within the jurisdiction of other adjudicatory bodies; appellant representation; protective orders and sanctions; the electronic filing process; publication or transparency of appeal decisions; the expected costs and benefits of the rule; and the adequacy of the comment period.

OPM found many of the comments helpful. OPM has determined to move suitability action appeals from MSPB to OPM as set forth in the proposed rule. However, in the final rule, it has added a number of procedural safeguards in response to comments.

First, the revised text narrows and clarifies the appeal right by specifying that it applies to applicants, appointees, and employees in the competitive service or career Senior Executive Service (SES), as those terms are used in part 731. It also adds an express burden-of-proof provision: the appellant bears the burden on timeliness, jurisdiction, and any improper-procedure claim, while the responsible agency bears the burden to prove the charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action. This responds to comments, including from 0303, 0334, 0332, and 0329, that the proposed process lacked sufficient standards for fair and reasoned adjudication.

Second, the revised text adds safeguards addressing concerns that OPM would be policymaker,

enforcement authority, and adjudicator. It defines the “responsible agency,” including the OPM office or component responsible for the action when OPM took, directed, or made the suitability action, and requires separation between that component and the adjudicative function. It also adds adjudicator-insulation requirements, ex parte communication protections, conflict-of-interest disqualification standards, and ALJ adjudication for appeals by OPM applicants, appointees, or employees. These changes respond to independence and institutional-bias comments raised by 0207/0286, 0288, 0303, 0334, 0332, 0314, 0331, and 0329.

Third, the revised text strengthens the record and disclosure rules. The responsible agency must now produce a complete, indexed, paginated, and certified record, including materials considered, relied upon, generated, received, issued, or served in investigating, proposing, deciding, directing, or effectuating the action. The record must include charge-by-charge analysis, suitability-factor analysis, mitigating or exculpatory evidence, the rationale for the action selected, and implementation documents. The revised text also requires identification of withheld or redacted material and generally bars reliance on nondisclosed material unless the appellant receives notice of its substance and a meaningful opportunity to respond. This responds to comments from 0303, 0334, 0332, 0333, and 0329 that eliminating MSPB discovery would worsen information asymmetry and impair appellants' ability to challenge factual error, pretext, or procedural defects.

Fourth, the revised text changes the fact-development and hearing provisions. The revised text allows additional information or investigation only when the existing record is insufficient to resolve a material issue and further development is reasonably likely to produce material information. It also provides that written-record review remains the default, but a hearing is required when the written record is insufficient to resolve a material factual dispute, including where there is a material credibility dispute. Any such hearing must be presided over by an administrative judge. This responds especially to 0207/0286 and other commenters who urged objective hearing criteria and a meaningful mechanism for resolving disputed facts without adopting a categorical hearing right in every case.

Fifth, the revised text broadens the savings clause and narrows the protective-order provision. The exclusive-appeal provision now states

that the OPM process is the sole means of appealing a suitability action under part 731, but does not displace matters within the independent jurisdiction of the Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority (FLRA), Inspectors General, MSPB, Department of Labor's Veterans' Employment and Training Service (VETS), or the Office of Special Counsel (OSC). The protective-order provision is narrowed to protect adjudicatory integrity, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information, and it states that any protective order must be no broader than reasonably necessary and must not restrict lawful protected communications. These revisions respond to comments from 0303, 0334, 0332, 0333, and 0329 regarding discrimination claims, labor-relations matters, whistleblower issues, veterans' rights, union communications, and concerns that the NPRM could operate as a gag order.

Finally, the revised text adds several administrability and transparency improvements. It narrows e-filing sanctions by requiring repeated failure to follow instructions after a show-cause order before OPM may strike a document; requires initial decisions to make findings on each material charge, specification, and suitability factor; tailors remedies to applicants, appointees, and employees; gives more specific grounds for Director review; clarifies when decisions become final; and adds publication of final merits decisions or de-identified summaries. These changes respond to comments that the proposed process needed clearer standards, more reasoned decision-making, greater transparency, and stronger safeguards against arbitrary or opaque adjudication.

II. Authority and Background

Congress has long charged the President with establishing rules for admission to the competitive service and with ensuring that individuals who enter and remain in the Federal workforce possess the character and conduct necessary to protect the integrity and promote the efficiency of the service. The President's authority to prescribe rules for the civil service and to regulate employee conduct is reflected in 5 U.S.C. 3301, 3302, and 7301, and has been delegated in relevant part to OPM and its predecessor, the Civil Service Commission. OPM administers these authorities through governmentwide civil service regulations, including the suitability

and fitness regulations in 5 CFR part 731. Those regulations apply to competitive service employees and career appointments in the Senior Executive Service (SES). See 5 CFR 731.101(a).

Suitability and fitness determinations examine whether an individual's character or conduct may have an adverse impact on the integrity or efficiency of the service. See 5 CFR 731.101, 731.201, and 731.202. The objective of the suitability adjudicator is to determine whether there is a reasonable expectation that the individual's employment or continued employment would protect the integrity or promote the efficiency of the service. See 5 CFR 731.201. When an unfavorable suitability determination is made, OPM or an agency acting under delegated authority must determine whether a suitability action is appropriate. OPM's regulations define a "suitability action" to include cancellation of eligibility, removal, cancellation of reinstatement eligibility, and debarment. See 5 CFR 731.101(a).

Suitability standards and procedures are an important part of the Federal Government's personnel-vetting framework. They assist agencies in identifying and mitigating risks associated with individuals who seek access to Federal employment, Federal facilities, Federal information, Federal systems, or agency mission functions. Those risks may include misconduct, dishonesty, fraud in examination or appointment, criminal conduct, violent conduct, or other conduct that bears on whether the individual's employment would protect the integrity and promote the efficiency of the service. Suitability procedures therefore serve both individual and institutional interests: they require agencies and OPM to provide notice and an opportunity to respond before certain suitability actions are taken, while enabling the Government to resolve suitability concerns in a timely and effective manner.

Suitability standards and procedures play a key role in protecting the Federal Government against potential risks posed by those entrusted to work for it. Every day, America's adversaries seek to undermine the effective performance of Government functions and the confidentiality of sensitive Government information. Employees who are untrustworthy or unvetted pose a threat to the effective performance of agency missions, workplace safety, and data security. Successive presidential administrations spanning almost 20 years have emphasized the importance of enhanced risk management of the

Federal Government's trusted workforce through efforts at modernizing processes to ensure only trusted individuals enter and remain in the Federal workforce.

In May 2018, the OPM Director and the Director of National Intelligence launched the Trusted Workforce 2.0 initiative in their respective roles as Suitability and Credentialing Executive Agent and Security Executive Agent. Trusted Workforce 2.0 reflects the Government's continued movement toward modernized vetting, risk management, and continuous-vetting processes designed to ensure that the Federal workforce remains trusted over time. Modernizing the procedures for reviewing suitability actions is part of that broader objective: suitability appeals should provide a fair opportunity to contest an unfavorable suitability determination and suitability action, while also reaching final resolution with sufficient speed to protect agency missions, workforce integrity, and the public interest.

This final rule revises subpart E of part 731. It removes the regulatory appeal of suitability actions to MSPB and establishes an OPM suitability-action appeal process. Individuals in any covered status—whether applicant, appointee, or employee, as those terms are used in part 731—may no longer appeal a part 731 suitability action to the MSPB under subpart E. Instead, an applicant, appointee, or employee in the competitive service or career Senior Executive Service may appeal to OPM a suitability action taken because of an unfavorable suitability determination. This final rule is limited to appeals of suitability actions under part 731. It does not establish an appeal right for fitness determinations, security-clearance determinations, credentialing determinations, national-security eligibility determinations, or any other determination outside the scope of subpart E.

OPM separately addressed amendments to subparts A, B, C, and D of 5 CFR part 731 in the *Suitability and Fitness* rulemaking. 91 FR 39361 (June 30, 2026). That rulemaking addressed substantive suitability and fitness standards and the authority and procedures for taking suitability actions. This final rule is separate from that rulemaking and is limited to the forum and procedures for appeals of suitability actions. OPM considered comments asserting that the two rulemakings should be evaluated together. OPM recognizes that procedural safeguards are important in any covered suitability action and, in response to comments, has strengthened the final subpart E procedures as described below. This

rule, however, does not itself amend the substantive suitability factors, the standards for making suitability or fitness determinations, or the procedures in subparts C and D for taking suitability actions.

The statutory and regulatory history of suitability actions confirms that suitability actions are distinct from adverse actions under chapter 75 of title 5. In 2011, the MSPB decided in *Scott v. OPM*, 116 M.S.P.R. 356, modified by 117 M.S.P.R. 467, that suitability actions could not be taken for post-appointment conduct. In 2015, the U.S. Court of Appeals for the Federal Circuit held in *Archuleta v. Hopper*, 786 F.3d 1340, that a suitability-based removal of a covered employee was subject to chapter 75 adverse-action procedures. Later in 2015, Congress amended 5 U.S.C. 7512 to provide that chapter 75 does not apply to “a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service.” Public Law 114–92, div. A, title X, sec. 1086(f)(9), 129 Stat. 1010. That amendment confirmed that a suitability action taken under OPM’s regulations is not a chapter 75 adverse action.

This clarifying addition was part of a larger package of reforms in the Fiscal Year 2016 National Defense Authorization Act (FY 2016 NDAA) designed to improve the speed and effectiveness of Government personnel security, suitability, and credentialing reviews. These reforms were heavily influenced by Congress’s response to tragic events that potentially could have been avoided had the Government had more robust personnel vetting processes. Following the Washington Navy Yard shooting in September 2013, when a trusted insider tragically killed 12 individuals at a Government facility, Congress held hearings examining necessary improvements to vetting processes highlighted by this event and other high-profile leaks of information (e.g., the unauthorized disclosure and subsequent public release of classified U.S. Government information leaked by Edward Snowden to the media), and crafted legislation to improve the Government’s ability to protect against risk posed by trusted insiders. For example, the same section of the FY 2016 NDAA that added language to clarify that suitability actions were not within the scope of chapter 75 also directed action to develop strategies and capabilities to enable real-time, risk managed personnel vetting decisions, increase access to criminal history information when determining an

individual’s suitability or fitness for employment, and improve insider threat detection and prevention.

Although chapter 75 does not apply to suitability actions taken under OPM’s regulations, OPM’s prior regulations continued to provide for MSPB review of suitability actions under subpart E of part 731. The MSPB’s authority to adjudicate suitability appeals under part 731 therefore arose from OPM’s regulations, not from chapter 75. Under 5 U.S.C. 1204(a), the MSPB may adjudicate matters placed within its jurisdiction by law, rule, or regulation. Accordingly, while OPM’s prior regulation placed suitability-action appeals within MSPB’s jurisdiction, OPM may revise that regulatory appeal procedure and establish an alternative appeal process consistent with OPM’s authority to administer the suitability program.

The final rule does not remove all review of suitability actions. Instead, it replaces the prior MSPB appeal route with an OPM appeal process tailored to the statutory and regulatory nature of suitability actions. OPM concludes that suitability appeals should be decided by adjudicators with suitability expertise, under procedures designed for suitability determinations and actions rather than chapter 75 adverse-action litigation. At the same time, OPM agrees with commenters that the process must contain safeguards sufficient to promote fairness, accuracy, transparency, and confidence in the adjudication—and has built such safeguards into the final rule. Those safeguards include:

- A defined right to appeal suitability actions to OPM, including challenges to the underlying unfavorable suitability determination and specified procedural failures.
- Continued pre-action protections under subparts C and D of 5 CFR part 731, including written notice, reasons for the action, access to relied-upon materials, representation, at least 30 days to respond, and a written decision with appeal rights.
- Clear burden and evidentiary standards: the appellant bears the burden on timeliness, jurisdiction, and improper procedure; the responsible agency bears the burden on the merits; and both are governed by a preponderance-of-the-evidence standard.
- A robust record requirement, including a complete, indexed, paginated, and certified agency record with mitigating, rehabilitative, contradictory, and exculpatory evidence, plus the rationale for the action selected.

- Disclosure protections, including service of the record on the appellant, privilege-log or index requirements for withheld or redacted material, substitute-disclosure procedures where needed, and limits on reliance on undisclosed material.

- Separation-of-functions and impartiality safeguards, including separation when OPM is the responsible agency, adjudicator insulation, ex parte communication protections, conflict disqualification, and training requirements.

- ALJ adjudication of appeals by OPM applicants, appointees, or employees and limited OPM review of those ALJ decisions;

- Fact-development safeguards, including a written-record default, materiality limits on investigations, notice and disclosure of investigation results, and hearings before administrative judges whenever resolution of a material factual dispute requires evaluation of witness credibility or when the written record is otherwise insufficient to resolve facts material to the outcome of the appeal.

- Reasoned decision and remedy requirements, including findings on each material charge, specification, and suitability factor; review of whether sustained grounds support the action imposed; and legally authorized corrective relief for prevailing appellants.

- Reconsideration and finality rules, including party requests for reconsideration, Director review before finality, and specified points at which OPM decisions become final.

- Preservation of matters within the independent jurisdiction of the EEOC, FLRA, Inspectors General, MSPB, DOL VETS, and OSC.

- Protective-order limits and transparency safeguards, including narrow tailoring of protective orders, protection for lawful communications, public availability of final merits decisions or de-identified summaries, and access to final merits decisions for the appellant, the appellant’s representative, and the representative of the involved Federal agency or office with a need to know.

III. Major Issues Raised by Commenters

A. OPM Authority To Transfer Suitability Appeals From MSPB to OPM

Several commenters questioned OPM’s legal authority to remove suitability action appeals from the MSPB and asserted that the proposal contravenes congressional intent in the CSRA including its creation and empowerment of the MSPB.

Commenters 0207/0286, 0288, 0303, 0334, 0332, 0314, 0330, 0331, and 0329 argued that transferring suitability appeals is inconsistent with CSRA, collapses the separation between personnel management and independent adjudication, and would recreate features of the pre-CSRA Civil Service Commission model. Commenter 005 asserted that the proposed rule did not adequately identify statutory authority for narrowing or eliminating MSPB jurisdiction and argued that OPM had not sufficiently explained how the change comports with the CSRA. Commenter 186 asserted that OPM lacked statutory authority to adjudicate suitability cases. Commenter 236 argued that the rule violates 5 U.S.C. 1204(a)(1), which requires MSPB to handle and decide cases within its jurisdiction. Commenter 285 asserted that the proposal circumvents protections Congress afforded in Federal employment by removing powers from entities such as MSPB and OSC. Commenter 319 argued that OPM's reliance on 5 U.S.C. 7512(F) stretches that provision because, in the commenter's view, it applies only to pre-appointment matters and does not expand the scope of permissible suitability actions. Commenter 332 argued that OPM's interpretation of 5 U.S.C. 7512(F) is inconsistent with Congress's intent in the CSRA and, in connection with OPM's related Suitability and Fitness rule, would improperly move matters that should be handled under chapter 75 into the suitability process. Commenters also emphasized that suitability actions may result in removal, cancellation of eligibility, cancellation of reinstatement eligibility, or debarment, and therefore warrant review by a structurally independent tribunal.

OPM disagrees that the final rule exceeds OPM's authority or conflicts with the CSRA. The comments largely conflate three distinct questions: first, the substantive authority to make suitability determinations and take suitability actions; second, whether chapter 75 procedures apply to suitability actions taken under OPM's regulations; and third, which administrative forum will review suitability actions under part 731. This rule addresses only the third question. It revises the administrative appeal procedure in subpart E of part 731. It does not independently expand the substantive grounds for taking suitability actions, enlarge the categories of positions covered by part 731, convert all misconduct into a suitability matter, or displace chapter 75 when an

agency proceeds under chapter 75 rather than under part 731.

Congress has vested the President with broad authority to regulate admission to the civil service, to ascertain the fitness of applicants as to age, health, character, knowledge, and ability, and to prescribe rules governing the competitive service. See 5 U.S.C. 3301, 3302. Congress has also authorized the President to prescribe regulations for the conduct of employees in the executive branch. See 5 U.S.C. 7301. OPM administers these authorities through governmentwide regulations, including 5 CFR part 731. OPM's authority also includes prescribing regulations for examinations in the competitive service and administering civil service rules and regulations, subject to the statutory functions assigned to MSPB and OSC. See 5 U.S.C. 1103(a)(5), 1302(a).

The question in this rulemaking is therefore not whether OPM may newly create a suitability system. OPM has long administered such a system. The question is whether OPM may revise the regulatory forum for reviewing suitability actions taken under part 731.

The statutory structure answers that question. MSPB is not a tribunal of plenary jurisdiction. It may hear and decide only those matters placed within its jurisdiction by statute, rule, or regulation. See 5 U.S.C. 1204(a)(1); 5 U.S.C. 7701(a); *Forest v. MSPB*, 47 F.3d 409, 410 (Fed. Cir. 1995); *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1327 (Fed. Cir. 2006). Section 1204(a)(1) does not itself assign suitability actions to MSPB; it requires MSPB to hear matters that are otherwise within MSPB's jurisdiction. Likewise, section 7701(a) does not itself make every personnel action appealable to MSPB; it provides procedures when an employee or applicant appeals an action that is appealable to MSPB "under any law, rule, or regulation." The right to a hearing and representation under section 7701(a) attaches once an action is otherwise made appealable to MSPB; it does not independently create MSPB jurisdiction over actions that no law, rule, or regulation makes appealable.

For part 731 suitability actions, the prior MSPB appeal route was regulatory. The Federal Circuit recognized this point in *Folio v. Department of Homeland Security*, explaining that the Board's jurisdiction "is not plenary, but is limited to those matters over which it has been given jurisdiction by law, rule, or regulation," and that former 5 CFR 731.501 "pertains to appeals of agency suitability determinations to the Board and sets out that jurisdiction." 402 F.3d 1350, 1353 (Fed. Cir. 2005).

The court further observed that section 731.501 was the regulation that made the suitability determination appealable to MSPB under section 7701(a). *Id.* at 1356. Thus, before this final rule, MSPB jurisdiction over part 731 suitability appeals existed because OPM's regulation placed those appeals before MSPB. It did not exist because chapter 75 independently required MSPB review of part 731 suitability actions. Because the prior MSPB appeal route was regulatory, OPM may revise that regulatory choice through notice-and-comment rulemaking.

OPM also disagrees with commenters who argue that 5 U.S.C. 7512(F) has no bearing on this rule. Section 7512(F) provides that chapter 75's adverse-action provisions do not apply to "a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service." Congress added that language after the MSPB's decision in *Scott v. OPM*, 116 M.S.P.R. 356 (2011), modified by 117 M.S.P.R. 467 (2012), and the Federal Circuit's decision in *Archuleta v. Hopper*, 786 F.3d 1340 (Fed. Cir. 2015). In *Archuleta*, the Federal Circuit held that, because then-existing chapter 75 did not exclude suitability-based removals, a covered employee's OPM-directed suitability removal was subject to chapter 75 adverse-action review. See *Archuleta*, 786 F.3d at 1348–51. Congress responded by adding section 7512(F). See Public Law 114–92, div. A, title X, sec. 1086(f)(9), 129 Stat. 1010.

OPM does not read section 7512(F) as a freestanding source of substantive suitability authority, and this final rule does not depend on such a reading. Section 7512(F) addresses chapter 75 coverage. It confirms that when OPM lawfully proceeds through a suitability action under OPM's regulations and applicable Presidential rules for the administration of the competitive service, that action is not an adverse action under chapter 75. The substantive standards for suitability determinations and suitability actions remain those prescribed in part 731 and supported by the underlying civil service authorities, including 5 U.S.C. 3301, 3302, and 7301. This final rule merely prescribes the administrative review mechanism for those actions. It does not rely on section 7512(F) to expand the conduct that may support a suitability action, to enlarge the class of covered employees, or to convert ordinary chapter 75 matters into suitability actions.

Nor does section 7512(F) need to do more than that for purposes of this final

rule. The relevant point is narrower: where OPM or an agency proceeds under part 731 and the action is a suitability action within the meaning of part 731, chapter 75 does not compel MSPB review. Former subpart E nevertheless provided MSPB review as a matter of regulation. This final rule revises that regulatory appeal path by establishing an OPM appeal process. Because the statute does not itself require MSPB review of part 731 suitability actions, OPM's revision of its own regulations does not unlawfully eliminate a statutory MSPB appeal right.

OPM further disagrees that the CSRA's creation of MSPB as an independent adjudicatory body freezes in place every regulatory grant of MSPB jurisdiction that existed at or after the time of the CSRA. OPM recognizes that the CSRA separated personnel-management functions from many adjudicatory functions and created MSPB to adjudicate matters within its jurisdiction. But that integrated scheme itself makes MSPB jurisdiction dependent on statute, rule, or regulation. *See* 5 U.S.C. 1204(a)(1), 7701(a). Congress could have provided that all suitability actions under part 731 must always be reviewed by MSPB. It did not. Instead, it preserved a structure in which MSPB hears matters placed within its jurisdiction by law, rule, or regulation, and former § 731.501 was the regulation that placed part 731 suitability appeals before MSPB. A regulatory forum choice does not become irrevocable merely because it has existed for a long period of time.

OPM also does not agree that establishing an OPM appeal process recreates the pre-CSRA Civil Service Commission or collapses the civil service remedial structure into OPM. This rule does not give OPM general authority to adjudicate all Federal employment disputes. It establishes an OPM-administered process for a narrow class of appeals involving suitability actions under part 731. MSPB remains responsible for matters placed within its jurisdiction by statute, rule, or regulation. OSC, EEOC, FLRA, Inspectors General, the Department of Labor's Veterans' Employment and Training Service, and other forums remain available where an independent legal basis for jurisdiction exists. Revised § 731.501(e) expressly provides that the part 731 appeal process is the sole means of appealing a suitability action under part 731, but does not otherwise preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of those entities.

B. Separation of Policymaking and Adjudication Functions and Adequacy of OPM as a Suitability Appeals Forum

Several commenters, including commenters 0005, 0046, and 0057, argued that the proposed OPM appeal process would not provide sufficiently impartial review because OPM issues suitability policy, may take or direct suitability actions, and would adjudicate appeals from those actions. Commenters also asserted that the proposed "appropriate independence" standard was insufficiently defined and did not adequately explain how OPM appeal adjudicators would be insulated from prior involvement, institutional pressure, supervisory influence, or case-specific direction. Other commenters similarly argued that transferring suitability appeals to OPM would collapse the separation between personnel management and independent adjudication that Congress adopted in the CSRA.

OPM does not agree that an OPM-administered suitability appeal process is inherently biased, creates an impermissible conflict of interest, or is inconsistent with the CSRA. Congress created MSPB as an independent adjudicatory body for matters within MSPB's jurisdiction, but the CSRA does not require every regulatory personnel appeal to be adjudicated by MSPB. As explained above, MSPB jurisdiction is limited to matters placed within its jurisdiction by law, rule, or regulation. *See* 5 U.S.C. 1204(a)(1), 7701(a). Prior MSPB jurisdiction over part 731 suitability appeals arose from OPM's regulations, not from chapter 75 itself. OPM therefore may revise the regulatory appeal forum for part 731 suitability actions, provided that the resulting process is fair, reasoned, and consistent with applicable law.

Nor does the fact that OPM administers civil service laws and regulations make OPM categorically incapable of adjudicating disputes under those laws. Congress vested the OPM Director with responsibility for executing, administering, and enforcing civil service rules and regulations and laws governing the civil service. *See* 5 U.S.C. 1103(a). OPM has long exercised adjudicative or quasi-adjudicative responsibilities in Federal personnel matters, including classification appeals under 5 CFR part 511, Fair Labor Standards Act claims under 5 CFR part 551, compensation and leave claims under 5 CFR part 178, and other matters assigned to OPM by statute or regulation. The existence of such functions does not transform OPM into an improper adjudicator; rather, it

reflects a familiar feature of Federal administration in which agencies apply and adjudicate matters within programs they administer.

Other Federal agencies operate in the same manner. For example, the EEOC issues Federal-sector EEO regulations and adjudicates appeals from agency final actions, dismissals, class-complaint decisions, and certain grievance decisions raising discrimination issues. *See* 29 CFR 1614.401, 1614.405. The FLRA provides governmentwide leadership on Federal labor-management relations while resolving representation, negotiability, unfair-labor-practice, and arbitration matters. *See* 5 U.S.C. 7105. These examples illustrate that combining regulatory, guidance, supervisory, and adjudicatory responsibilities within a single agency is not, standing alone, evidence of structural bias.

Supreme Court precedent confirms the same point. The Court has rejected the proposition that combining investigative, policymaking, prosecutorial, and adjudicative functions within an agency inherently violates due process. In *Withrow v. Larkin*, the Court explained that a party asserting unconstitutional bias in administrative adjudication must overcome the presumption of honesty and integrity of adjudicators and show a risk of actual bias or prejudgment that is constitutionally intolerable. 421 U.S. 35, 47 (1975). The Court likewise has rejected claims that agency decisionmakers are disqualified merely because they previously investigated or expressed policy views about related issues. *FTC v. Cement Institute*, 333 U.S. 683, 700–03 (1948). Due process concerns arise from more concrete circumstances, such as a direct, personal, substantial pecuniary interest, personal participation in the matter under review, personal animus, or an objectively intolerable probability of actual bias. *See Tumey v. Ohio*, 273 U.S. 510, 523, 532 (1927); *Withrow*, 421 U.S. at 47; *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884–87 (2009).

The APA reflects a similar principle. Even in formal adjudications governed by the APA, an agency may review an initial decision and, on review, generally has the powers it would have had in making the initial decision, subject to limits imposed by rule or notice. *See* 5 U.S.C. 557(b). The APA's separation-of-functions provision also does not apply to "the agency or a member or members of the body comprising the agency." 5 U.S.C. 554(d)(2)(C). Although this part does not make 5 U.S.C. 554, 556, or 557 applicable except to the extent

independently required by law or expressly incorporated, these provisions underscore that Federal administrative law does not treat agency-head supervision or agency-level review as equivalent to bias. The relevant inquiry is whether the process contains adequate safeguards against prejudgment, improper influence, ex parte communications, and conflicts of interest.

Nor does the fact that OPM is headed by a presidentially appointed Director establish bias. The OPM Director is appointed by the President with the advice and consent of the Senate. *See* 5 U.S.C. 1102. That appointment structure does not itself disqualify the Director or the agency from carrying out adjudicatory responsibilities assigned by law or regulation. Federal administrative adjudication frequently occurs within agencies headed by presidentially appointed officials, including agencies that also issue regulations and enforce the statutory schemes they administer. Indeed, the MSPB consists of three members appointed by the President with Senate confirmation. *See* 5 U.S.C. 1201. Due process does not require every administrative appeal to be decided by an entity outside the Executive Branch; it requires procedures that provide a meaningful opportunity to be heard before a fair decisionmaker. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

OPM recognizes the importance of separating the personnel involved in taking a suitability action from the personnel assigned to adjudicate an appeal of that action. The revised regulatory text therefore does not rely solely on general assurances of internal separation. The revised regulatory text replaces the proposed rule's more general "appropriate independence" formulation with specific, codified safeguards. Section 731.503(b)(2) now defines the "responsible agency" to include the employing agency or, when OPM took, directed, or made the suitability action under review, the OPM office or component responsible for that action. When OPM is the responsible agency, the adjudicative function must be separated from any OPM office or official that participated personally and substantially in the suitability determination or action.

The final rule also codifies individual adjudicator protections. Section 731.505(a) requires OPM personnel assigned to adjudicate appeals to be insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice

concerning that action. It prohibits OPM adjudicators from considering material ex parte communications concerning the merits of an appeal. If such a communication occurs, OPM must place a summary in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. The rule also disqualifies any OPM employee who has a prior relationship with the appellant, had prior involvement in the suitability determination or suitability action under appeal, or has any other conflict that would reasonably call the employee's impartiality into question.

OPM has also strengthened the rule for cases in which the appellant is an OPM applicant, appointee, or employee. In those appeals, OPM will assign an administrative law judge to adjudicate the appeal. To further insulate those appeals from agency involvement, OPM will not disturb the administrative law judge's initial decision unless a party shows harmful procedural irregularity, clear legal error, or material factual error that affected the outcome. In addition, an administrative judge will preside over any hearing held under the ascertainment-of-facts provision, and the hearing will be limited to material factual issues identified by OPM or the administrative judge as necessary to resolve the appeal.

The final rule also addresses commenters' concerns about expertise and decisional quality. Section 731.505(c) requires all OPM employees or administrative law judges assigned to adjudicate appeals under this subpart to have completed training that complies with national training standards for suitability adjudicators and qualifies them to review OPM and agency suitability determinations and actions. The rule further requires a complete, indexed, paginated, and certified record of the action; allocates burdens of proof; requires findings on each material charge, specification, and suitability factor; and authorizes appropriate relief where the appellant prevails. These features reinforce that the process is not intended to be a summary affirmance mechanism or a "rubber stamp," but a specialized administrative appeal process focused on whether the responsible agency has established the suitability determination and action by a preponderance of the evidence and whether the appellant has established any appealable procedural defect.

OPM also considered comments objecting to Director review. The final rule explains the circumstances in which Directorial review is called for. The Director may reopen and reconsider an initial decision or reopened-and-

reconsidered decision only before it becomes final. In deciding whether to exercise that authority, the Director may consider whether the decision contains clear legal error, rests on an erroneous finding of material fact, involves an issue of exceptional importance, affects governmentwide administration of the civil service laws, rules, regulations, or OPM policy, creates a conflict among OPM decisions, or otherwise warrants Director review. The rule also makes clear that there is no right to request Director review. These limitations provide transparency about when Director review is contemplated.

Ultimately, OPM concludes that the final rule provides a fair and reasoned adjudicatory process for suitability appeals. Suitability appeals require application of OPM's governmentwide suitability regulations and standards, and OPM is responsible for prescribing, interpreting, and administering those standards. At the same time, the final rule recognizes the importance of separating personnel involved in taking or directing a suitability action from personnel assigned to adjudicate an appeal of that action. The final rule therefore codifies separation-of-functions, ex parte, conflict-of-interest, ALJ, training, record-production, burden-of-proof, hearing, decision-writing, and transparency safeguards. OPM concludes that these safeguards adequately address commenters' impartiality concerns while preserving a specialized and efficient appeal process for part 731 suitability actions.

C. Due Process Considerations, Written Record, Hearings, and Discovery

OPM received several comments expressing concern that transferring suitability-action appeals from MSPB to OPM would provide insufficient independent review for individuals subject to suitability actions. Commenter 0193 contended that limiting external review may undermine veterans' confidence that veterans' preference rights under 5 U.S.C. 3330a will receive fair and independent consideration. Commenter 0195 asserted that the proposed rule creates an inherent structural risk or appearance of bias inconsistent with constitutional requirements for neutral decisionmakers because both the initial decisionmakers and reviewers ultimately report within OPM. Commenter 0195 also asserted that eliminating Federal Circuit review would violate constitutional due-process requirements. Commenter 0329 asserted that OPM cannot foreclose review in higher or alternative forums and that the proposed rule may increase litigation. Commenter 0332 argued that,

because MSPB decisions are currently subject to Federal Circuit review, replacing MSPB review with an OPM final decision risks insulating suitability determinations from meaningful judicial scrutiny.

OPM has carefully considered these comments but disagrees that the final rule is inconsistent with due process or otherwise provides insufficiently fair review. With respect to veterans' preference, this rule concerns only the procedures for appealing suitability actions under 5 CFR part 731. It does not amend, limit, or adjudicate rights or remedies arising under the veterans' preference statutes, including 5 U.S.C. 3330a. Section 731.501(e) has been revised to make this point clearer: the procedures in subpart E are the sole means of appealing a suitability action under part 731, but do not otherwise preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the Department of Labor's Veterans' Employment and Training Service, the MSPB, the EEOC, the FLRA, an Inspector General, or OSC. Thus, the final rule does not displace veterans' preference remedies or other independent statutory forums.

OPM also disagrees that due process requires suitability appeals to be adjudicated by MSPB, by an inferior officer, or by an adjudicator outside OPM. The relevant constitutional inquiry is whether the procedures, taken as a whole, provide a meaningful opportunity to be heard before a fair decisionmaker. Administrative agencies may adjudicate matters within programs they administer, and combining policymaking, investigative, enforcement, and adjudicative functions in the same agency does not by itself violate due process. See *Withrow v. Larkin*, 421 U.S. at 47–52. The Supreme Court has emphasized that adjudicators are presumed to act with honesty and integrity, and due process is concerned with concrete risks of actual bias or prejudgment, not the mere fact that adjudicators serve within the same agency that administers the relevant program. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976); *Richardson v. Perales*, 402 U.S. 389, 402, 407–08 (1971).

At the same time, OPM agrees that the final rule should contain clear safeguards against prejudgment, improper influence, undisclosed evidence, and institutional bias. The final rule therefore adds substantial protections beyond those contained in the proposed rule. It defines the “responsible agency” to include the

employing agency or, when OPM took, directed, or made the suitability action under review, the OPM office or component responsible for that action. When OPM is the responsible agency, the final rule requires the adjudicative function to be separated from any OPM office or official that participated personally and substantially in the suitability determination or action. The final rule also requires adjudicators to be insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice; prohibits adjudicators from considering material ex parte communications concerning the merits unless the communication is placed in the record and the parties receive a reasonable opportunity to respond, unless disclosure is prohibited by law; and bars assignment of an adjudicator who had prior involvement in the action, a prior relationship with the appellant, or another conflict reasonably calling impartiality into question. These provisions respond directly to comments asserting that the proposed rule did not define “appropriate independence” with sufficient precision.

The final rule adds additional safeguards for cases involving OPM's own applicants, appointees, and employees. In those cases, OPM will assign an administrative law judge to adjudicate the appeal, and OPM will not disturb the ALJ's initial decision unless a party shows harmful procedural irregularity, clear legal error, or material factual error that affected the outcome. The final rule also requires an administrative judge to preside over any hearing held under the ascertainment-of-facts provision. These provisions are not constitutionally required in every administrative appeal, but OPM has included them to further strengthen decisional independence and public confidence in the appeal process.

The constitutional adequacy of the final rule is best evaluated under the balancing framework set out in *Mathews*, which considers the private interest affected, the risk of erroneous deprivation and probable value of additional procedures, and the Government's interest, including administrative burden. Due process is flexible and calls for the procedures the particular situation demands. See *Gilbert v. Homar*, 520 U.S. 924, 930–31 (1997). OPM recognizes that suitability actions can have significant consequences, including removal, cancellation of eligibility, cancellation of reinstatement eligibility, or debarment. The final rule therefore provides notice, an opportunity to

respond, representation, access to the materials relied upon, production of a complete record, an opportunity to reply, written adjudication, burden-of-proof standards, additional fact development where necessary, hearings where material factual disputes, including witness-credibility disputes, cannot be resolved on the developed written record, reconsideration, and appropriate relief where the appellant prevails. Those procedures, taken together, adequately reduce the risk of erroneous deprivation while preserving the Government's strong interest in resolving suitability issues efficiently and protecting the integrity and efficiency of the service.

Commenters 0303, 0334, 0332, 0333, and 0329 argued that eliminating MSPB discovery would exacerbate information asymmetry between appellants and agencies. Commenters asserted that the agency or OPM will control most relevant documents and witnesses, while appellants may lack access to evidence needed to show factual error, pretext, retaliation, or procedural irregularity. Commenters 0052 and 0060 expressed concern that written-record review and limitations on hearings would reduce procedural protections because suitability determinations may involve credibility assessments, subjective intent, character evidence, or disputed facts that are difficult to evaluate without live testimony, cross-examination, or in-person presentation of evidence. Commenters 0025 and 0053 similarly expressed concern that eliminating MSPB-style discovery would restrict appellants' ability to obtain information needed to challenge the suitability determination.

OPM agrees in part and has revised the final rule to reduce the risk of error while retaining a streamlined process. OPM declines to provide automatic discovery or an automatic hearing in every part 731 appeal. Suitability appeals under this subpart concern limited regulatory issues: whether the unfavorable suitability determination that resulted in a suitability action is supported, whether the suitability action is substantively proper, and whether the responsible agency failed to provide specified procedural protections. A default written-record process is proportionate to those issues, particularly because suitability determinations often turn on application materials, investigative records, employment records, court records, written notices, written responses, and other documentary evidence. Written procedures can satisfy due process where the issues can be fairly resolved on a written record, and

the Supreme Court has recognized in administrative adjudication that written evidence may support agency decisionmaking without violating due process. *See Richardson*, 402 U.S. at 402, 407–08.

The final rule, however, does not leave appellants confined to a record unilaterally selected by the responsible agency. The rule requires the responsible agency to file a complete, indexed, paginated, and certified record of the action. That record must include all documents considered, relied upon, generated, received, issued, or served in investigating, proposing, deciding, directing, or effectuating the unfavorable suitability determination and resulting suitability action, regardless of whether the documents are maintained by the employing agency, OPM, an OPM component, or another authorized investigative or personnel-vetting entity. The required record must include, as applicable, status and appointment documents, investigative and vetting materials, charge-by-charge analysis, suitability-factor analysis, consideration of mitigating, rehabilitative, contradictory, or exculpatory evidence, the rationale for the action selected, final-decision materials, implementation documents, and a certification that the submitted record is complete. This record-production requirement is a significant safeguard against the information-asymmetry concerns raised by commenters.

The final rule also strengthens disclosure protections. The responsible agency must serve the appellant with the agency record. If documents are withheld, redacted, or protectively handled, the responsible agency must identify them in an index or privilege log unless identifying the document itself is prohibited by law. OPM may require a summary, substitute disclosure, protective order, in camera submission, or other procedure sufficient to provide the appellant a meaningful opportunity to respond, consistent with applicable law. The final rule provides that no nondisclosed material may be relied upon to affirm the suitability action unless the appellant has received notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law. These provisions directly address concerns that appellants could be unable to know or rebut the evidence used against them.

OPM has also revised the hearing and fact-development provisions. The final rule authorizes OPM to require either party to provide additional information

and to investigate the facts underlying the unfavorable suitability determination or suitability action when the existing record is insufficient to resolve a material issue within OPM's jurisdiction and the investigation is reasonably likely to produce material information. When OPM conducts an investigation, it must notify the appellant, the appellant's representative, and the responsible agency (and, if different, the employing agency) of the investigation and the nature of the information requested, provide the results of the investigation to the parties, and give them a reasonable opportunity to submit argument or additional information.

The final rule further provides objective criteria for hearings. OPM's review must be based solely on the developed written record unless the written record is insufficiently developed to resolve one or more facts material to the outcome of the appeal, including when resolution of a material factual dispute requires evaluation of witness credibility. In those circumstances, a hearing is required: OPM will assign an administrative judge to preside over the hearing, which will be limited to the material factual issues identified by OPM or the administrative judge as necessary to resolve the appeal. These revisions respond to comments requesting defined hearing criteria while avoiding unnecessary hearings where the developed written record is sufficient.

OPM recognizes that oral presentation and cross-examination can have particular value where credibility or veracity is central. *See Goldberg v. Kelly*, 397 U.S. 254, 269–70 (1970). The final rule accounts for that concern by directing hearings where witness credibility is material to the outcome and cannot be resolved fairly on the written record. There will be cases in which uncontested objective facts are sufficient to resolve a suitability appeal—for example, where the appellant has been convicted of a disqualifying criminal offense. The final rule does not require a superfluous hearing in those cases. But where material facts are in dispute, particularly where resolution of the dispute requires evaluation of witness credibility, the rule provides for a hearing before an administrative judge. OPM declines, however, to adopt a categorical right to a hearing in every suitability appeal, including every removal or debarment case. Under *Mathews*, due process does not require the maximum possible procedure in every case; it requires procedures reasonably tailored to the interests,

risks, and governmental burdens at issue. The final rule's material-dispute standard provides hearings where they are likely to improve decisional accuracy, while avoiding proceedings that would add cost and delay without meaningful benefit.

The final rule also adds several safeguards beyond record production, disclosure, and hearings. It expressly allocates burdens of proof: the appellant bears the burden to establish timeliness, OPM jurisdiction, and any improper-procedure claim, while the responsible agency bears the burden to establish, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action. It requires adjudicators and ALJs assigned to appeals to have completed training that complies with national training standards for suitability adjudicators. It requires written initial decisions that may affirm, reverse, modify, vacate, or remand the action in whole or in part and that must make findings on each material charge, specification, and suitability factor. If fewer than all charges or specifications are sustained, OPM must determine whether the sustained grounds support the action imposed and may affirm, reverse, modify, vacate, or remand as appropriate.

The final rule further provides remedies where the appellant prevails, including correction, cancellation, or modification of the suitability action; correction of relevant records; prospective eligibility or appointment-related relief; and, where legally authorized, back pay, interest, and reasonable attorney fees. It limits protective orders and cease-and-desist directives to matters necessary to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. Any protective order must be no broader than reasonably necessary and must not restrict lawful communications protected by law. The rule also provides for reconsideration based on material factual error, legal error, new and material evidence or legal argument that was unavailable despite due diligence, or good cause; limits Director review to decisions that have not yet become final; identifies considerations that may warrant Director review; clarifies finality; and requires public availability of final merits decisions or de-identified

summaries consistent with FOIA, the Privacy Act, and other applicable law.

OPM concludes that the procedures adopted in the final rule are adequate and proportionate for the limited issues appealable under part 731. The final rule does not simply replace MSPB review with summary internal review. It creates a specialized suitability-appeal process with express burden allocations, separation-of-functions protections, ex parte safeguards, adjudicator-disqualification rules, ALJ protections where appropriate, a complete certified record, disclosure and substitute-disclosure requirements, a bar on reliance on undisclosed material absent notice and a meaningful opportunity to respond except as authorized by law, objective criteria for investigations and hearings, administrative judge-presided hearings, written findings on material charges and suitability factors, reconsideration standards, remedies, and transparency provisions. OPM therefore concludes that the final rule provides a fair and meaningful opportunity to challenge a part 731 suitability action while also serving the Government's interest in timely, consistent, and expert resolution of suitability appeals.

D. Claims of Politicization, Merit System Harm, and Whistleblower Reprisal

OPM received comments that characterized the proposed rule as anti-democratic. See comments 010 and 213. Commenters 008 and 009 also expressed concern that moving suitability action appeals from MSPB to OPM would politicize the suitability appeals process. Commenters 0004 and 0285 expressed concern that moving suitability appeals from MSPB to OPM could weaken whistleblower protections, discourage employees from reporting waste, fraud, abuse, or corruption, and limit access to independent review or other legal protections. Commenter 0285 also appeared to assert that the proposed rule would remove appeal rights and prevent appellants from seeking review of unfavorable suitability determinations and to raise broader concerns about OPM removing powers from entities such as MSPB and OSC in this area.

OPM disagrees that this rule is anti-democratic or that it politicizes the suitability action appeals process. The rule does not authorize suitability determinations or suitability actions based on political affiliation, political viewpoint, voting history, partisan activity, or disagreement with agency leadership. Suitability determinations continue to be based on the specific

suitability factors in 5 CFR 731.202(b) and on whether the individual's character or conduct may adversely affect the integrity or efficiency of the service. In addition, pursuant to section 731.102(c), suitability determinations and actions under part 731 must be applied consistent with the Merit Systems Principles in 5 U.S.C. 2301 and the prohibited personnel practices in 5 U.S.C. 2302(b). Those requirements prohibit the use of suitability procedures for partisan political purposes or other unlawful personnel practices.

OPM also rejects the contention that MSPB review is any more or less independent than OPM review. Like MSPB, OPM is an independent agency. 5 U.S.C. 1101. Both MSPB and OPM leadership are appointed by the President with Senate consent. Further, both MSPB Members and the OPM Director are equally accountable to and serve at the pleasure of the President.¹ The principal difference between MSPB and OPM is that the MSPB is led by three Presidentially-appointed members while OPM is headed by a single Presidentially-appointed director. But the MSPB's tripartite leadership structure does not make it meaningfully more independent than OPM; both agencies are equally subject to Presidential supervision. Consequently, OPM rejects the argument that greater MSPB independence makes it a more appropriate venue for suitability appeals as the premise is inaccurate.

OPM agrees with commenters that statutory whistleblower protections and prohibitions against whistleblower retaliation are important. Nothing in this final rule authorizes OPM or an agency to take a suitability action because an individual made a protected disclosure or engaged in protected whistleblowing activity. Further, nothing in this rule alters the statutory prohibition on retaliation for protected disclosures and protected activity, *see* 5 U.S.C. 2302(b)(8)–(9), the OSC's authority to receive and investigate allegations of prohibited personnel practices, *see* 5 U.S.C. 1214(a)(1)(A), or any individual right of action before MSPB that otherwise exists. 5 U.S.C. 1221.

Nor does the rule eliminate an individual's ability to challenge a suitability action. Rather, the rule changes the forum for suitability action appeals and establishes an OPM appeals process. Under that process, an appellant may contest the unfavorable

suitability determination and may challenge whether the required suitability action procedures were followed. OPM will review the record using the preponderance of the evidence standard and may affirm, reverse, modify, vacate, or remand the action, in whole or in part.

OPM also disagrees that adjudication by OPM creates a politicized process or weakens whistleblower protections. The final rule also adds safeguards that directly address concerns about pretext, retaliation, and rubber-stamp review. The responsible agency must prove, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action. The appellant may challenge specified procedural failures. The responsible agency must provide a complete, indexed, paginated, and certified record, including the charge-by-charge analysis, suitability-factor analysis, consideration of mitigating, rehabilitative, contradictory, or exculpatory evidence, and the rationale for the action selected. OPM may not rely on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law. The final rule includes procedural safeguards intended to support impartial review, including separation between personnel involved in taking the suitability action and personnel assigned to adjudicate the appeal, training requirements for personnel adjudicating appeals, minimum requirements for the contents of the responsible agency's record, written decisions, and standards governing review of the record.

OPM also revised the final rule to make clear that the part 731 appeal process does not displace matters within the independent jurisdiction of the EEOC, FLRA, Inspectors General, MSPB, VETS, and OSC. Thus, allegations of discrimination, retaliation, whistleblower reprisal, labor-relations violations, veterans' rights violations, or other prohibited personnel practices remain subject to the procedures and remedies Congress assigned to those forums. Evidence of improper motive may also be considered in a part 731 appeal to the extent relevant to whether the charged suitability factor is supported, whether the suitability action is substantively proper, or whether the appellant has established an appealable procedural defect.

For these reasons, OPM declines to retain MSPB review based on comments

¹ *See Harris v. Bessent*, 160 F.4th 1235 (D.C. Cir. 2025); *see also Trump v. Slaughter*, No. 25–332 (June 29, 2026).

asserting that the OPM appeal process is anti-democratic or politically motivated. The final rule does not introduce political criteria into suitability adjudication. Nor does it displace existing whistleblower protections and related statutory remedies. Instead, it establishes a specialized administrative appeal process while preserving the requirement that suitability determinations and actions be based on conduct relevant to the integrity or efficiency of the service and be applied consistently with the merit system principles and prohibited personnel practices.

E. Exclusion of Mixed Cases

Commenters 0334, 0332, 0303, and 0329 argued that eliminating MSPB review would fragment mixed-case adjudication, weaken civil-rights enforcement, and require employees to litigate related facts in multiple forums. Commenters also expressed concern that individuals alleging discrimination, retaliation, whistleblower reprisal, veterans' rights violations, labor-relations violations, or other prohibited personnel practices would lack meaningful remedies.

OPM acknowledges that a suitability action may arise from facts that also form the basis of a discrimination claim, prohibited-personnel-practice allegation, whistleblower reprisal claim, veterans' rights claim, labor-relations matter, or other statutory cause of action. OPM disagrees, however, that part 731 must preserve an MSPB "mixed case" route for those claims. The mixed-case framework in 5 U.S.C. 7702 and 29 CFR 1614.302 applies where an employee or applicant has been affected by an action that is otherwise appealable to MSPB and alleges covered discrimination. Once this final rule removes the regulatory MSPB appeal for part 731 suitability actions, a part 731 suitability appeal is no longer an MSPB appeal to which the mixed-case procedures attach. Cases such as *Kloeckner v. Solis*, 568 U.S. 41 (2012), and *Perry v. MSPB*, 582 U.S. 420 (2017), address routing and review of statutory mixed cases; they do not require OPM to retain a regulatory MSPB appeal for suitability actions where no statute independently requires one.

This rule does not eliminate independent statutory remedies. OPM revised § 731.501(e) to make clear that the part 731 appeal process is the sole means of appealing a suitability action under part 731, but does not otherwise preclude an applicant, appointee, or employee from filing a complaint, appeal, disclosure, grievance, or other

matter within the independent jurisdiction of the EEOC, FLRA, an Inspector General, MSPB, the Department of Labor's Veterans' Employment and Training Service, or OSC. Thus, discrimination claims remain subject to the Federal-sector EEO process; prohibited-personnel-practice and whistleblower-reprisal matters remain subject to OSC and MSPB jurisdiction where applicable; veterans' rights matters remain subject to the governing VETS and MSPB procedures; and labor-relations matters remain subject to the statutory framework Congress assigned to the FLRA or other appropriate forum.

OPM will adjudicate the issues assigned to it under part 731: whether the unfavorable suitability determination is supported, whether the resulting suitability action is substantively proper, and whether the appellant has established an appealable procedural defect. OPM will not adjudicate independent claims of discrimination, retaliation, whistleblower reprisal, veterans' rights violations, or labor-law violations in a part 731 appeal. Evidence of discriminatory or retaliatory motive, however, may be considered to the extent it is relevant to the part 731 issues before OPM, including whether the charged suitability factor is supported, whether the action selected is substantively proper, or whether the appellant has established improper procedure.

This allocation of claims reflects, rather than undermines, the structure of the civil service remedial scheme. Congress has not created a single universal forum for every Federal employment dispute. Different forums decide different legal questions under different statutes, standards, procedures, and remedial schemes. A discrimination claim, a prohibited-personnel-practice claim, a USERRA or VEOA claim, a labor-relations claim, and a part 731 suitability appeal may involve overlapping facts, but they are not the same claim. Routing those claims to the entities Congress assigned to administer them preserves specialized expertise and avoids requiring OPM to decide matters outside the scope of part 731.

OPM also disagrees that this structure improperly duplicates proceedings or conceals unlawful conduct. Where an individual pursues multiple avenues of redress, some evidence may overlap, but the legal inquiries differ. In a part 731 appeal, OPM determines whether the suitability action satisfies part 731. In an EEO matter, the responsible agency and EEOC framework determine whether antidiscrimination law was violated. In

an OSC, MSPB, FLRA, VETS, or Inspector General matter, the relevant entity applies the statute and procedures governing that matter. The final rule preserves those independent channels and does not alter their jurisdiction, deadlines, election requirements, or remedies.

Accordingly, OPM declines to revise the rule to preserve an MSPB mixed-case election for part 731 suitability appeals. The final rule clarifies claim routing, preserves independent statutory remedies, and ensures that OPM's review remains focused on the suitability determination and action committed to OPM under part 731.

F. Limitation on Judicial Review

In the final rule, OPM provides that a party may not obtain judicial review of an OPM decision issued under this subpart and that there is no further right of appeal from a final OPM decision. Commenters 0207, 0329, and 0332 objected that the rule does not preserve review comparable to Federal Circuit review of MSPB decisions, and commenter 0207 objected generally to eliminating judicial review.

OPM declines to revise the rule in response to these comments. The final rule does not withdraw a statutory right to judicial review. Rather, it reflects that Congress has not provided a statutory right to judicial review of an OPM decision adjudicating a regulatory suitability appeal under part 731. Congress has provided judicial review in the CSRA where it chose to do so. For example, 5 U.S.C. 7703 authorizes judicial review of final orders or decisions of the MSPB. But a final decision issued under this subpart is an OPM decision, not an MSPB order or decision. Nothing in 5 U.S.C. 7703, chapter 75, or chapter 77 grants a party a right to judicial review of an OPM decision issued under this regulatory suitability-appeal process.

Nor did the prior availability of judicial review create an independent statutory entitlement to court review of all suitability appeals. Any Federal Circuit review previously available flowed from OPM's former regulatory decision to route suitability appeals to MSPB, whose final decisions are governed by 5 U.S.C. 7703. The Federal Circuit has recognized that MSPB jurisdiction is not plenary and that, for suitability appeals, former § 731.501 was the regulation that placed those matters within MSPB's jurisdiction. *Folio*, 402 F.3d at 1353, 1356 (Fed. Cir. 2005). OPM has now revised that regulatory forum. Because no statute independently requires MSPB review of part 731 suitability actions, the

elimination of the prior regulatory MSPB route does not eliminate a statutory judicial-review right.

This conclusion follows from the structure of the CSRA. MSPB hears matters placed within its jurisdiction by law, rule, or regulation. *See* 5 U.S.C. 1204(a)(1), 7701(a) (2024). Section 7701(a) supplies procedures for actions otherwise appealable to MSPB; it does not itself make every personnel matter appealable to MSPB. Section 7512(F) further confirms that a suitability action taken by OPM under OPM regulations is not a chapter 75 adverse action. Thus, where OPM or an agency proceeds under part 731, chapter 75 does not supply an independent MSPB or Federal Circuit review path.

The CSRA is a comprehensive and carefully calibrated remedial scheme. The D.C. Circuit has explained that Congress “intentionally provid[ed]—and intentionally [did] not provid[e]—particular forums and procedures for particular kinds of claims.” *Am. Fed’n of Gov’t Emps. v. Secretary of the Air Force*, 716 F.3d 633, 636 (D.C. Cir. 2013); *see also Am. Fed’n of Gov’t Emps. v. Trump*, 929 F.3d 748, 757 (D.C. Cir. 2019). The scheme is “comprehensive and exclusive.” *Grosdidier v. Broad. Bd. of Governors*, 560 F.3d 495, 497 (D.C. Cir. 2009). It regulates Federal employment and prescribes in detail the remedies, forums, and review available for different categories of personnel disputes. *Nyunt v. Broad. Bd. of Governors*, 589 F.3d 445, 448 (D.C. Cir. 2009). That exclusivity applies even where the CSRA provides no relief in a particular circumstance. *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004); *Filebark v. Dep’t of Transportation*, 555 F.3d 1009, 1010 (D.C. Cir. 2009); *Fornaro v. James*, 416 F.3d 63, 67 (D.C. Cir. 2005).

The Supreme Court has applied the same principle. In *United States v. Fausto*, the Court held that the absence of CSRA review rights for a covered category of excepted-service employees was not a gap to be filled by another remedial statute, but a manifestation of Congress’s considered judgment about the scope of review. 484 U.S. 439, 448–49 (1988). In *Elgin v. Dep’t of the Treasury*, the Court held that the CSRA supplied the exclusive review scheme for covered employees challenging covered adverse actions, even where constitutional claims were raised. 567 U.S. 1, 11–15 (2012). These decisions confirm that the relevant question is not whether judicial review would be desirable as a policy matter, but whether Congress provided it for the action, forum, claim, and party at issue.

Further, having decided to channel suitability appeals to OPM instead of the MSPB, OPM cannot itself confer, by regulation, a right to judicial review of its decisions in suitability actions. It is black-letter constitutional law that the “United States, as sovereign, is immune from suit save as it consents to be sued,” and “the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.” *United States v. Sherwood*, 312 U.S. 584, 586 (1941). It is equally well established that such consent must come from Congress: waivers of sovereign immunity must be “unequivocally expressed in statutory text”. *Lane v. Peña*, 518 U.S. 187, 192 (1996). The Supreme Court has held that without specific statutory authorization, no suit may be brought against the United States, and “no officer by his action can confer jurisdiction.” *United States v. Shaw*, 309 U.S. 495, 501 (1940). The CSRA waives the Federal Government’s sovereign immunity and authorizes judicial review of MSPB decisions. That waiver, however, extends to petitions for review of final MSPB orders and decisions under 5 U.S.C. 7703; it does not extend to an OPM decision issued under this subpart. The provisions of the final rule stating that a party cannot obtain judicial review of a decision under this subpart accordingly do not withdraw any consent to suit that Congress has given. They reflect OPM’s considered view, explained below, that Congress has neither provided a specific avenue of judicial review for these decisions nor left them subject to review under the general provisions of the Administrative Procedure Act (APA), because the CSRA’s comprehensive and exclusive remedial scheme precludes such review.

OPM acknowledges that sovereign immunity, standing alone, would not bar every suit challenging a final OPM decision under this subpart. In 1976, Congress amended 5 U.S.C. 702 to waive the Federal Government’s sovereign immunity in actions “seeking relief other than money damages” against an agency or its officers or employees. Public Law 94–574, 90 Stat. 2721 (1976). A suit challenging a final OPM decision under this subpart that seeks only nonmonetary relief—for example, an order setting aside the suitability action—accordingly would not confront a sovereign-immunity bar as such. The dispositive question for such a suit is not immunity but reviewability. Section 702 waives immunity subject to existing limits: it expressly preserves “other limitations

on judicial review” and confers no authority to grant relief that any other statute granting consent to suit expressly or impliedly forbids. 5 U.S.C. 702. And the APA’s judicial-review provisions do not apply to the extent that “statutes preclude judicial review.” 5 U.S.C. 701(a)(1). Congressional intent to preclude review need not be express; it may be “fairly discernible” from the structure of a statutory scheme that channels claims through a particular administrative path. *Block v. Community Nutrition Institute*, 467 U.S. 340, 345, 349, 351 (1984); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994); *Elgin*, 567 U.S. at 10. As explained below, the CSRA is such a scheme with respect to challenges to Federal personnel actions.

OPM also disagrees that the APA independently requires judicial review of OPM’s final decision under this subpart. OPM recognizes that 5 U.S.C. 704 makes reviewable “final agency action for which there is no other adequate remedy in a court,” and that a final OPM decision under this subpart is final agency action. OPM further recognizes that, because this rule replaces the former avenue of MSPB adjudication followed by judicial review under 5 U.S.C. 7703, an appellant will have no alternative judicial remedy for a suitability action, so section 704’s adequate-alternative-remedy limitation would not itself bar an APA claim. But section 704 identifies which agency actions are reviewable when judicial review is otherwise available; it does not supply review that the governing statutory scheme withholds. The APA does not create review where statutes preclude review, and it does not allow parties to bypass the exclusive remedial structure Congress established for Federal personnel disputes. *See* 5 U.S.C. 701(a)(1), 704; *Fausto*, 484 U.S. at 448–49; *Elgin*, 567 U.S. at 11–15. In *Fausto*, the Supreme Court held that the CSRA’s “integrated scheme of administrative and judicial review” forecloses review outside its terms even for employees to whom the statute gives no right of review at all. 484 U.S. at 443–49. The courts of appeals have repeatedly applied that holding to bar APA suits over Federal employment actions. *Fornaro v. James*, 416 F.3d 63, 66–67 (D.C. Cir. 2005) (“what you get under the CSRA is what you get”); *Grosdidier v. Chairman, Broadcasting Board of Governors*, 560 F.3d 495, 497 (D.C. Cir. 2009); *Filebark v. United States Department of Transportation*, 555 F.3d 1009, 1010–14 (D.C. Cir. 2009); *Graham v. Ashcroft*, 358 F.3d 931, 933–35 (D.C. Cir. 2004); *Nyunt v. Chairman*,

Broadcasting Board of Governors, 589 F.3d 445, 448 (D.C. Cir. 2009). Those decisions confirm that CSRA preclusion applies even where the statute affords the claimant no avenue of relief. The final rule therefore does not use regulation to extinguish a statutory judicial-review right; it clarifies that the part 731 regulatory appeal process itself does not create one.

OPM acknowledges one respect in which this rulemaking differs from *Fausto* and *Elgin*: here, the unavailability of further review results in part from OPM's revision of its own regulations rather than solely from the CSRA's text. But the premise of that revision is statutory. Congress provided in 5 U.S.C. 7512(F) that chapter 75's adverse-action provisions do not apply to a suitability action taken under OPM's regulations, and the MSPB appeal path that this rule replaces existed only as a matter of OPM regulation. The architecture of review for suitability actions thus rests, within the CSRA's comprehensive framework, on OPM's regulations, and the *Fausto-Elgin* structural analysis governs the resulting scheme. In any event, this rule neither enlarges nor contracts the jurisdiction of the Federal courts, which is fixed by statute; whether a particular suit may proceed under 5 U.S.C. 702 and 704 is ultimately a question for the courts to decide. Nor does anything in this subpart purport to preclude judicial review of colorable constitutional claims, which courts require a heightened showing of congressional intent to foreclose. *Webster v. Doe*, 486 U.S. 592, 603 (1988).

Finally, the limitation on judicial review applies to OPM's decision under this subpart. Revised § 731.501(e) preserves an applicant's, appointee's, or employee's ability to file a complaint, appeal, or other matter within the independent jurisdiction of the EEOC, FLRA, an Inspector General, MSPB, the Department of Labor's Veterans' Employment and Training Service, or OSC. Accordingly, the final rule does not foreclose independent statutory remedies; it provides that the final OPM decision resolving a part 731 suitability appeal is not subject to further administrative appeal or judicial review under part 731.

G. Recruitment, Retention, and Workforce Concerns

Several commenters, including commenter 0097, expressed concern that the proposed rule would negatively affect hiring, retention, morale, and trust in Federal personnel systems because employees and potential applicants rely on predictable, transparent, and fair

suitability procedures. Other commenters, including commenter 0166, supported the rule, stating that existing processes can be burdensome and may discourage agencies from acting when serious conduct raises suitability concerns, thereby allowing conduct that harms workplace culture, mission performance, and accountability to persist. Similar comments in the record reflected both sets of concerns: some commenters warned that reduced protections could deter Federal service, while others acknowledged that existing processes may be slow or may discourage warranted action.

OPM agrees that public confidence in the Federal personnel system is essential to recruitment and retention. But confidence is not served only by preserving existing procedures. It is also served by ensuring that suitability concerns are resolved promptly, consistently, and under procedures that are clear to applicants, appointees, employees, agencies, and the public. A system that leaves serious suitability concerns unresolved for extended periods can itself harm morale, workplace trust, mission effectiveness, and the willingness of high-performing employees to remain in Federal service.

OPM disagrees that MSPB review is necessary to maintain a stable and attractive Federal workforce. This rule does not make suitability actions at-will dismissals, does not add political or viewpoint-based suitability criteria, and does not eliminate procedural protections. Suitability actions remain limited to actions taken under part 731 because of an unfavorable suitability determination, and appellants may contest both the unfavorable suitability determination and specified procedural failures. The final rule also adds safeguards beyond the proposal, including express burdens of proof, a complete certified agency record, disclosure protections, separation-of-functions requirements, adjudicator conflict rules, ex parte protections, training requirements, ALJ adjudication or administrative judge-presided hearings where required by the rule, objective criteria for additional fact development and hearings, written findings on material charges and suitability factors, remedies for prevailing appellants, reconsideration standards, and public availability of final merits decisions or de-identified summaries.

These protections respond directly to commenters' concerns that a streamlined process could reduce fairness or transparency. At the same time, the final rule responds to

commenters who emphasized the costs of delay and under-enforcement. A suitability system that is too cumbersome to use effectively can undermine accountability and public trust by deterring agencies from addressing conduct that bears on the integrity or efficiency of the service. The final rule seeks to avoid both errors: unsupported or procedurally defective suitability actions should not be sustained, but supported suitability actions should be resolved without unnecessary duplication or delay.

Accordingly, OPM does not expect this final rule to deter qualified applicants from seeking Federal employment or discourage employees from continuing their service. OPM expects the rule to promote a more predictable, timely, and accountable suitability appeals process while preserving meaningful procedural protections and reinforcing the integrity and efficiency of the Federal service.

H. Sanctions and Protective Orders

Several commenters, such as 0296, 0299, 0303, 0329, and others, expressed concern that the proposed sanctions for noncompliance are excessively severe, and that the sanctions and protective-order provisions in the proposed rule were overly broad and insufficiently justified. Commenters argued the language improperly expanded OPM's authority by allowing OPM to issue protective or "cease-and-desist" orders *sua sponte*, preemptively, and outside the context of actual harassment. Commenters further asserted that the proposal could restrict First Amendment-protected speech, employee advocacy, union communications, whistleblowing, and other protected disclosures by limiting the use or communication of appeal-related information.

OPM has considered these comments and is narrowing § 731.506 in the final rule. The final rule does not adopt the broad "reasonably be foreseen to lead to harassment" formulation and does not authorize OPM to bar use of any information related to an appeal for any purpose whatsoever. Instead, OPM may issue a protective order or cease-and-desist directive only to protect the integrity of the adjudicatory process; prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information; or prevent misuse of nonpublic information obtained through the appeal. The final rule also adds two limiting principles. Any protective order must be no broader than reasonably necessary, and any such

order must not restrict lawful communications protected by law.

OPM declines to remove protective-order authority entirely. Because OPM will adjudicate appeals under part 731, it must have reasonable procedural tools to protect witnesses, parties, protected personal information, nonpublic appeal materials, and the integrity of the adjudicatory record. OPM also retains authority to act *sua sponte* or preemptively where necessary, because threats to the process, improper witness contact, or disclosure of protected information may arise before a party files a motion or before harm has fully occurred. That authority is limited to matters connected to an appeal under part 731 and to the specific purposes identified in § 731.506(a).

The final rule does not prohibit an appellant from discussing the appellant's own experience, seeking advice or representation, communicating with a union representative or attorney, filing or pursuing a matter before another authorized forum, making protected whistleblower disclosures, communicating with Congress, or engaging in any other communication protected by law. As revised, § 731.506 is a tailored case-management provision designed to protect the fairness and integrity of the adjudicatory process.

As finalized, § 731.506 is not a general authority for OPM to restrict speech, control communications unrelated to an appeal, or create a procedural trap for appellants. OPM may issue a protective order or cease-and-desist directive only for specified process-integrity purposes: to protect the integrity of the adjudicatory process; prevent threats, intimidation, targeted harassment, improper witness contact, or disclosure of protected personal information; or prevent misuse of nonpublic information obtained through the appeal. The final rule further provides that any protective order must be no broader than reasonably necessary and must not restrict lawful communications protected by law. These limitations directly address commenter concerns that the proposed language could be read too broadly.

OPM also clarifies that a violation of a protective order will not automatically result in denial or dismissal of an appeal. Section 731.506 is a case-management provision, not a dispositive merits rule. If a party violates a lawful protective order, OPM may impose only case-related sanctions appropriate to the violation, such as drawing an adverse inference, limiting a party's reliance on improperly used evidence, or excluding appropriate portions of a filing or

submission. Any such consequence must be tied to the violation and to the integrity of the adjudicatory process; it may not be used to avoid deciding the appealable issues under § 731.501(c).

In sum, OPM appreciates and has revised this section to reflect valid concerns raised by the commenters, and is finalizing language that is narrower and clearer, to ensure that the authority—both the protective order and sanctions for violation thereof—are used only to protect the fairness and integrity of the part 731 adjudication process.

I. Remedies

Commenter 0296 objected that proposed § 731.505(h) appeared to limit prevailing appellants principally to Back Pay Act relief and would delay payment of back pay, interest, and attorney fees until OPM's decision became final. The commenter also argued that excluding discrimination claims from the suitability appeal process would deny compensatory damages in that forum.

OPM agrees in part and has revised the remedies provision to better reflect the range of relief that may be appropriate in a suitability appeal. The final rule no longer frames relief solely in Back Pay Act terms. Instead, final § 731.505(g) provides that, if the appellant is the prevailing party, OPM will order appropriate relief authorized by law, which may include correction, cancellation, or modification of the suitability action; correction of relevant records; prospective eligibility or appointment-related relief; and, where applicable and legally authorized, back pay, interest, and reasonable attorney fees consistent with 5 CFR part 550, subpart H.

This revision is important because part 731 appeals may involve applicants, appointees, or employees and may concern cancellation of eligibility, removal, cancellation of reinstatement eligibility, or debarment. A remedy limited to back pay would not adequately account for cases involving applicants or eligibility-based actions. The final rule therefore expressly authorizes relief tailored to the suitability action at issue, including correction of records and prospective eligibility or appointment-related relief where authorized.

OPM also revised the proposed rule's treatment of interim relief. The final rule removes the proposed language stating that back pay, interest, or attorney fees are not payable before the decision becomes final. Instead, if a party timely seeks reopening and reconsideration, or if the OPM Director reopens and reconsiders an initial

decision, the responsible agency must continue to provide ordered relief unless OPM issues a stay. The final rule further provides that no stay may deprive the individual of pay and benefits while the initial decision is pending reconsideration. This change addresses the commenter's concern that relief could be unduly delayed after an appellant prevails.

OPM declines, however, to authorize compensatory damages or other relief not available under applicable law in a part 731 suitability appeal. The purpose of subpart E is to determine whether the unfavorable suitability determination and resulting suitability action are supported and whether the required suitability-action procedures were followed. It is not an EEO adjudication, a prohibited-personnel-practice proceeding, or a general damages forum. Accordingly, the final rule provides that the appellant is not entitled to compensatory damages or other relief not authorized by law.

This limitation does not preclude remedies available in another forum. Section 731.501(e) makes clear that the part 731 appeal process does not prevent an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the EEOC, FLRA, an Inspector General, MSPB, DOL VETS, or OSC. Thus, if compensatory damages or other relief are authorized in an EEO or other statutory process, this rule does not limit those remedies. The final rule simply confines remedies in the part 731 appeal to relief legally available for correcting an improper suitability determination or suitability action.

J. Appellant Representatives, Union Involvement, and Official Time

Commenters 0303, 0332, 0333, and 0329 objected to the proposed representative provisions, arguing that the restriction on Federal-employee representatives serving while on duty status or official time conflicts with 5 U.S.C. 7131, collective-bargaining agreements, and established representational rights. Commenter 0333 also argued that the rule would eliminate negotiated grievance and arbitration rights for bargaining-unit employees. Commenters 0043, 0249, 0250, 0252, and others raised similar concerns about OPM's authority to disallow a chosen representative.

OPM recognizes the importance of representation in suitability-action appeals. For that reason, the final rule preserves an appellant's right to select a representative of the appellant's choice to assist in preparing and presenting an

appeal. It also makes notice of the right to representation one of the procedural protections that an appellant may challenge as an improper procedure if the responsible agency failed to provide it.

OPM does not agree, however, that a Federal employee selected as a representative must be permitted to perform representational functions in duty status or on official time in this OPM regulatory appeal process. A part 731 appeal is not a negotiated grievance proceeding under chapter 71. It is a governmentwide suitability-appeal procedure established by OPM for review of suitability actions under part 731. Section 7131(d) does not create an unconditional entitlement to official time for every representational activity in every forum; it provides for official time in amounts the agency and exclusive representative agree are reasonable, necessary, and in the public interest. Section 7117(a)(1), in turn, provides that the duty to bargain extends only to the extent not inconsistent with Federal law or any governmentwide rule or regulation.

Accordingly, OPM is adopting § 731.504(b) as a governmentwide procedural limitation for this appeal process. The provision does not “delete” statutory text or eliminate the right to representation. It specifies that, when the chosen representative is a Federal employee, that representative may not perform the representational function in duty status, including official time under 5 U.S.C. 7131, and may not claim agency reimbursement for expenses incurred while performing that representational function. OPM concludes that agencies should not be required, through this OPM appeal process, to subsidize the prosecution or defense of individual suitability appeals through duty time, official time, or reimbursement of representative expenses, except where otherwise required by law.

Commenters’ reliance on prior official-time precedent does not require a different result. In *AFGE, National INS Council*, 45 FLRA 391 (1992), and *INS v. FLRA*, 4 F.3d 268 (4th Cir. 1993), the FLRA and court addressed negotiability of official time for statutory appeals in the absence of a controlling prohibition. The Fourth Circuit specifically noted that it found no statute or regulation precluding the negotiated official-time provision at issue. This final rule supplies a governmentwide regulatory limitation for part 731 appeals; those decisions do not hold that OPM is barred from adopting such a rule for a regulatory appeal process that OPM itself establishes.

OPM also disagrees that the official-time limitation makes the appeal right illusory or denies meaningful representation. An appellant may represent himself or herself; retain an attorney; select a non-Federal representative; select a union representative; or select a Federal employee representative who serves outside duty status. The rule does not prohibit a union from advising an appellant, does not prohibit a union official from serving as representative outside duty status, and does not limit representation in proceedings where official time is independently authorized by law. It only prevents a Federal employee representative from performing the part 731 appeal function while in duty status or from claiming agency reimbursement for that function.

OPM also declines to remove the representative-disallowance provision. Section 731.504(c) does not authorize arbitrary disallowance of representatives. It applies only when the selected representative is an employee of the responsible agency or OPM, and only when the representative’s activities would cause a conflict of interest or position. In response to comments, the final rule narrows this provision from the proposal by removing the additional grounds that would have permitted disallowance based on the priority needs of the Government or unreasonable costs to the Government. The remaining, narrowed provision is tailored to genuine conflicts of interest or position; it does not authorize OPM or an agency to disallow a representative merely because the representative is affiliated with a union or because the agency disagrees with the appellant’s position.

Nor does the final rule eliminate matters that are independently within FLRA jurisdiction or other collateral statutory forums. Section 731.501(e) provides that subpart E is the sole means of appealing a suitability action under part 731, but does not otherwise preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the FLRA or other listed entities. Thus, disputes over collective-bargaining obligations, unfair labor practices, or contract interpretation remain subject to the statutory framework governing those matters. To the extent a negotiated grievance procedure purports to provide an alternative forum for deciding the merits of a part 731 suitability action, however, this governmentwide regulation governs the appeal procedure for that suitability action. *See U.S. Dep’t of the Treasury, IRS v. FLRA*, 996 F.2d

1246, 1250 (D.C. Cir. 1993) (5 U.S.C. 7117(a)(1) “permits the government to pull a subject out of the bargaining process by issuing a governmentwide rule that creates a regime inconsistent with bargaining,” including where a regulation “sets out an exclusive method of resolving any claims”).

For these reasons, OPM declines to remove § 731.504(b) or § 731.504(c). The final rule preserves the appellant’s right to representation while reasonably limiting agency-funded representational activity and preserving OPM’s ability to prevent conflicts of interest, mission disruption, and unreasonable costs in the administration of this governmentwide suitability-appeal process.

K. Training/Qualifications

Commenters such as 0194, 0195, and 0332 questioned whether OPM personnel assigned to adjudicate suitability action appeals would have sufficient training, qualifications, and expertise to perform that function and asserted that the quality and rigor of the adjudicator process would diminish when compared to MSPB administrative judges and other legally trained adjudicators.

OPM appreciates the comments concerning the training and qualifications of personnel who will adjudicate suitability action appeals. OPM agrees that individuals assigned to review suitability action appeals must be qualified to evaluate the record, apply the suitability factors in § 731.202(b), and determine whether the suitability determination is supported by a preponderance of the evidence. OPM does not agree, however, that meaningful review of suitability-action appeals requires adjudication by MSPB administrative judges. Suitability appeals require specialized knowledge of part 731, suitability factors, suitability-action procedures, mitigating and exculpatory evidence, action-selection principles, and the evidentiary standards applicable to suitability determinations. OPM is the agency responsible for prescribing, interpreting, and administering the governmentwide suitability framework, and it is well positioned to ensure that adjudicators assigned to these appeals are trained in the standards they must apply.

Section 731.505(c) of the final rule requires that all OPM employees and administrative law judges assigned by OPM to adjudicate appeals complete training that complies with national training standards for suitability adjudicators. These standards are not new. OPM has required training in accordance with national suitability

adjudicator standards since 2012, and OPM provides governmentwide training that complies with those standards. The final rule formalizes that qualification requirement for personnel assigned to adjudicate suitability action appeals.

OPM also disagrees with comments suggesting that the use of trained OPM personnel will result in less rigorous review. The final rule also adds several safeguards that reinforce adjudicatory rigor beyond training alone. The responsible agency bears the burden to establish, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action. The responsible agency must submit a complete, indexed, paginated, and certified record, including the charge-by-charge analysis, suitability-factor analysis, consideration of mitigating, rehabilitative, contradictory, or exculpatory evidence, and the rationale for the action selected.

Under the final rule, appeal adjudicators must review the record under the preponderance of the evidence standard and determine whether the unfavorable suitability determination and resulting suitability action are supported under that standard. The initial decision must make findings on each material charge, specification, and suitability factor relied upon to support the action, and if fewer than all charges or specifications are sustained, OPM must determine whether the sustained grounds support the suitability action imposed.

The final rule's fact-development provisions will ensure that adjudicators have tools to address incomplete records or disputed material facts. OPM may require either party to provide additional information and may investigate where the existing record is insufficient to resolve a material issue and further development is reasonably likely to produce material information. If the written record is insufficiently developed to decide the appeal because of disputes involving one or more material facts, the final rule permits OPM to conduct further investigation or hold a hearing to evaluate witness credibility. These procedures require adjudicators to apply the governing suitability standards to the record and provide a mechanism to address material evidentiary gaps when they arise.

Accordingly, OPM declines to require MSPB adjudication as a prerequisite for qualified and rigorous review. The final rule instead establishes a specialized suitability-appeal process in which

adjudicators must be trained in national suitability-adjudicator standards and must operate within a framework that includes burden-of-proof rules, complete-record requirements, disclosure protections, separation-of-functions safeguards, ex parte restrictions, conflict-of-interest disqualification, objective criteria for additional fact development and hearings, and written findings on the material issues. OPM concludes that these requirements provide sufficient expertise, rigor, and procedural integrity for adjudicating part 731 suitability-action appeals.

L. Transparency and Publication of Decisions

OPM received comments expressing concern that the proposed suitability-appeals process would reduce transparency because filings would be accessible only to the parties and the proposed rule did not specify how OPM would make appeal decisions available to the public. Commenters 0296 and 0005, for example, asserted that without public, searchable, reasoned decisions, the new process could impair public oversight, reduce consistency, and increase the risk or perception of favoritism. Commenters recommended that OPM publish redacted or precedential decisions to promote transparency and consistent application of part 731.

OPM agrees in part. Transparency in suitability-action adjudication promotes public confidence, assists agencies and appellants in understanding how OPM applies part 731, and supports consistency across cases. At the same time, suitability appeals often involve sensitive personal, investigative, medical, financial, employment, law-enforcement, classified, national-security, or otherwise protected information. Public disclosure of full appeal records could unnecessarily expose private information about appellants, witnesses, agencies, and third parties, and could undermine legal privileges or other disclosure restrictions.

The final rule therefore adopts a balanced approach. OPM will make publicly available final merits decisions or de-identified summaries of final merits decisions, consistent with 5 U.S.C. 552, the Privacy Act, and other applicable law. Public summaries will identify the procedural posture, sustained and unsustained suitability factors, disposition, and remedy, without disclosing protected information. In addition, final merits decisions will be made available upon request to the applicant, appointee, or

employee involved in the proceeding, the appellant's representative under § 731.504, or the representative of the Federal agency or office involved in the proceeding with a need to know.

OPM is not adopting a requirement that all filings or complete case records be made publicly available. The final rule limits access to documents in OPM's electronic filing system to the parties and their representatives in the case, and separately permits inspection of OPM's appellate record subject to the Privacy Act, applicable privileges, classified-information or national-security requirements, protective orders, and other legal limits. This protects privacy and legally protected information while ensuring that the parties have access to the record needed to litigate the appeal.

OPM also is not adopting a separate precedential-decision regime in this rule. The final rule instead promotes consistency through reasoned initial decisions that must make findings on each material charge, specification, and suitability factor, and through public availability of final merits decisions or de-identified summaries. This approach provides public insight into OPM's application of the suitability standards while preserving flexibility to protect sensitive information and to determine, consistent with law, whether a full final merits decision or a de-identified summary is the appropriate public vehicle in a particular case.

Accordingly, OPM has revised the final rule to provide greater transparency than the proposal while protecting privacy, national-security, privileged, and other legally protected information. OPM concludes that the publication framework in § 731.509(e), together with the final rule's requirements for reasoned decisions, record access by the parties, and public summaries or decisions, appropriately addresses commenters' transparency concerns without making sensitive appeal filings publicly available.

M. Types of Positions Covered

Commenter 0336 objected to the rule's application to competitive-service employees, including tenured employees, and career SES members. The commenter asserted that applying suitability actions to post-appointment conduct is a novel expansion that circumvents chapter 75 protections, treats competitive-service employees less favorably than some excepted-service employees, lacks statutory support for career SES members, and improperly changes the mechanisms available for removing tenured Federal employees.

OPM disagrees with the commenter's characterization of this rule and declines to revise the rule on that basis. This final rule does not expand the categories of positions or individuals subject to part 731, create new substantive suitability factors, authorize new suitability actions, or alter the circumstances under which OPM or an agency may take a suitability action. It revises only subpart E—the forum and procedures for appealing a suitability action taken under part 731. Revised § 731.501(a) limits the appeal right to an applicant, appointee, or employee in the competitive service or career Senior Executive Service, as those terms are used in part 731, who is subject to a suitability action because of an unfavorable suitability determination. Revised § 731.501(c) further limits appealable merits issues to determinations based on the specific suitability factors in § 731.202(b) that resulted in a suitability action as defined in § 731.101(a), and § 731.501(d) confirms that an unfavorable suitability determination that does not result in a suitability action is not appealable under this subpart.

The commenter's objections to the use of suitability authority for post-appointment conduct are addressed in the separate *Suitability and Fitness* final rule. See 91 FR 39361. That rule addresses the substantive scope of part 731 and explains OPM's authority to make suitability determinations and take suitability actions under the President's and OPM's civil service authorities. This appeals rule assumes only that a suitability action has been taken under part 731 and prescribes the procedure for administrative review of that action. It therefore does not itself convert ordinary misconduct, performance deficiencies, or chapter 75 matters into suitability matters.

OPM also disagrees that this rule circumvents chapter 75. Chapter 75 remains available when an agency proceeds under chapter 75. When OPM or an agency proceeds under part 731, however, Congress has provided that chapter 75 does not apply to “a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service.” 5 U.S.C. 7512(F). OPM does not rely on section 7512(F) as an independent expansion of substantive suitability authority; rather, the provision confirms that, where a suitability action is lawfully taken under part 731, chapter 75 does not supply the governing appeal route.

Nor is the inclusion of career SES members improper. Part 731 has long applied to career SES appointments, and OPM does not read chapter 75's SES provisions to displace the President's and OPM's separate suitability authority when OPM acts under the civil-service rules and part 731. Section 7543 governs actions covered by subchapter V of chapter 75. A suitability action under part 731 is taken under separate suitability authority and remains subject to part 731's substantive limits and procedural requirements.

N. Timely Filing

OPM received a comment objecting to the proposed requirement that an appellant bear the burden to demonstrate, by a preponderance of the evidence, that the appeal was timely. Commenter 0301 stated that this requirement is unfair to appellants.

OPM disagrees. Timely filing is a threshold requirement for invoking OPM's appeal process, and it is reasonable to place the burden on the party seeking review to show that the appeal was filed within the applicable deadline or that good cause exists for an untimely filing. In the final rule, OPM has consolidated this requirement in § 731.501(b)(1), which provides that the appellant bears the burden to demonstrate the timeliness of the written appeal and OPM's jurisdiction by a preponderance of the evidence. This threshold burden is separate from the merits burden. If the appellant contests the unfavorable suitability determination and establishes timeliness and jurisdiction, the responsible agency bears the burden to prove, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action.

The final rule also provides clear filing rules. An appellant may file an appeal within 30 calendar days from the effective date of the suitability action. An appeal is timely if electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action. The rule explains how to calculate the filing period, including that the first day counted is the day after the effective date; that, for an appointee or employee, the effective date is the date the employing agency effectuates the action; and that, for an applicant, the effective date is the date on the notice of final action. When a notice of final action is served on an applicant by mail, 10 calendar days are added to the date of the notice for purposes of the filing deadline. If the last day falls on a

Saturday, Sunday, or Federal holiday, the filing period extends to the first workday after that date.

The final rule also preserves flexibility for appropriate cases. If an appeal is not filed within the regulatory deadline, it will be dismissed as untimely unless the appellant demonstrates good cause for the untimely filing. Section 731.503(g) separately provides that untimely filings may be accepted upon a party's showing of good cause, in OPM's sole and exclusive discretion. OPM declines to codify a fixed list of good-cause factors, but may consider the relevant facts and circumstances presented, including whether the appellant acted diligently, whether the delay resulted from circumstances outside the appellant's control, and whether the appellant timely sought any needed e-filing exemption.

Accordingly, OPM concludes that the timeliness burden is a reasonable threshold requirement. It provides certainty, promotes orderly adjudication, and does not alter the responsible agency's burden to prove the merits of the suitability determination and action once the appeal is properly before OPM.

O. Electronic Filing System

OPM received comments raising concerns about the proposed electronic filing requirement. Commenter 0183 questioned the readiness, administration, funding, and cost assumptions associated with the e-filing system. Commenter 0296 expressed concern that mandatory e-filing could reduce access for individuals with disabilities if the system is not accessible and compliant with applicable accessibility requirements. Commenter 0197 raised concerns that individuals without reliable email or internet access could be disadvantaged in pursuing an appeal.

OPM appreciates these comments but will retain electronic filing as the default method for suitability-action appeals. Electronic filing supports a more efficient, reliable, and orderly appeal process by allowing parties to submit filings, receive service, view case documents, and monitor case activity through a centralized system. It also provides a clear filing timestamp, reduces delays associated with paper mail and manual distribution, and helps OPM maintain a complete administrative record.

The final rule includes safeguards to ensure that the e-filing requirement does not prevent meaningful access to the appeal process. Section 731.502(a) provides that filings must be made

through the electronic filing system identified on OPM's website unless a party demonstrates good cause and obtains OPM approval to use another method. Section 731.502(c)(7) further provides that OPM may exempt a party or representative from registering as an e-filer for good cause. A party or representative who cannot use the system must promptly contact OPM, as instructed on OPM's website, to request an exemption before the applicable filing deadline.

OPM also recognizes the importance of accessibility. OPM will administer the electronic filing system consistent with applicable Federal accessibility requirements, including Section 508 of the Rehabilitation Act, 29 U.S.C. 794d. The good-cause exemption provides an additional safeguard for individuals who cannot use the electronic filing system because of disability-related, technological, access-related, or other demonstrated limitations.

The final rule also narrows and clarifies e-filing compliance provisions. Registration as an e-filer constitutes consent to electronic service, and registered users are responsible for maintaining current contact information and monitoring case activity. Documents filed in the system are deemed received on the date of electronic submission. Access to case documents in the system is limited to the parties and their representatives in the cases in which the documents were filed. OPM may strike a document only where an e-filer repeatedly fails to follow filing instructions after receiving a show-cause order. These provisions promote orderly case management while avoiding unnecessary sanctions for isolated or good-faith filing errors.

With respect to system readiness and cost, OPM has secured access to an existing electronic case-management system to receive, track, and manage appeal submissions. OPM has updated the regulatory impact analysis to account for the annual recurring cost of licenses for OPM staff, estimated at \$16,000 annually. OPM does not expect this recurring cost to materially alter the overall cost analysis. OPM will also address any applicable Paperwork Reduction Act, Privacy Act, records-management, and system-of-record requirements associated with collecting and maintaining appeal records.

Accordingly, OPM concludes that electronic filing is appropriate for this appeal process. The final rule promotes timely and reliable filing and service, protects case records, provides good-cause exemptions for individuals who cannot use the system, and will be implemented consistent with applicable

accessibility, privacy, records, and information-management requirements.

P. Length of Comment Period

OPM received several comments asserting that the comment period for the proposed rule was insufficient and violated the Administrative Procedure Act (APA). See Comment 0329 for an example. They argued that the comment period did not provide adequate time for meaningful public participation and cited Executive Order (E.O.) 12866's general statement that agencies should provide at least 60 days for public comment when practicable. The commenters based this argument on multiple sources—first, the APA's mandate that an “opportunity to participate” on proposed rules be provided following a notice of proposed rulemaking; second, as a violation of 5 U.S.C. 553(d); and third, E.O. 12866, which specifies that comment periods should “generally” be at least 60 days.

OPM rejects the argument that the comment period was inadequate as a matter of law or policy. The APA requires agencies to provide interested persons an opportunity to participate in rulemaking through submission of written data, views, or arguments. OPM provided that opportunity. As several appellate courts have held, a 30-day comment period is generally the minimum needed to comply with the APA.²

The commenter's reliance on E.O. 12866 and E.O. 13563 is similarly misplaced. These orders only mandate that comment periods should “generally” be at least 60 days. The policy rationale for that mandate is that stakeholders should have adequate opportunity to meaningfully participate in the notice-and-comment process. Concerning the present rulemaking, OPM received 343 comments, offering perspectives on many aspects of the proposed rule. OPM received hundreds of comments addressing the rule's legal basis, policy justification, procedural design, effect on employees and agencies, relationship to MSPB, relationship to EEOC and OSC processes, possible alternatives, and

potential consequences for the civil service. The breadth and specificity of the comments confirm that interested parties had a meaningful opportunity to comment. Factually, it cannot be said that the comment period was insufficient to allow for meaningful feedback on the proposed rule given the feedback that OPM did receive. The volume of comments received and their wide scope indicate that the 30-day comment period did not meaningfully impair the public's ability to comment on the proposed rule.

Further, in the years since those executive orders were issued, comment periods have not infrequently been shorter, often 30 or 45 days. This is, in part, because agencies, working with the White House, have a great deal of discretion in shortening the comment period based on the facts of the situation. As courts have repeatedly held, “executive orders are not judicially enforceable.”³ That is, as a general matter, executive orders and other White House guidance on the regulatory process bind executive agencies only as a matter of the internal management of the executive branch. Thus, several Federal courts have specifically held that there is no legal requirement that agencies comply with the requirements specified in E.O.s 12866 and 13563.⁴

Accordingly, the 30-day comment period provided by OPM was not “truncated” but was instead well within the APA's procedural requirements and the period that should be considered reasonable in light of the President's executive order compelling agency action.

Q. Interaction With the June 2025 Suitability and Fitness NPRM and Other Personnel Rulemakings

Commenters 0207/0286, 0288, 0303, 0334, 0332, 0314, 0330, and 0329 argued that this rule should not be evaluated in isolation from other recent or pending OPM personnel rulemakings, including the June 2025 Suitability and Fitness NPRM. Several commenters asserted that the rulemakings, viewed

² See *Chamber of Com. of the U.S. v. U.S. Sec. & Exch. Comm'n*, 85 F.4th 760, 779 (5th Cir. 2023) (“the APA generally requires only a minimum thirty-day comment period.”); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992) (“Although the APA mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment.”); *Nat'l Lifeline Ass'n v. Fed. Comm'n's Comm'n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (“When substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.”).

³ *Sierra Club v. U.S. Dep't of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 913 (D.C. Cir. 2024)); see also *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1338–39 (4th Cir. 1995) (no private right of action to enforce executive order unless issued pursuant to a statutory mandate or delegation by Congress).

⁴ *Nat'l Mining Ass'n v. United Steel Workers*, 985 F.3d 1309, 1326–27 (11th Cir. 2021) (holding that E.O. 12866 and E.O. 13563 specifically are not judicially enforceable); *Miller v. Garland*, 674 F.Supp.3d 296, 307 (E.D. Va. 2023), appeal dismissed, No. 23–1604, 2024 WL 4973474 (4th Cir. July 30, 2024) (holding that E.O. 12866 is not judicially enforceable).

together, would expand the use of suitability actions while reducing independent review, judicial review, discovery, hearings, and other procedural protections. Some commenters also argued that OPM's decision to proceed through several separate rulemakings addressing related personnel subjects deprived the public of a meaningful opportunity to comment or violated the APA.

OPM has considered these comments and disagrees that the APA required OPM to combine this rulemaking with the June 2025 Suitability and Fitness rulemaking, delay this rulemaking, reopen the comment period, or provide a separate comment period devoted solely to the interaction among this rulemaking and other personnel rulemakings. The APA requires a notice of proposed rulemaking to identify the time, place, and nature of the proceeding; the legal authority for the proposal; and either the proposed rule's terms or substance or a description of the subjects and issues involved. After notice, the agency must provide interested persons an opportunity to submit written data, views, or arguments and must consider the relevant matter presented. 5 U.S.C. 553(b)–(c). The fair-notice inquiry asks whether the final rule is a logical outgrowth of the proposal; it does not require an agency to combine every related regulatory initiative into a single omnibus rulemaking.

This rulemaking satisfied those APA requirements. The proposed rule identified the affected CFR Part and subpart, provided proposed regulatory text for subpart E of part 731, described the proposed transfer of the suitability-action appeal process from MSPB to OPM, explained the proposed procedures for filing and adjudicating appeals, invited public comment, and set a comment deadline. The NPRM also expressly identified the June 2025 Suitability and Fitness NPRM, explained that the June NPRM addressed separate changes to subparts A, B, C, and D of part 731, and stated that this suitability-appeals rule was limited to subpart E and would operate independently of the June NPRM. OPM also addressed the potential cost implications if both rulemakings were finalized, further confirming that OPM did not conceal the possible interaction between the rulemakings.

The APA does not prohibit an agency from pursuing several rulemakings at the same time, even where those rulemakings concern related aspects of a broader regulatory program.

Agencies may proceed through separate rulemakings where, as here, the

rules amend different regulatory provisions, address distinct legal and operational questions, rest on separate administrative records, and can operate independently. This final rule concerns the forum and procedures for appealing suitability actions under subpart E of part 731. The June 2025 Suitability and Fitness rulemaking addressed the substantive suitability and fitness standards and the authority and procedures for taking suitability actions under other subparts of part 731. Other personnel rulemakings referenced by commenters concerned different regulatory parts or different subjects, such as probationary or trial-period appeals, reductions in force, or performance appraisals. Those subjects may be related in the broad sense that they concern Federal personnel administration, but they are not the same rulemaking.

Nor did the use of separate rulemakings prevent meaningful public comment. The proposed rule disclosed the relationship between this suitability-appeals rulemaking and the June 2025 Suitability and Fitness NPRM, and commenters in fact submitted extensive comments addressing the alleged cumulative effects of the rulemakings. The comments received demonstrate that interested parties understood OPM was proceeding through separate but related rulemakings and had a meaningful opportunity to raise interaction-based objections. OPM has considered those objections.

OPM also disagrees that separate rulemakings were an attempt to evade the APA. Proceeding separately allowed commenters to focus on the specific legal authority, regulatory text, operational effects, and policy rationale for each proposal. Combining all contemporaneous personnel proposals into a single omnibus rulemaking would not necessarily have improved notice or public participation; it could instead have obscured the issues by combining distinct statutory questions, regulatory provisions, and administrative records in one proceeding. The APA does not require that result.

At the same time, OPM recognizes that commenters' interaction-based concerns were principally about the procedural protections that would apply to any covered suitability action. OPM has therefore revised subpart E to strengthen the appeal process. The final rule clarifies the appellant's right to contest an unfavorable suitability determination and specified procedural failures; expressly allocates burdens of proof; requires the responsible agency to provide a complete, indexed, paginated, and certified record of the action;

requires disclosure or appropriate treatment of withheld, redacted, privileged, classified, national-security, or otherwise protected material; prohibits reliance on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance and a meaningful opportunity to respond, except as otherwise authorized by law; codifies separation-of-functions and ex parte safeguards; provides objective criteria for investigation and hearings; requires an administrative judge to preside over any hearing; requires findings on each material charge, specification, and suitability factor; and preserves matters within the independent jurisdiction of other forums, including EEOC, FLRA, Inspectors General, MSPB, DOL VETS, and OSC.

These revisions address procedural concerns raised by commenters without changing the scope of this rulemaking. This final rule does not itself amend the substantive suitability factors, expand the grounds for taking suitability actions, or decide whether any separate amendments to subparts A, B, C, or D of part 731 should be finalized. If separate substantive amendments to part 731 are finalized, the appeal procedures in this final rule will apply to covered suitability actions under part 731. If those separate amendments are not finalized, this final rule will still operate as the appeal procedure for suitability actions that are otherwise covered by part 731. In either circumstance, the procedures in subpart E are capable of operating independently.

For these reasons, OPM does not adopt commenters' argument that the APA required a consolidated rulemaking or a reopened comment period. OPM has considered the asserted interaction among this rulemaking, the June 2025 Suitability and Fitness rulemaking, and other personnel rulemakings, and has strengthened the final appeal procedures in response to commenters' procedural concerns.

R. Suitability Determinations Versus Security-Clearance or National-Security Determinations

Commenter 0329 asserted that the proposed rule appeared to conflate suitability determinations with eligibility determinations for access to classified information or assignment to, or retention in, sensitive national-security positions. OPM agrees that these determinations are distinct and clarifies that this rule does not merge them. Part 731 itself distinguishes suitability determinations and actions

from determinations of eligibility for access to classified information or for assignment to, or retention in, sensitive national-security positions made under E.O. 12968, E.O. 10865, E.O. 13467, or similar authorities. This final rule amends only the appeal procedures in subpart E of part 731 and applies only to a suitability action taken because of an unfavorable suitability determination. Revised § 731.501(a) limits the appeal right to applicants, appointees, and employees in the competitive service or career Senior Executive Service, as those terms are used in part 731; § 731.501(c) limits appealable merits issues to suitability determinations based on the factors in § 731.202(b) that resulted in a suitability action; and § 731.501(d) makes clear that an unfavorable suitability determination that does not result in a suitability action is not appealable under this subpart.

The final rule therefore does not create, expand, or alter any appeal right for security-clearance determinations, credentialing determinations, national-security eligibility determinations, position-sensitivity determinations, or other determinations outside part 731. References in the final rule to classified information, national-security requirements, or other legally protected information address only how such information must be handled if it appears in the suitability-appeal record; they do not expand OPM's jurisdiction in a part 731 appeal or authorize OPM to adjudicate a clearance or national-security eligibility determination in this proceeding.

S. Comments From Federal Agencies

OPM received several comments in favor of the rule from individuals and agencies. Across the submissions, these commenters strongly support the rule and view it as a necessary step to streamline and accelerate suitability actions in the Federal Government. Commenters emphasized that agencies often avoid taking an action because the existing process is too burdensome and drawn out, allowing misconduct to persist. They argue that this tolerance of wrongdoing damages workplace culture, signals that accountability is weak, and discourages supervisors from addressing problems. *See* Comment 166. A significant theme among favorable comments involves the need to expedite removal of employees who commit serious misconduct. *See* Comments 089 and 190. Commenters recognize that keeping such individuals in the workplace harms others and erodes trust, and they believe this rule will enable agencies to take faster, more

decisive action to protect employees. Overall, individuals in support of this rule see it as long overdue, beneficial for the efficiency and integrity of the civil service, and likely to make Federal workplaces safer and more accountable.

Several agencies provided comments in support of the rule, consistently describing the reform to suitability action appeals as necessary, efficient, and beneficial for workforce management. Existing procedures are described as too complicated and inefficient, and the standards applied by MSPB as overly technical. *See* Comment 179. Agencies expressed frustration with current processes, citing a discrepancy between MSPB goals of resolving certain categories of appeals within approximately 120 days, while in practice, suitability action appeals frequently consume a year or more to reach a final resolution, despite them being a small share of MSPB's annual filings. *See* Comments 178, 218, and 309.

Other agencies recognized the opportunity for consistency and benefits of expertise by centralizing suitability appeals within OPM, specifically recognizing OPM's exclusive authority over a subset of suitability cases pursuant to 5 CFR 731.202(b). Further, agencies anticipate the rules would reduce litigation and administrative costs, citing considerable attorney, human capital, and management resources expended to defend suitability actions before MSPB, including post-MSPB judicial review on disproportionate, narrowly focused issues that do not need the full scope of MSPB discovery for a fair adjudication. Agencies explained that even successfully litigated cases are overshadowed by punishing processes and costs to the American public. *See* Comments 188 and 230. Agencies positively noted the rule's retention of strong due process protections, including notice, access to records, and an opportunity for response and representation. *See* Comment 218. OPM believes this final rule will restore confidence in the Federal workforce and eliminate procedural bottlenecks that unnecessarily complicate an agency's ability to maintain efficient and effective mission performance.

OPM also considered other options as explained in the alternatives section of this final rule.

IV. Section-by-Section Analysis

Authority Citation

OPM revises the authority citation for part 731 to reflect OPM's civil-service administration authorities under 5

U.S.C. 1103, which include "securing accuracy, uniformity, and justice in the functions of the Office" and "executing, administering, and enforcing" the civil service rules and regulations of the President and the Office and the laws governing the civil service.

Subpart E—Suitability Action Appeals

OPM revises subpart E to remove the prior MSPB appeal procedure and establish an OPM appeal process for suitability actions taken because of unfavorable suitability determinations. The revised subpart sets out the right to appeal, filing procedures, record and response requirements, representative provisions, adjudication standards, sanctions and protective orders, reconsideration, Director review, and finality.

731.501—Right To Appeal

Section 731.501 establishes the right of an applicant, appointee, or employee in the competitive service or career SES, as those terms are used in part 731, to appeal to OPM a suitability action taken because of an unfavorable suitability determination. The section also allocates burdens of proof. The appellant bears the burden, by a preponderance of the evidence, to establish the timeliness of the appeal, OPM's jurisdiction, and any claim of improper procedure. If the appellant contests the unfavorable suitability determination and establishes timeliness and jurisdiction, the responsible agency bears the burden to establish, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action.

The section identifies the appealable issues: the unfavorable suitability determination based on the factors in § 731.202(b), provided it resulted in a suitability action as defined in § 731.101(a), and specified procedural failures relating to advance notice, representation, time to respond, and the written decision. It also provides that an unfavorable suitability determination that does not result in a suitability action is not appealable under this subpart. Finally, the section provides that subpart E is the sole means of appealing a suitability action under part 731, while preserving matters within the independent jurisdiction of the EEOC, FLRA, Inspectors General, MSPB, DOL VETS, and OSC. The section also provides that a party cannot obtain judicial review of a decision under this subpart.

731.502—Procedures for Submitting Appeals

Section 731.502 establishes filing procedures and time limits. Appeals and requests to reopen and reconsider must be filed through the electronic filing system identified on OPM's website unless OPM grants a good-cause exception. An appeal must be filed within 30 calendar days from the effective date of the suitability action and is timely if electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date. The section explains how to compute the filing period, including special rules for applicants, service by mail, weekends, and Federal holidays. Untimely appeals will be dismissed unless the appellant demonstrates good cause, as determined by OPM.

The section also establishes e-filing procedures. Parties and representatives must register using a unique email address; registration constitutes consent to electronic service; documents will be available through OPM's electronic filing system; and access to case documents is limited to registered parties and representatives in the case. The section requires e-filers to follow OPM filing instructions, maintain current contact information, monitor case activity, and use the electronic system unless exempted for good cause. OPM may strike a document only when an e-filer repeatedly fails to follow filing instructions after receiving a show-cause order. Documents filed in the system are deemed received on the date of electronic submission.

731.503—Form and Content of Suitability Action Appeals and Agency Response

Section 731.503 specifies the required content of an appeal, including the basis for the appeal, contact information for the appellant and representative, and supporting documentation. The section also governs the responsible agency's response. OPM will notify the responsible agency of the appeal; and, unless the OPM adjudicator provides otherwise, the responsible agency must respond within 30 calendar days of notification.

The section defines "responsible agency" as the employing agency or, when OPM took, directed, or made the suitability action under review, the OPM office or component responsible for that action. When OPM is the responsible agency, the adjudicative function must be separated from any OPM office or official that participated personally and substantially in the suitability determination or action.

The final rule also addresses the employing agency's role when OPM is the responsible agency. Because many relevant records will be in the employing agency's possession, § 731.503(b)(3) provides that, when OPM is the responsible agency and is not the appellant's employing agency, OPM will notify the employing agency of the appeal, and the employing agency must furnish requested records and information and otherwise participate in the response to the extent OPM directs. Section 731.503(c) likewise requires the employing agency to furnish documents within the scope of the record of the action that are in its possession, and OPM will identify the records the employing agency must furnish and the records OPM will provide. Parallel provisions in § 731.505(d) and (f) provide that the employing agency, when it is not the responsible agency, may be required to provide information and will receive notice of investigations and of the decision on the appeal.

The section requires the responsible agency to file a complete, indexed, paginated, and certified record of the action. The record must include documents considered, relied upon, generated, received, issued, or served in investigating, proposing, deciding, directing, or effectuating the unfavorable suitability determination and resulting suitability action. The record must include, as applicable, documents establishing the appellant's status and the authority for the action, investigative and adjudicative materials, charge-by-charge and suitability-factor analysis, mitigating and exculpatory evidence, the rationale for the action selected, the final decision, proof of service, implementation documents, and a certification of completeness.

The responsible agency must serve the appellant with the agency record. If documents are withheld, redacted, or protectively handled, the responsible agency must identify them in an index or privilege log unless identifying the document itself is prohibited by law. OPM may require a summary, substitute disclosure, protective order, in camera submission, or other procedure sufficient to provide the appellant a meaningful opportunity to respond, consistent with applicable law. No nondisclosed material may be relied upon to affirm a suitability action unless the appellant has received notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law.

The section also permits the appellant to file a reply within 15 calendar days of the agency response unless OPM provides otherwise. The reply may not

raise new allegations of error unless the basis rests on information first disclosed in the agency response or OPM grants leave for good cause. The section further addresses inspection of OPM's appellate record, mutual service of documents, certificates of service, and acceptance of untimely filings upon a showing of good cause.

731.504—Appellant Representatives

Section 731.504 preserves the appellant's ability to select a representative of choice, provided the designation is submitted in writing for the specific appeal. If the selected representative is a Federal employee, the representative may not perform representational functions while in duty status, including while on official time under 5 U.S.C. 7131, and may not claim agency reimbursement for expenses incurred while performing the representational function.

The section also allows OPM or the responsible agency, in its sole and exclusive discretion, to disallow a representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position.

731.505—Adjudication of Appeals

Section 731.505 establishes the adjudication framework. For appeals by applicants, appointees, or employees of agencies other than OPM, OPM will assign OPM personnel to adjudicate the appeal. Those adjudicators must be insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice concerning that action. The section prohibits adjudicators from considering material ex parte communications concerning the merits of an appeal. If such a communication occurs, OPM must place a summary in the record and provide the parties a reasonable opportunity to respond unless disclosure is prohibited by law. The section also disqualifies any OPM employee with a prior relationship with the appellant, prior involvement in the suitability determination or action, or another conflict that would reasonably call the employee's impartiality into question. OPM may assign an administrative law judge when necessary.

For appeals by OPM applicants, appointees, or employees, OPM will assign an administrative law judge to adjudicate the appeal. To insulate those appeals from agency involvement, OPM will not disturb the administrative law judge's initial decision unless a party

shows harmful procedural irregularity, clear legal error, or material factual error that affected the outcome. The section defines harmful procedural irregularity and clarifies that assigning an administrative law judge does not make 5 U.S.C. 554, 556–557 applicable except to the extent independently required by law or expressly incorporated in part 731.

The section requires all OPM employees or administrative law judges assigned to adjudicate appeals to complete training that complies with national training standards for suitability adjudicators and qualifies them to review OPM and agency suitability determinations and actions.

The section also establishes fact-development procedures. OPM may require either party, or the employing agency if the employing agency is not a party to the appeal, to provide additional information and may investigate the facts underlying the suitability determination or action if the existing record is insufficient to resolve a material issue within OPM's jurisdiction and the investigation is reasonably likely to produce material information. If OPM conducts an investigation, it must notify the appellant, the appellant's representative, and the responsible agency (and, if different, the employing agency) of the investigation and the nature of the information requested; provide the results; and allow a reasonable opportunity to submit argument or additional information.

OPM's review must be based solely on the developed written record unless the written record is insufficiently developed to resolve one or more facts material to the outcome, including when resolution of a material factual dispute requires evaluation of witness credibility. In those cases, OPM will assign an administrative judge to preside over a hearing, which will be limited to the material factual issues identified by OPM or the administrative judge as necessary to resolve the appeal.

If a party fails to participate in an investigation or hearing, OPM may impose sanctions listed in § 731.506(b)(1) through (3), except where prohibited by law. OPM may issue an initial decision affirming, reversing, modifying, or vacating the unfavorable suitability determination and resulting suitability action, in whole or in part. The initial decision must make findings on each material charge, specification, and suitability factor relied upon to support the action. If fewer than all charges or specifications are sustained, OPM will determine whether the sustained

grounds support the action imposed and may affirm, reverse, modify, vacate, or remand the action as appropriate.

The section also addresses remedies. If the appellant prevails, OPM will order appropriate relief authorized by law, which may include correction, cancellation, or modification of the suitability action; correction of relevant records; prospective eligibility or appointment-related relief; and, where applicable and legally authorized, back pay, interest, and reasonable attorney fees consistent with 5 CFR part 550, subpart H. The appellant is not entitled to compensatory damages or other relief not authorized by law. If reopening or reconsideration is pending, the responsible agency must continue to provide ordered relief unless OPM issues a stay, but no stay may deprive the individual of pay and benefits while the initial decision is pending reconsideration.

731.506—Sanctions and Protective Orders

Section 731.506 authorizes OPM to issue protective orders or cease-and-desist directives to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. OPM may act sua sponte or at a party's request, preemptively or at any point in the appeal process. A requesting party must file the request through OPM's e-filing procedures and include reasons and supporting evidence. Any protective order must be no broader than reasonably necessary and must not restrict lawful communications protected by law.

If a party fails to comply with an OPM order, OPM may, except where prohibited by law, draw adverse inferences, prohibit the noncompliant party from introducing or relying on evidence, or eliminate from consideration appropriate parts of the noncompliant party's filings or submissions. Any sanction issued under this authority must be proportionate, causally related to the violation, and no broader than necessary to protect the adjudicatory process.

731.507—Requests for Reconsideration of an Initial Decision

Section 731.507 permits either party to request that OPM reopen and reconsider an initial decision. The request must be filed within 30 calendar days of issuance of the initial decision through the e-filing system and must explain how the asserted ground

affected the outcome. Any documents or filings related to the request must be submitted at the same time.

OPM may grant reconsideration when the initial decision contains an erroneous finding of material fact sufficient to warrant a different outcome; is based on an erroneous interpretation of statute or regulation or erroneous application of law to the facts; when new and material evidence or legal argument is available that, despite due diligence, was unavailable when the record closed; or when OPM finds good cause. In a reopened and reconsidered appeal, OPM may issue a reopened and reconsidered decision affirming, reversing, modifying, or vacating the initial decision; require additional argument and evidence; take any other action necessary for final disposition; and issue a compliance order. There is no further administrative appeal from the reopened and reconsidered decision, subject to Director review under § 731.508 before finality.

731.508—Review by the OPM Director

Section 731.508 preserves discretionary review by the OPM Director before a decision becomes final under § 731.509. The Director may, on the Director's own initiative, reopen and reconsider any initial decision or reopened and reconsidered decision before it becomes final. The section does not create a party right to request Director review; parties seeking review must use the reconsideration process in § 731.507. If the Director reopens and reconsiders a decision, the Director may take any action available under § 731.507(d). Under the final rule, the Director may act on the Director's own initiative and only before a decision becomes final under § 731.509.

In response to comments expressing concern that Director review could be too open-ended or could undermine the perceived neutrality of OPM adjudication, OPM has revised § 731.508 to identify nonexclusive considerations that may inform the Director's decision to reopen and reconsider a nonfinal suitability appeal decision. In determining whether to exercise this authority, the Director may consider whether the decision contains clear legal error, rests on an erroneous finding of material fact, involves an issue of exceptional importance, affects the governmentwide administration of civil-service laws, rules, regulations, or OPM policy, creates a conflict among OPM decisions, or otherwise warrants Director review.

This revision responds to commenters who objected to Director review as

insufficiently cabined, while preserving final agency supervision over important legal, factual, policy, consistency, and governmentwide civil service issues. OPM has retained sua sponte Director review because final agency oversight promotes decisional consistency and accountability within OPM's adjudicatory process. The revision does not create a separate right for parties to request Director review; parties may seek reconsideration under § 731.507. If the Director reopens and reconsiders a decision under § 731.508, the Director may take any action available under § 731.507(d). This structure preserves meaningful principal-officer oversight of the decisions of inferior officers while clarifying that Director review will occur within the rule's record-based adjudicatory framework, including the final rule's agency-record, separation-of-functions, ex parte, reconsideration, and finality provisions.

OPM declines to eliminate Director review entirely. Director review serves both administrative and constitutional functions. As an administrative matter, it ensures that OPM can correct material legal, factual, or procedural errors before a decision becomes final; resolve recurring or important questions of interpretation; and promote uniform application of part 731 across agencies. That review function is especially important in a governmentwide personnel system, where inconsistent interpretations by subordinate adjudicators could produce uneven appeal rights for similarly situated employees in different agencies. See 5 U.S.C. 1103(a)(1), (a)(3), (a)(5) (vesting the OPM Director with responsibility for securing "accuracy, uniformity, and justice" in OPM's functions, directing and supervising OPM employees, and executing, administering, and enforcing civil service laws and regulations).

Director review also reinforces the rule's consistency with the Appointments Clause. The Constitution requires principal officers to be appointed by the President with the advice and consent of the Senate, while Congress may vest appointment of inferior officers in the President alone, courts of law, or heads of departments. U.S. Const. art. II, sec. 2, cl. 2. The OPM Director is a presidentially appointed, Senate-confirmed officer with authority to appoint subordinate OPM officials. See 5 U.S.C. 1102(a), 1103(a)(2). Under the Supreme Court's Appointments Clause precedents, inferior officers must remain subject to direction and supervision by a properly appointed superior officer. See *Edmond v. United States*, 520 U.S. 651, 663–65 (1997). In the adjudicatory context, the Court has

treated the availability of review by a superior executive officer as a significant feature distinguishing inferior officers from principal officers. *Id.* at 665.

That principle is particularly relevant where subordinate adjudicators exercise significant authority under Federal law. The Supreme Court has held that officials who occupy continuing offices and exercise significant discretion in conducting adjudications may be "Officers of the United States" rather than mere employees. See *Freytag v. Comm'r*, 501 U.S. 868, 881–82 (1991); *Lucia v. SEC*, 585 U.S. 237, 245–51 (2018). The rule need not resolve in every case whether a particular OPM adjudicator is an employee or an inferior officer. It is enough that the rule preserves supervision by the Director, a principal officer, before OPM's decision becomes final. In addition, OPM intends to ensure that OPM personnel assigned to adjudicate appeals under this subpart are appointed by the Director. Because such adjudicators may occupy continuing positions and exercise significant discretion in conducting adjudications, appointment by the Director—the head of OPM—ensures that any adjudicator who qualifies as an inferior officer will have been appointed in the manner the Appointments Clause requires. See U.S. Const. art. II, sec. 2, cl. 2.

The Supreme Court's decision in *United States v. Arthrex*, 594 U.S. 1, 22–23 (2021), confirms the importance of that structure. There, the Court held that administrative patent judges could not constitutionally issue unreviewable final decisions on behalf of the Executive Branch while being appointed only as inferior officers. The constitutional problem was not that subordinate adjudicators participated in deciding cases; it was that their decisions were insulated from review by a principal officer. *Id.* at 25–26. The Court's remedy was to permit discretionary review by the Director of the Patent and Trademark Office, explaining that the Director need not review every decision, but must have authority to review decisions if he chooses. *Id.* at 27–28.

Subpart E follows that model. OPM adjudicators may issue initial decisions, and OPM may reopen and reconsider those decisions on party request or on its own initiative. In addition, the Director may, in his or her discretion, reopen and reconsider any appeal in which OPM has issued a decision that has not yet become final, and a decision issued by the Director is the final decision of OPM. This structure ensures that no subordinate adjudicator has

unreviewable authority to bind OPM or the Executive Branch in an appeal under part 731.

731.509—Final Decision

Section 731.509 establishes when OPM decisions become final. An initial decision becomes OPM's final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 731.507 or the Director reopens the decision under § 731.508. A timely request for reconsideration suspends finality: if OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes final 30 calendar days after issuance of the denial or dismissal unless the Director reopens it before that time; and if OPM grants the request, the reopened and reconsidered decision becomes final 30 calendar days after issuance unless the Director reopens that decision before that time. An untimely request does not suspend or otherwise affect finality, but if OPM accepts and grants an untimely request for good cause, any resulting reopened and reconsidered decision becomes final in the same manner. A decision issued by the Director under § 731.508 that disposes of the appeal is OPM's final decision and is effective upon issuance; if the Director remands the appeal or directs further proceedings, any resulting decision becomes final under § 731.509. There is no further right of appeal from a final OPM decision.

The section also addresses publication and access. OPM will make publicly available final merits decisions or de-identified summaries of final merits decisions, consistent with FOIA, the Privacy Act, and other applicable law. Public summaries will identify the procedural posture, sustained and unsustained suitability factors, disposition, and remedy without disclosing protected information. Final merits decisions will also be made available upon request to the applicant, appointee, or employee involved in the proceeding, the representative selected under § 731.504, or the representative of the Federal agency or office involved in the proceeding who has a need to know.

V. Regulatory Analysis and Related Comments

A. Statement of Need

This final rule is needed to establish a suitability-specific appeal process that resolves challenges to suitability actions more promptly, consistently, and effectively while preserving meaningful procedural protections. Suitability actions are taken to protect the integrity

and promote the efficiency of the civil service. When such actions remain unresolved for extended periods, both the individual and the Government are left in uncertainty, agencies may be delayed in addressing conduct that presents suitability concerns, and the public interest in a trusted Federal workforce is undermined.

Before this final rule, suitability-action appeals were routed to the MSPB by OPM regulation. Congress did not require that forum. MSPB adjudicates matters placed within its jurisdiction by law, rule, or regulation, and Congress has separately clarified in 5 U.S.C. 7512(F) that a suitability action taken by OPM under OPM regulations is not a chapter 75 adverse action. OPM therefore has authority to revise its own regulatory appeal procedure and to establish an administrative review process tailored to suitability actions rather than chapter 75 litigation.

OPM is adopting this rule for several related reasons. First, suitability appeals require application of OPM's governmentwide suitability regulations, suitability factors, action-selection standards, and personnel-vetting expertise. Housing these appeals within OPM promotes uniform application of part 731 and allows appeals to be decided by adjudicators trained in the suitability framework they are applying.

Second, the MSPB process imposes procedures designed for a broader range of personnel disputes, including discovery, hearings, petitions for full Board review, and judicial review. Those procedures can add complexity, cost, and delay to a class of appeals that Congress has distinguished from chapter 75 adverse actions.

OPM considered that MSPB procedures add considerable complexity and delay in arriving at a final resolution for both appellants and agencies. When appealing to the MSPB, employees have a statutory right to a hearing when the matter is within its jurisdiction. See 5 U.S.C. 7701(a). And before reaching a hearing, MSPB regulations allow the parties to engage in discovery. See 5 CFR 1201.71–1201.75.

Under the prior regulatory framework, a suitability appeal filed with MSPB could proceed through multiple adjudicative stages. First, the appeal was assigned to an MSPB administrative judge, who possessed broad authority to conduct the proceeding, including authority to rule on discovery motions, issue subpoenas, receive evidence, order production of evidence and witness appearances, hold prehearing conferences, grant hearing requests, regulate hearings, and issue an initial

decision. 5 CFR part 1201 also provides for discovery, including interrogatories, depositions, requests for production, and requests for admission, as well as motions to compel and subpoena procedures.

If a hearing is held, MSPB procedures contemplate hearing scheduling, presentation of testimony and evidence, a hearing record or transcript, and closure of the record after the hearing or after written submissions if the hearing is waived. The administrative judge then issues an initial decision containing findings of fact, conclusions of law, reasons or bases for those findings, an order disposing of the case, and notice of further review rights.

Then, after the administrative judge's initial decision, either party may seek review by the full Board. The initial decision becomes final after 35 days only if no petition for review is filed and no other action prevents finality. If a party files a petition for review, the Board may deny review, grant review, reopen the case, hear oral argument, require briefs, remand for further testimony or evidence, or take other action necessary for final disposition.

After a final MSPB decision, a party may seek judicial review. Under 5 U.S.C. 7703, an employee or applicant adversely affected or aggrieved by a final MSPB order or decision may obtain judicial review, generally by filing a petition in the U.S. Court of Appeals for the Federal Circuit within 60 days, subject to specific statutory rules for certain cases.

This multi-stage process may be appropriate for matters Congress made appealable to MSPB under chapter 75 or other statutes. But OPM has determined that it is not necessary or well-tailored for suitability appeals that are expressly outside the MSPB's statutory jurisdiction.

Third, MSPB's ability to provide final Board-level review has depended on the existence of a quorum, and recent quorum lapses have produced substantial delays in some cases. OPM considered that, during the 2017 to 2022 lack-of-quorum period, 14 OPM suitability appeals were affected, with individuals and agencies waiting an average of more than five years between OPM's suitability action and a Board decision. Quorum-related delay is a significant pain point for agencies as well as appellants: while an appeal awaits Board action, the responsible agency cannot obtain finality on a warranted suitability action, must preserve evidence and witness availability for years, and faces prolonged uncertainty in staffing decisions. OPM considered that, in light

of recent judicial decisions holding the President may dismiss MSPB members at-will, the MSPB may lose a quorum even more frequently going forward. OPM also considered MSPB annual performance information showing that initial appeals averaged 109 days during fiscal years 2022 through 2024, not including additional time for full Board review.

Fourth, OPM considered the operational effect that lengthy and costly appeal procedures may have on agencies' willingness to take warranted suitability actions. Suitability actions, including cancellation of eligibility, removal, cancellation of reinstatement eligibility, and debarment, are tools for protecting the integrity and efficiency of the service and, where applicable, allowing time for rehabilitation before renewed Federal employment. OPM considered that, from fiscal years 2018 through 2024, 71 percent of MSPB suitability appeals that were not initially dismissed resulted in settlement. Settlement may be appropriate in individual cases. But OPM also considered that frequent settlement of suitability appeals may reduce the protective effect of debarment or other suitability actions and may discourage agencies from taking warranted actions. OPM does not treat any single statistic as dispositive. Rather, OPM considered the statutory structure, the nature of suitability actions, MSPB procedural complexity, quorum-related delay, settlement experience, agency costs, and the need for timely finality together.

OPM received comments asserting that the rule was inadequately justified, relied too heavily on efficiency, failed to consider reliance interests, and should instead preserve MSPB review or pursue alternatives such as MSPB reform, additional MSPB resources, or an expedited MSPB track. OPM considered those comments but, as discussed above, disagrees that the APA requires OPM to preserve a regulatory MSPB appeal route or to rely on reforms outside OPM's control. The final rule does not eliminate review of suitability actions. It replaces the prior regulatory forum with a specialized OPM appeal process and substantially strengthens the proposed procedures in response to comments.

The final rule includes safeguards designed to promote fairness, accuracy, and confidence in the new process. It expressly allocates burdens of proof; requires the responsible agency to establish the charges supporting the unfavorable suitability determination and the substantive propriety of the action by a preponderance of the

evidence; requires a complete, indexed, paginated, and certified record of the action; requires service of that record on the appellant; requires identification of withheld, redacted, or protectively handled material; and prohibits reliance on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law. The final rule also codifies separation-of-functions protections when OPM is the responsible agency, bars adjudicators with prior involvement or conflicts reasonably calling impartiality into question, restricts material ex parte communications, requires training for adjudicators, provides for additional fact development where the record is insufficient, and requires an administrative judge to preside over any hearing held to resolve material factual disputes. It further requires reasoned initial decisions addressing material charges, specifications, and suitability factors; provides appropriate remedies for prevailing appellants; allows reopening and reconsideration; preserves Director review before finality; and provides for public availability of final merits decisions or de-identified summaries consistent with applicable law.

These safeguards address commenters' concerns that streamlining should not come at the expense of fairness or accuracy. OPM agrees that suitability-action appeals must provide meaningful review, particularly because suitability actions can have serious consequences. The final rule therefore does not adopt a summary affirmance model. It establishes a structured administrative appeal process that preserves notice, response, representation, record access, reasoned decision-making, additional fact development where necessary, hearings where material factual disputes, including witness-credibility disputes, cannot be resolved on the written record, reconsideration, appropriate relief, and transparency.

OPM concludes that the final rule is necessary to align the appeal forum with the statutory and regulatory nature of suitability actions, reduce delay and unnecessary procedural complexity, promote uniform application of governmentwide suitability standards, and ensure that suitability actions are resolved in a manner that protects both individual procedural interests and the Government's interest in maintaining the integrity and efficiency of the civil service.

B. Impact

This final rule removes the prior regulatory route for suitability-action appeals to MSPB and establishes an OPM suitability-action appeal process. The rule affects applicants, appointees, and employees in the competitive service or career Senior Executive Service, as those terms are used in part 731, who are subject to a suitability action because of an unfavorable suitability determination. These are the categories of individuals covered by part 731 suitability-action procedures; the rule does not independently expand the categories of persons subject to suitability actions or alter the substantive standards for taking such actions.

For affected individuals, the principal impact is a change in appellate forum and procedure. Individuals will no longer appeal part 731 suitability actions to MSPB under subpart E. Instead, they may appeal to OPM, contest the unfavorable suitability determination, and raise specified procedural challenges. OPM anticipates that this process will allow appellants and agencies to reach final administrative resolution more quickly than under the prior MSPB route, while preserving meaningful procedural protections.

The final rule provides safeguards designed to ensure that the new process is fair, structured, and reviewable within OPM. The responsible agency must prove, by a preponderance of the evidence, the charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action. The appellant retains the burden to establish timeliness, jurisdiction, and any improper-procedure claim. The responsible agency must file and serve a complete, indexed, paginated, and certified record of the action, including the charge-by-charge analysis, suitability-factor analysis, mitigating or exculpatory evidence, and rationale for the action selected. OPM may not rely on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law.

The rule also affects agencies that take or effectuate suitability actions. Responsible agencies will need to respond to OPM appeal notices, produce the complete record of the action, identify any withheld or redacted materials, serve required documents, and comply with OPM orders. These obligations may require

agencies to organize and certify suitability-action records more carefully than under prior practice. At the same time, agencies will no longer incur the same costs associated with litigating part 731 suitability appeals before MSPB, including MSPB discovery, hearing practice, petitions for Board review, and related defense obligations.

OPM will be affected because it will operate the new suitability-action appeal process. OPM will need to maintain the electronic filing system, receive and process appeals, notify responsible agencies, adjudicate appeals, manage records, rule on reconsideration requests, conduct or direct additional fact development where appropriate, assign administrative law judges when required by the rule, maintain separation between responsible and adjudicative functions when OPM is the responsible agency, and make final merits decisions or de-identified summaries publicly available consistent with applicable law. These responsibilities will require dedicated process management and trained adjudicators, but they also replace OPM's prior role in preparing and defending suitability actions before MSPB.

The final rule also limits the impact on other remedial systems. Although the OPM process is the sole means of appealing a suitability action under part 731, it does not preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the EEOC, FLRA, an Inspector General, MSPB, DOL VETS, or OSC. Thus, the rule changes the forum for part 731 suitability appeals but does not displace independent statutory remedies for discrimination, prohibited personnel practices, veterans' rights, labor-relations matters, or other claims assigned by law to another forum.

OPM expects the final rule to reduce delay and operational costs associated with suitability-action appeals while improving consistency in the application of governmentwide suitability standards. The rule is also expected to improve the Government's ability to resolve suitability concerns in a timely manner, thereby supporting the integrity and efficiency of the Federal service. At the same time, the final rule adds procedural safeguards beyond those proposed in the NPRM, including express burden allocations, a complete-record requirement, disclosure protections, separation-of-functions requirements, ex parte restrictions, adjudicator-disqualification rules, training requirements, administrative-

judge-presided hearings where material factual disputes, including witness-credibility disputes, cannot be resolved on the developed written record, reasoned written decisions, reconsideration, Director review before finality, remedies for prevailing appellants, and public availability of final merits decisions or de-identified summaries.

C. Costs

OPM has updated the cost analysis for this final rule to reflect the current regulatory baseline. In the proposed rule, OPM presented a current-volume estimate and a separate estimate of potential additional impacts if the June 2025 *Suitability and Fitness* rule were finalized. Because the *Suitability and Fitness* rule is now final, this final rule uses the anticipated combined appeal volume as the operative estimate. The final analysis also updates wage assumptions to 2026 rates, accounts for the procedures established in the final OPM suitability-action appeal process, and includes the recurring cost of OPM appeal-staff licenses for the electronic filing system.

Although the changes in this final rule are separate and distinct from the changes made by the *Suitability and Fitness* rule, the *Suitability and Fitness* rule affects the expected volume of suitability-action appeals that will be processed under this subpart. The cost analysis below therefore incorporates the expected effects of both rulemakings for purposes of estimating the costs and savings associated with transferring suitability-action appeals from MSPB adjudication to the OPM appeal process established in this final rule.

1. One-Time Implementation Costs

This rule will affect the operations of most Federal agencies in the Executive branch, ranging from cabinet-level departments to small independent agencies. To comply with the regulatory changes in this rule, affected agencies will need to review the final rule and update policies and procedures governing suitability-action appeals, agency records, service, representation, and related internal processing.

For this cost analysis, OPM assumes that the average salary rate of Federal employees performing this work will be the 2026 rate for GS-14, step 5, from the Washington, DC, locality pay table: \$163,104 annually and \$78.15 hourly. OPM assumes that the total value of labor, including wages, benefits, and overhead, equals 200 percent of the wage rate, resulting in an assumed labor cost of \$156.30 per hour.

OPM estimates that, in the first year following publication of this rule, affected agencies will spend an average of 80 hours updating policies and procedures. This results in an estimated one-time implementation cost of approximately \$12,500 per agency and approximately \$1 million governmentwide. This estimate differs from the proposed rule primarily because OPM updated the wage assumptions from 2025 to 2026 rates.

2. Recurring Costs and Savings

OPM assessed recurring cost impacts by estimating: first, savings to agencies, OPM, and MSPB from eliminating MSPB adjudication of suitability-action appeals; and second, costs to agencies and OPM to process suitability-action appeals under the OPM appeal process established in this final rule. The difference between the avoided MSPB-related costs and the costs of the new OPM process represents the recurring cost impact of the final rule.

OPM estimates that, under the current framework, MSPB receives approximately 63 initial suitability appeals per year, based on MSPB annual reports for fiscal years 2018 through 2024. In light of the final *Suitability and Fitness* rule, OPM also estimates that approximately 1,226 removal actions presently taken by agencies under chapter 75 could be referred to OPM for suitability action instead. From FY 2021 through FY 2025, OPM found that OPM suitability actions were appealed to MSPB at a rate of 20.8 percent. Applying that rate to the estimated 1,226 removal actions yields approximately 255 additional appeals per year that are expected to shift from adverse-action appeals to suitability-action appeals. Adding those 255 appeals to the historical average of 63 initial suitability appeals results in an estimated annual volume of 318 suitability-action appeals under this final rule.

OPM recognizes that not all appeals proceed to a hearing. Based on MSPB annual reports for fiscal years 2018 through 2024, approximately 86 percent of suitability appeals were dismissed or settled. Applying that rate to the estimated 318 annual suitability-action appeals, OPM estimates that approximately 273 appeals per year would resolve before a full hearing-equivalent level of effort, while approximately 45 appeals per year would require the full level of effort associated with hearing preparation and adjudication.

OPM notes that the historical rate of dismissal and settlement may overstate the share of appeals that will resolve

early under this rule. As discussed above, frequent settlement under the MSPB framework partly reflected the length, cost, and complexity of MSPB litigation, and this rule is expected to reduce the resulting pressure on agencies to settle warranted suitability actions. As a sensitivity analysis, OPM therefore also considered a substantially lower pre-hearing resolution rate of 50 percent, under which approximately 159 appeals per year would require the full level of effort. Even under that assumption, the rule remains a net-savings deregulatory action: avoided MSPB-related costs would also increase as more appeals proceed to a full decision, and the incremental cost of each additional OPM hearing is small relative to the avoided cost of a full MSPB proceeding, so net savings would grow, not shrink, as the pre-hearing resolution rate declines.

a. Savings From Eliminating MSPB Suitability-Action Appeals

Eliminating MSPB adjudication of suitability-action appeals will reduce costs for agencies, OPM, and MSPB. These savings arise from avoided MSPB litigation and adjudication work, including reduced attorney time, reduced agency HR and supervisory time associated with appeals that otherwise would be processed as adverse-action appeals before MSPB, and reduced MSPB administrative judge time.

OPM estimates that agencies will avoid approximately \$3.75 million annually in supervisory and HR personnel time associated with the 255 adverse-action appeals expected to shift to the suitability-action appeal process. This estimate assumes 80 hours of supervisory or HR staff time per appeal and uses the 2026 Washington, DC, locality rate for GS-15, step 5: \$191,850 annually and \$91.93 hourly. Applying OPM's assumption that the total value of labor equals 200 percent of the hourly wage results in an hourly labor cost of \$183.86.

OPM also estimates annual savings of approximately \$2.83 million from reduced attorney time. This estimate uses the 2026 Washington, DC, locality rate for GS-14, step 5: \$163,104 annually and \$78.15 hourly, with total labor cost calculated at 200 percent of the wage rate, or \$156.30 per hour. OPM assumes that attorneys would spend approximately 100 hours on appeals that proceed through a full hearing and approximately 50 hours on appeals that are dismissed or settled. Applying those assumptions to the estimated 45 appeals requiring the full level of effort and 273 appeals resolving earlier yields

approximately \$2.83 million in avoided attorney costs.

MSPB will also avoid work associated with processing suitability-action appeals. OPM assumes that MSPB administrative judges are paid at the 2026 Washington, DC, locality rate for GS-15, step 5, with total labor cost of \$183.86 per hour. OPM assumes that an administrative judge would spend 20 hours on each appeal proceeding through a full hearing and 12 hours on each appeal dismissed or settled. Applying those assumptions to the estimated 45 full-effort appeals and 273 dismissed or settled appeals yields approximately \$768,000 in annual MSPB savings. OPM recognizes that MSPB may also experience additional savings from reduced administrative staff support, but OPM lacks sufficient information to estimate those additional savings reliably.

Taking together the estimated savings from avoided agency HR and supervisory time, avoided attorney time, and avoided MSPB administrative judge time, OPM estimates annual avoided costs of approximately \$7.35 million before accounting for the costs of operating the OPM suitability-action appeal process. OPM does not separately claim avoided suitability-staff record-preparation time as an additional savings because the final OPM appeal process requires the responsible agency to prepare and submit a complete agency record, and that work is accounted for as part of the cost of operating the OPM appeal process.

b. Costs of Operating the OPM Suitability-Action Appeal Process

Operating the OPM suitability-action appeal process will impose recurring costs on OPM and responsible agencies. These costs consist of six principal components: first, time required by suitability staff at the responsible agency to prepare the response file and certified agency record; second, time required by OPM appeal-review staff and deciding officials to review and decide appeals; third, costs associated with hearings when a material factual dispute cannot be resolved on the developed written record; fourth, costs associated with requests to reopen and reconsider initial decisions; fifth, annual license costs for OPM appeal staff to use the electronic filing and case-management application; and sixth, incremental administrative-law-judge costs to adjudicate appeals filed by OPM applicants, appointees, or employees under § 731.505(b).

For the first component, OPM estimates that responsible-agency suitability staff will spend

approximately 20 hours per appeal compiling the response file and agency record required by the final rule. OPM uses the 2026 Washington, DC, locality rate for GS-13, step 5: \$138,024 annually and \$66.14 hourly. Applying the 200-percent labor-cost assumption results in an hourly labor cost of \$132.28. Applying these assumptions across the anticipated annual volume yields estimated record-preparation costs of approximately \$841,000 per year (318 appeals × 20 hours × \$132.28 per hour).

For the second component, OPM estimates that appeal-review personnel will spend approximately 10 hours reviewing each appeal and preparing a recommendation, and that an OPM deciding official will spend approximately 3 hours reviewing the recommendation and issuing the initial decision. OPM assumes appeal-review personnel are paid at the 2026 GS-13, step 5, Washington, DC, locality rate, with a total labor cost of \$132.28 per hour, and deciding officials are paid at the 2026 GS-14, step 5, Washington, DC, locality rate, with a total labor cost of \$156.30 per hour. Applying these assumptions across all 318 anticipated appeals yields estimated costs of approximately \$421,000 per year for appeal review (318 appeals × 10 hours × \$132.28 per hour) and approximately \$149,000 per year for deciding officials (318 appeals × 3 hours × \$156.30 per hour), for total review-and-decision costs of approximately \$570,000 per year.

For the third component, agencies and OPM will incur costs when resolution of a material factual dispute requires evaluation of witness credibility or the written record is otherwise insufficient to resolve facts material to the outcome. The final rule provides that any such hearing will be presided over by an administrative judge and will be limited to the material factual issues identified by OPM or the administrative judge as necessary to resolve the appeal. Because the final rule adopts a written-record default, requires a complete certified agency record, and limits any hearing to the material factual issues that cannot be resolved on the developed written record, OPM expects hearings to be infrequent. Informed by the small share of former MSPB suitability appeals that turned on witness credibility, OPM estimates that approximately 18 percent of the approximately 45 appeals per year expected to require the full level of adjudicatory effort—approximately 8 appeals per year, or roughly 2.5 percent of all anticipated appeals—will require a hearing. For each hearing, OPM

assumes 6 hours of administrative-judge time for preparation, presiding, and ruling on hearing-related motions, at the 2026 GS-15, step 5, Washington, DC, locality rate (\$191,850 annually and \$91.93 hourly, or \$183.86 per hour with the 200-percent labor-cost assumption), totaling \$1,103; 20 hours of responsible-agency attorney time at the GS-14 rate of \$156.30 per hour, totaling \$3,126; 15 hours of responsible-agency suitability or other staff time at the GS-13 rate of \$132.28 per hour, totaling \$1,984; 10 hours of OPM deciding-official time at the GS-14 rate of \$156.30 per hour, totaling \$1,563; and transcription costs of approximately \$1,500 per hearing, reflecting one hearing day of approximately 300 transcript pages at \$5.00 per page. These assumptions yield estimated costs of approximately \$9,276 per hearing and approximately \$74,000 per year (8 hearings × \$9,276).

For the fourth component, OPM will incur costs to process requests to reopen and reconsider initial decisions. Based on the narrow grounds for reopening under § 731.507 and the MSPB's experience with petitions for review of initial decisions, OPM estimates that parties will request reopening and reconsideration in approximately 15 percent of appeals—approximately 48 requests per year—and that OPM will grant approximately 33 percent of those requests, or approximately 16 per year. OPM assumes a GS-13 reviewer will spend approximately 1 hour screening each request and preparing a recommended disposition, yielding approximately \$6,300 per year (48 requests × 1 hour × \$132.28 per hour). OPM assumes that, for each request granted, a GS-13 reviewer will spend approximately 3 hours reviewing the case and making a new recommendation, and that a GS-14 deciding official will spend approximately 2 hours reviewing the recommendation and issuing any reopened and reconsidered decision. Applying those assumptions to the approximately 16 granted requests yields approximately \$11,351 per year (16 requests × ((3 hours × \$132.28) + (2 hours × \$156.30))), for total reconsideration-related costs of approximately \$18,000 per year.

For the fifth component, OPM will incur annual license costs for OPM appeal staff to use the electronic filing and case-management application. OPM estimates those recurring license costs at approximately \$16,000 annually. This is a change from the proposed rule, which did not separately include recurring e-filing license costs.

For the sixth component, OPM will incur incremental costs for appeals filed

by OPM applicants, appointees, or employees, which § 731.505(b) requires to be adjudicated by an administrative law judge to safeguard impartiality. Based on the small share of former MSPB suitability appeals involving OPM's own workforce, OPM anticipates approximately 3 such appeals per year. Because the record-preparation and review costs of those appeals are already captured in the first and second components, this component reflects only the incremental cost of administrative-law-judge adjudication. OPM assumes approximately 12 hours of administrative-law-judge time per appeal at the 2026 AL-3, step F, rate (\$199,296 annually and \$95.49 hourly, or \$190.98 per hour with the 200-percent labor-cost assumption), yielding approximately \$7,000 per year (3 appeals × 12 hours × \$190.98 per hour). This estimate is conservative because such appeals are expected to be resolved on the written record in most cases.

Taking together these six components—approximately \$841,000 for responsible-agency record preparation; approximately \$570,000 for OPM appeal review and initial decisions; approximately \$74,000 for hearings; approximately \$18,000 for reconsideration; approximately \$16,000 for annual e-filing licenses; and approximately \$7,000 for administrative-law-judge adjudication of appeals by OPM applicants, appointees, or employees—OPM estimates that the OPM suitability-action appeal process will cost agencies and OPM approximately \$1.52 million annually (approximately \$1,525,000) at the anticipated volume of 318 suitability-action appeals per year. OPM anticipates that existing adjudicatory personnel can assume the preparatory work necessary to compile response files and respond to information requests for appeals of OPM's own suitability actions. For the work of reviewing appeals and making recommendations for initial decisions, OPM anticipates that it will likely need two additional personnel at the 2026 GS-13, step 5, Washington, DC, locality rate to handle the additional workload expected as a result of the final Suitability and Fitness rule.

c. Total Cost Impact

OPM has updated the final cost analysis to reflect the current regulatory baseline, including final amendments to part 731 made by the Suitability and Fitness rule. OPM is not presenting alternative cost scenarios in this final rule. Instead, because the Suitability and Fitness rule is now final, OPM uses the anticipated combined volume of 318

suitability-action appeals per year as the operative estimate.

Taking into account approximately \$7.35 million in annual avoided MSPB-related costs and approximately \$1.52 million in annual costs to operate the OPM suitability-action appeal process, this final rule is expected to result in annual net savings to the Government of approximately \$5.83 million. These recurring annual savings are separate from the one-time implementation costs of approximately \$1 million.

OPM notes that the final estimate differs from the proposed rule. The proposed rule estimated approximately \$574,000 in annual savings if suitability-action appeal volumes remained at then-current levels and approximately \$5.9 million in annual savings if both this rulemaking and the Suitability and Fitness rule were finalized. The final rule no longer uses the current-volume-only scenario as the operative estimate, updates wage assumptions to 2026 rates, includes recurring electronic filing license costs, and reflects the procedural requirements in the final regulatory text.

d. Comments on the Cost Analysis

Commenters 0236 and 0282 broadly disputed OPM's efficiency rationale and argued that the rule may shift or increase costs rather than reduce them, including by creating new OPM resource needs or increasing downstream litigation. OPM acknowledges these comments but does not agree that they undermine the cost estimate. The final cost analysis identifies the principal labor costs avoided by eliminating MSPB adjudication of suitability-action appeals and the principal costs of operating the OPM suitability-action appeal process. Commenters 0236 and 0282 did not provide quantified data that would allow OPM to estimate additional downstream litigation costs attributable to this rule.

Commenter 0267 argued that savings are illusory and largely offset by the need to build and staff a new internal OPM appeals system. Commenter 0267 also expressed concern that the rule could create an under-resourced appeals function, especially at startup, and merely shift case backlogs from MSPB to OPM. OPM acknowledges this concern but disagrees that the final cost estimate fails to account for OPM resource needs. The final cost analysis includes OPM appeal-review staff time, OPM deciding-official time, hearing-related costs, reconsideration costs, and recurring e-filing license costs. OPM has also updated the analysis to reflect the anticipated increase in appeal volume

following the final Suitability and Fitness rule and estimates that it will likely need two additional GS-13 personnel to support appeal review and recommendations.

Commenter 0294 argued that cost savings cannot be reliably projected because the estimate appears to depend on a projected decrease in settlements. OPM clarifies that the estimate does not depend on an assumption that settlement rates will decrease. Rather, OPM uses historical MSPB dismissal and settlement rates to estimate the expected level of effort associated with appeals that resolve before a full hearing-equivalent level of effort and appeals that require the full level of effort. The cost model therefore uses settlement and dismissal data to allocate expected labor hours, not to assume any particular future settlement outcome.

Commenter 0258 argued that this rule could not be evaluated separately from the *Suitability and Fitness* rule. OPM agrees that the final cost analysis should reflect the current regulatory baseline. The proposed rule presented both a current-volume estimate and a potential combined estimate if the June 2025 *Suitability and Fitness* rule were finalized. In this final rule, because the *Suitability and Fitness* rule is now final, OPM has removed the current-volume-only scenario as the operative estimate and incorporated the anticipated appeal-volume effects of that final rule, including the estimate that approximately 1,226 removal actions presently taken under chapter 75 could be referred to OPM for suitability action and that approximately 255 additional appeals per year may shift from adverse-action appeals to suitability-action appeals.

Commenter 0058 asserted that the cost-benefit analysis was fundamentally flawed. OPM acknowledges the comment but notes that Commenter 0058 did not provide additional detail or alternative quantitative assumptions supporting that assertion. OPM has nevertheless updated the final cost analysis to reflect the final regulatory baseline, 2026 pay rates, the expected combined appeal volume, the final rule's procedural requirements, and annual e-filing license costs.

Commenters 0303 and 0338 asserted that the projected savings are minimal. OPM disagrees. The proposed rule estimated approximately \$574,000 in annual savings under then-current appeal volumes, and approximately \$5.9 million if both the appeal-rulemaking and the June 2025 *Suitability and Fitness* rule were finalized. The final analysis now uses the final Suitability and Fitness rule as part of the operative

baseline and estimates approximately \$5.83 million in annual net savings. OPM concludes that annual net savings of that magnitude are not minimal, particularly when considered together with the final rule's objective of establishing a specialized suitability-action appeal process.

Commenter 0303 also argued that OPM's projected cost analysis failed to account for an increase in suitability actions used to remove employees. OPM disagrees. Both the proposed rule and this final rule account for the possibility that approximately 1,226 removal actions presently taken by agencies under chapter 75 could be referred to OPM for suitability action, and this final rule incorporates the resulting estimated 255 additional annual appeals into the operative cost model.

Commenter 0246 objected that OPM's cost estimates are based on unclear or faulty assumptions and questioned the credibility of OPM's implementation plan. OPM disagrees. Commenter 0246 questioned OPM's projected hearing-related costs, but the commenter's estimate was based on 63 appeals per year. The final rule updates the model to reflect 318 appeals per year, including 255 additional appeals expected as a result of the final Suitability and Fitness rule. OPM also clarifies that the hearing-rate assumption is derived from seven years of MSPB suitability-appeal data and is used to distinguish appeals expected to require a full hearing-equivalent level of effort from those expected to resolve earlier.

Commenter 0246 also raised concerns about OPM's estimated costs for administrative judges. OPM disagrees that the estimate is understated. The final rule provides for hearings only when a material factual dispute cannot be resolved on the developed written record, including when resolution requires evaluation of witness credibility, and any hearing held under § 731.505(d) will be presided over by an administrative judge. OPM's calculations therefore assume that administrative judges participate only in the subset of cases requiring a hearing; the rule does not assume that administrative judges will be dedicated exclusively to suitability-action appeals. The final cost analysis quantifies these assumptions, estimating approximately 8 hearings per year and itemizing the associated administrative-judge, attorney, agency-staff, deciding-official, and transcription costs.

OPM disagrees that the cost estimate is understated merely because the proposal initially discussed a smaller baseline volume of appeals. The final

rule's cost model uses the higher projected appeal volume and accounts for the fact that not every appeal will require the same level of adjudicatory effort. Some appeals are expected to be dismissed as untimely, outside OPM's jurisdiction, or otherwise procedurally defective; some are expected to be resolved on the developed written record; some may require additional information or investigation; and only a subset are expected to require a hearing. The final rule's procedures reflect that structure. OPM's review is based on the developed written record except where the written record is insufficient to resolve a material factual dispute, including a material witness-credibility dispute. Any hearing held under § 731.505(d) will be presided over by an administrative judge and limited to the material factual issues identified as necessary to resolve the appeal.

OPM also disagrees that the cost estimate for administrative judges is understated. The final rule does not assume that administrative judges will adjudicate every appeal or that any administrative judge will be dedicated exclusively to suitability-action appeals. Rather, administrative judges are expected to participate in the subset of matters requiring that level of adjudicatory involvement, including hearings under § 731.505(d) and appeals by OPM applicants, appointees, or employees under § 731.505(b). This is consistent with the final regulatory text, which uses administrative-judge participation as a procedural safeguard where warranted, not as the staffing model for every case.

OPM further clarifies that the reference to a "separate cadre" of staff does not mean that every person supporting suitability-action appeals will perform only that function on a full-time basis. OPM intends to maintain functional separation between personnel involved in taking or directing suitability actions and personnel involved in adjudicating appeals. That separation is required by the final rule when OPM is the responsible agency. It does not require OPM to create idle full-time positions or prevent OPM from assigning qualified personnel to other compatible duties when appeal workload permits. The final rule is therefore consistent with a staffing model in which existing adjudicatory or suitability personnel perform some functions and OPM adds capacity where needed to support the projected appeal volume.

OPM also disagrees with the commenter's suggestion that part-time use of specialized staff undermines the efficiency rationale for the rule. The

purpose of the rule is not to maximize utilization of each individual staff role in isolation; it is to replace a multi-stage MSPB process with a suitability-specific OPM process that can be managed within OPM, is not dependent on MSPB quorum or Board-level review, and applies procedures proportionate to the issues presented in part 731 appeals. The final rule uses a written-record default, targeted record-development authority, hearings when material factual disputes, including witness-credibility disputes, cannot be resolved on the written record, and reconsideration standards tailored to OPM's process. Those design choices reduce unnecessary procedural layers while preserving safeguards for cases that require more intensive review.

OPM also notes that the final rule adds procedural protections that may increase some OPM processing costs compared with the proposal but improve the fairness and reliability of the process. These include express burdens of proof, a complete indexed and certified agency record, disclosure and substitute-disclosure procedures for withheld or protected material, a rule against reliance on nondisclosed material absent notice and a meaningful opportunity to respond except as authorized by law, separation-of-functions safeguards, ex parte restrictions, adjudicator-disqualification rules, training requirements, written findings on material charges and suitability factors, and public availability of final merits decisions or de-identified summaries. These protections reflect OPM's consideration of comments asserting that efficiency should not come at the expense of accuracy or procedural fairness.

Finally, OPM has updated the implementation assumptions to reflect that OPM has secured access to an existing electronic case-management system to receive, track, and manage appeal submissions, and has updated the regulatory impact analysis to include the annual recurring license cost for OPM staff. OPM therefore disagrees that the final rule lacks a reasonable implementation plan. The final analysis reflects a higher projected caseload, clarifies the basis for hearing-related assumptions, does not assume full-time dedicated administrative-judge work where the workload does not require it, and accounts for the final rule's actual procedural framework.

Commenter 0183 expressed concern that OPM would need to build a new electronic filing system. OPM clarifies that it is leveraging an existing electronic case-management system to receive, track, and manage suitability-

action appeal submissions. The final cost analysis therefore includes approximately \$16,000 in annual recurring license costs for OPM appeal staff, rather than costs to build an entirely new electronic filing platform.

Commenter 0183 also questioned whether OPM is sufficiently staffed to handle the expected appeal workload and questioned the hourly time assumptions used to calculate costs for judges and attorneys. OPM has updated the final analysis to reflect the anticipated increase in appeals and the expected need for two additional GS-13 personnel. OPM also concludes that the time assumptions used in the final cost analysis reflect the structural differences between MSPB litigation-style proceedings and OPM's streamlined administrative review process. The final cost estimate accounts for the final rule's record-based review process, the complete agency-record requirement, the availability of hearings where the written record is insufficient to resolve material factual disputes, and the reconsideration process established in the final regulatory text.

D. Benefits

This final rule is expected to provide substantial procedural, operational, and programmatic benefits. By replacing the prior MSPB appeal route with a suitability-specific OPM appeal process, the rule is expected to reduce unnecessary delay, cost, and procedural complexity while preserving meaningful review for individuals subject to suitability actions. The rule does not eliminate an appeal; it establishes a more tailored appeal process for determining whether the unfavorable suitability determination and resulting suitability action are supported and whether required suitability procedures were followed.

A principal benefit of the rule is more timely finality for both appellants and agencies. Under the prior regulatory framework, suitability appeals could proceed through MSPB administrative-judge proceedings, discovery, potential hearings, petitions for full Board review, and judicial review. That multi-stage process may be appropriate for matters Congress made appealable to MSPB under chapter 75 or other statutes, but OPM has determined that it is not necessary for regulatory suitability appeals under part 731. The final rule instead provides a written-record default, targeted record development where needed, hearings when material factual disputes, including witness-credibility disputes, cannot be resolved on the written record, reopening and reconsideration standards tailored to

this process, and Director review before finality. This structure is expected to shorten the time needed to reach a final administrative resolution.

The rule also reduces the Executive Branch's dependency on MSPB Board-level review and quorum availability for this limited class of regulatory appeals. Suitability actions are designed to protect the integrity and promote the efficiency of the service. Prolonged uncertainty can burden appellants, delay agency workforce decisions, and weaken the protective function of suitability actions. By placing suitability appeals within OPM, the agency responsible for governmentwide suitability policy and administration, the rule allows OPM to allocate resources, manage caseloads, and maintain continuity in the resolution of suitability appeals without relying on the availability of a separate Board quorum.

The rule is also expected to promote greater consistency and rigor in suitability adjudication. Suitability appeals require application of OPM's part 731 regulations, suitability factors, action-selection principles, and personnel-vetting standards. The final rule requires OPM employees and administrative law judges assigned to adjudicate appeals to complete training that complies with national training standards for suitability adjudicators. Centralizing review in OPM is expected to produce more uniform application of governmentwide suitability standards and reduce variation that may arise when suitability appeals are processed as a small subset of a broader personnel-litigation docket.

The final rule also strengthens procedural protections compared with the proposal. It expressly allocates burdens of proof; requires the responsible agency to prove, by a preponderance of the evidence, the charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action; requires a complete, indexed, paginated, and certified agency record; requires service of that record on the appellant; requires identification of withheld, redacted, or protectively handled material; and generally prohibits reliance on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law. The rule also adds separation-of-functions protections, ex parte restrictions, adjudicator-disqualification rules, ALJ adjudication or ALJ-presided hearings where required, reasoned

initial decisions addressing material charges and suitability factors, remedies for prevailing appellants, and public availability of final merits decisions or de-identified summaries consistent with applicable law. These safeguards are expected to improve confidence in the OPM appeal process while avoiding procedures not necessary in every suitability appeal.

The rule may also improve agency accountability and workforce integrity. A costly, lengthy, and uncertain appeal process may discourage agencies from pursuing warranted suitability actions, particularly where the action is intended to mitigate risk, protect mission functions, or ensure sufficient time for rehabilitation before renewed Federal employment. A more prompt and suitability-specific appeal process may increase agencies' willingness to take appropriate action when supported by the record, while ensuring that unsupported or procedurally defective actions are corrected. This benefits the public by helping agencies maintain a trusted workforce and by ensuring that suitability decisions are resolved on the merits rather than avoided because of unnecessary procedural burden.

Finally, the rule aligns the appeal procedure with the statutory distinction between suitability actions and chapter 75 adverse actions. Congress has provided that a suitability action taken by OPM under OPM regulations is not a chapter 75 adverse action. This final rule reflects that distinction by replacing a chapter 75-style appellate model with procedures designed for part 731 suitability actions. On balance, OPM expects the final rule to reduce operational costs, improve timeliness, promote consistent suitability adjudication, preserve meaningful procedural protections, and more effectively protect the integrity and efficiency of the Federal service.

E. Alternatives

OPM considered retaining the existing regulatory framework, under which individuals subject to suitability actions may appeal to MSPB. OPM declines to adopt that alternative. Although MSPB review has historically provided an external adjudicatory forum, OPM concludes that retaining the existing process would not adequately address the principal problems this rule is intended to solve: delay, procedural complexity, duplicative layers of review, and inconsistent alignment between the nature of suitability actions and the procedures used to review them. Suitability actions are distinct from chapter 75 adverse actions, and Congress has made clear in 5 U.S.C.

7512(F) that a suitability action taken by OPM under OPM regulations is not a chapter 75 action. OPM therefore concludes that a suitability-specific OPM appeal process is more appropriate than continuing to route these regulatory appeals through MSPB.

OPM also considered creating a two-step process under which an appellant would first appeal to OPM and then retain a further appeal to MSPB. OPM rejects that alternative because it would add, rather than reduce, procedural layers. OPM's prior experience with the OPM Review Panel demonstrates that adding internal OPM review while retaining MSPB review did not achieve streamlined finality; many appellants proceeded to MSPB after the Review Panel issued a decision. The lesson OPM draws from that history is not that OPM review is infeasible, but that a duplicative OPM-plus-MSPB model would preserve the same delay and cost concerns that this rule is designed to address.

Several commenters, including commenters 0207/0286, 0303, 0332, 0331, 0333, and 0329, urged OPM to consider alternatives such as retaining MSPB jurisdiction, creating an expedited MSPB track for suitability appeals, increasing MSPB funding and staffing, ensuring MSPB Board vacancies are filled, using specialized MSPB administrative judges, improving agency training, working with Congress, or assigning appeals to another independent third party. Other commenters, including 0204, 0287, and 0294, similarly recommended preserving MSPB review or using existing adjudicatory expertise.

OPM considered these alternatives but does not adopt them. Many would require action by Congress, MSPB, or other actors outside OPM's control, such as appropriations, statutory amendments, changes to MSPB internal case-management rules, creation of a new adjudicatory body, or appointment and confirmation of Board members. The APA does not require OPM to adopt an alternative that OPM cannot implement through this rulemaking, particularly where the alternative would not achieve OPM's objective of establishing a single, specialized, and timely suitability-appeal process.

OPM also considered whether improved agency training or management guidance would be sufficient. OPM agrees that training remains important and will continue to provide governmentwide suitability guidance and training. But training alone would not address the structural features of the existing appeals process that OPM identified as resulting in

protracted proceedings: MSPB procedures designed for broader personnel litigation, potential discovery and hearing practice in every MSPB appeal, petitions for Board review, judicial review of MSPB decisions, and recurring vulnerability to Board quorum lapses. Training may improve the quality of initial suitability actions, but it would not create a more timely, suitability-specific appellate process.

In response to comments, OPM also considered whether to preserve additional procedural features of MSPB practice, including automatic discovery, a categorical right to a hearing, or a broader mixed-case process within the suitability appeal. OPM declines to adopt those alternatives. OPM concludes that automatic discovery and a hearing in every appeal are not necessary for the limited issues reviewable under part 731 and would undermine the efficiency gains this rule is intended to achieve. At the same time, OPM agrees that the appeal process must include safeguards sufficient to ensure fair and accurate review. The final rule therefore strengthens the proposed process by adding express burdens of proof, requiring a complete certified agency record, requiring disclosure or legally appropriate substitute treatment of withheld or redacted material, prohibiting reliance on nondisclosed material absent notice and a meaningful opportunity to respond except as otherwise authorized by law, establishing separation-of-functions and ex parte safeguards, requiring trained adjudicators, providing objective criteria for additional fact development and hearings, requiring an administrative judge to preside over any hearing, requiring reasoned findings on material charges and suitability factors, and providing reconsideration and Director review before finality. The rule also provides that administrative judge hearings will be held when the written record is insufficiently developed to resolve one or more facts material to the outcome of the appeal, including all cases where resolution of a material factual dispute requires evaluation of witness credibility. Thus the regulations provide for hearings where they are relevant to resolving the case without creating a categorical right to hearings in cases where material facts are not in dispute. These revisions address commenters' procedural concerns while preserving the rule's central objective: replacing the MSPB process with a suitability-specific OPM appeal process.

OPM further considered whether Director review should be eliminated or made available as a party-requested

appeal. OPM declines both alternatives. The final rule preserves party-requested reopening and reconsideration under § 731.507 and separately preserves the Director's ability, on the Director's own initiative and before finality, to reopen and reconsider an initial decision or reopened-and-reconsidered decision under § 731.508. OPM revised § 731.508 to identify considerations that may warrant Director review, including clear legal error, erroneous material fact, exceptional importance, governmentwide civil-service administration, OPM policy, conflict among OPM decisions, or other reasons warranting review. This approach preserves principal-officer supervision and decisional consistency without creating an additional appeal layer as of right. Under the Supreme Court's decision in *United States v. Arthrex*, 141 S. Ct. 1970 (2021), OPM cannot constitutionally permit inferior officers to issue final decisions without review by a principal officer.

OPM recognizes that the final rule does not adopt every alternative proposed by commenters. But OPM has considered the principal alternatives and concludes that they would either fail to address the problems identified, depend on actions outside OPM's control, preserve duplicative or lengthy review, or undermine the suitability-specific process OPM is establishing. OPM instead adopts a final rule that changes the appeal forum while adding significant procedural protections. OPM concludes that this approach best balances timely resolution, consistent application of part 731, fairness to appellants, and the Government's interest in protecting the integrity and efficiency of the Federal service.

F. Reliance Interests

OPM considered potential reliance interests arising from the prior MSPB appeal procedure and concludes that those interests do not warrant retaining MSPB as the forum for part 731 suitability-action appeals. OPM recognizes that applicants, appointees, employees, agencies, unions, and representatives have operated for many years under a regulatory framework that routed suitability-action appeals to MSPB. OPM also recognizes that parties may have valued MSPB procedures, including discovery, hearings, petitions for Board review, and judicial review of MSPB decisions.

Those reliance interests, however, concern a regulatory forum and regulatory procedures, not a statutory entitlement to MSPB adjudication. MSPB jurisdiction over part 731 suitability appeals existed because

OPM's regulations placed those appeals before MSPB. Congress did not require that suitability actions be appealed to MSPB, and suitability actions are distinct from chapter 75 adverse actions. OPM may revise a regulatory appeal forum prospectively through notice-and-comment rulemaking, provided it acknowledges reliance interests and gives a reasoned explanation for the change. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 30–33 (2020); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

OPM has done so here. The final rule is not a withdrawal of review; it replaces one regulatory forum with another and adds a structured suitability-specific appeal process. Individuals subject to a suitability action will continue to receive the pre-action protections provided in part 731, including advance written notice of the charges and reasons, notice of the right to respond, access to the materials relied upon, a minimum 30-day response period, the right to representation, and a written decision. The final rule also preserves an appeal in which the appellant may contest the unfavorable suitability determination and raise specified procedural defects.

In addition, the final rule strengthens the procedures proposed in the NPRM. It expressly allocates burdens of proof; requires the responsible agency to prove the charges supporting the unfavorable suitability determination and the substantive propriety of the action by a preponderance of the evidence; requires a complete, indexed, paginated, and certified agency record; requires service of that record on the appellant; requires identification of withheld, redacted, or protectively handled material; and prohibits reliance on nondisclosed material to affirm a suitability action unless the appellant receives notice of the substance of that material and a meaningful opportunity to respond, except as otherwise authorized by law. The rule also provides separation-of-functions safeguards when OPM is the responsible agency, ex parte restrictions, adjudicator-disqualification rules, training requirements, objective criteria for additional fact development, administrative-judge-presided hearings where material factual disputes, including witness-credibility disputes, cannot be resolved on the developed written record, reasoned initial decisions, reconsideration, Director review before finality, remedies for prevailing appellants, and public

availability of final merits decisions or de-identified summaries.

These safeguards address the core interests underlying commenters' reliance concerns: fair notice, meaningful opportunity to respond, access to the evidence supporting the action, impartial review, reasoned decision-making, and appropriate relief. The final rule does not preserve every procedural feature of MSPB litigation, but reliance on the prior regulatory forum does not require OPM to retain procedures that OPM has reasonably determined are not necessary for part 731 suitability appeals and that contribute to delay, cost, and duplicative review.

OPM also considered reliance interests in other statutory and regulatory remedies. The final rule makes clear that the part 731 appeal process is the sole means of appealing a suitability action under part 731, but it does not preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the EEOC, FLRA, an Inspector General, MSPB, DOL VETS, or OSC. Thus, the rule does not displace independent remedies for discrimination, prohibited personnel practices, whistleblower reprisal, veterans' rights violations, labor-relations matters, or other claims committed by law to another forum.

Nor does the rule reopen final decisions issued under the prior framework or eliminate rights that vested under a final adjudication. The rule operates prospectively as a change to the appeal forum and procedures for suitability actions governed by subpart E, and it does not affect appeals filed with the MSPB before the effective date of this final rule, which will continue to be adjudicated by the MSPB. Parties may no longer rely on the continued availability of the prior regulatory MSPB route for future part 731 suitability appeals, but they retain meaningful procedural protections and any independent statutory remedies otherwise available.

OPM therefore concludes that any reliance interests associated with the former MSPB appeal route are outweighed by OPM's reasons for adopting a suitability-specific appeal process: aligning the appeal forum with the regulatory nature of part 731 suitability actions, reducing delay and unnecessary procedural complexity, promoting consistent application of OPM's governmentwide suitability standards, and protecting both individual procedural interests and the integrity and efficiency of the Federal service.

VI. Procedural Issues and Regulatory Review

A. Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule affects suitability and fitness regulations which apply primarily to Federal agencies and employees. Although some Federal contractors may be small entities, the nature of the changes in this rulemaking is not expected to result in economic impacts to non-agency entities.

B. Regulatory Review

OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of E.O. 12866, as supplemented by Executive Order 13563. This rule is an E.O. 14192 deregulatory action. OPM estimates this rule generates \$4.7 million in annualized savings in 2024 dollars at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon. That figure is derived as follows. In 2026 dollars, OPM estimates the rule produces approximately \$5.83 million in recurring annual savings and approximately \$1 million in one-time implementation costs incurred in fiscal year 2026. Converting to 2024 dollars using the GDP price deflator (approximately 2.2 percent annual inflation, a two-year conversion factor of approximately 0.957) yields approximately \$5.58 million in recurring annual savings and approximately \$0.96 million in one-time costs. Because the final rule does not apply to appeals filed with the MSPB before its effective date, OPM assumes the recurring savings phase in at 50 percent (approximately \$2.79 million) in fiscal year 2027 and reach the full \$5.58 million in fiscal year 2028 and each year thereafter over a perpetual horizon. Discounting those flows to 2024 at a 7 percent rate produces a present value of savings of approximately \$67.3 million and a present value of costs of approximately

\$0.8 million, for a net present value of approximately \$66.5 million; multiplying by the 7 percent discount rate to annualize over a perpetual horizon yields approximately \$4.7 million in annualized net savings.

C. Severability

If any of the provisions of this rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

D. Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of E.O. 12988.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or Tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires most final rules to be submitted to Congress before taking effect. OPM will submit to Congress and

the Comptroller General of the United States a report regarding the issuance of this rule before its effective date. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

H. Paperwork Reduction Act

This final rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). Depending on the population, currently suitability and vetting information is collected through the following OMB Control Numbers.

- 3206–0261 (Standard Form 85, Questionnaire for Non-Sensitive Positions)
- 3206–0258 (Standard Form 85P, Questionnaire for Public Trust Positions and SF 85P–S, Supplemental Questionnaire for Selected Positions)
- 3206–0005 (SF 86, Questionnaire for National Security Positions)

Additional information regarding these collections of information—including all current supporting materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number. Data gathered through these information collections fall under the following system of records notice: Personnel Vetting Records System, DUSDI 02–DoD (83 FR 52420).

In addition, OPM suitability adjudication records are currently covered by the system of records notice (SORN) CENTRAL–9, Personnel Investigations Records (81 FR 70191). After reviewing that SORN in light of the changes in the Suitability and Fitness rule and this rulemaking, OPM is proposing to rescind the existing system of records and establish a new system of records titled CENTRAL–9, OPM Suitability Adjudications Files. Individual agencies should each have a SORN that covers the agency's adjudication and referral records. Agencies should evaluate whether the agency-specific SORNs must be updated to permit sharing information with OPM as part of the appeals process.

On November 15, 2023, a new information collection, the Personnel Vetting Questionnaire (PVQ), was approved (OMB Control Number 3206–0279). The Defense Counterintelligence and Security Agency (DCSA) is working to implement the new information collection. OPM plans to discontinue the current information collections once

the PVQ is operational. OPM believes this rulemaking does not require any changes in any of these collections.

OPM is adopting an e-filing system for use in collecting and maintaining adjudication records for a variety of different existing regulatory provisions. OPM has submitted a request for a new information collection to the Office of Management and Budget for this system (see 91 FR 46802 (July 24, 2026)). OPM will not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

To the extent the final rule requires Federal agencies to submit agency responses, agency records, certifications, or other documents in their official capacity, those submissions are not collections from “persons” for purposes of the Paperwork Reduction Act. However, submissions from appellants, representatives, or other non-agency parties may constitute information collections subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 731

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts, Government employees, Investigations.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management

Jerson Matias,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR part 731 as follows:

PART 731—SUITABILITY AND FITNESS

- 1. The authority citation for part 731 is revised to read as follows:

Authority: 5 U.S.C. 1103, 1302, 2301, 2302, 3301, 7301. E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218, as amended. E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 198, as amended. E.O. 13488, 74 FR 4111, 3 CFR, 2010 Comp., p. 189, as amended. E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp., p. 243. E.O. 14210, 90 FR 9669. Presidential Memorandum of January 31, 2014, 3 CFR, 2014 Comp., p. 340. Presidential Memorandum of March 20, 2025, 90 FR 13683. 5 CFR parts 1, 2, 5, and 6.

- 2. Revise Subpart E to read as follows:

Subpart E—Suitability Action Appeals

- Sec.
- 731.501 Right to appeal.
- 731.502 Procedures for submitting appeals.
- 731.503 Form and content of suitability action appeals and agency response.
- 731.504 Appellant representatives.
- 731.505 Adjudication of appeals.
- 731.506 Sanctions and protective orders.
- 731.507 Requests for reconsideration of an initial decision.
- 731.508 Review by the OPM Director.
- 731.509 Final decision.

§ 731.501 Right to appeal.

(a) *Right of appeal.* An applicant, appointee, or employee in the competitive service or career Senior Executive Service, as those terms are used in this part, may appeal to OPM a suitability action taken against the appellant because of an unfavorable suitability determination.

(b) *Burden of proof.* (1) The appellant bears the burden to demonstrate, by a preponderance of the evidence:

(i) The timeliness of the written appeal;

(ii) That OPM possesses jurisdiction over the appeal; and

(iii) If the appellant challenges the suitability action based on improper procedure under paragraph (c)(2) of this section, that the responsible agency failed to provide one or more of the procedural protections identified in paragraph (c)(2) of this section.

(2) If the appellant contests the unfavorable suitability determination under paragraph (c)(1) of this section, and after the appellant establishes timeliness and jurisdiction, the responsible agency bears the burden to establish, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action taken. This paragraph does not shift to the responsible agency the appellant's burden under paragraph (b)(1)(iii) of this section to demonstrate improper procedure.

(c) *Appealable issues—(1) Unfavorable suitability determination.* The appellant may contest the determination that he or she is unsuitable for Federal employment based on the specific factors found at § 731.202(b) provided that the unfavorable suitability determination resulted in a suitability action as defined at § 731.101(a).

(2) *Improper procedure.* An appellant who has been subject to a suitability action may challenge whether the responsible agency failed to provide:

(i) Advance written notice stating the charge(s) and specific reason(s) for the

proposed action and notifying the appellant of the right to answer the notice in writing and to review, upon request, the materials relied upon;

(ii) Notice of the right to be represented by a representative chosen by the appellant;

(iii) A minimum of 30 calendar days from the date of the notice of proposed action to file a written response and furnish documentation; or

(iv) A written decision delivered to the appellant that explains the decision and the procedures for appealing the decision.

(d) *Nonappealable issues.* An applicant, appointee, or employee may not appeal an unfavorable suitability determination that does not result in a suitability action as those actions are defined at § 731.101(a).

(e) *Exclusive appeal procedure.* The procedures in this subpart are the sole means of appealing a suitability action under this part, but do not otherwise preclude an applicant, appointee, or employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the Equal Employment Opportunity Commission, Federal Labor Relations Authority, an Inspector General, Merit Systems Protection Board, the Department of Labor's Veterans' Employment and Training Service, or the Office of Special Counsel. A party cannot obtain judicial review of a decision under this subpart.

§ 731.502 Procedures for submitting appeals.

(a) *Filing an appeal.* An applicant, appointee, employee, or authorized representative seeking to file an appeal or reconsideration under this subpart must utilize the electronic filing system identified on OPM's website. Unless a party demonstrates good cause and seeks approval from OPM, OPM will not accept pleadings, evidence, or other documents via electronic mail or postal mail.

(b) *Time limits.* An appellant may file an appeal within 30 calendar days from the effective date of a suitability action. An appeal is deemed timely when it is electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action.

(1) In computing the number of days allowed for filing an appeal, the first day counted is the day after the effective date of the suitability action. In the case of an appointee or employee, the effective date of the action is the date the employing agency effectuates the suitability action, regardless of whether the agency is effectuating its own action or an OPM action. In the case of an

applicant, the effective date of the action is the date on the notice of final action. When a notice of final action is served on an applicant by mail, 10 calendar days are added to the date of the notice for the deadline to file an appeal. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

(2) If an individual does not file an appeal within the time set by this section, the appeal will be dismissed as untimely filed unless the individual demonstrates good cause for an untimely appeal. The determination of good cause will be in the sole and exclusive discretion of OPM.

(c) *E-filing procedures.* (1) All parties and their representatives to an appeal or request to reopen and reconsider must register as instructed by OPM on its suitability action appeals website using a unique email address.

(2) Registration as an e-filer constitutes consent to accept electronic service of pleadings, evidence, notices, orders, and other documents filed by other e-filers or issued by OPM. No party may electronically file any document with OPM or access an appeal or reconsideration of an appeal unless registered as an e-filer or exempted under paragraph (c)(7) of this section.

(3) All notices, orders, decisions, and other documents issued by OPM, as well as all documents filed by parties, will be made available for viewing and downloading at OPM's electronic filing system. Access to documents is limited to the parties and their representatives who are registered as e-filers in the cases in which they were filed.

(4) All parties and their representatives must follow the instructions on OPM's website for properly filing all pleadings, evidence, and other documents. OPM may strike a document where an e-filer repeatedly fails to follow these instructions following receipt of a show cause order.

(5) Each e-filer must promptly update their profile in OPM's electronic filing system and notify OPM and other parties of any change in their address, telephone number, or email address by filing a pleading in each pending case with which they are associated. E-filers are responsible for monitoring case activity regularly in OPM's electronic filing system to ensure that they have received all case-related documents.

(6) A party or representative may withdraw their registration as an e-filer pursuant to the requirements posted on OPM's website. Withdrawing registration in OPM's electronic filing

system means that, effective upon OPM's processing of a proper withdrawal, pleadings, evidence, orders, and other documents filed by a party, a party's representative, or OPM will no longer be served on that person electronically and that person will no longer have electronic access to their case records through OPM's electronic filing system. OPM may still process an appeal or request for reconsideration after a party withdraws as an e-filer. Withdrawal of e-filing registration by a party or representative will not be considered good cause for staying a case.

(7) OPM, in its sole and exclusive discretion, may exempt a party or representative from registering as an e-filer for good cause. A party or representative must promptly contact OPM as instructed on OPM's website to request an exemption from the e-filing requirements in this subpart. OPM will not find good cause for failing to timely file an appeal or seek reconsideration if the party or representative fails to contact OPM to request an exemption before any deadline to appeal or seek reconsideration.

(8) Documents filed in OPM's electronic filing system are deemed received on the date of the electronic submission.

§ 731.503 Form and content of suitability action appeals and agency response.

(a) *Appeal.* An appeal must be in writing and shall state the basis of the appellant's appeal; the name, address, and email address or phone number of the appellant and appellant's representative, if any; and any documentation supporting the appellant's appeal.

(b) *Agency response.* (1) Upon receipt of the appeal, OPM will notify the agency responsible for the suitability action (responsible agency) of the appeal. Unless the OPM adjudicator processing the appeal provides otherwise, the responsible agency must file its response to an appeal within 30 calendar days of notification of the appeal; include all documents contained in the agency record of the action; include a designation of and signature by the authorized agency representative; and include any other documents or responses requested by OPM.

(2) For purposes of this subpart, *responsible agency* means the employing agency or, when OPM took, directed, or made the suitability action under review, the OPM office or component responsible for that action. When OPM is the responsible agency, the adjudicative function must be

separated from any OPM office or official that participated personally and substantially in the suitability determination or action.

(3) When OPM is the responsible agency and is not the appellant's employing agency, OPM will also notify the employing agency of the appeal. The employing agency must furnish to OPM, within the time OPM specifies, any documents or information in its possession that are within the scope of the record of the action or that OPM otherwise requests, and must otherwise participate in the response to the appeal to the extent OPM directs.

(c) *Record of the action.* The responsible agency must file a complete, indexed, paginated, and certified record of the action with OPM. The record of the action includes all documents considered, relied upon, generated, received, issued, or served in investigating, proposing, deciding, directing, or effectuating the unfavorable suitability determination and consequent suitability action, regardless of whether such documents are maintained by the employing agency, OPM, an OPM investigative or adjudicative component, or another authorized investigative or personnel-vetting entity. When the responsible agency is not the employing agency, the employing agency must furnish to the responsible agency or to OPM, within the time OPM specifies, any documents within the scope of the record of the action that are in the employing agency's possession; OPM will identify for the employing agency the records the employing agency must furnish and the records OPM will provide. The record must include, as applicable:

(1) documents establishing the appellant's status, position, appointment or application, and the legal authority under which the action was taken or directed;

(2) all investigative, vetting, personnel, application, and adjudicative materials considered or relied upon by the office or component that took or directed the action;

(3) the charge-by-charge analysis, suitability-factor analysis, consideration of mitigating, rehabilitative, contradictory, or exculpatory evidence, and rationale for the action selected;

(4) the written final decision, proof of service, effective-date documentation, appeal-rights notice, and documents implementing the action;

(5) any direction from OPM to an employing agency to effectuate the action and any employing-agency implementation documents; and

(6) a certification that the submitted record is complete.

The responsible agency must serve the appellant with the agency record. The responsible agency must identify any withheld, redacted, or protectively handled document in an index or privilege log, unless identifying the document itself is prohibited by law. OPM may require a summary, substitute disclosure, protective order, in camera submission, or other procedure sufficient to provide the appellant a meaningful opportunity to respond, consistent with applicable law. No nondisclosed material may be relied upon to affirm the suitability action unless the appellant has received notice of the substance of the material and a meaningful opportunity to respond, except as otherwise authorized by law.

(d) *Reply.* Unless the OPM adjudicator provides otherwise, the appellant may file a reply to an agency response to an initial appeal utilizing the electronic filing system within 15 calendar days of the agency response. The reply may not raise new allegations of error unless the basis rests on information first disclosed in the agency response or unless OPM grants leave for good cause.

(e) *Inspection of OPM's appellate record.* The parties may inspect OPM's appellate record on request, subject to the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law.

(f) *Service of Documents.* The parties will serve on each other copies of any and all information submitted to OPM with respect to an appeal, subject to the Privacy Act, applicable privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law. Such information must be served on all other parties at the same time the information is submitted to OPM and must be accompanied by a certificate of service stating how and when service was made.

(g) *Untimely Filings.* Untimely filings may be accepted upon a party's showing of good cause at the sole and exclusive discretion of OPM.

§ 731.504 Appellant representatives.

(a) *Designation of representative.* An appellant may select a representative of his or her choice to assist in the preparation and presentation of an appeal, provided that the appellant submits his or her designation of representative in writing related to the specific appeal.

(b) *Federal employee representatives; official time and reimbursement.* If the

selected representative is a Federal employee, the representative may not perform such representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), nor may the representative claim agency reimbursement for any expenses incurred while performing such representational function.

(c) *Disallowance of representative.* OPM or the responsible agency may, in its sole and exclusive discretion, disallow an appellant's choice of representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position.

§ 731.505 Adjudication of appeals.

(a) *Appeals by non-OPM applicants, appointees, or employees.* OPM will assign OPM personnel to adjudicate an appeal under this subpart by an applicant, employee, or appointee of an agency other than OPM. OPM personnel assigned to adjudicate an appeal under this subpart shall be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators shall not consider material ex parte communications concerning the merits of an appeal. If such a communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. In addition, no OPM employee may be assigned to adjudicate an appeal if the employee has a prior relationship with the appellant, had prior involvement in the suitability determination or suitability action under appeal, or has any other conflict that would reasonably call the employee's impartiality into question. When necessary, OPM may assign an administrative law judge to adjudicate an appeal.

(b) *Appeals by OPM applicants, appointees, or employees.* OPM will assign an administrative law judge to adjudicate an appeal under this subpart by an OPM applicant, appointee, or employee. To insulate the adjudication of appeals by such individuals from agency involvement, OPM will not disturb initial decisions in those cases unless a party shows there has been harmful procedural irregularity in the proceedings, a clear error of law, or a material factual error that affected the outcome of the appeal. For purposes of this paragraph, the term *harmful procedural irregularity* means an irregularity in the application of

procedures that was likely to have caused the administrative law judge to reach a conclusion different from the one he or she would have reached in the absence or cure of the irregularity. The assignment of an administrative law judge under this paragraph or paragraphs (a) or (d) of this section does not make 5 U.S.C. 554, 556, or 557 applicable to an appeal under this subpart except to the extent those provisions are independently required by law or expressly incorporated in this part.

(c) *Training of personnel assigned to adjudicate appeals.* All OPM employees or administrative law judges assigned by OPM to adjudicate appeals under this subpart must have completed training that complies with national training standards for suitability adjudicators that qualifies them to review OPM and agency suitability determinations and actions.

(d) *Ascertainment of facts.* (1) OPM may require either party, or the employing agency if the employing agency is not a party to the appeal, to provide additional information and may investigate the facts underlying an unfavorable suitability determination or suitability action in the course of adjudicating an appeal if OPM determines, in its sole discretion, that the existing record is insufficient to resolve a material issue within OPM's jurisdiction and that the investigation is reasonably likely to produce information material to resolving that issue.

(2) When OPM conducts an investigation under this paragraph, OPM will:

(i) Inform the appellant, the appellant's representative, if any, and the responsible agency, and, if different, the employing agency, of the investigation and the nature of the information requested; and

(ii) Provide the appellant, the appellant's representative, if any, and the responsible agency, and, if different, the employing agency, with the results of the investigation and a reasonable opportunity to submit argument or additional information to support their positions.

(3) OPM's review of an unfavorable suitability determination and consequent suitability action must be based solely on the developed written record unless the written record is insufficiently developed to resolve one or more facts material to the outcome of the appeal, including when resolution of a material factual dispute requires evaluation of witness credibility.

(4) In cases where the resolution of a material factual dispute requires

evaluation of witness credibility, or where the developed written record is insufficient to resolve one or more facts material to the outcome of the appeal, OPM will assign an administrative judge to preside over a hearing. The hearing will be limited to the material factual issues identified by OPM or the administrative judge as necessary to resolve the appeal.

(e) *Failure to participate.* If a party fails to participate in an investigation or hearing pursuant to paragraph (d), OPM may, except when prohibited by law, impose any sanction listed at § 731.506(b)(1) through (3).

(f) *Initial decision.* (1) OPM may issue an initial decision that affirms, reverses, modifies, vacates, or remands the unfavorable suitability determination and consequent suitability action, in whole or in part. OPM will notify the appellant, the responsible agency, and, if different, the employing agency in writing of its decision on the appeal.

(2) The initial decision must make findings on each material charge, specification, and suitability factor relied upon to support the action. If fewer than all charges or specifications are sustained, OPM will determine whether the sustained grounds support the suitability action imposed and may affirm, reverse, modify, vacate, or remand the action, as appropriate.

(g) *Remedies.* (1) If the appellant is the prevailing party, OPM will order appropriate relief authorized by law, which may include correction, cancellation, or modification of the suitability action; correction of relevant records; prospective eligibility or appointment-related relief; and, where applicable and legally authorized, back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The appellant is not entitled to compensatory damages or other relief not authorized by law.

(2) If a party timely requests reopening and reconsideration of an initial decision or the OPM Director reopens and reconsiders an initial decision, the responsible agency must continue to provide ordered relief unless OPM issues an order staying any such relief. No such stay may be ordered that would deprive the individual of pay and benefits while the initial decision is pending reconsideration.

§ 731.506 Sanctions and protective orders.

(a) *Cease-and-desist order.* OPM may issue a protective order or cease-and-desist directive to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal

information, or misuse of nonpublic information obtained through the appeal. OPM may do this *sua sponte*, or at the request of a party, preemptively or at any juncture in the appeal process. A party requesting OPM to issue a protective order or cease-and-desist order should file such request using the e-filing procedures prescribed at § 731.502(c) and must include a statement of reasons justifying the request, together with any relevant documentary evidence. Any protective order issued by OPM must be no broader than reasonably necessary and must not restrict lawful communications protected by law.

(b) *Failure to comply with an OPM order.* When a party to an appeal fails to comply with an order issued under paragraph (a) of this section, OPM may, except when prohibited by law:

(1) Draw all inferences in opposition to the noncompliant party with regard to the appeal in question;

(2) Prohibit the noncompliant party from introducing evidence, or additional evidence, concerning the appeal, or otherwise relying on the record; or

(3) Eliminate from consideration any appropriate part of the filings or other submissions of the noncompliant party.

(4) Any sanction issued under this paragraph (b) must be proportionate, causally related to the violation, and no broader than necessary to protect the adjudicatory process.

§ 731.507 Requests for reconsideration of an initial decision.

(a) Upon a request from either party to the dispute, OPM may, in its sole and exclusive discretion, reopen and reconsider an initial decision issued under this subpart. A party may request reopening and reconsideration of an initial decision within 30 calendar days from issuance of the initial decision.

(b) The request to reopen and reconsider must be filed using the e-filing system identified on OPM's website and must explain how the ground(s) relied on affected the outcome of the case. Any documents or further filings related to a request to reopen and reconsider must be filed at the same time the request is submitted.

(c) Grounds for which OPM may grant a request to reopen and reconsider are:

(1) The initial decision contains an erroneous finding of material fact sufficient to warrant a different outcome;

(2) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The party must explain how the error affected the outcome of the case;

(3) New and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed; or

(4) OPM finds good cause to reopen and reconsider an appeal.

(d) In any appeal that is reopened and reconsidered, OPM may:

(1) Issue a reopened and reconsidered decision ("R&R decision") that affirms, reverses, modifies, or vacates the initial decision, in whole or in part;

(2) Require the parties to submit argument and evidence;

(3) Take any other action necessary for final disposition of the case; and

(4) Issue an order with a date for compliance with the R&R decision.

(e) There is no further right of administrative appeal from the R&R decision.

§ 731.508 Review by the OPM Director.

The Director may, on the Director's own initiative and before a decision becomes final under § 731.509, reopen and reconsider any initial decision or reopened and reconsidered decision. In determining whether to exercise this authority, the Director may consider, among other things, whether the decision contains clear legal error; rests on an erroneous finding of material fact; involves an issue of exceptional importance, an issue affecting the governmentwide administration of the civil service laws, rules, regulations, or OPM policy, or a conflict among OPM decisions; or otherwise warrants Director review. This section does not create a right to request Director review. Upon reopening and reconsideration, the Director may take any action described in § 731.507(d).

§ 731.509 Final decision.

(a) The initial decision becomes OPM's final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 731.507 or the Director reopens the decision under § 731.508.

(b) A timely request under § 731.507 suspends finality. If OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes OPM's final decision 30 calendar days after issuance of the denial or dismissal, unless the Director reopens the initial decision under § 731.508 before that time. If OPM grants the request, a reopened and reconsidered decision becomes OPM's final decision 30 calendar days after issuance unless the Director reopens that decision under § 731.508 before that time.

(c) An untimely request under § 731.507 does not suspend or otherwise affect finality. If OPM accepts and grants an untimely request for good cause, any resulting reopened and reconsidered decision becomes final as provided in paragraph (b) of this section.

(d) A decision by the OPM Director under § 731.508 that disposes of the appeal is OPM's final decision and is effective upon issuance. If the Director remands the appeal or directs further proceedings, any resulting decision becomes final under this section.

(e) There is no further right of appeal of a final decision by OPM.

(f) OPM will make publicly available final merits decisions or de-identified summaries of final merits decisions issued under this subpart, consistent with 5 U.S.C. 552, the Privacy Act, and other applicable law. Public summaries will identify the procedural posture, sustained and unsustained suitability factors, disposition, and remedy, without disclosing protected information. OPM will also make a final merits decision available upon request to the applicant, appointee, or employee involved in the proceeding; the individual's representative under § 731.504; or a representative of the Federal agency or office involved in the proceeding who has a need to know.

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Part IV

Office of Personnel Management

5 CFR Parts 11, 230, 315, et al.

Streamlining Probationary and Trial Period Appeals; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 11, 230, 315, 432, 751, and 752

[Docket ID: OPM-2025-0013]

RIN 3206-AO96

Streamlining Probationary and Trial Period Appeals

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the circumstances and procedures for adjudicating appeals from employees terminated during their probationary and trial periods and supervisors and managers who fail to complete their probationary periods. Executive order, “Strengthening Probationary Periods in the Federal Service,” rendered the prior procedures for appealing such actions to the Merit Systems Protection Board (MSPB) inoperative. This final rule establishes a new, limited appeals process adjudicated by OPM. The final rule also makes conforming amendments.

DATES: Effective September 2, 2026. Covered actions (*i.e.*, terminations, assignments, noncertifications, or failures to certify/finalize) effected before the effective date of this rule are not governed by this final rule.

FOR FURTHER INFORMATION CONTACT: Aaron Gottesman, Senior Advisor to the Director, by email at employee_accountability@opm.gov or by phone at (202) 606-2930.

SUPPLEMENTARY INFORMATION: OPM is issuing this final rule to establish streamlined appeal procedures for employees terminated during their probationary or trial periods and supervisors and managers who fail to complete their probationary periods.¹ Under Executive Order (E.O.) 14284, the

President rendered the probationary period appeal procedures in 5 CFR part 315, subpart H, “inoperative and without effect” and directed OPM to rescind those regulations and make conforming amendments. OPM published a final rule implementing those directives on June 24, 2025, at 90 FR 26727. Since that rescission, no administrative appeals process has existed for terminations during probationary or trial periods. E.O. 14284 delegated authority to OPM to prescribe circumstances and procedures by regulation by which employees terminated during their probationary or trial periods may appeal such termination.

This final rule establishes OPM procedures for appeals formerly addressed by subpart H of part 315 and for supervisory or managerial probationary period appeals under § 315.908. The rule grants authority to OPM to adjudicate appeals to include appeals filed by employees terminated during their probationary periods (or during their trial periods, for employees covered under 5 CFR part 307), or whose appointments were not finalized during such periods, and by supervisors and managers who fail to complete their probationary periods (akin to the former § 315.806 and the current § 315.908, respectively).

OPM will only adjudicate appeals that allege either discrimination based on partisan political reasons, marital status, or an agency’s failure to follow procedures for terminations based upon pre-appointment reasons. Employees will not, however, be able to attach claims of unlawful discrimination under the laws administered by the Equal Employment Opportunity Commission (EEOC) to an appeal as previously permitted before issuance of E.O. 14284. Employees may pursue such claims at the EEOC to the same extent they could do so before issuance of E.O. 14284. This final rule also provides a procedure for an appellant to seek reconsideration of the decision. This rule will not apply to any termination effected prior to the effective date of the rule.

I. Digest of Public Comments

In response to the proposed rule, OPM received 632 comments during the 30-day public comment period from a variety of individuals (including current and former civil servants, scientists, and members of Congress) and organizations, such as those representing science and technology, national and local unions, and Federal

agencies.² Of the 632 comments received, 618 were posted, and 2 were not posted because they contained threats to the President and members of the Administration or contained sensitive personally identifiable information from commenters. The remaining 12 comments are attributed to individual commenters who indicated on their comment submission that their comment represented a specific number of submissions. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments ranged from ardent support of the proposed regulation to categorical rejection of it. Some of the comments supported the proposed regulation or were neutral or mixed, while many opposed it.

OPM found many of the comments helpful, and it has made several adjustments to the proposed rule in response to comments, as explained below. Among other changes, the final rule adds more detailed procedures for agency certification at the end of the probationary or trial period, specifies the minimum contents of the agency record, allows employees to raise new allegations in reply when they are based on information first disclosed by the agency or when good cause exists, and strengthens safeguards insulating OPM adjudicators from officials involved in the challenged action. The final rule also clarifies that OPM’s audit and investigation authority is directed to material issues that cannot be resolved on the existing record, and it revises the protective-order provision to ensure that any order is no broader than reasonably necessary and does not restrict lawful protected communications.

The comments focused on probationers potentially losing rights under the new OPM appeals process as compared with the former MSPB process that E.O. 14284 rescinded, as well as the requirement that discrimination claims within the jurisdiction of the EEOC be filed with the EEOC. Commenters who supported the proposed rule noted that probationers’ rights were already limited prior to the proposal, so providing a complicated and burdensome appeal process under MSPB jurisdiction is not practical nor does it support managers and supervisors removing probationers for inefficient service to the public.

In the next section, we address the background for these regulatory

¹ In this preamble, OPM sometimes uses the terms “probationary,” “probationer,” or “probationary employee” as shorthand to refer collectively to employees serving probationary periods or trial periods covered by this final rule. This shorthand is not intended to expand the scope of the rule or to eliminate distinctions among competitive service probationary periods, trial periods covered by 5 CFR part 307, supervisory or managerial probationary periods, or other appointment-specific requirements. A relatively small number of employees serving trial periods under 5 CFR part 307 are covered by this final rule and have the limited appeal rights granted herein. However, excepted service employees serving trial periods outside 5 CFR part 307 do not have appeal rights under this rule arising solely from termination during such trial periods, unless another statute, regulation, or other independent legal authority provides such rights.

² Comments cited are available in the docket for this rulemaking and can be accessed at <https://www.regulations.gov/comment/OPM-2025-0013-nnnn>, where “nnnn” is the comment number.

amendments and related comments. In subsequent sections, we respond to the significant groups of comments, describe the specific amendments, provide a regulatory analysis, and provide the amended regulatory text. Note that OPM received several comments that are not addressed below because they were beyond the scope of the proposed regulatory changes or were vague or incomplete.

II. Background, Legal Authority, and Need for the Rule³

The concept of a probationary or trial period in the U.S. civil service dates to the Pendleton Civil Service Act of 1883 (Pendleton Act). The Pendleton Act required “that there shall be a period of probation before any absolute appointment or employment aforesaid.”⁴ The new Civil Service Commission created by the Pendleton Act reflected a similar understanding of probation. In its first annual report in 1884, the Commission characterized the probationary period as lasting “six months before any absolute appointment can be made. At the end of this time the appointee goes out of the service unless then reappointed.”⁵ Two years later, the Commission wrote in its third annual report that probation was “another test under the Merit System” which “must be considered before we pass final judgment on the examinations, of which they are an essential part.” If at the end of the probationary period “the appointing officer is not . . . willing to make an unconditional appointment,” the probationer would not remain in the service.⁶ In 1897 President William McKinley signed E.O. 101, *Amending Civil Service Rules Regarding Removal from Service*, adding a number 8 to Rule II that stated: “No removal shall be

made from any position subject to competitive examination except for just cause and upon written charges filed with the head of the Department, or other appointing officer, and of which the accused shall have full notice and an opportunity to make defense.”

In 1910, the Court of Claims explained in the case of *Ruggles v. United States* that probationers lacked any cognizable legal rights under the rules or the Pendleton Act.⁷ With the enactment of the Lloyd-La Follette Act of 1912, Congress created the first legislative codification of protection against removal for civil servants. In doing so, Congress did not create new protections out of whole cloth; it largely codified the removal protections that had already developed as a matter of Executive practice under President McKinley’s 1897 executive order and its successors. The Act established “[t]hat no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service.”⁸ The Act also imposed certain procedural requirements on removals, including advance notice and an opportunity to respond in writing.⁹ However, Congress did not establish employment protections for probationary employees.

After the passage of the Lloyd-La Follette Act and the court’s decision in *Ruggles*, the CSC took the opportunity to clarify that the removal rules first established in 1897 should never have been treated as creating any serious limits on removing civil servants from employment.¹⁰ Regarding probationers, the Commission quoted from *Ruggles* that probationers have no cognizable right to their employment¹¹ and that the Lloyd-La Follette Act’s protections did not apply to probationers at all.¹² Over the next decade, the Commission would repeatedly cite the *Ruggles* decision and its assessment of the Lloyd-La Follette Act.¹³

By 1922, the Commission expressed concerns that too few probationers were being terminated and that agencies were not adequately using the probationary

period as a screening mechanism.¹⁴ Consistent with that concern, over the next couple of decades, the Commission maintained the view, embodied in its regulations, that probationers retained virtually no protection from removal at all.

The Veterans’ Preference Act of 1944 expanded civil service protections beyond the Lloyd-La Follette Act to preference eligible Federal employees, but it explicitly excluded probationers.¹⁵ President John F. Kennedy later expanded these protections beyond preference eligibles. As the CSC recognized, “[w]ith the issuance of Executive Orders 10987 and 10988 on January 17, 1962, a new era of greatly expanded appeals rights for employees was opened.”¹⁶ However, nothing in these E.O.s or implementation by the CSC attempted to expand application of those protections to probationers.

For a brief period of time starting in 1958, the CSC instituted a rule granting broader appeal rights to probationary

¹³ See, e.g., U.S. Civil Service Commission, *30th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1913* 91 (1914), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152041&seq=97>; U.S. Civil Service Commission, *31st Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1914* 79, 95 (1915), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924054241355&seq=223>; U.S. Civil Service Commission, *32nd Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1915* 72, 89 (1915), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152066&seq=9>; U.S. Civil Service Commission, *33rd Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1916* 48, 66 (1916), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152074&seq=112>; U.S. Civil Service Commission, *38th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1921* 52, 75 (1921), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152124&seq=8>.

¹⁴ U.S. Civil Service Commission, *39th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1922* xxi (1922), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152140&seq=9> (“The proportion of failures on probation seems small to the commission, being only about one-half of 1 per cent. This may indicate that appointing officers do not in all cases fully scrutinize the conduct and capacity of the probationers and perform the duty of dropping those found unsuitable.”).

¹⁵ *Veterans’ Preference Act of 1944*, Public Law 78–359, sec. 14, 58 Stat. 387, 390 (codified as amended in scattered sections of 5 U.S.C.), available at <https://tile.loc.gov/storage-services/service/lh/uscode/uscode1940-00900/uscode1940-009005017/uscode1940-009005017.pdf>.

¹⁶ U.S. Civil Service Commission, *79th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1962* 15 (1962), available at <https://babel.hathitrust.org/cgi/pt?id=uiug.30112109910338&seq=237&q1>.

³ Commenter 0348 notes that much of the “Background” section of the proposed rule was identical or nearly so to an Office of Special Counsel brief filed with the MSPB. OPM agrees that a citation should be provided and does so now. See Brief for the U.S. Office of Special Counsel as Amicus Curiae, *Commerce v. U.S. Office of Pers. Mgmt.*, CB–1205–25–0021–U–1 (Merit Sys. Prot. Bd. filed May 14, 2025), available at https://www.osc.gov/-assets/docs/osc-amicus-brief-cb-1205-25-0021-u-1-et-al_.pdf.

⁴ *Pendleton Civil Service Act*, ch. 27, sec. 2, 22 Stat. 403, 404 (1883), available at <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/22/STATUTE-22-Pg403a.pdf>.

⁵ U.S. Civil Service Commission, *First Annual Report of the United States Civil Service Commission to the President* 29 (1884), available at <https://babel.hathitrust.org/cgi/pt?id=nnc1.cu09006737&seq=9>.

⁶ U.S. Civil Service Commission, *Third Annual Report of the United States Civil Service Commission to the President* 36 (1886), available at <https://babel.hathitrust.org/cgi/pt?id=njp.32101073361022&seq=40>.

⁷ *Ruggles v. United States*, 45 Ct. Cl. 86 (1910).

⁸ *Lloyd-La Follette Act*, Act of Aug. 24, 1912, ch. 389, sec. 6, 37 Stat. 555, 555, amended by Act of June 19, 1948, ch. 502, sec. 1, 62 Stat. 354, 354 (formerly codified at 5 U.S.C. 652(a)).

⁹ *Id.*

¹⁰ See *29th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1912* (1913), p. 21, available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924103152033&seq=11>.

¹¹ *Id.* at 96.

¹² *Id.* at 112.

employees.¹⁷ But in 1962, the Commission revoked these regulations. 27 FR 4755, 4759 (May 19, 1962). In the following year, the Commission issued new regulations establishing much more limited appeal rights for probationary employees that, until E.O. 14284, permitted appeals based on improper discrimination or terminations for matters arising before employment. 28 FR 9973, 10052 (Sept. 14, 1963).

The passage of the Civil Service Reform Act of 1978 (CSRA) formed the basis of the current law governing probationary employment. The relevant language, unchanged since 1978, provides the President with substantial authority to issue regulations establishing the conditions in which an appointment in the competitive service becomes final. 5 U.S.C. 3321(a). The Senate Committee for Government Affairs explained in its report on the CSRA the importance of preserving executive discretion to remove probationers as “an extension of the examining process to determine an employee’s ability to actually perform the duties of the position. It is inappropriate to restrict an agency’s authority to separate an employee who does not perform acceptably during this period.” S. Rep. No. 95–969, 95th Cong., 2d Sess. 45 (1978).

Courts emphasized this language in holding that Congress purposefully denied probationary employees statutory appeal rights. *See, e.g., United States v. Connolly*, 716 F.2d 882, 886 (Fed. Cir. 1983); *Nat’l Treasury Emps. Union v. FLRA*, 848 F.2d 1273, 1275 (D.C. Cir. 1988). As the United States Court of Appeals for the District of Columbia Circuit explained in *Dep’t of Justice v. Federal Labor Relations Authority*, Congress chose not to extend the same employment protections afforded tenured employees to probationary employees because it “recognized and approved of the inextricable link between the effective operation of the probationary period and the agency’s right to summary termination.” 709 F.2d 724, 728 (D.C. Cir. 1983). Similarly, courts elsewhere recognized Congress’ intentional limitation on protections for probationary employees. *See, e.g., Nat’l Treasury Emps. Union v. FLRA*, 737 F.3d 273, 276 (4th Cir. 2013); *Yates v. Dep’t of the Air Force*, 115 F. App’x 57,

59 (Fed. Cir. 2004); *Jones v. United States DOJ*, 111 F. Supp. 3d 25, 30 n.5 (D.D.C. 2015).

Concerns that agencies have not been effectively utilizing probationary periods have continued into the 21st century. In 2005, the MSPB reported to the President and to Congress that Federal agencies were failing to use the probationary period to assess and remove probationers.¹⁸ In conducting a survey of agency supervisors, the MSPB found that, “even though supervisors are aware that the probationer’s appointment is not final, supervisors tend to treat their probationers as fully appointed Federal employees, with all the rights and responsibilities that implies.”¹⁹ The MSPB identified that the failure of agencies to maximize the probationary period is a cultural problem pervasive across all levels. The problem appeared to be a systemic one, as “supervisors expressed frustration at the lack of agency support for the full use of the probationary period, and even a number of probationers were perturbed by what they saw as agencies’ failure to use the probationary period to remove marginal and poor performers.”²⁰ The MSPB reaffirmed the 2005 report in a 2019 Research Brief, acknowledging that “MSPB found that supervisors are sometimes reluctant to remove a probationer who is not performing well in the position, even though it is easier to remove a probationer than an employee with a final appointment.”²¹

In 2015, the Government Accountability Office (GAO) issued a report regarding Federal workforce performance.²² GAO interviewed several chief human capital officers in Federal agencies and found that “[a]gencies may not be using the supervisory probationary period as intended.”²³ The GAO found that “supervisors are often not making

performance-related decisions about an individual’s future likelihood of success with the agency during the probationary period.”²⁴ This inefficiency typically happened for two reasons: “(1) the supervisor may not know that the individual’s probationary period is ending, and (2) the supervisor has not had enough time to observe the individual’s performance in all critical areas of the job.”²⁵ The GAO concluded that the probationary period needed to be “more effectively used by agencies” and that “improving how the probationary period is used could help agencies more effectively deal with poor performers.”²⁶

To this day, poor performance in the civil service has not been adequately addressed. OPM’s 2024 Federal Employee Viewpoint Survey indicated that 40 percent of Federal employees reported that poor performers in their units would usually “[r]emain in the work unit and continue to underperform[.]”²⁷ The next highest percentage of respondents—21 percent—answered “Do Not Know[.]”²⁸ Only 47 percent agreed that “[i]n my work unit, differences in performance are recognized in a meaningful way.”²⁹ 27 percent disagreed with that claim.³⁰

Commenters scrutinized reports cited by OPM in the proposed rule. Commenter 0337 argued that the rule does not consider policy changes already implemented to address problems with the probationary periods including new OPM training and planning on performance management. Commenter 0341 argued that agencies’ failure to use probationary periods is a management and training issue, not grounds for an overhaul. Commenter 0443 added that reports showing these periods are not effectively utilized by managers are not connected to the existence of impartial and independent review under the MSPB.

OPM acknowledges these comments but disagrees that training and management guidance alone are sufficient. OPM agrees that agencies should improve supervisory training and performance-management practices, and the rule does not preclude those efforts. But the record also shows that

¹⁸ *See, generally*, Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity, Report to the President and the Congress of the United States* (Aug. 2005), available at [https://www.mspb.gov/studies/studies/The_Probationary_Period_A_Critical_Assessment_Opportunity_\(2005\)_224555.pdf](https://www.mspb.gov/studies/studies/The_Probationary_Period_A_Critical_Assessment_Opportunity_(2005)_224555.pdf).

¹⁹ *Id.* at 33.

²⁰ *Id.*

²¹ Merit Systems Protection Board, *Remedying Unacceptable Employee Performance in the Federal Civil Service*, Research Brief 4 (June 18, 2019), available at https://www.mspb.gov/studies/researchbriefs/Remedying_Unacceptable_Employee_Performance_in_the_Federal_Civil_Service_1627610.pdf.

²² Government Accountability Office, *Federal Workforce: Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance*, GAO–15–191 (Feb. 2015), available at <https://www.gao.gov/assets/gao-15-191.pdf>.

²³ *Id.* at 9.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Office of Personnel Management, Federal Employee Viewpoint Survey Dashboard, “Core Performance (Q16) In my work unit poor performers usually,” at 7 (2024), available at <https://www.opm.gov/fevs/reports/opm-fevs-dashboard/>.

²⁸ *Id.*

²⁹ *Id.* at 6, “Core Question Bank,” Question No. 17.

³⁰ *See id.* (Reporting Positive versus Negative “Perception” Score).

¹⁷ U.S. Civil Service Commission, *75th Annual Report of the United States Civil Service Commission for the Fiscal Year Ended June 30, 1958* 4 (1958), available at <https://babel.hathitrust.org/cgi/pt?id=uiug.301121.09910361&seq=495>. *See also* 5 CFR 9.103 (1960), available at <https://www.loc.gov/item/cfr1960002-T5CIP9/>.

existing processes have not produced adequate results. In OPM's view, the costs, formality, and litigation risk associated with MSPB appeals have contributed to supervisors' reluctance to make full use of probationary and trial periods. Additional training may improve supervisory confidence, but it does not address the procedural incentives that discourage timely action during the very period designed to assess an employee's fitness for continued Federal service.

The rule therefore preserves the limited legal status of probationary and trial period employees while creating a more appropriate review mechanism for the narrow claims that remain appealable. Such employees will continue to receive neutral, record-based review by OPM's Merit System Accountability and Compliance (MSAC) office, and the final rule includes safeguards insulating adjudicators from officials who participated in the challenged personnel action or provided case-specific advice concerning that action. This approach maintains meaningful review for legally cognizable claims while supporting the intended function to which E.O. 14284 restored probationary and trial periods: allowing agencies to make timely, evidence-based decisions about whether continued employment advances the efficiency of the service.

Commenters 0449 and 0516 suggested that the rule misreads the 2024 FEVS since it applies to all Federal workers rather than exclusively employees in their probationary or trial periods; most Federal workers did not respond; and a majority did not agree that poor performers usually remain in their work unit and continue to underperform. Further, they suggest it is outdated since OPM cancelled the 2025 FEVS. Commenter 0580 said that agencies should require another OPM FEVS to collect data on OPM policies from 2025, and commenter 0581 noted FEVS showed improvements in most scores since a dip between 2020 and 2021 attributable to the COVID-19 pandemic.

OPM is not required to conduct a new study to address the persistent problems found in performance management and utilization of the probationary period. OPM acknowledges that the FEVS does not concentrate solely on probationary employees and that other initiatives have been taken by agencies to improve employee performance and accountability, however these initiatives do not correct the specific issues addressed by the rule such as the lengthy appeals process through adjudication from the MSPB. Additionally, OPM believes that it is not

sufficient that most Federal employees did not find poor performance unaddressed in their work unit. The fact that FEVS showed that a significant number of employees do not believe that poor performance is adequately addressed in their work unit helps demonstrate the need for a more efficient adjudication process for the limited number of claims that are appropriately appealable following a probationary termination.

President Trump sought to address this longstanding issue when he signed E.O. 14284, "Strengthening Probationary Periods in the Federal Service," on April 24, 2025. 90 FR 17729 (Apr. 24, 2025). E.O. 14284 established Civil Service Rule XI to govern Federal agencies' use of probationary and trial periods. Under Rule XI, agencies must assess and certify their employees serving under probationary or trial periods before finalizing their appointments to the Federal service. Rule XI provides four non-mandatory criteria for the agency head, or designee, to consider in determining whether a probationary employee's continued employment advances the public's interest. Where an agency determines not to certify an employee's continued employment, the employee's appointment expires before the end of the employee's tour of duty on the last day of their probationary or trial period. The agency also retains the discretion to dismiss them prior to the expiration of their probationary or trial period.

Section 4 of E.O. 14284 also revoked the termination and appeal procedures under subpart H of part 315 of this chapter. These procedures, which applied upon initial appointment to a career-conditional competitive service position, included the requirement for agencies to provide, at a minimum, written notice of the agency's conclusions as to the inadequacies of an employee's performance or conduct when terminating an employee during a probationary period; procedures and bases for appealing a termination during a probationary period; and the authority of the MSPB to adjudicate appeals. The rescission of subpart H meant that employees could not appeal any terminations from a probationary or trial period. However, through Civil Service Rule 11.6 (5 CFR 11.6) the President delegated authority to the Director of OPM to issue rulemaking on the circumstances and procedures for employees to appeal their termination from a probationary or trial period.

Prior to E.O. 14284, OPM established through regulation the circumstances and procedures for appealing

terminations during an employee's probationary period. See 44 FR 48951-52 (Aug. 21, 1979). Congress defined the term "employee" for purposes of identifying who could appeal certain adverse actions to the MSPB to exclude employees serving a probationary or trial period. See 5 U.S.C. 7511(a)(1). However, Congress also granted, inadvertently or not,³¹ appeal rights to employees in the (1) competitive service who complete one year of current continuous service under other than a temporary appointment limited to one year or less; (2) excepted service who are preference eligibles that completed one year of current continuous service in the same or similar positions in either an Executive Agency or the United States Postal Service or Postal Rate Commission; or (3) excepted service who complete two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment as defined by OPM regulations in 5 CFR 213.104(a)(1).³² For employees who did not meet the definition of employee, they could not appeal, for example, a termination from the Federal service. However, the CSC and, later, OPM exercised its authority to prescribe the circumstances in which an employee serving a probationary period in the competitive service could appeal to the CSC or MSPB, respectively.³³

Likewise, Congress did not establish through statute the circumstances under which supervisors and managers failing their probationary period have the right to appeal their assignment to nonsupervisory or nonmanagerial positions. Nor did Congress specify that the MSPB adjudicate such appeals. However, OPM exercised its regulatory authority to authorize the MSPB to adjudicate such appeals that raise discrimination based on partisan political reasons or marital status. See 44 FR 48951-52 (Aug. 21, 1979).

The final rule establishes limited grounds for employees serving a probationary period in the competitive service and employees in the excepted service covered by 5 CFR part 307

³¹ Merit Systems Protection Board, *Navigating the Probationary Period after Van Wersch and McCormick* (Sept. 2006), available at https://www.mspb.gov/studies/studies/Navigating_the_Probationary_Period_After_Van_Wersch_and_McCormick_276106.pdf.

³² See 5 U.S.C. 7511(a)(1)(A)(ii), (a)(1)(B)(ii), (a)(1)(C)(ii); see also *Mitchell v. MSPB*, 741 F.3d 81 (Fed. Cir. 2014) (holding that "temporary appointment" refers to the regulatory definition, which currently limits a temporary appointment to one year or less).

³³ See, e.g., 33 FR 12422-23; 40 FR 15380; 44 FR 48951-52; 55 FR 29339; 79 FR 43922.

serving a trial period to appeal their terminations, or their employing agencies' failure to finalize their appointments during those periods. Under these regulations, such employees can challenge their terminations or their agencies' failure to finalize their appointments for alleged discrimination based on partisan political reasons or marital status. These limited grounds of appeal reflect the historical principle that probationary and trial periods serve as a critical evaluation phase for new Federal employees, and thus that agencies should enjoy great flexibility in separating employees serving probationary or trial periods. Some non-veteran excepted service employees may qualify for appeal rights under other regulatory or legal provisions not covered by this rule. It should also be noted that excepted service employees serving in an appointment in the excepted service outside of part 307 of this chapter did not have such appeal rights unless otherwise entitled by statute, and OPM is maintaining that policy. Providing limited grounds of appeal also ensures agencies adhere to the Merit System Principles and corrects agency actions taken contrary to these principles consistent with OPM's statutory authority. See 5 U.S.C. 1103(a)(7), (c)(2)(F), 1104(b)(2); see also 5 CFR 5.3, 10.2–10.3.

III. Responses to Major Issues Raised by Commenters

A. OPM's Authority To Hear Probationary Appeals

Several commenters such as 0010, 0047, 0231, and 0620 argued that the authority to hear appeals from probationary employees is legally assigned to the MSPB. They believed this jurisdiction was established by Congress in the CSRA. According to these commenters, moving this authority from MSPB to OPM would be unlawful unless Congress amended the law to specifically allow OPM to take over this responsibility. To support their argument, they reference Chapters 12 and 77 of Title 5 of the United States Code and other sections of the CSRA.

The commenters' reading of the CSRA is incorrect. As an initial matter, the comments rest on an inaccurate premise: the CSRA itself confers no appeal rights on probationary employees, and the limited appeal rights formerly available under subpart H of part 315 were created by regulation, not statute. The CSRA gives OPM extensive discretion in regulating probationary periods. Pursuant to 5 U.S.C. 1301, "[t]he Office of Personnel

Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service." Under 5 U.S.C. 1104(a)(1), "the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management." Further, OPM "shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section." 5 U.S.C. 1104(b)(1). And the OPM Director has the responsibility "to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations," and "execut[e], administer[, and enforc[e] . . . the civil service rules and regulations of the President and the Office and the laws governing the civil service." 5 U.S.C. 1104(b)(3), 1103(a)(5). Under 5 U.S.C. 3321(a), the authority to prescribe rules, regulations, and directives governing probationary periods rests with the President, and the President has delegated to OPM, consistent with 5 U.S.C. 1104(a), the authority to prescribe the circumstances and procedures for probationary and trial period appeals through E.O. 14284 and Civil Service Rule XI. Moreover, if OPM did not exercise that delegated authority, appeals would not revert to the MSPB; covered employees would simply have no appeals process at all. Courts have recognized that Congress charged OPM with the authority to establish conditions of employment including procedural protections. *Nat'l Treasury Emps. Union*, 737 F.3d at 277–78. This includes rights to challenge removals in violation of these protections. *FLRA*, 709 F.2d at 725 n. 3.

When crafting the CSRA, Congress gave the President, acting through the Director of OPM, authority to create a regulatory right for terminated probationary employees to appeal their termination. See 5 U.S.C. 3321(a), 1104(a). Nowhere in the CSRA did Congress extend statutory appeal rights to probationary employees seeking to reverse a termination. In fact, as noted in the proposed rule, the Senate Committee for Government Affairs stressed the importance of *not* providing such a right of appeal because the agency's discretion to remove probationers was "an extension of the examining process to determine an employee's ability to actually perform the duties of the position." S. Rep. No. 95–969, 95th Cong., 2d Sess. 45 (1978). Congress went so far as to explicitly

exclude probationary employees from the definition of "employee" for purposes of 5 U.S.C. Chapter 75. See 5 U.S.C. 7501(1). Commenter 0134 noted this significant statutory distinction.

Unlike OPM's authority to regulate probationer appeals, which derives from the President's statutory authority under 5 U.S.C. 3321(a), delegated to OPM pursuant to 5 U.S.C. 1104(a) through E.O. 14284 and Civil Service Rule XI, the MSPB's jurisdiction to hear termination appeals from a probationary or trial period employee is derived from regulation. Specifically, the Federal Circuit has explained that "[t]he Board's jurisdiction to review adverse personnel action taken against probationary government employees is extremely narrow. In fact, there is no statutory basis for jurisdiction." *Goss v. Dep't of the Air Force*, 131 F. App'x 721, 724 (Fed. Cir. 2005). Moreover, "[t]he only cognizable right of appeal by a probationary employee to the MSPB is contained in the regulation previously mentioned, 5 CFR 315.806." *Mastriano v. FAA*, 714 F.2d 1152, 1155 (Fed. Cir. 1983). Congress authorized MSPB to be that venue if, and only if, OPM designated such appeals be heard there. 5 U.S.C. 7701(a). That designation was a policy choice, selected by virtue of regulation, (subpart H of part 315 of title 5, Code of Federal Regulations). Pursuant to Executive Order 14284, that regulation has been repealed.

Further, in Civil Service Rule XI, the President designated OPM as the body which defines the "circumstances under and procedures by which employees terminated from a probationary or trial period may appeal such termination." 5 CFR 11.6(a). Civil Service Rule XI further specifies that, "[e]xcept as otherwise required by law, such appeals shall be the sole and exclusive means of appealing terminations during probationary or trial periods." 5 CFR 11.6(b).

In the CSRA, Congress did not direct that the MSPB have jurisdiction over probationary appeals. At the time the CSRA was passed, probationary appeals were housed within the Civil Service Commission. Nothing in the CSRA altered that arrangement or mentions probationary appeals. Further, *AFGE v. OPM* states "if OPM chooses to use the MSPB for dispute resolutions, it must take that statutory device as it finds it." 821 F.2d 761, 769 (D.C. Cir. 1987) (emphasis added). This declaration assumes that OPM may, in fact, choose not to use the MSPB for dispute resolution and can create its own probationary appeal process.

That conclusion is reinforced by the structure of 5 U.S.C. 7701. MSPB hears

appeals that are properly before it under law, rule, or regulation. Before E.O. 14284, OPM regulations supplied the relevant rule for the narrow class of probationary appeals formerly heard by MSPB. Once those regulations were rescinded and replaced, there was no independent statutory command requiring those appeals to remain at MSPB. Civil Service Rule 11.6 now expressly directs OPM to prescribe the circumstances and procedures for appeals by employees terminated during probationary or trial periods. OPM is exercising that authority in this rule.

Commenter 0620 asserted that “adjudicating employee appeals is inherently a quasi-judicial activity function” and so MSPB is best positioned to adjudicate probationary appeals. The Commenter further suggested that the MSPB has a more “professionalized” process than OPM could establish, “citing MSPB’s use of administrative judges, its publication of decisions, development of rules of evidence, and establishment of precedential case law through Board review.”

OPM respectfully disagrees with the Commenter’s criticisms. Contrary to the claim that OPM lacks the professionalism and capability of MSPB, OPM has shown it can effectively carry out the responsibilities outlined in this rule through its experience with the classification appeals process. OPM has established a fair, impartial, and professional approach to handling classification appeals, making decisions based solely on established facts without bias or improper influence. This experience demonstrates OPM’s ability to develop and maintain a neutral and effective system for adjudicating appeals.

OPM intends to apply this proven framework to the adjudication process under this rule. OPM will issue written decisions and make final merits decisions publicly available, subject to applicable legal limits, to promote transparency, consistency, and guidance for future adjudications. While the Commenter points out that OPM will use adjudicators instead of administrative judges, there is no meaningful difference between these roles in terms of their function, and this distinction does not affect the fairness or professionalism of the process.

OPM disagrees with Commenter 0443 that moving these appeals to OPM recreates the Civil Service Commission structure that Congress altered in 1978. The rule does not give OPM general authority to adjudicate all Federal employment disputes. It establishes an OPM-administered process for a narrow

class of regulatory appeals involving employees whose appointments have not yet been finalized and who do not yet have tenure or a property interest in their position. MSPB remains responsible for matters within its statutory or regulatory jurisdiction. OSC, EEOC, Inspectors General, and other forums remain available where an independent legal basis for jurisdiction exists. The rule therefore does not collapse the civil service remedial structure into OPM; it establishes the limited matters that will be heard by OPM under part 751.

OPM notes finally that Executive Order 14284 eliminated Part 315, subpart H in its entirety, including the limited MSPB appeals it formerly provided. This rule creates a new process for appealing some probationary terminations to OPM. If OPM were to decline to finalize this rule then probationary employees would continue to have no appeals process whatsoever. That no-appeals status quo—not the former MSPB process—is the baseline against which this rule should be measured.

B. OPM’s Capacity to Fairly Adjudicate Probationary Appeals

Commenters 0607 and 0615 asserted that relocating the appellate venue from MSPB to OPM will make probationary and trial period appeals less transparent and will thereby undermine public confidence in the civil service. OPM disagrees.

The final rule creates a new forum—where none currently exists—and procedures for a narrow class of regulatory appeals; it does not make probationary or trial period personnel actions secret, exempt agencies from generally applicable disclosure laws, or diminish the merit system principles, prohibited personnel practice rules, or other accountability mechanisms that continue to govern Federal employment. Agencies remain subject to applicable statutory and regulatory requirements governing records, disclosures, privacy, prohibited personnel practices, equal employment opportunity, Inspector General oversight, Office of Special Counsel (OSC) jurisdiction, and other independent remedial processes.

OPM also disagrees that transparency depends on reinstituting MSPB as the forum for these limited appeals. As explained elsewhere in this preamble, MSPB’s prior jurisdiction over probationary appeals was regulatory rather than statutory. OPM may therefore provide an OPM-administered process affording appeal rights that correspond to the limited substantive grounds historically available to covered

probationary and trial period employees. The question is not whether MSPB is the only possible transparent forum, but whether the final rule provides sufficient procedural transparency and accountability for the narrow issues that are appealable under part 751.

The final rule does so. OPM has committed to issuing written decisions and making final merits decisions publicly available. In particular, OPM will maintain a publicly accessible website containing final decisions issued under part 751 that address a party’s claim on the merits, subject to applicable legal limits protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be publicly disclosed. This public decision requirement is intended to promote consistency, permit public review of OPM’s reasoning, provide guidance to agencies and employees, and allow interested parties to assess how OPM is applying part 751 over time. The final rule also reflects OPM’s intent to publish its decisions and use them to promote consistency in future adjudications.

OPM further notes that the final rule contains additional transparency safeguards. The agency must submit a response and all documents in the agency record supporting the action. The appellant may reply. The appellant, the appellant’s representative, and the agency may inspect OPM’s appellate record, subject to applicable limits. OPM may require additional information, conduct an audit or investigation where necessary to determine a material fact, and issue a written decision explaining the disposition of the appeal. The rule also provides reconsideration and Director review before finality. These procedures ensure that appeals are resolved on an identifiable record and through reasoned decision-making, not through unexplained or informal action.

OPM therefore declines to retain MSPB as the venue on transparency grounds. The final rule preserves public accountability through written decisions, a defined administrative record, and public availability of final merits decisions. In OPM’s judgment, this framework provides transparency appropriate to the limited regulatory appeal rights at issue while also supporting the rule’s objective of a faster and more focused probationary and trial period appeal process.

Many commenters, including 0006, 0203, 0395, and 0617, argued that moving probationary appeals from

MSPB to OPM would deny employees an objective and independent adjudicatory forum. These commenters asserted that OPM is a partisan authority, that OPM has a conflict of interest because it has issued governmentwide policy and guidance relating to probationary employees, and that the new process would produce predetermined outcomes. Commenters 0175 and 0198 similarly argued that the rule narrows appeal grounds and procedures before a decisionmaker subordinate to political leadership. Commenters 0036 and 0172 stated that employees will perceive OPM adjudication as unfair because agencies benefit from faster removals and because OPM adjudication will be opaque.

OPM disagrees. These comments rest on an incorrect premise about the source and nature of the former MSPB forum. Congress did not create a general statutory right for probationary employees to appeal probationary terminations to MSPB. Rather, MSPB's jurisdiction over the limited category of probationary appeals formerly covered by § 315.806 was created by regulation. Congress excluded most probationary employees from the statutory adverse-action appeal rights available to employees who have completed the applicable period of service, and Civil Service Rule XI nullified the former § 315.806 and directed OPM to prescribe the circumstances and procedures for appeals from probationary and trial period terminations. The final rule therefore provides a forum and procedures for a limited regulatory appeal; it does not withdraw a statutory right to MSPB adjudication. No such right exists.

OPM notes that declining to finalize this rule would not restore MSPB jurisdiction over probationary appeals. Rather, employees on probationary and trial periods would continue to have no ability to appeal terminations over issues such as political discrimination. OPM concludes that finalizing this rule and providing a transparent and defined appeals process within OPM is preferable to maintaining that status quo. Under that status quo, covered employees have no administrative forum in which to challenge even a termination alleged to be based on partisan political reasons.

OPM also disagrees that its institutional role creates a conflict of interest. OPM does not make the employing agency's individualized decision to terminate, not certify, or fail to finalize a particular employee's appointment. Those determinations are made by the employing agency. OPM's

role under this rule is to adjudicate, based on the record and the limited issues made appealable under part 751, whether the appellant has established a basis for relief.

The fact that OPM administers civil service laws and regulations does not make OPM incapable of adjudicating disputes under those laws. Federal agencies routinely issue regulations, provide governmentwide guidance, and adjudicate matters within their statutory responsibilities. OPM itself is a clear example. Congress has vested the OPM Director with responsibility for executing, administering, and enforcing civil service rules and regulations and the laws governing the civil service, including retirement and classification activities. *See* 5 U.S.C. 1103. OPM also has express regulatory authority in several civil service areas, including competitive service examinations and veterans' preference administration. *See* 5 U.S.C. 1302. The fact that OPM issues governmentwide personnel policy therefore does not make it unusual for OPM also to resolve particular disputes arising under that same statutory framework.

OPM has long maintained adjudicative or quasi-adjudicative processes in personnel matters. For example, OPM adjudicates classification appeals under 5 CFR part 511, subpart F. Employees may request an OPM decision on the proper occupational series, grade, or chapter 51 coverage of their official positions, and agencies may appeal certain OPM classification certificates. In those appeals, OPM may request written facts, investigate, or audit the position; OPM's appellate decision is final unless OPM reconsiders it; and the decision is binding on administrative, certifying, payroll, disbursing, and accounting officials.

OPM also adjudicates Fair Labor Standards Act claims under 5 CFR part 551, subpart G. Those procedures cover FLSA exemption-status determinations, minimum-wage and overtime-pay claims, and child-labor complaints. Covered claimants may file with either the employing agency or OPM, but not both at the same time, and an OPM FLSA claim decision is final and not subject to further administrative review. Similarly, OPM settles certain compensation and leave claims under 5 CFR part 178; those claims are resolved on the written record, with the burden on the claimant, and OPM's settlement is final within OPM. OPM regulations also provide for appeals to OPM from certain examination ratings or application rejections.

Other agencies operate in the same manner. The EEOC issues Federal-sector EEO regulations and adjudicates appeals from agency final actions, dismissals, class-complaint decisions, and certain grievance decisions raising discrimination issues. *See* 29 CFR 1614.401(a)–(e). EEOC's Office of Federal Operations issues written appellate decisions on behalf of the Commission, applying specified standards of review and providing for finality unless reconsideration is granted. 29 CFR 1614.405(a)–(c). The FLRA likewise provides governmentwide leadership and guidance on Federal labor-management relations while resolving representation, negotiability, unfair-labor-practice, and arbitration matters. *See* 5 U.S.C. 7105. These examples show that combining policy, guidance, and adjudication within the same agency is a familiar feature of Federal administration in general, and Federal workforce administration in particular, not evidence of structural bias.

Nor does the fact that OPM is headed by a presidentially appointed Director establish bias. Like MSPB, OPM is an independent agency. 5 U.S.C. 1101. Both the OPM Director and MSPB Members are appointed by the President with the advice and consent of the Senate and serve at the President's pleasure. Indeed, MSPB members no longer enjoy for-cause removal protections and are removable at will, so MSPB possesses no greater structural independence from the President than does OPM.³⁴ The principal structural difference between MSPB and OPM is that the MSPB is led by three members while OPM is headed by a single director. But a tripartite versus single-head leadership structure has little bearing on an agency's capacity to issue impartial decisions. Consequently, OPM rejects the argument that greater MSPB independence makes it a more appropriate venue for probationary appeals; the premise is inaccurate.

The relevant question is whether the adjudicatory structure creates a constitutionally intolerable risk of actual bias or prejudgment—not whether the agency head is politically accountable. Administrative adjudicators are presumed to act with honesty and integrity, and the combination of investigative, policymaking, and adjudicative functions in an agency does not, without more, violate due process. *Withrow v. Larkin*, 421 U.S. 35, 47, 58

³⁴ *See Harris v. Bessent*, 160 F. 4th 1235 (D.C. Cir. 2025); *see also Trump v. Slaughter*, No. 25–332 (June 29, 2026).

(1975). The Supreme Court has also rejected the proposition that agency decisionmakers are disqualified merely because they previously investigated, reported on, or expressed policy views concerning related issues. *FTC v. Cement Inst.*, 333 U.S. 683, 700–03 (1948). Due process concerns arise from more concrete circumstances, such as a direct pecuniary interest, personal involvement, personal animus, or an objectively intolerable probability of actual bias. See *Tumey v. Ohio*, 273 U.S. 510, 523, 532 (1927); *Withrow*, 421 U.S. at 47; *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884–87 (2009).

The Administrative Procedure Act (APA) itself reflects the same principle. It permits agency review of initial decisions by presiding employees and provides that, on review, the agency has the powers it would have had in making the initial decision, subject to any limits imposed by rule or notice. 5 U.S.C. 557(b). The APA's separation-of-functions provision also expressly does not apply to "the agency or a member or members of the body comprising the agency." 5 U.S.C. 554(d)(2)(C). Federal administrative law therefore does not treat agency-head accountability as equivalent to bias; it looks instead to whether the process includes appropriate safeguards against prejudgment, improper influence, or conflicts of interest.

Ultimately, OPM must determine whether the rule provides a fair and reasoned adjudicatory process for the limited appeal rights at issue. OPM concludes that it does. Here, the final rule provides a defined administrative process, requires decisions to be based on the record, preserves the limited substantive appeal grounds historically available to covered probationary employees, and includes safeguards against arbitrary or predetermined decision-making.

Those safeguards are substantial. Appeals are not assigned to the agency officials who took the challenged action. Rather, OPM personnel assigned to adjudicate appeals must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action; OPM adjudicators may not consider material *ex parte* communications on the merits; and OPM-employee appeals must be assigned to an administrative law judge, whose initial decision may be disturbed only on limited grounds.

Further, the agency must submit a response and all documents in the agency record supporting the action. The appellant may reply. OPM may

require additional information, audit or investigate an agency's action when doing so is necessary to determine a material fact, and conduct a hearing where the written record is insufficient or where credibility issues make a hearing necessary and efficient. OPM will issue written decisions, allow reconsideration, and permit Director review before finality. Those are the safeguards relevant to adjudicatory fairness; the mere fact that OPM is headed by a presidentially appointed Director is not a basis for finding institutional bias.

OPM further disagrees that the new process will be opaque. OPM has committed to make its decisions public. The final rule provides that OPM will maintain a publicly accessible website containing final decisions issued under part 751 that address a party's claim on the merits, subject to applicable legal limits protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be publicly disclosed. Public availability of final merits decisions will promote consistency, allow employees and agencies to understand OPM's reasoning, and permit the public to assess how OPM is applying the rule over time. The rule therefore does not create a closed process with hidden outcomes. It creates a written, record-based process with public final merits decisions.

Commenters 0430, 0450, 0454, and others asserted that OPM will not have enough employees to review probationary appeals, that the appeals experience will become more difficult for employees, and that OPM employees will be overburdened by additional duties. OPM disagrees. The rule establishes a streamlined process tailored to a narrow class of regulatory appeals. These appeals are limited to specified issues: partisan-political reasons, marital status, and certain procedural claims involving terminations based in whole or in part on pre-appointment reasons. The final rule does not require OPM to replicate the full MSPB adjudicatory structure for chapter 75 adverse actions. By using electronic filing, written submissions, required agency records, targeted record development, and hearings only where necessary and efficient, the rule reduces unnecessary process while preserving fair adjudication of the issues that remain appealable. OPM has assessed the expected case volume and resource needs and has determined that MSAC and OPM's adjudicatory staff can administer the process. OPM will monitor implementation and may adjust

internal staffing, case-management practices, and guidance as necessary.

Commenters 0006, 0010, 0013, 0030, 0617, and others asserted that making OPM the forum for these appeals forces appellants to litigate before the same entity that directed agencies to terminate them or fail to certify their appointments. OPM disagrees with that characterization. OPM does not direct agencies to terminate or refuse to certify particular employees. Agencies are responsible for evaluating their own probationary and trial period employees and for making the individualized personnel decisions challenged in any appeal. OPM's role in issuing governmentwide rules or guidance does not make it the deciding official in each agency's personnel action. Under the final rule, OPM will review the agency's action through the part 751 process, not defend or ratify a predetermined outcome.

Commenters 0038, 0307, and 0417 argued that the rule weakens the ability to challenge OPM decision-making. Commenter 0485 further argued that OPM adjudication creates a risk of bias because certain OPM actions or guidance have been alleged or found likely unlawful in other contexts. Commenters 0421, 0444, and 0578 argued that OPM cannot independently review terminations they contend OPM directed, and that the Director's ability to review decisions gives final authority to a political appointee without recourse to Article III courts.

OPM disagrees. Allegations regarding separate guidance, separate litigation, or separate personnel actions do not establish that OPM adjudicators will fail to decide part 751 appeals fairly. If an appellant contends that an employing agency acted unlawfully in a specific case, the appellant may raise any issue that is appealable under § 751.101(c) and may pursue any independent remedy available before EEOC, OSC, MSPB, an Inspector General, or another authorized forum. Further, OPM notes that if it does not finalize this rule probationary employees will remain without any appeals.

Finally, commenters 0001, 0029, 0043, 0479, 0585, and others asserted that the rule is intended to "cover up" or obscure probationary terminations that occurred in 2025. Commenters 0019 and 0421 suggested that the rule would nullify pending and future probationary employee cases and allow agencies to avoid accountability for prior conduct. OPM disagrees. The final rule is prospective. Terminations effected before the effective date of the rule are not governed by this final rule, and the rule does not reopen, extinguish, or

nullify pending appeals or past decisions. Rather, probationary terminations effectuated between the issuance of Executive Order 14284 and the finalization of this rule are not subject to any administrative appeal. The rule is not designed to affect the outcome of prior personnel actions or pending litigation. Rather, it creates procedures that will govern covered appeals going forward.

For these reasons, OPM declines to restore MSPB as the adjudicatory forum based on generalized concerns about bias, opacity, staffing, or political influence. The final rule provides a neutral administrative process appropriate to the limited regulatory rights at issue; provides—where none now exist—appeal rights on the historically narrow substantive grounds for covered probationary appeals; makes final merits decisions public; and leaves intact independent remedies available under other statutes and regulations.

C. Due Process, Written Record, Hearings, Discovery, and Burden of Proof

Commenters 0086, 0322, 0398, and 0500 raised due process concerns, arguing that procedures limited to the written record would be unfair and one-sided toward the agency without the due process rights to a hearing and discovery, as well as giving OPM unilateral authority to decide cases on the written record it controls and to reopen decisions. Commenters 0423 and 0430 argued that removing the agency requirement to disclose the reason for termination and placing the burden of proof on the employee blocks any successful appeal. Commenters 0444 and 0500 claimed that eliminating discovery also makes claims functionally unprovable and that the lack of hearings and discovery provide information asymmetries that give government agencies an advantage. Commenter 0502 added that this limits the ability to develop a sufficient factual record of circumstances to render an informed decision. Commenters 0485 and 0516 contended that the proposed rule failed to satisfy due process requirements by narrowing appealable claims, limiting procedural safeguards and eliminating independent adjudication, adding that these deficiencies mean the rule fails to meet the *Mathews* balancing test.³⁵

Commenter 0448 stated that it would be impossible to prove partisan or marital discrimination as the rule removes essential tools like the deposition of supervisors and the ability

to examine internal communications. Commenter 0335 suggested that shortening the length of appeals benefits no one except the executive branch. And commenters 0339, 0380, 0414, and 0447 criticized the rule for replacing hearings and discovery with an OPM audit in which appellants cannot compel evidence, subpoena witnesses, or cross-examine.

OPM has carefully considered these concerns but declines to provide an automatic right to discovery or a hearing in every part 751 appeal. The appeal rights preserved in part 751 are narrow. Covered employees may raise allegations that the action was based on partisan political reasons or marital status and may raise specified procedural issues where a termination is based in whole or in part on conditions arising before appointment. These issues do not require the full range of procedures associated with statutory adverse-action appeals under chapter 75. A default written-record process is proportionate to the limited regulatory rights at issue and is consistent with the government's interest in preserving the probationary and trial period as an effective final stage of examining and assessing an employee before finalizing an appointment.

OPM also disagrees that the final rule leaves appellants dependent on an agency-created record. The final rule requires the agency to submit a response and the agency record. The appellant may reply. OPM may audit or investigate the agency's action when doing so is necessary to determine a material fact. OPM may require additional information from the agency or the appellant. OPM may also conduct a hearing where the written record is insufficient to resolve a material factual dispute or where material credibility issues make a hearing necessary and efficient. These tools allow OPM to develop the record where necessary without requiring full discovery and a hearing in every case.

OPM concludes that the procedures adopted in the final rule are adequate and proportionate for the limited issues that may be appealed under part 751. The final rule provides the substantive appeal grounds historically available for covered probationary employees—grounds that do not exist at all under the current baseline—through a process tailored to those narrow claims.

Commenter 0317 asserted that the Fifth Amendment requires that Federal employees have a fair opportunity to appeal decisions. Commenter 0150 claimed that OPM has engaged in illegal conduct since 2025, violating the constitutional right to due process.

Commenters 0307, 0310, 0314 and 0516 argued that courts recognize employment rights and these cannot be extinguished arbitrarily; *Loudermill* held that employees possess a property interest in continued employment that entitles them to protections, including notice of reason for removal and an opportunity to respond.³⁶ Commenter 0421 added that probationary employees denied discovery, hearings or independent review will argue to courts that they have been deprived of property and liberty interests without due process of law.

OPM agrees that agencies must comply with applicable law and regulations when taking action against probationary and trial period employees. The final rule does not authorize terminations for unlawful reasons, and it preserves appeals alleging partisan-political discrimination, marital-status discrimination, and specified procedural defects in cases based on pre-appointment reasons.

But probationary and trial period employees do not have the same statutory property interest and concomitant due process protections as employees who have completed the applicable period of service. *Smith v. Lehman*, 689 F.2d 342, 345 (2d Cir. 1982), clarified that probationary employees lack a property interest in continued employment and receive only minimal procedural protection. The probationary and trial period remains an extension of the examining process. Congress and the President have preserved agency flexibility during that period because the government has a strong interest in determining, before an appointment is finalized, whether continued employment serves the public interest and the efficiency of the service.

The procedures in part 751 are therefore calibrated to the employee's limited status and the narrow issues that may be appealed. The final rule does not convert probationary or trial period terminations into chapter 75 adverse actions, and it does not create a general appeal right for claims that fall outside § 751.101(c). To the extent an employee has an independent statutory claim before another forum, the final rule does not displace that remedy. Further, OPM notes that the rule creates an appeals process where none currently exists. The rule thus gives probationary and trial period employees substantially more procedural protections than they currently possess.

³⁶ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

³⁵ *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Commenters 0450 and 0515 argued that restricting hearings to circumstances in which OPM determines that a hearing is “necessary and efficient” will allow OPM to deny hearings in most cases. Commenters such as 0049, 0051, and 0062 similarly asserted that the absence of a guaranteed hearing or formal discovery right will tilt the appeals process in favor of agencies. These commenters contended that agencies will possess most relevant information, that appellants may be unable to uncover evidence of pretext or procedural irregularity, and that credibility disputes cannot be fairly resolved on the written record.

OPM has considered these comments but declines to create an automatic right to discovery or a hearing in every appeal under part 751. The appeal rights preserved in this final rule are narrow regulatory rights. Covered appellants may raise only the issues identified in § 751.101(c): whether the action was based on partisan political reasons or marital status, and whether the agency failed to follow the specified procedures applicable to a termination based in whole or in part on conditions arising before appointment. These are not ordinary chapter 75 adverse-action appeals, and Congress did not give probationary employees the same procedural rights that apply to employees who have completed the applicable period of service. OPM therefore concludes that a default written-record process is appropriate and proportionate to the limited issues that may be appealed.

OPM disagrees, however, that the final rule leaves appellants dependent on whatever record an agency chooses to create. The final rule requires the agency to file a response and provide the agency record. The agency record must include the materials considered or relied upon in taking the action, documentation relevant to the appellant’s appointment and probationary or trial period status, and other documents necessary to adjudicate jurisdiction, timeliness, appealability, and the merits of any appealable claim. The appellant may then file a reply to the agency’s response and may address factual or legal issues raised by the agency. These procedures are intended to reduce information asymmetry and ensure that OPM decides appeals on an identifiable record rather than on unsupported agency assertions.

The final rule also gives OPM tools to develop the record when the written submissions are insufficient. OPM may require additional information, audit or investigate an agency’s action when doing so is necessary to determine a

material issue of fact, and conduct a hearing where the written record is insufficient to resolve a material factual dispute or where a material credibility issue makes a hearing necessary and efficient. OPM’s standard does not mean that hearings will be denied whenever a hearing would be inconvenient. It means that hearings will be used when they are needed to resolve issues that matter to the disposition of the appeal, rather than as a routine procedural step in every case regardless of need. This approach preserves fairness while avoiding unnecessary delay and expense in cases that can be resolved on the written record.

Commenters 0008, 0167, 0357, 0430, and 0408 asserted that placing the burden on appellants to establish timeliness, OPM jurisdiction, and the appealable basis for the claim is unfair, even if lawful. OPM disagrees. The appellant is the party invoking OPM’s limited regulatory jurisdiction under part 751. It is therefore appropriate for the appellant to establish, by a preponderance of the evidence, that the appeal was timely filed, that OPM has jurisdiction, and that the appellant has raised an issue made appealable by § 751.101(c). This allocation is consistent with the limited nature of probationary appeal rights and with the general principle that a party seeking relief must establish the basis for that relief.

At the same time, the final rule does not require appellants to prove their claims without access to the agency’s explanation and records. The agency must respond and produce the agency record; the appellant may reply; and OPM may obtain additional information where necessary. In addition, if the agency record is incomplete, inconsistent, or insufficiently developed on a material issue, OPM may take that into account in deciding whether further record development, an audit, an investigation, or a hearing is warranted. The burden-of-proof provision therefore does not make the agency’s action unreviewable. It identifies which party must establish threshold jurisdictional and appealability matters and, where the merits are reached, the factual predicate for the limited claims allowed under the rule.

Commenters 0002, 0029, 0077, 0160, 0253, and others asserted that agencies should be required to provide an appellant with a rationale for dismissal. OPM declines to adopt a general rationale-for-dismissal requirement beyond the requirements preserved in the final rule. The historical probationary appeal framework distinguished between terminations

based on post-appointment performance or conduct and terminations based in whole or in part on conditions arising before appointment. The final rule preserves that distinction. Where an agency terminates an employee based in whole or in part on conditions arising before appointment, the employee may appeal whether the agency failed to provide the specified procedural protections, including advance written notice stating the reasons for the proposed action, a reasonable time to answer, and a written decision. OPM has preserved that limited procedural appeal because pre-appointment reasons raise distinct fairness concerns.

OPM does not, however, make every probationary or trial period termination independently appealable based on the adequacy of the agency’s explanation. The probationary and trial period is part of the examining and assessment process, and an appointment is not finalized merely by the passage of time. Agencies must comply with Civil Service Rule XI (5 CFR part 11) and applicable law, but the final rule does not convert probationary or trial period separations into chapter 75 adverse actions requiring the full statement-of-charges process applicable to covered employees. Nor does the final rule make failure to provide written notice of the effective date under 5 CFR 11.5, standing alone, a basis for reversal. Such notice serves an important administrative function, but it does not itself establish that an action was based on partisan political reasons or marital status, nor does it establish a violation of the specific pre-appointment procedures preserved in § 751.101(c).

Commenters 0429 and 0572 claimed that OPM improperly assumes that non-attorney staff will be able to adjudicate appeals and that due process concerns arise unless appeals are handled by attorneys trained for that task. OPM disagrees. The final rule does not require OPM to use only attorneys, administrative judges, or administrative law judges in every case. The relevant question is whether OPM assigns personnel who are qualified to apply the governing regulation, evaluate the record, make findings on the limited issues presented, and issue reasoned decisions. OPM has experience administering record-based adjudicatory functions and will assign personnel with appropriate training and expertise to adjudicate appeals under part 751. Further, as noted above, constitutional due process requirements do not attach to probationary employees who lack a cognizable property interest in their job.

OPM also notes that these appeals involve a defined set of legal and factual

issues. The adjudicator must determine timeliness, jurisdiction, appealability, and, where appropriate, whether the appellant has established one of the limited claims permitted by § 751.101(c). OPM will provide internal procedures, training, supervisory review, reconsideration, and Director review before finality to promote consistency and correct material errors. The final rule also provides an additional safeguard for appeals filed by OPM employees by assigning those appeals to an administrative law judge. OPM therefore declines to adopt a categorical rule requiring attorney adjudicators or administrative law judges in every part 751 appeal.

Some commenters assert that OPM or employing agencies may modify, omit, or shape records to support predetermined outcomes. OPM takes record integrity seriously but does not agree that speculative concerns about possible misconduct justify retaining the prior MSPB forum or imposing full discovery and hearing procedures in every case. Agencies remain subject to generally applicable legal obligations governing official records, personnel records, prohibited personnel practices, false statements, and misconduct. The final rule also requires agencies to produce the agency record, permits appellants to reply, allows OPM to require additional information, and authorizes OPM to audit or investigate where necessary to determine an issue of material fact. If an appellant identifies a material inconsistency, omission, or other reason to question the completeness or reliability of the agency record, OPM may consider that issue in determining whether further development is needed and in deciding the appeal.

Commenters 0212, 0356, 0396, and 0406 asserted that the Director's authority to oversee and, if necessary, reverse a decision subjects the process to undue political influence. In response to comments expressing concern that Director review could be too open-ended or could undermine the perceived neutrality of OPM adjudication, OPM has revised § 751.108 to identify nonexclusive considerations that may inform the Director's decision to reopen and reconsider a nonfinal probationary or trial period appeal decision. Under the final rule, the Director may act on the Director's own initiative and only before a decision becomes final under § 751.109. In determining whether to exercise that authority, the Director may consider, among other things, whether the decision may contain clear legal error, may rest on an erroneous finding

of material fact, may involve an issue of exceptional importance, may affect the governmentwide administration of civil service laws, rules, regulations, or OPM policy, may conflict with another OPM decision, or may otherwise warrant Director review.

This revision responds to commenters who objected to Director review as insufficiently cabined, while preserving final agency supervision over important legal, factual, policy, consistency, and governmentwide civil service issues. OPM has retained sua sponte Director review because final agency oversight promotes decisional consistency and accountability within OPM's adjudicatory process. The revision does not create a separate right for parties to request Director review; parties may seek reconsideration under § 751.107. If the Director reopens and reconsiders a decision under § 751.108, the Director may take any action available under § 751.107(c). This structure preserves meaningful principal-officer oversight while clarifying that Director review will occur within the rule's record-based adjudicatory framework, including the final rule's agency-record, separation-of-functions, ex parte, reconsideration, and finality provisions.

OPM declines to eliminate Director review entirely. Director review serves both administrative and constitutional functions. As an administrative matter, it ensures that OPM can correct material legal, factual, or procedural errors before a decision becomes final; resolve recurring or important questions of interpretation; and promote uniform application of part 751 across agencies. That review function is especially important in a governmentwide personnel system, where inconsistent interpretations by subordinate adjudicators could produce uneven appeal rights for similarly situated probationary or trial period employees in different agencies. Cf. 5 U.S.C. 1103(a)(1), (3), (5) (vesting the OPM Director with responsibility for securing "accuracy, uniformity, and justice" in OPM's functions, directing and supervising OPM employees, and executing, administering, and enforcing civil service laws and regulations).

Director review also reinforces the rule's consistency with the Appointments Clause. The Constitution requires principal officers to be appointed by the President with the advice and consent of the Senate, while Congress may vest appointment of inferior officers in the President alone, courts of law, or heads of departments. U.S. Const. art. II, sec. 2, cl. 2. The OPM Director is a presidentially appointed, Senate-confirmed officer. 5 U.S.C.

1102(a). Under the Supreme Court's Appointments Clause precedents, inferior officers must remain subject to direction and supervision by a properly appointed superior officer. *Edmond v. United States*, 520 U.S. 651, 663–65 (1997). In the adjudicatory context, the Court has treated the availability of review by a superior executive officer as a significant feature distinguishing inferior officers from principal officers. *Id.* at 665.

That principle is particularly relevant where subordinate adjudicators exercise significant authority under Federal law. The Supreme Court has held that officials who occupy continuing offices and exercise significant discretion in conducting adjudications may be "Officers of the United States" rather than mere employees. See *Freytag v. Comm'r*, 501 U.S. 868, 881–82 (1991); *Lucia v. SEC*, 585 U.S. 237, 245–51 (2018). Consistent with those decisions, the Director of OPM—exercising the appointment authority vested in the Director by 5 U.S.C. 1103(a)(2)—will appoint, or ratify the appointment of, the officials who adjudicate appeals under this rule, and the rule further provides for supervision and review by the Director, a principal officer, before OPM's decision becomes final.

The Supreme Court's decision in *United States v. Arthrex*, 594 U.S. 1, 22–23 (2021), confirms the importance of that structure. There, the Court held that administrative patent judges could not constitutionally issue unreviewable final decisions on behalf of the Executive Branch while being appointed only as inferior officers. The constitutional problem was not that subordinate adjudicators participated in deciding cases; it was that their decisions were insulated from review by a principal officer. *Id.* at 25–26. The Court's remedy was to permit discretionary review by the Director of the Patent and Trademark Office, explaining that the Director need not review every decision, but must have authority to review decisions if he chooses. *Id.* at 27–28.

Part 751 follows that model. OPM adjudicators may issue initial decisions, and OPM may reopen and reconsider those decisions on party request or on its own initiative. In addition, the Director may, in his or her discretion, reopen and reconsider any appeal in which OPM has issued a decision that has not yet become final, and a decision issued by the Director is the final decision of OPM. This structure ensures that no subordinate adjudicator has unreviewable authority to bind OPM or the Executive Branch in an appeal under part 751.

D. Scope of Covered Employees and Appeal Rights

Several commenters (for example, 0553, 0543, 0548, and 0467) urged OPM to clarify or expand the final rule to permit employees in the excepted service serving a trial period under Civil Service Rule XI to appeal trial period terminations to OPM on the same grounds as competitive service probationers. OPM declines to adopt that approach. The final rule establishes a new appeals process whose substantive scope corresponds to the probationary and trial period appeal rights that existed before E.O. 14284, with a different forum and different procedures. Before E.O. 14284, subpart H of part 315 applied to probation on initial appointment to a competitive position. It did not create a general appeal right for employees serving trial periods in the excepted service. Excepted-service employees serving trial periods had appeal rights only where Congress or another regulation independently provided them. For example, part 307 provides particular appeal rights for individuals serving under Veterans Recruitment Appointments. The final rule preserves that limited category by including employees appointed under part 307 to the extent they previously had comparable appeal rights, but it does not create a new, across-the-board appeal right for all excepted-service trial period employees.

This limitation is consistent with the structure of the CSRA. Congress distinguished between competitive service employees, excepted service preference eligibles, and excepted service non-preference eligibles for purposes of adverse-action appeal rights. In particular, Congress generally did not provide excepted service employees full adverse-action appeal rights until they completed the applicable period of current continuous service. OPM does not read E.O. 14284 or Civil Service Rule XI as requiring OPM to expand those statutory or regulatory appeal rights to excepted service employees who had no such right before the Executive Order.

Civil Service Rule XI uses “probationary period” for the competitive service and “trial period” for the excepted service, and it establishes a common certification framework for both categories. That terminology and certification framework do not themselves create identical appeal rights for all employees serving probationary or trial periods. Civil Service Rule 11.6 authorizes the Director of OPM to prescribe the

circumstances and procedures for appeals; it does not require OPM to create new appeal rights for categories of employees who did not previously possess them.

Expanding part 751 to cover all excepted service trial period employees would be a substantive enlargement of appeal rights rather than a conforming implementation of E.O. 14284. Such an expansion would be inconsistent with the purpose of the probationary and trial period system: to preserve agency flexibility during the initial period of assessment before an appointment is finalized. It would also risk creating uncertainty by granting appeal rights to employees whose appointments, statutory coverage, and excepted service authorities vary substantially across agencies and programs.

Accordingly, the final rule limits part 751 coverage to the categories identified in § 751.101(f). Excepted service employees serving trial periods outside those categories may not appeal under this part unless they are otherwise entitled to appeal by statute or another applicable regulation. Nothing in the final rule prevents such employees from pursuing any claim or remedy that falls within the jurisdiction of the EEOC, the OSC, an Inspector General, the Merit Systems Protection Board, the Department of Labor, or another forum where an independent legal basis for such jurisdiction exists.

E. EEOC, OSC, MSPB, and Other Forums

Commenter 0004 and others contended that the rule does not sufficiently explain how part 751 interacts with MSPB procedures in cases involving overlapping claims, mixed cases, constructive adverse actions, or employees transitioning out of probationary status. OPM has considered these comments and provides the following clarification.

Part 751 establishes a limited OPM appeal process for the categories of employees and claims identified in § 751.101. It does not displace independent statutory or regulatory jurisdiction assigned to another forum. If an employee is covered by part 751 and alleges that a probationary termination, noncertification, failure to certify and finalize an appointment, or covered supervisory or managerial probationary action was based on partisan political reasons or marital status, that claim is brought to OPM under this part. If the employee alleges discrimination under statutes administered by the EEOC, the employee may pursue that claim through the Federal-sector EEO process.

If the employee alleges a prohibited personnel practice within OSC’s jurisdiction, the employee may file with OSC. If the employee claims that the employee was not actually a probationary or trial period employee because the employee had completed the service necessary to qualify as an “employee” under chapter 75, or if the employee asserts an independent statutory appeal right such as a claim under USERRA or VEOA, the final rule does not preclude the employee from seeking review in the forum Congress provided.

This allocation of claims reflects the structure of the current civil service remedial scheme. Congress and the President have not created a single universal forum for every type of personnel claim. Instead, different forums address different legal questions: OPM will adjudicate the narrow probationary and trial period appeal issues preserved in § 751.101(c); EEOC will adjudicate claims under the Federal-sector antidiscrimination statutes it administers; OSC will address matters within its prohibited-personnel-practice jurisdiction; and MSPB will continue to adjudicate matters within its independent statutory or regulatory jurisdiction. Section 751.101(e) therefore makes the part 751 process exclusive only for appeals covered by this part, while preserving other claims where another forum has an independent legal basis for jurisdiction.

OPM also clarifies how part 751 applies when an employee is transitioning out of probationary status. The relevant question is the employee’s legal status and the nature of the action at issue. If the employee has completed one year of current continuous service under other than a temporary appointment limited to one year or less and is not otherwise excluded from coverage, the employee may be covered by the procedures in part 432 or part 752, rather than part 751. If the employee remains within the categories defined in § 751.101(f), the limited part 751 process applies. If the employee disputes probationary status itself, that threshold issue may be raised because OPM must determine its own jurisdiction and the applicability of part 751 before resolving the merits of any appeal.

OPM further clarifies that the label an appellant gives a claim does not determine the forum. A claim styled as a “constructive adverse action” will not be heard under part 751 unless the appellant establishes that the matter falls within OPM’s jurisdiction and raises an issue made appealable by § 751.101(c). Conversely, if the

employee alleges facts showing that the action is actually appealable to MSPB under an independent statutory or regulatory basis—such as because the employee had already acquired chapter 75 coverage—nothing in part 751 prevents the employee from presenting that jurisdictional argument to MSPB. Part 751 does not expand MSPB jurisdiction, but it also does not eliminate MSPB jurisdiction that exists independently of this rule.

Multiple commenters, including 0049, 0119, 0250, 0352, and many others, stated that probationary employees should have a choice to bring mixed cases to MSPB or EEOC. Commenters 0252, 0607, and 0613 expressed concern that probationary employees are especially vulnerable to discrimination and that limiting OPM appeals could hide patterns of abuse. OPM does not agree that the final rule eliminates discrimination remedies or conceals discriminatory conduct.

The final rule does not bar probationary or trial period employees from filing discrimination complaints. It directs discrimination claims to the forum Congress and regulation have made responsible for Federal-sector discrimination claims: the EEOC process. Employees who believe they were discriminated against based on race, color, religion, sex, pregnancy, national origin, age, disability, genetic information, or other protected status under statutes administered through the Federal-sector EEO process may continue to pursue those claims through that process. The final rule does not narrow the substantive protections of Title VII, the ADEA, the Rehabilitation Act, the ADA-related Federal-sector framework, or other laws administered through the EEO process. Nor does it prevent an employee from seeking judicial review where the applicable discrimination statute and EEO framework provide such review.

OPM disagrees that probationary employees must have an MSPB “mixed case” option for these claims. Congress did not create a general statutory right for probationary employees to bring probationary termination appeals to MSPB. The prior ability to attach certain discrimination allegations to an MSPB probationary appeal depended on OPM’s former regulatory choice to route a narrow class of probationary appeals to MSPB. Once E.O. 14284 rendered those regulations inoperative and Civil Service Rule XI directed OPM to prescribe the circumstances and procedures for probationary and trial period appeals, OPM was not required to recreate the prior mixed-case structure for probationary appeals. OPM

has instead determined that discrimination claims should be handled by the EEO process, while OPM resolves the limited probationary issues identified in § 751.101(c).

Many commenters, including Commenters 0028, 0260, 0368, and 0497, suggested that the rule bars probationary employees from filing complaints with the EEOC or otherwise strips employees of rights to make discrimination claims. Those commenters are mistaken. The rule does not eliminate any substantive right to be free from unlawful discrimination. It separates claims by legal source and forum. OPM will decide the limited issues assigned to OPM under part 751. EEOC and agency EEO offices will address claims under the Federal-sector anti-discrimination laws. That approach channels claims to the entity with specialized responsibility for the relevant body of law and avoids requiring OPM to adjudicate claims that this final rule does not assign to it.

Commenters 0289, 0293, and 0296 correctly noted that probationary employees may have several possible avenues depending on the claim: an EEO complaint if they allege discrimination under statutes administered through the Federal-sector EEO process; an OPM appeal if they allege partisan-political reasons, marital status, or specified pre-appointment procedural defects within § 751.101(c); an OSC complaint if they allege a prohibited personnel practice within OSC’s jurisdiction; and, in some circumstances, an MSPB appeal if they contend they meet the statutory definition of “employee” or assert another independent statutory appeal right, such as rights related to military service. Other commenters, including 0342, 0484, 0579, and 0613, characterized this structure as fragmented. OPM disagrees.

The civil service remedial scheme is claim-specific by design. A structure that directs different legal claims to different expert forums does not reflect improper fragmentation. Instead, it reflects how Congress and implementing regulations have long allocated responsibility for Federal employment disputes. A discrimination claim, a prohibited-personnel-practice claim, a USERRA or VEOA claim, a threshold chapter 75 coverage claim, and a limited probationary appeal under part 751 may arise from related facts, but they are not the same legal claim. They require different legal standards, different remedies, and different adjudicatory expertise. The final rule therefore clarifies, rather than obscures,

which forum is responsible for which issue.

Commenter 0345 argued that assigning discrimination claims to the EEOC process forces bifurcation, parallel litigation tracks, separate investigations, and duplicative agency staffing. Commenters 0380, 0414, 0418, 0439, 0447, 0451, and 0516 similarly argued that the rule unlawfully bifurcates EEO claims contrary to congressional intent. Commenters 0419, 0425, and 0474 argued that separating claims based on race, sex, pregnancy, or other protected status from claims of partisan-political discrimination would create waste, burden claimants, and create a possible conflict of interest because OPM would be adjudicating and enforcing its own rules.

OPM does not agree. Congress did not establish a general MSPB mixed-case appeal right for probationary terminations. The former mixed-case route existed only because OPM had previously assigned certain probationary appeals to MSPB by regulation. OPM is now replacing that regulatory assignment with a narrower OPM process under Civil Service Rule XI. It is reasonable for OPM to assign discrimination claims to the EEO process while retaining OPM review over the limited claims that part 751 preserves.

OPM also does not agree that separate forums will necessarily produce duplication or inconsistent decisions. The legal inquiries are distinct. In a part 751 appeal, OPM will determine whether the action was based on partisan political reasons or marital status, or whether the agency failed to follow specified procedures for a termination based in whole or in part on pre-appointment reasons. In an EEO matter, the agency EEO process and EEOC framework address whether the agency violated applicable antidiscrimination law. The same factual background may be relevant to more than one claim, but the legal standards, decisionmakers, and available remedies differ. Where an employee chooses to pursue multiple avenues, the employee may submit overlapping evidence to more than one forum, but that does not make the legal inquiries duplicative.

OPM further concludes that routing discrimination claims to the EEO process promotes expertise and consistency. EEOC and agency EEO offices have specialized responsibility for Federal-sector discrimination complaints, including investigation, administrative adjudication, remedies, and coordination with judicial-review rights where applicable. Requiring OPM

to adjudicate EEO claims as part of a limited probationary appeal would complicate and delay the part 751 process, undermine the streamlined structure of the rule, and risk inconsistent development of discrimination law outside the forum charged with administering it.

Nor does the rule conceal patterns of discrimination or abuse. EEO complaints remain available. OSC complaints remain available for matters within OSC's jurisdiction. Inspector General complaints remain available where appropriate. MSPB review remains available where an independent basis for MSPB jurisdiction exists. OPM will also issue written decisions in part 751 appeals and has committed to make final merits decisions publicly available, subject to applicable limits protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed. These mechanisms preserve transparency and accountability while maintaining the limited scope of part 751.

Finally, OPM disagrees that its role creates a conflict of interest. OPM is not the employing agency in appeals filed by employees of other agencies and does not make the individualized decision to terminate, not certify, or fail to finalize a particular employee's appointment. Those decisions are made by the employing agency. OPM's MSAC adjudicatory function is distinct from OPM's rulemaking and policy functions, and part 751 requires decisions to be made on the record and within the limited issues identified in the rule. For appeals filed by OPM employees, the final rule provides an additional safeguard by assigning the appeal to an administrative law judge.

Accordingly, OPM declines to revise the rule to provide an MSPB mixed-case election for probationary and trial period appeals. The final rule preserves the limited appeal rights historically available to covered probationary employees, directs discrimination claims to the EEO process, preserves independent remedies in other forums where legally available, and provides clearer claim routing for employees, agencies, and adjudicators.

Commenters 0163, 0172, 0274, 0331, and 0484 argued that by taking jurisdiction from MSPB and establishing a venue at OPM, appellants will instead file wrongful termination claims in Article III courts, unnecessarily and counterproductively fracturing the CSRA's model of administrative and judicial review of Federal personnel actions.

The Supreme Court has repeatedly explained that Article III courts lack jurisdiction to hear claims arising under the CSRA, including the types of claims covered by this rule (probationary appeals). In *United States v. Fausto*, the Court explained that “[a] leading purpose of the CSRA was to replace the haphazard arrangements for administrative and judicial review of personnel action, part of the outdated patchwork of statutes and rules built up over almost a century that was the civil service system.” 484 U.S. 439, 444 (1988) (internal quotations and citations omitted). This comprehensive framework reflects Congress's deliberate choice to preclude judicial review outside the narrow circumstances in which the CSRA scheme permits judicial, or administrative, review.³⁷ Nothing in this rule opens the doors to judicial review by probationers on wrongful termination grounds, and under this rule, such cases will continue to be dismissed for lack of jurisdiction.³⁸

F. Consistency With Merit System Principles

Commenters 0227, 0035, 0044, 0399, 0425, 0516 and others asserted that this rule violates the Merit System Principles codified at 5 U.S.C. 2301. OPM disagrees. The Merit System Principles remain fully in effect and continue to govern Federal personnel management. Nothing in this rule authorizes an agency to take, or OPM to approve, a personnel action based on partisan political reasons, marital status, political affiliation, favoritism, arbitrary conduct, retaliation, or any other basis prohibited by law. The final rule creates a forum and procedures for a limited class of regulatory appeals; it does not displace the Merit System Principles, the prohibited personnel practices in 5 U.S.C. 2302, the jurisdiction of OSC, the jurisdiction of EEOC, or any other independent statutory protection.

³⁷ See, e.g., *Elgin v. Dep't of the Treasury*, 567 U.S. 1 (2012); *Mastriano v. FAA*, 714 F.2d 1152 (Fed. Cir. 1983); *Sagar v. Lew*, 211 F. Supp. 3d 262 (D.D.C., 2016); *Walker v. Merit Sys. Prot. Bd.*, 594 F. App'x 984 (Fed. Cir. 2014); *González v. Vélez*, 864 F.3d 45 (1st Cir. 2017).

³⁸ See *Tocci v. Napolitano*, 791 F. Supp. 2d 944 (D. Or., 2011); *Ahuruone v. U.S. Dep't of the Interior*, 312 F. Supp. 3d 1 (D.D.C., 2018); *Swartz v. Internal Revenue Serv.*, 702 F. Supp. 780 (W.D. Mo. 1988); *Ladson v. Jue*, 2015 WL 3755918 (E.D. Va., 2015); *Chamat v. Paulson*, 2009 WL 764989 (S.D. Cal., 2009); *Peter B. v. C.I.A.*, 620 F. Supp. 2d 58 (D.D.C. 2009); *Gonzalez v. Manjarrez*, 2013 WL 152177 (W.D. Tex. Jan. 4, 2013), *aff'd*, 558 F. App'x 350 (5th Cir. 2014); *Toro v. Napolitano*, 2013 WL 4102158 (S.D. Cal. Aug. 13, 2013); *Radakovic v. U.S. Office of Pers. Mgmt.*, 2012 WL 1900037 (D. Mass. 2012).

Indeed, the final rule is designed to preserve the merit-based character of probationary and trial period employment while recognizing the distinct role of those periods in the civil service system. A probationary or trial period is part of the examining and assessment process. During that period, agencies must be able to determine whether continued employment advances the public interest and the efficiency of the service. At the same time, agencies may not use that period as a means to evade the Merit System Principles or to take actions for unlawful reasons. Part 751 reflects that balance by preserving appeals alleging partisan political reasons or marital status and by preserving specified procedural challenges where a termination is based in whole or in part on conditions arising before appointment.

Commenters 0011, 0070, 0396, 0615 and others asserted that this rule will be abused to effectuate politically based dismissals. One commenter points to *Starkey v. Dep't of Housing and Urban Development*, 2024 M.S.P.B. 6 (2024), as justification for retaining MSPB jurisdiction to prevent politically based dismissals. OPM has considered this concern, but does not agree that *Starkey* supports reestablishing MSPB as the forum for all probationary appeals.

Starkey demonstrates the importance of preserving a meaningful avenue to challenge a probationary termination allegedly based on partisan political reasons. The final rule does exactly that. A covered appellant who alleges that a termination, noncertification, failure to certify and finalize an appointment, or covered supervisory or managerial probationary action was based on partisan political reasons may appeal that claim to OPM under § 751.101(c). Thus, the final rule does not eliminate the type of claim at issue in *Starkey*; it preserves that claim and assigns it to OPM for adjudication under the procedures in part 751.

OPM also disagrees that such claims can be fairly resolved only by MSPB. The relevant question is whether the adjudicatory process allows the decisionmaker to evaluate the record, require production of relevant agency materials, consider the appellant's response, develop the record where necessary, assess material factual disputes, and provide reasoned decisions. The final rule provides those safeguards. The agency must submit a response and all documents in the agency record supporting the action. The appellant may reply. OPM may require additional information, audit or investigate the agency's action when

doing so is necessary to determine a material fact, and conduct a hearing where the written record is insufficient or where a material credibility dispute makes a hearing necessary and efficient. OPM will issue written decisions, provide reconsideration and Director review before finality, and make final merits decisions publicly available subject to applicable legal limits.

These safeguards are particularly important in cases alleging partisan political motive. If the written record is sufficient to resolve the claim, OPM may decide the appeal on that record. If the record contains material factual gaps, inconsistent explanations, or credibility issues comparable to those that may arise in a politically based dismissal case, OPM has authority to obtain additional information, conduct an audit or investigation, or hold a hearing where necessary and efficient. The final rule therefore does not require OPM to accept an agency's explanation at face value, nor does it prevent OPM from developing the record when the appellant raises a nonfrivolous and material claim within OPM's jurisdiction.

OPM further rejects the suggestion that agency officials will be permitted to use the probationary or trial period as cover for political retaliation or partisan discrimination. Such conduct remains prohibited. In addition, employees may continue to pursue claims within OSC's jurisdiction, including prohibited personnel practice claims, where an independent legal basis for OSC jurisdiction exists. Employees may also pursue claims in other forums, including EEOC, MSPB, Inspectors General, or another authorized forum, where an independent statute or regulation provides jurisdiction.

OPM acknowledges that public confidence in the civil service depends not only on legal rules but also on transparent and even-handed administration. For that reason, the final rule requires record-based adjudication and written decisions, and OPM has committed to making final merits decisions publicly available, subject to applicable limits protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed. Public availability of final merits decisions will allow agencies, employees, representatives, and the public to assess how OPM applies the prohibition against partisan-political and marital-status based actions over time.

OPM also has experience administering adjudicatory functions in

a neutral and professional manner, including classification appeals and other record-based personnel determinations. OPM will apply that experience in administering part 751. Decisions under this rule must be based on the administrative record and the issues made appealable by the regulation, not on political preference, agency convenience, or a predetermined outcome. For appeals filed by OPM employees, the final rule adds an additional safeguard by assigning the matter to an administrative law judge.

Accordingly, OPM declines to revise the rule on the grounds that it violates the Merit System Principles or will enable politically based dismissals. The final rule preserves the substantive prohibition against partisan-political and marital-status based terminations of probationary period employees. OPM again notes that, if it did not finalize this rule, probationary employees would have no right to appeal terminations allegedly undertaken on the basis of political affiliation. OPM thus sees this rule as reinforcing Merit System Principles by providing a forum and procedures to adjudicate such allegations.

G. Representatives, Unions, and Official Time

Commenters 0570 and 0608 questioned OPM's authority to mandate the procedures provided for in this rule as the sole and exclusive means by which a probationary or trial period employee may appeal a termination. For example, they point to the definition of the term "grievance," provided at 5 U.S.C. 7103(a)(9) as basis for Congress mandating probationary or trial period employees be permitted to challenge terminations via negotiated grievance arbitration procedures.

OPM disagrees. Courts, interpreting Congress's intent, have long found that probationary employees are, by statute, treated differently than those who have been certified following such periods.³⁹ Among the procedures Congress did not grant to probationary employees was the ability to challenge a removal by grievance. Proposals to extend such procedures to probationary employees are contrary to law. "Permitting probationary employees to grieve removals based on a mere allegation of violation . . . would eviscerate the entire purpose of the probationary

program." *NTEU v. FLRA*, 737 F.3d 273, 280 (4th Cir. 2013).

Probationary terminations are not a matter covered under Chapter 71, and placing them within such bounds, thereby opening the door to use of negotiated grievance procedures to challenge terminations, would "upset nearly thirty years of FLRA decisions holding that probationary employees are not permitted under law or regulation to grieve removals." *Id.* Thus, there is no statutory basis to provide official time to representatives in connection with probationary appeals. Use of official time is principally governed by statute. Under 5 U.S.C. 7131, which forms the basis of the statutory right, official time is authorized only when a representative is: negotiating a collective bargaining agreement; participating for or on behalf of a labor organization in a proceeding before the FLRA; or in connection with any other matter covered by the FSLMRS. Courts have repeatedly explained that probationary appeals are not covered by Chapter 71.⁴⁰

Therefore, OPM's rulemaking properly precludes proposals to grant grievance-arbitration rights to probationary employees. Further, Commenters misunderstand how the term "grievance" is defined under 5 U.S.C. 7103(a)(9). Provisions of the FSLMRS, "like every Act of Congress, should not be read as a series of unrelated and isolated provisions." *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995). This means the definition of "grievance" in the FSLMRS is not rigid or applied to every situation. Instead, when determining what counts as a grievance, one must exclude any subject matter that is already excluded due to conflicts with other laws or by governmentwide rules under 5 U.S.C. 7117(a)(1). Further, Congress "specifically excluded probationary employees from the broad definitions of 'employee' and 'grievance'" in statute. *NTEU v. FLRA*, 848 F.2d 1273, 1276 (D.C. Cir. 1988).

Commenters 0055, 0081, and 0110 asserted that the rule would preclude an appellant from designating a union official as his or her representative.

⁴⁰ See *Nat'l Treasury Emps. Union v. Fed. Labor Rels. Auth.*, 737 F.3d 273, 280 (4th Cir. 2013) (noting longstanding precedent that probationary employees may not grieve removals); *United States Dep't of Health & Human Servs. v. FLRA*, 858 F.2d 1278, 1283 (D.C. Cir. 1988) (emphasizing Congress's intent to permit summary termination during probation); see also *United States Dep't of Justice v. FLRA*, 709 F.2d 724, 730 (D.C. Cir. 1983); *Bartholomew v. United States*, 740 F.2d 526, 530 (7th Cir. 1984); *United States Postal Serv. v. Am. Postal Workers Union*, 553 F.3d 686, 690 (D.C. Cir. 2009).

³⁹ See, e.g., 5 U.S.C. 7501(1); *Goss v. Dep't of the Air Force*, 131 F. App'x 721, 724 (Fed. Cir. 2005); *Mastriano v. FAA*, 714 F.2d 1152, 1155 (Fed. Cir. 1983); see also *Bante v. Merit Sys. Prot. Bd.*, 966 F.2d 647 (Fed. Cir. 1992); *Bofill v. Merit Sys. Prot. Bd.*, 26 F. App'x 916 (Fed. Cir. 2001).

Commenters 0004, 0047, 0153, 0217, 0347, 0599, and others asserted that an employee is statutorily entitled to select a Federal employee who is a union official to assist him or her in the preparation of an appeal, and, in such cases, the selected representative is entitled to claim official time for work done while in a duty status on behalf of the employee.

However, the final rule preserves an appellant's ability to select a representative, including a union representative, subject to the limitations in § 751.104. The rule does not prevent an employee from seeking advice, consulting a representative, or being represented in an appeal under part 751. Nor does it affect official time that may be independently authorized in other proceedings, such as EEO proceedings, where a separate legal framework applies.

The rule merely prevents the representative (when such representative is a Federal employee) from performing representational functions while in a duty status (including while on official time) or from claiming agency reimbursement for any expenses incurred while performing such representational function.

OPM believes that part 751 appeals should not be conducted through paid representational activity by Federal employees in a duty status. Part 751 appeals are regulatory probationary-appeal proceedings established by OPM under Civil Service Rule XI. They are not negotiated grievance proceedings under chapter 71, and the final rule does not require agencies to provide official time for the preparation or presentation of these appeals. Section 7131(d) allows official time for representational activity in amounts the agency and exclusive representative agree to be reasonable, necessary, and in the public interest, subject to applicable law and governmentwide regulation. This final rule establishes a governmentwide procedural limitation for this OPM appeal process. Other commenters, such as Commenters 0086, 0283, 0516, 0570, and 0584, asserted that official time is essential to ensuring that probationary and trial period employees can effectively challenge improper agency actions. OPM has considered these comments but declines to revise the rule. The final rule preserves an appellant's ability to select a representative, including a union representative, subject to the limitations in § 751.104. It does not require appellants to proceed without assistance, prohibit union representatives from advising or representing employees, require

appellants to retain private counsel, or limit representation in proceedings outside part 751 where official time is independently authorized. What the final rule does is narrower: it provides that a Federal employee who serves as a representative in this OPM regulatory appeal process may not perform that representational work in a duty status, including on official time under 5 U.S.C. 7131.

OPM disagrees that taxpayer-funded official time is necessary to make representation meaningful in this limited appeal process. Part 751 appeals are not negotiated grievance proceedings under chapter 71, nor are they statutory adverse-action appeals under chapter 75. They are limited regulatory appeals established under Civil Service Rule XI for employees whose appointments have not yet been finalized. The issues are correspondingly narrow: partisan-political reasons, marital status, and specified procedural claims involving terminations based in whole or in part on conditions arising before appointment. Given that limited scope, OPM concludes that the public interest is better served by preserving the right to representation while not requiring agencies to subsidize preparation or presentation of these appeals through official time.

Further, official time would be statutorily unavailable to represent probationary employees in part 751 appeals even if this regulation were silent on the topic. 5 U.S.C. 7131(d) authorizes agencies to provide official time for (1) "any employee representing an exclusive representative" and (2) "in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative."

Ground (1) is unavailable because a Federal employee who assists a probationer in a part 751 appeal is not "representing an exclusive representative" within the meaning of the statute. That phrase describes an employee acting on behalf of the labor organization in its institutional capacity—that is, performing the representational functions the FSLMRS assigns to an exclusive representative, such as negotiating a collective bargaining agreement, processing grievances under a negotiated grievance procedure, or participating in proceedings under chapter 71. See 5 U.S.C. 7114(a)(1); *AFGE, AFL-CIO, Local 1692 and Headquarters, 323rd Flying Training Wing (ATC), Mather Air Force Base*, 3 FLRA No. 47 (1980) (official time under 5 U.S.C. 7131 concerns activities involving an

"interface" between the labor organization and agency management under the Statute, such as negotiations, grievances, negotiability disputes, and unfair labor practice proceedings, and preparation for such activities); cf. *Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89 (1983) (declining to extend the benefits associated with official time beyond those Congress provided in the Statute).

A part 751 appeal involves none of these functions. The representative's authority in such an appeal derives solely from the individual appellant's personal designation under § 751.104, not from the union's status as exclusive representative. Indeed, the FSLMRS itself distinguishes between representation by an exclusive representative and an employee's separate right to be represented "by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action." 5 U.S.C. 7114(a)(5)(A). A Federal employee designated by a probationer under § 751.104 acts in the latter, personal capacity. The exclusive representative is not a party to a part 751 appeal, has no statutory or regulatory role in the proceeding, and asserts no institutional interest of its own; part 751 appeals are not grievances, and the union's chapter 71 representational authorities are therefore not implicated. This conclusion does not change merely because the individual the appellant selects happens to hold union office: an employee's union title does not convert personal representation of an individual appellant into representation of the exclusive representative.

Thus, because employees representing colleagues in probationary appeals are representing the probationer, not the union, such hearings are not grievances where the union's institutional authorities are implicated. As a result, ground (1) for official time is unavailable. As discussed above, courts have consistently held that Chapter 71 of Title 5, United States Code does not cover appeals of probationary terminations. See *NTEU v. FLRA*, 737 F.3d at 279–80; *NTEU v. FLRA*, 848 F.2d at 1276 (D.C. Cir. 1988); *Dep't of Justice v. FLRA*, 709 F.2d 724 (D.C. Cir. 1983); *NTEU*, 67 FLRA 24, 26 (2012), *aff'd sub nom. NTEU v. FLRA*, 737 F.3d 273 (4th Cir. 2013). Consequently, probationary appeals are not "any other matter covered by" Chapter 71 and ground (2) is also unavailable. Commenters do not explain how it would be lawful for agencies to provide paid official time to represent probationary employees without statutory authorization under 5

U.S.C. 7131. The provisions in the final rule that prohibit providing paid official time for such appeals reflect the statutory limits Congress placed on provision of official time. Thus, official time for these appeals would be unlawful regardless of whether this rule addressed the subject; the rule's prohibition merely makes that pre-existing statutory limitation explicit.

Commenter 0500 argued that private attorneys are cost prohibitive and that, without official time, probationary employees will lose a realistic opportunity to challenge potentially improper or unlawful terminations. OPM recognizes that representation can assist employees in presenting their claims. For that reason, the final rule does not bar representation and does not prevent an appellant from selecting a union official, attorney, non-attorney representative, or other permissible representative. But the possibility that some appellants may prefer representation by a Federal employee during that representative's duty hours does not create a statutory entitlement to official time in this proceeding. Employees may represent themselves, obtain assistance from a union representative outside the representative's duty status, seek private or pro bono assistance, or pursue other independently available remedies in the appropriate forum.

Commenter 0500 also contended that restricting a Federal employee representative from claiming official time for representational work in a probationary or trial period appeal is arbitrary and capricious under the APA. OPM disagrees. Section 7131(d) does not create an automatic entitlement to official time for every form of representational activity. It permits official time in amounts agreed to by the agency and exclusive representative, subject to applicable law, rule, and regulation, and only where the time is reasonable, necessary, and in the public interest. As discussed above, section 7131(d) expressly does not authorize official time for matters not covered by Chapter 71 and not related to representing a labor organization. Thus, official time is statutorily unavailable under 7131(d) for probationary appeals. Conforming OPM regulations to statutory limits on agency authority is neither arbitrary nor capricious.

Further, even if 7131(d) did permit official time for probationary appeals, this final rule is a governmentwide regulation governing a specific OPM appeal process. OPM has determined that official time for the preparation or presentation of part 751 appeals is not warranted because these appeals

concern limited regulatory rights of employees still serving probationary or trial periods, are not part of the negotiated grievance process, and are designed to be resolved through a streamlined written-record procedure.

OPM also concludes that the restriction is reasonably tailored. The final rule does not regulate representational activity generally; it applies only to representational functions performed by a Federal employee representative in connection with an appeal under part 751 while in a duty status. It does not restrict communications on non-duty time, prevent employees from consulting a union representative, limit union activity unrelated to a part 751 appeal, or affect official time that may be available in other proceedings under a separate statutory or regulatory framework, including EEO proceedings where applicable. Nor does the rule prevent a union from choosing to assist a probationary employee; it simply does not require the employing agency to pay another Federal employee to perform that assistance during duty hours in this particular regulatory appeal process.

OPM further declines to limit the restriction only to the "presentation" of an appeal. Preparation and presentation are both core representational functions in an adjudicatory proceeding. A rule that barred official time only for the moment of filing or presenting an appeal, but allowed official time for all factual development, drafting, consultation, and strategy related to that appeal, would not meaningfully serve OPM's objective of maintaining a streamlined and resource-conscious process. It is also not clear how section 7131(d) would authorize official time for preparation of an appeal in a matter not covered by Chapter 71. The final rule therefore applies to both preparation and presentation of part 751 appeals while preserving the appellant's ability to obtain representation outside duty status. The final rule does not prohibit representational communications generally; it limits the use of duty time for representational functions in this specific OPM appeal process and in accordance with the limits Congress placed on negotiated official time.

Commenter 0516 asserted that the rule chills whistleblowing and protected union activity, and that the restriction on official time compounds those effects by signaling that employees who speak up will have little meaningful recourse. OPM disagrees. The final rule does not alter statutory whistleblower protections, prohibited personnel practice remedies, OSC jurisdiction,

EEO rights, Inspector General processes, or any other independent remedy available by law. A protected disclosure, protected union activity, or complaint to an authorized forum does not lose protection because official time is unavailable for a Federal employee representative in a part 751 appeal. Likewise, the rule does not prohibit probationary employees from engaging in protected union activity during their probationary or trial periods. It addresses only whether a Federal employee representative may perform representational work for a part 751 appeal while in a paid duty status.

Commenter 0516 also contended that the rule would prevent employees from engaging in union activity during their probationary period by limiting a representative's use of official time to prepare an appeal for a removed probationary employee. OPM does not agree that this conclusion follows. Part 751 appeals are not proceedings under the FSLMRS, and probationary termination appeals do not become chapter 71 proceedings merely because an appellant selects a union representative. The final rule therefore does not diminish employees' rights to engage in protected union activity; it declines to attempt to circumvent the limits Congress placed on negotiated official time by purporting to create a taxpayer-funded official-time subsidy for representation in this limited OPM appeal process.

H. Limitation on Judicial Review

OPM is specifying in § 751.101(e) that "[a] party cannot obtain judicial review of a decision under this part." It is also providing in § 751.109(d) that "[t]here is no further right of appeal of a final decision of OPM." Commenters 0341, 0431, 0440, 0450, and others contended that, although lawful, restricting judicial review is unfair.

OPM disagrees. Section 751.101(e) does not withdraw a statutory right to judicial review. Rather, it reflects the absence of any statutory right to obtain judicial review of an OPM decision adjudicating a probationary or trial period appeal under this part. Congress has provided judicial review in the CSRA where it chose to do so. For example, 5 U.S.C. 7703 authorizes judicial review of final orders or decisions of the MSPB. But the decisions issued under this rule are OPM decisions, not MSPB decisions. Nothing in 5 U.S.C. 7703, chapter 75, or chapter 77 grants a party a right to obtain judicial review of an OPM decision issued under a regulatory probationary-appeal process. Nor does the prior existence of MSPB review

under former § 315.806 create an independent statutory entitlement to judicial review. Any judicial review previously available flowed from OPM's regulatory decision to route certain probationary appeals to the MSPB, whose final decisions are governed by 5 U.S.C. 7703. OPM has now exercised its authority, consistent with Civil Service Rule 11.6, to prescribe a different forum and different procedures for this limited class of appeals.

This conclusion follows from the structure of the CSRA. The CSRA “creates an integrated scheme of administrative and judicial review, wherein the Congress intentionally provided—and intentionally chose not to provide—particular forums and procedures for particular kinds of claims.” *Am. Fed'n of Gov't Emps. v. Sec'y of the Air Force*, 716 F.3d 633, 636 (D.C. Cir. 2013) (alterations, citation, and quotation marks omitted). Congress allowed certain individual Federal employees who are affected by agency personnel decisions to challenge those decisions “by litigating their claims through the statutory scheme in the context of [a] concrete” dispute, with limitations imposed by Congress on the kinds of claims and remedies available. *See Am. Fed'n of Gov't Emps. v. Trump*, 929 F.3d 748, 757 (D.C. Cir. 2019).

That structure is not accidental. The CSRA's review scheme is both “comprehensive and exclusive.” *Grosdidier v. Broad. Bd. of Govs.*, 560 F.3d 495, 497 (D.C. Cir. 2009). It is “comprehensive” in that “[i]t regulates virtually every aspect of Federal employment and prescribes in great detail the protections and remedies applicable to adverse personnel actions, including the availability of administrative and judicial review.” *Nyunt v. Broad. Bd. of Govs.*, 589 F.3d 445, 448 (D.C. Cir. 2009) (cleaned up). It is “exclusive,” meanwhile, in that “[i]t constitutes the remedial regime for Federal employment and personnel complaints.” *Id.* The CSRA's review scheme is exclusive even when “the CSRA provides no relief,” and in fact, “precludes other avenues of relief.” *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004). In other words, “the CSRA is the exclusive avenue for suit even if the plaintiff cannot prevail in a claim under the CSRA.” *Grosdidier*, 560 F.3d at 497. “Congress designed the CSRA's remedial scheme with care, ‘intentionally providing—and intentionally not providing—particular forums and procedures for particular kinds of claims.’” *Id.* (quoting *Filebark v. Dep't of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009)).

In *United States v. Fausto*, the Court held that the absence of CSRA review rights for a covered category of excepted service employees was not a gap to be filled by another remedial statute, but a manifestation of Congress's considered judgment about the scope of review. 484 U.S. 439 (1988). Similarly, in *Elgin v. Dep't of the Treasury*, the Court held that the CSRA supplied the exclusive review scheme for covered employees challenging covered adverse actions, even where the employees raised constitutional claims. 567 U.S. 1 (2012). These decisions confirm that the question is not whether judicial review might be desirable as a policy matter, but whether Congress has provided it for the action, employee, claim, and forum at issue.

In contrast to covered employees, probationers generally do not enjoy the same guaranteed right to appeal termination decisions to the MSPB, as Congress excluded them from the definition of “employee[s]” for purposes of the CSRA's Chapter 75. *See* 5 U.S.C. 7511(a)(1). The probationary period has long been treated as an extension of the examining process, and Congress generally withheld ordinary chapter 75 adverse-action appeal rights from employees who have not completed the applicable service or status requirements.

Courts have repeatedly recognized that probationary employees' appeal rights are “extremely limited” and that there is no statutory basis for ordinary MSPB jurisdiction over probationary removals. *Mastriano*, 714 F.2d at 1155. The former MSPB appeal right for probationary employees was regulatory, not statutory. OPM's decision to provide a limited OPM administrative appeal therefore does not trigger the judicial-review provisions applicable to MSPB decisions, nor does it require OPM to create a new layer of judicial review by regulation.

Commenters 0341, 0371, and 0450 suggested that OPM's decisions cannot be final without court review, and that the ability to challenge agency decisions in court serves as a check on agency mistakes. Commenter 0483 added that denying access to Article III courts may also be unconstitutional since the Supreme Court has held that judicial review provides a forum for claims after administrative exhaustion requirements have been met by litigants. Commenters 0410 and 0483 asserted that the Supreme Court has recognized a presumption in favor of judicial review, having rejected arguments in cases like *Kucana v. Holder* that such a right may only be stripped by express exclusion in statute. *See Kucana v. Holder*, 558 U.S.

233 (2010). Other commenters, like 0255 and 0444, asserted that there is a generalized right of judicial review.

Unlike the circumstances cited in *Kucana*, the CSRA does not establish a right to judicial review for *any* aspect of the administrative process for resolving the probationary or trial period assessment. To the extent that OPM previously delegated this review authority to the MSPB, whose decisions are in turn subject to judicial review by the Federal Circuit, this grant of review by OPM is best described as an act of grace. In hindsight, rather than serving as an efficient way to resolve disputes arising during the probationary period, OPM believes that this grant unduly restricted agencies' ability to conduct probationary assessments by introducing the possibility of multiple rounds of administrative review and subsequent judicial review in a Federal appellate court.

While the CSRA does include a comprehensive remedial scheme, which may include judicial review, this review is limited. The CSRA provides that “[t]he reviewable agency actions are removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.” *Elgin*, 567 U.S. at 5–6. But courts have repeatedly dismissed a litany of other actions arising under the CSRA (including, but not limited to, those relating to the APA). For example, in *United States v. Fausto*, 484 U.S. 439 (1988), the Court said “the absence of provision for . . . employees to obtain judicial review is not an uninformative consequence of the limited scope of the statute, but rather manifestation of a considered congressional judgment” This conclusion emerges not only from the statutory language, but also from what we have elsewhere found to be an indicator of nonreviewability, the structure of the statutory scheme.” Similarly, in *Zummer v. Sallet*, 37 F.4th 996 (5th Cir. 2022), the court held the CSRA prohibits district courts from hearing claims seeking to reverse suspensions and terminations. Indeed, for decades, courts have consistently held “that it would be inappropriate . . . to supplement [the CSRA] regulatory scheme with a new judicial remedy.” *Bush v. Lucas*, 462 U.S. 367, 368 (1983). *See also Krafur v. Davenport*, 736 F.3d 1032, 1034 (6th Cir. 2013) (“The [CSRA] spells out in painstaking detail the path an employee must follow if he wants to challenge a prohibited personnel practice”); *Fornaro v. James*, 416 F.3d 63, 67 (D.C. Cir. 2005) (Roberts, J.); *Dotson v. Griesa*, 398 F.3d 156, 163 (2d Cir. 2005) (“the CSRA creates an integrated scheme of

administrative and judicial review for adverse employment actions . . . That scheme . . . affords no administrative or judicial review to judicial branch employees”) (internal quotation marks omitted); *Pathak v. Dep’t of Veterans Aff.*, 274 F.3d 28 (1st Cir. 2001) (holding the CSRA stripped the district court of subject matter jurisdiction to consider a suspension of less than 14 days); *Ryon v. O’Neill*, 894 F.2d 199, 204 (6th Cir. 1990) (“In short, the text of the CSRA, the structure of the review it establishes, and the legislative history of the Act, all lead ineludibly to the conclusion that Congress intended review of agency reassignment decisions to be confined to the specific procedures set out in the text of the CSRA”); and *Yokum v. U.S. Postal Serv.*, 877 F.2d 276 (4th Cir. 1989) (holding the CSRA “precludes judicial review of administrative personnel decisions adverse to the interests of nonpreference eligible postal workers”) (internal quotations omitted).

This is because the “CSRA nowhere grants any employee, whether in the excepted or competitive service, the right to bring an action in Federal district court.” *Galvin v. F.D.I.C.*, 48 F.3d 531 (5th Cir. 1995). “It is well established that the appeal rights of a probationary employee are extremely limited.” *Mastriano*, 714 F.2d at 1155. In fact, “Congress excluded probationary employees from the definition of ‘employee’ for most adverse action purposes.” *Piskadlo v. Veterans’ Administration, Merit Sys. Prot. Bd.*, 669 F.2d 82, 83 (1st Cir. 1982). Further, “[t]he language of the current statute establishes that Congress clearly intends review of the termination of probationary employees to be more limited than that of other employees.” *Bante v. Merit Sys. Prot. Bd.*, 966 F.2d 647, 650 (Fed. Cir. 1992). Put plainly, Congress intended to provide more review rights to regular employees than probationary employees. It does not stand to reason, therefore, that when taking great pains to, “in great detail,” prescribe the avenues of redress available under the CSRA, “including the availability of administrative and judicial review,” *Fausto*, 484 U.S. at 443, Congress intended to provide probationary appellants greater access to Article III judicial review than it provided to non-probationary employees.

Commenters’ reliance on the general presumption favoring judicial review is misplaced in this context. OPM recognizes that courts ordinarily presume that agency action is subject to judicial review. But that presumption may be overcome by the structure and purpose of a comprehensive statutory

scheme. The CSRA is such a scheme. Unlike the statute at issue in *Kucana*, this is not a case in which OPM is attempting to make an otherwise reviewable statutory claim unreviewable merely by labeling the matter discretionary by regulation. Instead, Congress enacted a detailed personnel-review scheme that provides judicial review for some personnel actions, employees, and forums, while withholding it for others. The absence of judicial review here is therefore not an “extraordinary delegation” to OPM to insulate its own decisions from review; it is a consequence of Congress’s decision not to provide judicial review for probationary appeal decisions of this type.

OPM also disagrees that additional judicial review is necessary to make the process fair. Fairness must be assessed in light of the limited status of probationary and trial period employees, the narrow issues appealable under this part, and the government’s strong interest in preserving the probationary and trial period as a meaningful extension of the examining process. The final rule provides a neutral administrative forum within OPM; requires an agency response and production of the agency record; allows the appellant to reply; permits representation; authorizes OPM to audit or investigate where necessary to determine an issue of material fact; permits a hearing where the written record is insufficient or credibility issues make one necessary and efficient; provides written decisions; authorizes appropriate corrective relief, including back pay where available; allows reconsideration; permits Director review before finality; and requires publication of final merits decisions, subject to applicable limits. In OPM’s judgment, those procedures are adequate and proportionate for the limited regulatory appeal rights at issue, ensuring a fair process for an appellant.

Nor does this rule foreclose independent remedies that Congress or another lawful authority has made available outside part 751. Section 751.101(e) expressly preserves the ability of an employee to file a complaint, appeal, or other matter within the jurisdiction of the EEOC, an Inspector General, the MSPB, or OSC where an independent legal basis for such jurisdiction exists. Employees may continue to pursue discrimination claims through the EEO process and may obtain judicial review where the applicable civil-rights statutes and EEOC regulations authorize it. Employees may also pursue claims before OSC, MSPB, or another forum to

the extent Congress has independently authorized such claims. What the final rule does not provide is a further administrative appeal or judicial review of OPM’s own final decision under this limited probationary-appeal process.

Commenters also invoked *Wesson v. Jenkins*⁴¹ and *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*⁴² to argue that OPM may not make its part 751 decisions final without judicial review. OPM disagrees. Neither decision addresses the CSRA, probationary employment, OPM’s authority to prescribe probationary-appeal procedures, or the availability of judicial review of an OPM decision issued under a regulatory civil service appeal process.

The facts and applicable legal requirements of both cases also diminish their relevancy. *Wesson* is a Federal habeas case involving collateral review of an Ohio capital conviction under 28 U.S.C. 2254. It says nothing about the CSRA’s integrated remedial scheme for Federal personnel actions or the scope of review available to probationary Federal employees.

McLaughlin is likewise inapposite. There, the Supreme Court considered whether the Hobbs Act required a district court, in a private Telephone Consumer Protection Act enforcement action, to treat an FCC statutory interpretation as binding. The Court held that the Hobbs Act did not bind district courts in later civil enforcement proceedings because the Hobbs Act was silent as to that distinct enforcement-proceeding question. The Court’s analysis turned on the structure of pre-enforcement review statutes and the absence of language or statutory context precluding later review in that specific setting.

The CSRA is materially different. This rule does not involve a civil enforcement proceeding, a private damages action, or a regulated party defending against liability. It involves a Federal employment dispute governed by the CSRA and Civil Service Rule XI. Unlike the Hobbs Act provision at issue in *McLaughlin*, the CSRA is not silent about review of Federal personnel actions. It creates a detailed and integrated system that specifies which employees may obtain administrative review, which actions are appealable, which forum may hear the appeal, and when judicial review is available.

Accordingly, OPM concludes that adding judicial review to this regulatory

⁴¹ 2020 WL 1066531 (N.D. Ohio Mar. 5, 2020), *aff’d sub nom. Wesson v. Shoop*, 17 F.4th 700 (6th Cir. 2021).

⁴² 606 U.S. 146 (2025).

process would effectively recreate the multi-layered adjudicatory structure that E.O. 14284 directed OPM to replace, and would undermine the efficiency and accountability benefits of resolving probationary appeals through a limited administrative process tailored to the narrow issues historically available to probationary appellants. Further, OPM cannot unilaterally subject its decisions to judicial review; that takes an act of Congress. No provision in the CSRA provides jurisdiction to Federal courts to review OPM decisions in probationary appeals. OPM cannot waive the Federal Government's sovereign immunity by regulation without Congressional authorization. OPM therefore declines to revise the final rule to provide any further administrative appeal or judicial review of final OPM decisions under part 751.

I. Reliance Interests, Recruitment, Retention, and Workforce Concerns

Commenter 0198 argued that Federal employees serving probationary or trial periods have a reliance interest in having appeals concerning terminations heard by MSPB. The commenter also argues that this rule will undermine the American public's reliance on a nonpartisan civil service.

OPM has considered these reliance concerns but concludes that they do not warrant reestablishing MSPB as the forum for these limited regulatory appeals. The reliance interest asserted by Commenter 0198 concerns a forum and set of procedures created by regulation, not a statutory entitlement to MSPB adjudication. Congress did not provide most probationary employees with the same statutory adverse-action appeal rights available to employees who have completed the applicable period of service. The former MSPB appeal route existed because OPM regulations assigned a narrow category of probationary appeals to MSPB. Because that forum was regulatory, OPM may prospectively revise it, provided OPM acknowledges reliance concerns and gives a reasoned explanation for the change.

OPM has done so here. The final rule is prospective and does not disturb terminations effected before the effective date of the rule, pending appeals, or final decisions issued under the prior framework. It also preserves the core substantive protections historically available to covered probationary appellants: claims that the action was based on partisan political reasons or marital status, and specified procedural claims for terminations based in whole or in part on conditions

arising before appointment. The rule therefore does not leave covered employees without a remedy for the historically recognized grounds of probationary appeal; it changes the adjudicatory forum and procedures for those claims.

Further, employees currently serving an initial probationary period in the competitive service do not have a cognizable reliance interest in the Merit Systems Protection Board as the forum for probationary termination appeals, because any such expectation was extinguished when the President issued Executive Order 14284 over a year ago. That order rendered inoperative and without effect the prior regulatory framework in subpart H of part 315 that had designated MSPB as the venue for probationary appeals. Once those regulations were revoked, any prior, purely regulatory expectation that MSPB would hear probationary appeals ceased to exist, and probationary employees were on notice that continued service during the probationary period did not carry with it a right to MSPB adjudication of termination decisions. OPM notes that every competitive service employee currently serving their one-year probationary period was hired after the issuance of Executive Order 14284. Accordingly, they had no expectation of limited MSPB probationary appeals as those appeals did not exist when they were hired.

In addition, even if E.O. 14284 had not rescinded the prior MSPB forum for competitive service employees serving an initial probationary period, OPM would still find any reliance interests in that forum to be limited. Probationary and trial period employees enter service with notice that their appointments have not yet been finalized and that the probationary or trial period is part of the examining and assessment process. The historical appeal rights available during that period have been narrow. OPM does not discount that some applicants and employees may value the prior MSPB forum, but OPM does not believe that employees generally accepted or continued Federal employment principally in reliance on the availability of MSPB review for the limited grounds historically available to probationary appellants. In any event, any such reliance is outweighed by the benefits of establishing a streamlined process better tailored to the limited regulatory rights at issue.

Nor does the final rule undermine public reliance on a nonpartisan civil service. The rule does not authorize politically based dismissals, favoritism, retaliation, discrimination, or arbitrary

personnel action. The Merit System Principles, prohibited personnel practices, EEO protections, whistleblower protections, OSC jurisdiction, Inspector General authorities, and other independent accountability mechanisms remain in effect. The final rule also expressly preserves appeals alleging partisan political reasons or marital status. In addition, OPM will issue written decisions and has committed to making final merits decisions publicly available, subject to applicable legal limits. Public availability of those decisions will promote transparency, consistency, and public accountability in OPM's administration of part 751. Rather, OPM expects the final rule to strengthen the nonpartisan nature of the civil service. This is because it creates an appeals process to adjudicate allegations of discrimination based upon political affiliation. Currently no such process exists. If OPM were to decline to finalize the rule probationary employees would remain generally unable to appeal terminations based upon political discrimination.⁴³

Several commenters also argued that the rule will harm recruitment and retention by creating an actual or perceived degradation of due process. Commenters asserted that the rule could reduce the Government's ability to compete with the private sector for top talent; make it harder to fill specialized positions; increase the need to train replacement employees; discourage new ideas and viewpoints; deter employees from moving into better-fitting positions or management roles; and, in some cases, harm national security by making it harder to retain highly trained employees.

OPM has considered these concerns but does not agree that they justify retaining the prior MSPB process. The rule should be evaluated in light of what it actually does. It does not reduce the rights of employees who have completed probationary or trial periods and obtained the statutory protections associated with continued service. It does not eliminate EEO rights, whistleblower protections, prohibited-personnel-practice remedies, veterans' rights, or other independent statutory remedies. It does not eliminate all appeal rights for covered probationary employees. And it does not authorize agencies to separate employees for unlawful reasons. Rather, it expands

⁴³ OPM notes that other forums available for contesting discrimination based upon political affiliation, such as the Office of Special Counsel or an Inspector General report, permit employees to file a complaint but do not provide a direct right of appeal, as this rule does.

employees' rights by creating a focused adjudicatory process for a narrow category of appeals by employees whose appointments have not yet been finalized.

OPM further concludes that a clear and effective probationary system supports, rather than undermines, recruitment and retention. The Federal Government's ability to attract and keep high-performing employees depends not only on procedural protections but also on public trust, mission effectiveness, performance accountability, and the ability of agencies to build strong teams. A system that makes the probationary or trial period meaningful helps agencies identify employees who should receive finalized appointments, address poor fit or inadequate performance early, and avoid imposing long-term burdens on coworkers, supervisors, agency missions, and the public. High-performing employees benefit from a workplace in which performance matters and agencies can act before performance or conduct problems become entrenched.

OPM does not agree that the Government's prior investment in recruiting, onboarding, or training a probationary employee means the appointment should be finalized regardless of the agency's assessment. Those investments are important, but they are not dispositive. The purpose of the probationary and trial period is to determine, before an appointment becomes final, whether continued employment advances the public interest, the agency's mission, and the efficiency of the service. Treating sunk costs as a reason to retain an employee whose continued service does not satisfy that standard would defeat the purpose of the probationary system and would not serve agencies, employees, or the public.

OPM also does not agree that the final rule will deter talented applicants from Federal service. Applicants who seek a career in public service should expect both merit-based protections and meaningful performance accountability. The final rule advances both interests. It establishes limited appeal rights for unlawful or procedurally defective actions, provides a written-record process with agency record production and appellant reply, permits OPM to require additional information and conduct audits, investigations, or hearings where necessary and efficient, provides reconsideration and Director review before finality, and requires public availability of final merits decisions subject to applicable legal limits. At the same time, it avoids importing procedures designed for

tenured adverse-action appeals into the distinct probationary and trial period context.

OPM recognizes the importance of recruiting and retaining talented employees in specialized, mission-critical, and national-security-related positions. But OPM does not believe that resuscitating the prior MSPB forum for narrow probationary appeals is necessary to accomplish that objective. Agencies can and should recruit by communicating the value of Federal service, the importance of mission, the protections that continue to apply, and the expectation that employees will demonstrate during the probationary or trial period that continued service is in the public interest. A transparent, predictable, and timely appeal process supports that message better than a more complex process that is disproportionate to the limited rights at issue.

Accordingly, OPM concludes that the asserted reliance, recruitment, and retention concerns do not outweigh the benefits of the final rule. The rule strengthens the merit-based civil service by providing limited appeals, maintains the substantive protections historically available to covered probationary appellants, leaves independent statutory remedies intact, increases transparency through public final merits decisions, and establishes a streamlined adjudicatory process that better reflects the limited status of employees whose appointments have not yet been finalized.

J. Major Questions Doctrine

Commenters 0206 and 0207 asserted that this rule violates the major questions doctrine, suggesting the substance of this rule concerns an issue of vast "economic and political significance" and the "history and the breadth of the authority that [the agency] has asserted" creates a question as to whether the CSRA provides the authority asserted, citing the Supreme Court's decision in *West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

Commenters' reliance on *West Virginia v. EPA* is misplaced. The major questions doctrine applies only in "extraordinary cases" where the history and breadth of the authority asserted, together with the economic and political significance of that assertion, give a court reason to hesitate before concluding that Congress delegated the authority claimed. *Id.* at 721–24. This final rule does not present such a case. In *West Virginia*, EPA asserted novel authority under section 111(d) of the Clean Air Act to require generation shifting across the electric-power sector.

The Court emphasized that EPA's approach would restructure the national mix of electricity generation, impose billions of dollars in compliance costs, affect electricity prices, require coal-plant retirements, eliminate jobs, and require EPA to balance national energy-policy considerations outside its traditional expertise. *Id.* at 714–16, 728–30.

This rule is materially different in both scope and statutory footing. It concerns the internal administration of a narrow class of Federal personnel appeals involving employees serving probationary or trial periods and certain supervisory or managerial probationary actions. It does not regulate private conduct, impose compliance obligations on the public, restructure any industry, or resolve a question of nationwide economic or social policy. OPM estimates the rule will result in first-year governmentwide costs of approximately \$2.75 million and recurring annual governmentwide costs of approximately \$1.5 million. Those figures are not remotely comparable to the economic consequences at issue in *West Virginia*, but the distinction is not merely one of dollars. OPM also does not claim an unheralded power from a vague, ancillary statutory phrase. Congress authorized the President to prescribe rules, regulations, and directives governing probationary periods before certain Federal appointments become final; assigned OPM responsibility for executing, administering, and enforcing civil service rules and regulations and advising the President on matters including tenure and separation; and provided that MSPB appeals exist only for actions made appealable to the Board by "law, rule, or regulation." 5 U.S.C. 1103(a)(5), (a)(7), 3301, 3302, 3321(a), 7701(a). Further, OPM's predecessor agency, the Civil Service Commission, formerly exercised precisely this authority in hearing limited appeals of probationary terminations.

Congress also did not give probationary and trial period employees the same statutory adverse-action appeal rights provided to covered employees under chapter 75. Chapter 75's definition of "employee" generally excludes individuals serving probationary or trial periods under initial appointments, and courts have long recognized that MSPB jurisdiction over probationary termination appeals was created by OPM regulation rather than by an independent statutory right. See 5 U.S.C. 7511(a)(1); *Mastriano*, 714 F.2d at 1155; *Bante*, 966 F.2d at 650.

Accordingly, this rule creates a forum and procedures for a limited regulatory appeal that OPM previously channeled to the MSPB. It does not assert the type of transformative, novel authority of vast economic and political significance that triggered the major questions doctrine in *West Virginia*. In any event, the rule rests on clear civil service authorities and longstanding regulatory practice.

K. Length of Comment Period

OPM received several comments, including Commenter 0013, that the proposed rule violated the APA. Specifically, this Commenter argued the 30-day comment period following the proposed rule was unlawfully short in violation of the APA. The Commenter based this argument on multiple sources: first, the APA's mandate that an "opportunity to participate" on proposed rules be provided following a notice of proposed rulemaking; and E.O.s 12866 and 13563, which specify that comment periods should "generally" be at least 60 days.

OPM rejects the argument that the comment period was inadequate as a matter of law or policy. The APA requires agencies to provide interested persons an opportunity to participate in rulemaking through submission of written data, views, or arguments. OPM provided that opportunity. As several appellate courts have held, a 30-day comment period is generally the minimum needed to comply with the APA.⁴⁴

The Commenter's reliance on E.O. 12866 and E.O. 13563 is similarly misplaced. These orders only mandate that comment periods should "generally" be at least 60 days. The policy rationale for that mandate is that stakeholders should have adequate opportunity to meaningfully participate in the notice-and-comment process. Concerning the present rulemaking, OPM received 632 comments, offering perspectives on many aspects of the proposed rule. OPM received hundreds of comments addressing the rule's legal basis, policy justification, procedural design, effect on employees and

agencies, relationship to MSPB, relationship to EEOC and OSC processes, possible alternatives, and potential consequences for the civil service. The breadth and specificity of the comments confirm that interested parties had a meaningful opportunity to comment. Factually, it cannot be said that the comment period was insufficient to allow for meaningful feedback on the proposed rule given the feedback that OPM did receive.

Further, in the years since those executive orders were issued, comment periods have not infrequently been shorter, often 30 or 45 days. This is, in part, because agencies, working with the White House, have a great deal of discretion in shortening the comment period based on the facts of the situation. As courts have repeatedly held, "[e]xecutive [o]rders are not judicially enforceable."⁴⁵ That is, as a general matter, executive orders and other White House guidance on the regulatory process bind executive agencies only as a matter of the internal management of the executive branch. Thus, several Federal courts have specifically held that there is no legal requirement that agencies comply with the requirements specified in E.O.s 12866 and 13563.⁴⁶

Accordingly, the 30-day comment period provided by OPM was not "truncated" but was instead well within the APA's procedural requirements and the period that should be considered reasonable in light of the President's executive order compelling agency action.

OPM also declines to reopen the comment period based on objections to the earlier rule implementing E.O. 14284 and Civil Service Rule XI. This rulemaking concerns the circumstances and procedures for covered appeals under part 751. To the extent commenters addressed Rule XI or the June 2025 rule, OPM has considered those comments where relevant to the design of the part 751 appeal process. But this rulemaking is not the vehicle for reopening all issues resolved in the prior rulemaking. OPM has provided

notice and an opportunity to comment on the procedural rule now being finalized.

L. Comments From Federal Agencies

Federal agency commenters (0302, 0324, 0355, 0401, 0402, 0428, 0446, and 0508) supported the proposed rule. These commenters generally stated that probationary and trial periods are intended to allow agencies to determine whether employees should continue in Federal service before receiving the full procedural protections associated with completed probationary or trial service. The commenters stated that substituting a single appeal to OPM for MSPB appeals would better reflect the limited scope of these appeals and would promote more efficient, predictable, and timely resolution.

Several commenters stated that the current appeals process can discourage supervisors from taking timely action during probationary or trial periods. Commenters 0324, 0355, 0402, 0428, 0446, and 0508 stated that litigation risk, procedural burden, or uncertainty may lead supervisors to tolerate poor performance or misconduct, reassign employees, or allow employees to pass beyond the probationary or trial period without appropriate action. Commenters 0302 and 0401 also stated that many probationary appeals are dismissed for lack of jurisdiction or otherwise do not reach the merits, while still requiring agency resources.

Commenters 0324, 0355, 0446, and 0508 raised concerns about delay in MSPB proceedings, including delay associated with periods when MSPB lacks a quorum. Commenter 0446 described an appeal that remained unresolved for more than six years, and Commenter 0508 stated that delays can increase potential back pay exposure. Commenters 0324, 0355, 0401, 0402, 0446, and 0508 stated that OPM is an appropriate forum because of its Federal human resources role, adjudicatory experience, and ability to administer a centralized process.

Commenters further stated that the rule would support accountability, morale, and mission effectiveness by enabling agencies to address performance, conduct, and suitability concerns during the probationary or trial period. Commenter 0446 also recommended that OPM make final decisions publicly available and searchable online.

OPM agrees with commenters that probationary and trial periods serve an important evaluative function and that the appeal process for the limited matters covered by this rule should be efficient, predictable, and consistent

⁴⁴ See *Chamber of Com. of the U.S. v. U.S. Sec. & Exch. Comm'n*, 85 F.4th 760, 779 (5th Cir. 2023) ("the APA generally requires only a minimum thirty-day comment period."); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992) ("Although the APA mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment."); *Nat'l Lifeline Ass'n v. Fed. Commc'ns Comm'n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) ("When substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.").

⁴⁵ *Sierra Club v. U.S. Dep't of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 913 (D.C. Cir. 2024)); see also *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1338–39 (4th Cir. 1995) (no private right of action to enforce executive order unless issued pursuant to a statutory mandate or delegation by Congress).

⁴⁶ *Nat'l Mining Ass'n v. United Steel Workers*, 985 F.3d 1309, 1326–27 (11th Cir. 2021) (holding that E.O. 12866 and E.O. 13563 specifically are not judicially enforceable); *Miller v. Garland*, 674 F.Supp.3d 296, 307 (E.D. Va. 2023), appeal dismissed, No. 23–1604, 2024 WL 4973474 (4th Cir. July 30, 2024) (holding that E.O. 12866 is not judicially enforceable).

with that function. OPM also agrees that routing these appeals to OPM will reduce unnecessary procedural burden, conserve MSPB resources, and promote timely resolution while preserving the employee appeal rights addressed in the rule. OPM is finalizing the rule to establish a single OPM appeal process for the matters covered by the rule.

OPM agrees with Commenter 0446 that public availability of final merits decisions will promote transparency, consistency, and predictability in the administration of these appeals. Accordingly, the final rule includes a publication provision at § 751.109(e). Subject to applicable legal limits, including requirements protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed, OPM will maintain a publicly accessible website containing final decisions issued under this part that address a party's claim on the merits.

IV. Section-by-Section Analysis

Part 11—Probationary and Trial Periods

OPM is adding part 11 to the amendatory instructions and list of subjects because this final rule includes conforming and corrective amendments to Civil Service Rule XI. These amendments are being made in the same rulemaking because they concern the same probationary and trial period framework that governs the appeal procedures established in new part 751.

OPM is correcting § 11.2(a)(2) by replacing the phrase "Reinstatement Priority List" with "Reemployment Priority List." This is a technical correction. The applicable list is the Reemployment Priority List, and the amendment corrects the terminology used in the regulation without changing the substantive operation of § 11.2. This correction conforms § 11.2(a)(2) to the terminology used throughout OPM's existing placement regulations (under 5 CFR part 330, subpart B) and guidance, replacing an inaccurate label with the correct regulatory name of the existing program.

OPM is also amending § 11.5 to incorporate into the CFR certain forward-looking procedures established by E.O. 14284 for review during initial probationary and trial periods. Specifically, paragraphs (b)–(d) of Section 5 of E.O. 14284 set forth certain procedures for agencies to follow as part of their certification process for continued employment of employees serving probationary or trial periods. In the proposed rule, OPM specifically

invited comment on whether and how Rule XI should be modified to expressly incorporate those provisions.

Although these provisions are already in effect and controlling, these requirements from E.O. 14284 are not currently reflected in Civil Service Rule 11. Therefore, OPM amends Rule 11 to incorporate these provisions into the regulations to provide administrative convenience and greater clarity for employees, supervisors, agency officials, and human resources practitioners. OPM has structured the new requirements as paragraphs (e)–(h) in 5 CFR 11.5 and redesignated existing paragraphs accordingly to conform to CFR drafting conventions.

New § 11.5(e) requires each agency head to designate, in writing, one or more agency officials responsible for evaluating the continued employment of employees serving initial probationary or trial periods. This provision ensures that agencies identify accountable officials before the end of the probationary or trial period and that those officials are positioned to assess the needs and interests of the agency, the organizational goals of the agency or the Federal Government, and the efficiency of the service.

New § 11.5(f) requires the designated official to meet with the employee at least 60 days before the end of the employee's initial probationary or trial period. The meeting requirement is intended to make the end-of-period assessment a meaningful management judgment rather than a purely ministerial personnel action.

New § 11.5(g) requires the agency head or designated official, within 30 days before the end of the employee's initial probationary or trial period, to determine whether to finalize the employee's appointment or terminate the employee's service. OPM is adding this provision to align the regulatory text with the structure of Civil Service Rule XI, under which the agency must make an affirmative determination before the appointment is finalized.

New § 11.5(h) requires the agency head or designated official to certify in writing, before finalizing the appointment, that the employee's continued employment will advance the public interest. This certification requirement is central to Civil Service Rule XI. It confirms that completion of a probationary or trial period is not merely the result of the passage of time, but instead reflects an affirmative agency determination that finalizing the appointment is warranted.

OPM is redesignating former paragraphs (e) through (g) of § 11.5 as paragraphs (i) through (k). The

redesignation is necessary to accommodate the new procedural provisions added as paragraphs (e) through (h).

OPM is not codifying as a standing CFR requirement the one-time provision in E.O. 14284 requiring agency heads, within 15 days of the order, to identify employees whose initial probationary or trial periods ended 90 days or more from the date of the order. That directive was time-limited and implementation-specific. The permanent CFR text instead codifies the continuing obligations that agencies must follow for employees serving initial probationary or trial periods on an ongoing basis.

Part 230—Organization of the Government for Personnel Management

OPM is revising § 230.402(f) to conform the appeal procedures for emergency-indefinite employees to new part 751. The final rule clarifies that the first year of service of an emergency-indefinite employee is a probationary period and that an agency may terminate the appointment during that period. Where an emergency-indefinite employee is entitled to appeal a termination during the probationary period, the applicable procedures are those set forth in part 751. This conforming change ensures that the appeal route for emergency-indefinite employees is consistent with the new OPM-administered probationary appeal process.

Part 315—Career and Career-Conditional Employment

OPM is revising § 315.201(a) to conform the career-conditional employment regulations to Civil Service Rule XI. The revised text provides that a person employed in the competitive service for other than temporary, term, or indefinite employment is appointed as a career or career-conditional employee subject to the probationary period required by part 11. This amendment clarifies that the probationary-period requirement for career and career-conditional employees is now governed by Civil Service Rule XI in part 11, while preserving the existing career-tenure service requirement.

OPM is also revising § 315.908(b) to replace MSPB with OPM as the forum for appeals by supervisors or managers assigned to nonsupervisory or nonmanagerial positions for failure to complete a supervisory or managerial probationary period. The appealable issues remain limited to allegations that the agency action was based on partisan political reasons or marital status. This

amendment conforms § 315.908 to the new appeal procedures in part 751 and to E.O. 14284's direction that OPM prescribe the circumstances and procedures for probationary and trial period appeals.

Part 432—Performance-Based Reduction in Grade and Removal Actions

OPM is revising § 432.102(f) to clarify which employees are excluded from the performance-based action procedures in part 432. The revised exclusions distinguish between competitive service employees serving probationary periods under initial appointments, competitive service employees in appointments requiring no probationary period who have not completed one year of current continuous employment, preference eligible employees in the excepted service who have not completed one year of current continuous employment, and non-preference eligible employees in the excepted service who have not completed two years of current continuous service in the same or similar positions in an Executive agency under other than a qualifying temporary appointment. These amendments align part 432 coverage with the statutory definitions governing adverse-action coverage and with the new probationary and trial period appeal framework.

Part 751—Probationary and Trial Period Appeals

OPM is adding new part 751 to establish the procedures for appeals that were formerly routed to the MSPB under regulations that have been rescinded or superseded following E.O. 14284. New part 751 identifies the employees who may appeal to OPM, the issues that may be appealed, the deadlines and procedures for filing appeals, the required agency response, representation rules, OPM's adjudication procedures, reconsideration, Director review, finality, and publication of final decisions.

Section 751.101—Right To Appeal

Section 751.101(a) establishes the basic right to appeal to OPM. Covered employees may appeal a termination during a probationary or trial period required under part 11 or another authority administered by OPM, and covered supervisors or managers may appeal assignment to a nonsupervisory or nonmanagerial position for failure to complete a supervisory or managerial probationary period required under subpart I of part 315. This provision implements Civil Service Rule 11.6 and

replaces the prior MSPB forum with an OPM-administered appeal process.

In the final rule, OPM has revised § 751.101(a) to conform the general right-of-appeal provision to the appealable actions already addressed elsewhere in § 751.101. In addition to terminations during a probationary or trial period and assignments to nonsupervisory or nonmanagerial positions following failure to complete a supervisory or managerial probationary period, the final text now expressly references an agency's decision not to certify continuation of an appointment and an agency's failure to certify and finalize an appointment. This revision is clarifying and nonsubstantive. It does not create any new appeal right, expand the grounds for appeal, alter the burden of proof, or change the procedures governing appeals under part 751. Rather, it ensures that paragraph (a) accurately reflects the actions addressed in paragraph (c) and avoids any implication that noncertification or failure-to-certify claims identified in paragraph (c) fall outside the threshold right-of-appeal provision. Such claims remain appealable only to the extent permitted by paragraphs (b) through (d), including the limited grounds specified in paragraph (c).

Section 751.101(a) also establishes that an individual serving a probationary period does not have a right to appeal their termination under this part if the employee has completed one year of current continuous service under other than a temporary appointment limited to one year or less and is not otherwise excluded by the provisions of that subpart. Instead, the appropriate procedures established under 5 CFR part 432 or 752 may apply unless otherwise excluded by the provisions of those parts. OPM notes that it has amended referenced provisions of 5 CFR parts 432 and 752 in its rulemaking under RIN 3206–AO80 (90 FR 17182); however, the cross-references in this rule would be unaffected by the changes initiated in that rulemaking.

Section 751.101(b) places the burden on the appellant to establish timeliness, OPM jurisdiction, and the appealable issue by a preponderance of the evidence. OPM is adopting this standard because the appellant is the party invoking OPM's limited regulatory jurisdiction. The standard is also consistent with the narrow scope of probationary and trial period appeal rights and with OPM's intent to provide a streamlined process focused on threshold jurisdictional and appealability issues.

Section 751.101(c) identifies the issues that may be appealed to OPM. These issues mirror those under subpart I and the now-rescinded subpart H of part 315. An employee may appeal allegations that a covered action was based on partisan political reasons or marital status. For this purpose, the covered actions include terminations not required by statute, assignments to nonsupervisory or nonmanagerial positions under § 315.907, an agency's decision not to certify continuation of an appointment during a probationary or trial period, and an agency's failure to certify and finalize such an appointment.

Section 751.101(c)(2) preserves a limited procedural appeal for terminations based in whole or in part on conditions arising before appointment. In those cases, the employee may challenge whether the agency failed to provide advance written notice stating the reasons for the proposed action, a reasonable time to answer and furnish affidavits, and a written decision at or before the effective date of the action. These procedures preserve the historically limited procedural protections associated with pre-appointment reasons without converting probationary or trial period terminations into ordinary adverse actions under chapter 75.

Section 751.101(d) provides that no other issues are appealable under part 751. OPM is adopting this limitation to maintain the narrow historical scope of probationary appeal rights and to implement E.O. 14284's direction to establish streamlined procedures. The rule does not make every alleged violation of Civil Service Rule XI independently appealable. For example, an alleged failure to provide written notice of the effective date under § 11.5(i), or an alleged failure to conduct the meeting required under § 11.5(f), is not by itself an independent basis for reversal under part 751 unless the employee also establishes one of the appealable issues identified in § 751.101(c).

Section 751.101(e) provides that part 751 is the sole means of appealing terminations during probationary or trial periods, but clarifies that the rule does not preclude an employee from filing a complaint, appeal, or other matter within the jurisdiction of the EEOC, an Inspector General, the MSPB, the Department of Labor Veterans' Employment and Training Service, or OSC where an independent legal basis for such jurisdiction exists. OPM is revising the exclusivity language to make clear that part 751 is exclusive

only for appeals covered by this part and that the rule does not displace independent statutory or regulatory remedial schemes administered by other entities.

Section 751.101(e) also provides that a party cannot obtain judicial review of a decision under part 751. OPM is including this language to reflect the limited regulatory nature of the appeal right and the absence of a statutory judicial-review provision for OPM decisions issued under this part. This limitation does not bar judicial review where another statute independently provides it, such as in certain discrimination matters processed through the EEO framework.

OPM has revised the exclusivity language in § 751.101(e) to refer to the “sole means of appealing a covered action under § 751.101(a),” rather than the sole means of appealing “terminations.” This change is clarifying and nonsubstantive. As revised, § 751.101(a) identifies several covered actions, including termination during a probationary or trial period, assignment to a nonsupervisory or nonmanagerial position after failure to complete a supervisory or managerial probationary period, noncertification of continuation of an appointment, and failure to certify and finalize an appointment. Referring only to “terminations” in the exclusivity provision could create unnecessary ambiguity about whether the same OPM appeal procedures apply to the other covered actions identified in § 751.101(a).

Section 751.101(f) defines “employee” for purposes of part 751. The definition limits part 751 coverage to employees who had comparable regulatory appeal rights before E.O. 14284 or who are otherwise specifically covered by the final rule. The definition includes certain competitive service probationers, supervisors and managers serving supervisory or managerial probationary periods, emergency-indefinite employees in their first year of service, and employees appointed under part 307 before the end of their first year on an initial appointment.

OPM is also clarifying that excepted service employees outside part 307 are not covered by part 751 and may not appeal a trial period termination under this part unless otherwise entitled by statute. This limitation preserves the pre-E.O. scope of appeal rights. Before E.O. 14284, subpart H of part 315 did not create a general appeal right for all excepted service employees serving trial periods. The final rule therefore does not create a new across-the-board trial period appeal right for excepted service

employees who did not previously possess one.

Section 751.102—Procedures for Submitting Appeals

Section 751.102 establishes the procedures for filing appeals and requests for reconsideration. OPM is requiring use of an electronic filing system to promote efficient case intake, consistent service, reliable records, and timely adjudication.⁴⁷ OPM is replacing the placeholder reference to a specific URL with a reference to the electronic filing system identified on OPM’s website. This approach avoids placing a particular web address in regulatory text and allows OPM to update filing instructions as technology or system design changes.

Section 751.102(b) establishes a 30-calendar-day deadline for filing an appeal. The rule specifies how to compute the filing deadline, including treatment of weekends and Federal holidays, and provides that late filings may be excused only upon a showing of good cause. This deadline promotes prompt resolution of probationary and trial period appeals while preserving limited flexibility for circumstances warranting an extension.

Section 751.102(c) requires parties and representatives to register as e-filers and accept electronic service, unless OPM grants an exemption for good cause. The final rule also removes the sentence suggesting that withdrawal of e-filing registration may preclude future re-registration. OPM is deleting that language to avoid an unnecessarily categorical consequence that could impair access to the appeal process. OPM will instead administer registration, withdrawal, re-registration, and good-cause exemptions through the procedures posted on OPM’s website and case-specific instructions.

Section 751.103—Form and Content of Appeal and Agency Response

Section 751.103(a) establishes the required contents of the initial appeal, including the basis for the appeal, identifying and contact information for the appellant and any representative, and supporting documentation. This provision ensures that OPM and the agency have sufficient information to identify the appealed action and the issues the appellant is raising.

Section 751.103(b) establishes the agency response requirement. The final rule adds a list of documents that must be included, at a minimum, in the

agency record of the action. The agency record must include all documents considered or relied upon by the agency in taking the action, the notice of action and effective date, documents showing the appellant’s appointment, service history, and probationary or trial period status, any written certification, noncertification, or failure-to-certify record under 5 CFR part 11, any documents supporting the agency’s asserted reasons, and a certification that the agency has produced the complete record considered by the deciding official or otherwise relied upon by the agency. In addition, OPM is specifying that the agency must produce the complete agency record to OPM, but may redact or withhold information on the copy served upon the appellant to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law.

OPM is adding this minimum-record requirement to promote fairness, transparency, and efficient adjudication. Because part 751 appeals will generally be decided on the written record, it is important that the agency provide the materials necessary for OPM to determine jurisdiction, timeliness, appealability, and the merits of any appealable claim. The agency certification requirement also addresses concerns that an agency could selectively produce records or omit materials relevant to the appealed action.

Section 751.103(c) permits the appellant to file a reply to the agency response within 15 calendar days. The final rule clarifies that the reply generally may address only factual and legal issues raised by the agency response but may raise a new allegation of error if the basis for that allegation rests on information first disclosed in the agency response or if OPM grants leave for good cause. OPM is adding this exception to avoid unfairness where an appellant could not reasonably have raised an issue before seeing the agency’s record or response. This change balances the need for a streamlined process with the need to provide a meaningful opportunity to respond to newly disclosed information.

Section 751.103(d) allows the appellant, the appellant’s representative, and the agency to inspect OPM’s appellate record upon request, subject to any Privacy Act requirements, classified information or national security restrictions, OPM protective orders, or any other

⁴⁷ Commenter 0483 suggests that establishing an e-filing system is more complex than OPM anticipates. OPM disagrees and has already established an e-filing system.

applicable limitations required by law. Section 751.103(e) requires parties to serve each other with copies of information submitted to OPM and to include a certificate of service, subject to the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law. These provisions help ensure that each party has access to the materials OPM may consider.

Section 751.103(f) allows OPM to accept untimely filings upon a showing of good cause. This provision gives OPM limited flexibility to address unusual circumstances while preserving the overall timeliness requirements of part 751.

Section 751.104—Employee Representatives

Section 751.104 permits an appellant to select a representative of the appellant's choice, subject to specified limitations. OPM is retaining the appellant's ability to obtain assistance while clarifying that, if the selected representative is a Federal employee, the representative may not perform representational functions in a duty status, including while on official time under 5 U.S.C. 7131, and may not claim agency reimbursement for expenses incurred while performing the representational function. OPM is adopting this limitation because part 751 appeals are regulatory probationary or trial period appeals and are not proceedings under chapter 71. Nothing in § 751.104 prevents an appellant from selecting a union official or other representative, but the rule does not create a right to paid official time for that representation.

Section 751.104 also permits OPM or the responsible agency to disallow a representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position. Because Federal employee representatives may not perform representational functions while in a duty status, additional exceptions for priority Government needs or unreasonable Government costs are unnecessary, and the final rule does not include them. This limitation is consistent with OPM's existing approach in other administrative appeal contexts and is intended to protect agency operations and the integrity of the adjudicatory process.

Section 751.105—Adjudication of Appeals

Section 751.105(a) provides that OPM will assign personnel to adjudicate appeals filed by employees of agencies other than OPM. The final rule adds safeguards to ensure that OPM adjudicators are insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM is adding this language to strengthen the appearance and reality of neutral adjudication.

Section 751.105(a) also prohibits OPM adjudicators from considering material *ex parte* communications concerning the merits of an appeal. If such communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. This provision promotes fairness and transparency while recognizing that some information may be protected from disclosure by statute, regulation, privilege, or other applicable legal limits.

The final rule further provides that no employee may adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, was an employee of the agency that is a party to the appeal. This restriction is designed to reduce conflict concerns and promote confidence in OPM's adjudicatory process. When necessary, OPM may assign or obtain the services of an administrative law judge to preside over an appeal.

Section 751.105(b) provides special procedures for appeals filed by OPM employees. OPM will assign an administrative law judge to adjudicate such appeals. To preserve both decisional independence and constitutionally sufficient supervision, OPM will not disturb the administrative law judge's initial decision in an OPM-employee appeal unless a party shows harmful procedural irregularity, clear error of law, or a material factual error that affected the outcome. This approach provides an additional structural safeguard when OPM is both the employing agency and the adjudicatory agency.

OPM has considered whether assigning an administrative law judge to adjudicate appeals is consistent with 5 U.S.C. 554, 556, and 557. OPM concludes that it is. Those provisions do not prohibit OPM from assigning a properly appointed administrative law judge to serve as a neutral adjudicator in appeals filed by OPM employees or

where there are other conflict-of-interest concerns. Section 554 applies only to adjudications required by statute to be determined on the record after opportunity for an agency hearing and, in any event, excludes matters involving the selection or tenure of an employee, except matters involving administrative law judges appointed under 5 U.S.C. 3105. Sections 556 and 557 apply when a hearing is required to be conducted under section 556. Probationary termination appeals under this part are employee-tenure matters and are not formal APA adjudications under sections 554, 556, and 557.

OPM is assigning an administrative law judge in OPM employee appeals for a narrower and different reason: to insulate adjudication of appeals filed by OPM's own employees from ordinary agency involvement and to promote the appearance and reality of neutral decision-making. This approach is consistent with the approach used by the MSPB at 5 CFR 1201.13 to adjudicate appeals arising from its employees. The assignment of an administrative law judge under this section does not, by itself, make sections 554, 556, or 557 applicable to the appeal, nor does it create any procedural right not otherwise provided by this part.

Section 751.105(c) authorizes OPM to audit or investigate an agency's action. Where OPM conducts an audit or investigation to ascertain additional facts, it will provide the parties with the results and provide a reasonable opportunity to submit arguments or additional information in support of their positions. OPM notes that the final rule removes the phrase "and exclusive" from "sole and exclusive discretion" as an editorial simplification; OPM retains discretion to determine whether an audit or investigation is warranted. The section also explains when a hearing may be used: where the written record is insufficiently developed to decide a material factual issue, or where a disputed issue of witness credibility is material to the outcome. OPM is adopting this approach to preserve a primarily written, streamlined process while allowing additional fact development when necessary and efficient.

Commenters 0004, 0454, 0455, and others asserted that the phrase "in the interest of justice," which describes when OPM may audit or investigate an agency's action, is unclear.

OPM agrees and is revising the standard for audits and investigations in § 751.105 to provide greater clarity and to address commenters' concerns that

the proposed phrase “in the interest of justice” is vague. Under the final rule, OPM may request additional information from a party, and it may audit or investigate an agency action when it determines, in its sole discretion, that the existing record is insufficient to resolve a material issue within OPM’s jurisdiction, and that the audit or investigation is reasonably likely to produce information material to resolving that issue.

This standard preserves OPM’s ability to develop the record where necessary while preventing audits or investigations from becoming routine discovery. Part 751 appeals will generally be resolved on the written record because the appealable issues are narrow. But OPM recognizes that a written-record process must include a mechanism to address material gaps, inconsistencies, or credibility issues that cannot fairly be resolved on the existing submissions. The final rule therefore permits targeted audits or investigations where additional fact development is needed to decide jurisdiction, timeliness, appealability, or the merits of a claim properly before OPM.

The standard also limits OPM’s authority. An audit or investigation must be tied to a material issue within OPM’s jurisdiction under § 751.101(c). OPM will not conduct an audit or investigation based solely on speculation, generalized disagreement with the agency’s action, or a request for discovery unrelated to an appealable issue. The rule thus provides a safeguard against incomplete or unreliable records without creating an automatic right to discovery or a hearing in every case.

Paragraph (d) establishes that OPM will provide written notification of its decision. Paragraph (e) establishes OPM’s authority to award remedies under 5 U.S.C. 1103(a)(5) and 5596(b). Where OPM grants an employee’s appeal, it will order relief including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with 5 CFR part 550 subpart H. Paragraph (e) also establishes that if an agency timely requests reconsideration of an initial decision or OPM reopens and reconsiders an initial decision, the agency must continue to provide the relief ordered unless OPM issued an order staying any such relief. OPM will not order a stay, however, that would deprive the employee of pay and benefits while the initial decision is pending reconsideration.

Section 751.106—Sanctions and Protective Orders

Section 751.106 authorizes OPM to issue protective orders and cease-and-desist directives. OPM stated in the proposed rule that it believes that MSPB procedures, while providing for protective orders, are inadequate to protect Federal employees from threats and harassment.

Some commenters objected that proposed § 751.106 gave OPM broad protective order authority and could chill lawful communications by appellants, witnesses, employees, or union representatives. Commenters objected in particular to language that could be read to restrict communications that might foreseeably lead to harassment or to prohibit use of any information related to an appeal for any purpose unrelated to the adjudication.

OPM has considered these comments and is narrowing § 751.106 in the final rule. The final rule does not adopt the broad “reasonably be foreseen to lead to harassment” formulation and does not authorize OPM to bar use of any information related to an appeal for any purpose whatsoever. Instead, OPM may issue a protective order or cease-and-desist directive only to protect the integrity of the adjudicatory process; prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information; or prevent misuse of nonpublic information obtained through the appeal. The final rule also adds two limiting principles. Any protective order must be no broader than reasonably necessary, and any such order must not restrict lawful communications protected by law.

OPM declines to remove protective-order authority entirely. Because OPM will adjudicate appeals under part 751, it must have reasonable procedural tools to protect witnesses, parties, protected personal information, nonpublic appeal materials, and the integrity of the adjudicatory record. OPM also retains authority to act *sua sponte* or preemptively where necessary, because threats to the process, improper witness contact, or disclosure of protected information may arise before a party files a motion or before harm has fully occurred. That authority is limited to matters connected to an appeal under part 751 and to the specific purposes identified in § 751.106(a).

The final rule does not prohibit an appellant from discussing the appellant’s own experience, seeking advice or representation, communicating with a union

representative or attorney, filing or pursuing a matter before another authorized forum, making protected whistleblower disclosures, communicating with Congress, or engaging in any other communication protected by law. As revised, § 751.106 is a tailored case-management provision designed to protect the fairness and integrity of the adjudicatory process.

Commenter 0111 suggested that OPM should revise MSPB regulations including, for example, by directing MSPB to be more generous in its use of protective orders to prevent harassment and other types of improper behavior and address other areas in which OPM believes the MSPB’s actions, or lack thereof, are deficient.

Commenter 0111 is not the first to propose OPM issue regulations superimposing its preferred approach on MSPB when handling classes of appeals before the Board. In fact, OPM has previously issued regulations directing MSPB how to handle appeals from reduction in force (RIF) actions. 50 FR 35507 (1985). However, OPM lacks statutory authority to dictate appeal procedures—whether RIFs, or any other class of personnel appeals—to the MSPB when the venue for the appeal is the MSPB. As explained in *American Federation of Government Employees v. OPM*, OPM exceeds “its designated statutory authority by issuing a regulation that purports to instruct the MSPB how to conduct personnel appeals.” 821 F.2d 761, 768 (D.C. Cir. 1987). That authority lies with the MSPB itself. “Congress’ specific delegation to MSPB of autonomy over its own appellate procedures compels just the opposite conclusion: if OPM chooses to use the MSPB for dispute resolutions, it must take that statutory device as it finds it.” *Id.*, at 769.

Section 751.106(b) authorizes OPM to impose case-related consequences when a party fails to comply with an order issued under § 751.106(a). OPM may draw adverse inferences, prohibit the noncompliant party from introducing evidence or relying on parts of the record, or eliminate appropriate portions of the noncompliant party’s filings or submissions from consideration. These sanctions are necessary to give effect to OPM’s orders and to protect the fairness and integrity of the adjudicatory process.

Commenter 0292 raised a concern that OPM’s authority to issue preventative protective orders could be exercised in bad faith and that an appellant could lose an appeal based on an alleged violation of such an order. OPM has considered this concern and has revised the final rule to reduce the risk of

overbroad or improper use of protective-order authority.

As finalized, § 751.106 is not a general authority for OPM to restrict speech, control communications unrelated to an appeal, or create a procedural trap for appellants. OPM may issue a protective order or cease-and-desist directive only for specified process-integrity purposes: to protect the integrity of the adjudicatory process; prevent threats, intimidation, targeted harassment, improper witness contact, or disclosure of protected personal information; or prevent misuse of nonpublic information obtained through the appeal. The final rule further provides that any protective order must be no broader than reasonably necessary and must not restrict lawful communications protected by law. These limitations directly address commenter concerns that the proposed language could be read too broadly.

OPM also clarifies that a violation of a protective order will not automatically result in denial or dismissal of an appeal. Section 751.106 is a case-management provision, not a dispositive merits rule. If a party violates a lawful protective order, OPM may impose only case-related sanctions appropriate to the violation, such as drawing an adverse inference, limiting a party's reliance on improperly used evidence, or excluding appropriate portions of a filing or submission. Any such consequence must be tied to the violation and to the integrity of the adjudicatory process; it may not be used to avoid deciding the appealable issues under § 751.101(c).

OPM further disagrees that the possibility of bad faith justifies eliminating protective-order authority altogether. Any adjudicatory system requires tools to protect parties, witnesses, personal information, nonpublic appeal materials, and the integrity of the record. The final rule addresses the risk identified by Commenter 0292 by narrowing the grounds for protective orders, requiring tailoring, preserving lawful protected communications, limiting available sanctions to case-related consequences, and providing written decisions subject to reconsideration and Director review before finality. OPM therefore declines to remove preventative protective-order authority, but has narrowed and clarified § 751.106 to ensure that the authority is used only to protect the fairness and integrity of the part 751 adjudication.

Sections 751.107, 751.108 and 751.109—Reconsideration, Director Review, and Finality

Section 751.107 creates a process for reconsideration of an initial decision. Either party may request reconsideration within 30 calendar days, and OPM may also reopen and reconsider an initial decision on its own initiative. The grounds for reconsideration include erroneous material factual findings, legal error affecting the outcome, new and material evidence or legal argument that was unavailable despite due diligence when the record closed, or other good cause. OPM is including this reconsideration process to provide an internal mechanism for correcting material errors while preserving the streamlined nature of part 751 appeals.

Section 751.108 permits the OPM Director, on the Director's own initiative and before a decision becomes final under § 751.109, to reopen and reconsider an initial decision or a reopened and reconsidered decision. In response to comments expressing concern that Director review could be too open-ended, the final rule identifies nonexclusive considerations that may inform the Director's exercise of this authority. These include whether the decision may contain clear legal error, may rest on an erroneous finding of material fact, may involve an issue of exceptional importance, may affect the governmentwide administration of civil service laws, rules, regulations, or OPM policy, may conflict with another OPM decision, or may otherwise warrant Director review.

This revision preserves the Director's responsibility for final agency action and ensures principal-officer oversight of important legal, factual, consistency, policy, and governmentwide civil service issues before finality attaches. At the same time, the final rule clarifies that Director review is sua sponte and does not create a separate right for a party to request Director review; parties seeking reconsideration must proceed under § 751.107. If the Director reopens and reconsiders a decision under § 751.108, the Director may take any action available under § 751.107(c).

Commenters 0206, 0207, 0440, 0452, and others contended that the rule violates the Appointments Clause of the Constitution, pursuant to *Lucia v. SEC*, in which the Supreme Court held that ALJs presiding over enforcement proceedings were exercising significant authority and therefore constituted Officers of the United States. *See Lucia v. SEC*, 585 U.S. 237 (2018). Commenters argue that adjudicators

under this rule will similarly exercise significant authority.

OPM agrees in part. Although it is not judicially established that adjudicators under this rule will be Officers of the United States, there are substantial arguments that they will be. To ensure consistency with the Appointments Clause, the Director of OPM—who is authorized by 5 U.S.C. 1103(a)(2) to appoint individuals to be employed by OPM—will appoint, or ratify the appointment of, each official who adjudicates appeals under this rule. Article II vests executive power in the President, who may rely on subordinate officials to carry out that authority. OPM recognizes, however, that supervision and review by the Director do not by themselves resolve the Appointments Clause question. In both *Freytag v. Commissioner*, 501 U.S. 868 (1991), and *Lucia v. SEC*, 585 U.S. 237 (2018), the adjudicators held to be officers were subject to review by principal officers; the availability of higher-level review therefore does not mean that an adjudicator is not an officer subject to the Appointments Clause. *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021), in turn, addressed whether administrative patent judges were principal or inferior officers—not whether they were officers at all—and confirmed that decisions of inferior officers must be subject to direction and review by duly appointed principal officers. Because the Director will appoint or ratify the appointments of the officials who adjudicate appeals under this rule and retains full review authority over their decisions, the rule satisfies both requirements. This final rule thus responds to neutrality and accountability concerns raised by commenters while preserving final agency supervision within OPM's record-based adjudicatory framework.

Section 751.109 describes the process by which OPM's initial decision becomes its final decision. Under § 751.109(a), an initial decision becomes OPM's final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 751.107 or the Director reopens the decision under § 751.108. Under § 751.109(b), a timely reconsideration request suspends finality: if OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes final 30 calendar days after issuance of the denial or dismissal unless the Director intervenes, and if OPM grants the request, the resulting reopened and reconsidered decision becomes final as provided in that paragraph. Under § 751.109(c), an untimely request does not suspend finality. Under

§ 751.109(d), a decision by the Director that disposes of the appeal is OPM's final decision and is effective upon issuance; if the Director remands the appeal or directs further proceedings, any resulting decision becomes final under § 751.109.

OPM views this appellate process as necessary to ensure that the Director is able to sufficiently supervise adjudicators and avoid any serious constitutional concerns from having subordinate officials wield executive authority. Under Article II, the Constitution vests executive power in the President who must rely upon subordinates to exercise his authority. Adjudicators assigned to adjudicate appeals under this rule exercise significant authority and are therefore likely inferior officers of the United States. Accordingly, their appointments will be made, or ratified, by the Director consistent with the Appointments Clause and 5 U.S.C. 1103(a)(2), and their decisions will be supervised and reviewable by the Director, a principal officer appointed by the President with Senate consent.

Section 751.109(e) requires OPM to maintain a publicly accessible website containing final decisions issued under part 751 that address a party's claim on the merits, subject to applicable limits. Final merits decisions not made publicly available must be made available upon request by a concerned party. OPM is including this provision to promote transparency, consistency, and predictability in the administration of part 751 while preserving appropriate limits on public disclosure.

Part 752—Adverse Actions

OPM is revising § 752.201(b)(1) and (2) to clarify coverage for suspensions of 14 days or less. The revised text distinguishes between competitive service employees who have completed a probationary period and competitive service employees who have completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less. This amendment aligns the coverage language with the statutory and regulatory distinction between probationary employees and employees who have acquired coverage under the adverse-action procedures.

OPM is revising §§ 752.401(c)(1), 752.401(c)(2)(i), 752.401(d)(10), and 752.401(d)(12) to conform part 752 coverage to Civil Service Rule XI and the new part 751 process. The revised text excludes competitive service employees serving probationary periods unless they meet the applicable

coverage requirements and separately addresses nonpreference eligible employees serving trial periods under initial excepted service appointments pending conversion to the competitive service. These conforming amendments ensure that employees who remain in probationary or trial period status are directed to the appropriate limited appeal procedures, while employees who have obtained statutory adverse-action coverage remain governed by part 752 where applicable.

V. Regulatory Analysis and Related Comments

A. Statement of Need

On April 24, 2025, the President issued E.O. 14284, which rescinded the regulations in subpart H of part 315 of title 5, including the circumstances and procedures for filing an appeal from removal during a probationary period. Thus, this rulemaking is necessary to prescribe the circumstances under, and procedures by which, employees terminated during a probationary or trial period may appeal to OPM. OPM believes this rule balances the needs of promoting greater accountability of the Federal workforce while also providing an avenue for probationary or trial period employees to appeal removals. Reinstating MSPB procedures would unnecessarily add complexity to a process designed for Federal agencies to evaluate whether it is in the public's interest to retain newly hired employees into the Federal service. When appealing to the MSPB, employees have a statutory right to a hearing when the matter is within the MSPB's jurisdiction. 5 U.S.C. 7701(a). And before reaching a hearing, MSPB regulations allow the parties to engage in discovery. 5 CFR 1201.71—1201.75. These procedures unnecessarily delay and increase costs of the adjudication of appeals that could be more efficiently accomplished by limiting the transactional costs of litigation and adjudication.

Many Federal agencies and several commenters who support the shift of probationary appeals from MSPB to OPM cite the fact that MSPB was designed for tenured employee appeals and that OPM can adjudicate probationary appeals more efficiently and expeditiously. This shift is expected to reduce unnecessary litigation. Furthermore, agencies cite the administrative burden of litigation at MSPB as a troublesome reason why supervisors and managers do not remove ineffective employees during probationary or trial periods and allow these employees to become tenured.

As of September 30, 2025, roughly 1,037 cases were pending before the full Board at MSPB headquarters awaiting petition-for-review decisions, following a period when the Board lacked a quorum to issue decisions. Backlogs of that size do not clear quickly. Moreover, of the 9,050 cases that the MSPB processed in FY 2025, only 55.8 percent were resolved within 120 days. This means that nearly half of Federal employees who filed appeals waited more than four months for an initial decision. This is before any petition for review to the full Board.⁴⁸ Allowing probationary appeals to take months, or even years, when accounting for full MSPB review is inconsistent with notions of efficient adjudication. There is a cost to delay, and this is especially the case for agencies and probationary employees where the grounds for review are statutorily limited.

Under this rule, OPM will adjudicate a limited number of issues using streamlined procedures that reduce the administrative burden to the government. OPM believes, along with the Federal agencies that commented, that this administrative burden has been one factor that has inhibited supervisors from fully utilizing probationary periods.⁴⁹ Additionally, this rule gives OPM jurisdiction over appeals from supervisors and managers assigned to nonsupervisory and nonmanagerial positions who fail their probationary period. This is necessary to streamline the procedures of all appeals related to probationary periods and promote consistency between how such probationary periods are treated.

Numerous commenters argued that OPM has not adequately explained the benefits of the rule or justified moving probationary appeals from MSPB to OPM. Many commenters defended current MSPB procedures. Commenters 0342, 0400, 0409, and 0503 maintained that the proposed rule does not identify a failure in the MSPB process, evidence of a problem requiring change, or any benefit from that change. Commenters 0440 and 0450 argued that the rule transfers adjudications from MSPB to OPM without explaining why that transfer is beneficial, and state that MSPB is a preferable adjudicatory organization. Commenters 0444 and

⁴⁸ Merit Systems Protection Board, *FY 2025 Annual Performance Report 14* (2025), available at https://www.mspb.gov/about/annual_reports/MSPB_APR_for_FY_2025.pdf.

⁴⁹ See U.S. Government Accountability Office, *Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance* 7 (2015), available at <https://www.gao.gov/assets/gao-15-191.pdf>.

0587 stated that OPM must explain in greater detail why MSAC would be a better channel for adjudicating appeals, rather than relying on criticism of MSPB's prior lack of a quorum. Commenters 0312, 0394, 0423, and others asserted that MSPB's lack of a quorum was a manufactured crisis used to justify permanent structural change and suggested that the rule would not be necessary if MSPB were fully staffed. Commenter 0494 stated that OPM has not provided sufficient empirical evidence that MSPB procedures are unworkable or that transferring appeals to OPM will improve efficiency, including through analysis of case volume, resource requirements, and safeguards. Commenters 0175, 0202, 0212, 0220, and 0237 further stated that placing probationary and trial period appeals at OPM instead of MSPB creates a risk of inconsistent implementation across agencies and components.

OPM has considered these comments and disagrees. OPM does not premise this final rule on a conclusion that MSPB is unable to adjudicate personnel matters generally, or that MSPB administrative judges are not capable adjudicators. The issue is narrower. Probationary and trial period appeals are limited regulatory appeals involving a narrow set of issues. They are not ordinary chapter 75 adverse-action appeals, and Congress did not create a general statutory right for probationary employees to appeal probationary terminations to MSPB. MSPB's prior role in this limited class of appeals existed because OPM regulations assigned that role to MSPB. Following E.O. 14284 and Civil Service Rule XI, MSPB no longer hears probationary appeals under 5 CFR part 315, subpart H. OPM has determined that these limited appeals should be adjudicated through a streamlined OPM process tailored to the narrow grounds that remain appealable.

Under the prior regulatory framework, a probationary or trial period appeal within MSPB's jurisdiction could proceed through the same multi-stage adjudicative structure that governs other MSPB appellate cases, even though the issues in such appeals are narrow. The prior subpart H probationary appeal rights were limited: under 5 CFR 315.806, an employee could appeal certain probationary terminations to MSPB only on specified grounds, including partisan political reasons, marital status, certain procedural defects for actions covered by the prior § 315.805, and discrimination claims only when raised in addition to those limited grounds. Despite the limited nature of those grounds, however,

appeals raising these claims would nonetheless have to proceed through the following multi-stage process:

First, once an appeal was filed, the matter could be assigned to an MSPB administrative judge. MSPB part 1201 procedures authorize administrative judges to manage the proceeding, rule on motions, regulate hearings, address discovery disputes, receive evidence, and issue an initial decision. MSPB procedures also provide that an appellant generally has a right to a hearing on the merits if the appeal is timely and within MSPB's jurisdiction, and they authorize discovery into relevant, nonprivileged matters.

Second, after the administrative judge issued an initial decision, either party could seek review by the full Board. Under MSPB rules, an initial decision becomes final after 35 days unless a petition for review or other specified filing prevents finality. If a petition for review is filed, the Board may deny review, grant review, reopen the case, or issue a final decision disposing of the action.

Third, after a final MSPB decision, judicial review may be available under 5 U.S.C. 7703. That provision allows an employee or applicant adversely affected or aggrieved by a final MSPB order or decision to obtain judicial review, generally by filing a petition in the Federal Circuit or another court of appeals of competent jurisdiction, depending on the type of case, within the statutory time period.

That multi-stage process may be appropriate for actions Congress made appealable to MSPB under chapter 75 or other statutes. But OPM has determined that it is not necessary or well-tailored for the limited regulatory appeal rights available to employees serving probationary or trial periods. A probationary or trial period exists before an appointment becomes final and is designed to allow the Government to determine whether the employee should continue in Federal service. See 5 U.S.C. 3321(a). The issues in these appeals ordinarily turn on threshold and record-based questions, such as whether the appellant was serving a covered probationary or trial period, whether OPM has jurisdiction, whether the appeal was timely and properly filed, whether the termination falls within the limited grounds for appeal, whether required procedures were followed, and whether any violation prejudiced the appellant.

Rather than reinstating these multi-stage MSPB procedures designed to adjudicate adverse actions, the final rule provides a streamlined OPM process tailored to probationary and trial period

appeals. Under revised § 751.101, a covered employee may file an appeal with OPM on the grounds specified in the regulation. Under § 751.102, the appeal must be filed within the prescribed time limits and through OPM's electronic filing system unless OPM grants an exemption for good cause. This filing structure is intended to provide a uniform intake process, reduce procedural disputes, and allow OPM to identify jurisdictional and timeliness issues promptly.

The OPM process is designed to put the relevant agency record before the adjudicator early. Under revised § 751.103, the agency must file a response within the prescribed period and produce the complete agency record to OPM. For a probationary or trial period appeal, that record should include the appointment documents, personnel-action records, probationary or trial period status documentation, notice of termination, effective-date materials, documents relied upon by the agency in taking the action, any required notice or opportunity-to-respond materials, and any other records necessary to determine jurisdiction, compliance with applicable procedures, and prejudice. The agency must serve the appellant with the agency record, subject only to legally required redactions or withholding, such as those required by the Privacy Act, applicable privileges, classified-information or national-security requirements, OPM protective orders, or other disclosure limits required by law.

The final rule also preserves meaningful fact development without making discovery and hearings automatic in every case. The appellant may reply to the agency response, and OPM may permit new allegations where the basis rests on information first disclosed in the agency response or where good cause exists. Under revised § 751.105, OPM may require additional information and may conduct further proceedings where necessary and efficient to resolve a material issue within OPM's jurisdiction. A hearing remains available where the written record is insufficiently developed to decide a material fact or where a material credibility issue requires live testimony. This approach preserves the tools needed to resolve disputed material issues while avoiding unnecessary discovery, hearing practice, and litigation costs in cases that can be decided on the record.

Finally, instead of Board-level review and subsequent MSPB-based judicial review, the final rule provides for OPM reconsideration, limited Director review before finality, and final OPM action.

Under revised § 751.107, either party may seek reconsideration of an initial decision on the grounds specified in the rule, and OPM may reopen and reconsider where appropriate. Under revised § 751.108, the Director may review a nonfinal decision on the Director's own initiative before finality, including where review is warranted by potential legal error, material factual error, an issue of exceptional importance, governmentwide civil service administration, conflict among OPM decisions, or another comparable reason. Once a decision becomes final under § 751.109, there is no further administrative appeal under part 751. The final rule separately preserves collateral matters within the jurisdiction of other forums where applicable.

OPM concludes that this structure better fits the nature of probationary and trial period appeals. The MSPB process can involve administrative-judge proceedings, discovery, hearings, petitions for review to the full Board, possible reopening or remand, and subsequent judicial review. By contrast, the final rule provides a single, record-focused OPM process that requires the agency to produce the complete record, gives the appellant an opportunity to respond, permits targeted fact development where needed, and provides reconsideration and final agency supervision before finality. This approach reduces delay, cost, and uncertainty while preserving administrative review of whether the agency complied with the limited legal and regulatory requirements governing probationary and trial period terminations.

OPM also disagrees that it must prove MSPB "failed" before deciding against reinstituting MSPB as the forum for limited probationary appeals. An agency may revise a regulatory process when it reasonably concludes that a different process better implements the governing law and policy. Here, OPM is implementing Civil Service Rule XI, exercising its authority to prescribe the circumstances and procedures for probationary and trial period appeals, and aligning the appeal forum with OPM's responsibility for administering the civil service rules governing probationary and trial periods. The final rule therefore rests on OPM's independent policy judgment about the appropriate forum and procedures for these appeals, not solely on MSPB's prior quorum issues.

MSPB's prior lack of a quorum and associated backlog are nevertheless relevant practical considerations. They illustrate the risks of routing narrow regulatory appeals through a multi-

layered adjudicatory system that may be affected by Board vacancies and backlogs. The MSPB's periodic losses of a quorum have significantly delayed its ability to adjudicate cases. But the rule would be justified even if OPM had guarantees that the MSPB would retain a quorum in perpetuity going forward. The central problem is not merely delay caused by a lack of quorum; it is the mismatch between the limited scope of probationary appeal rights and the more elaborate procedures associated with MSPB adjudication. OPM concludes that a written-record process, with targeted fact development and hearings only where necessary and efficient, is better suited to resolving these narrow claims.

OPM further disagrees with commenters who suggest that MSPB funding, faster confirmations, or internal MSPB case-management reforms are adequate substitutes for this rule. Increasing MSPB funding and changing the speed of Senate confirmations are outside OPM's regulatory authority. OPM also cannot simply retain MSPB as the venue while directing MSPB to use OPM's preferred procedures. The courts have already held that OPM cannot do this. When appeals are assigned to MSPB, MSPB generally controls its own adjudicatory procedures. Thus, a rule directing MSPB to adjudicate these cases differently would raise separate legal concerns and would not accomplish OPM's objective of establishing an OPM-administered process under Civil Service Rule XI.

The final rule provides concrete benefits. It clarifies the appeal route for covered probationary and trial period employees; separates OPM appeals from claims that belong in other forums, such as EEOC discrimination claims; establishes—where the current status quo affords no appeal at all—the limited substantive appeal grounds historically available to covered probationary employees; reduces unnecessary procedural complexity; and supports timely resolution of appeals involving employees whose appointments have not yet been finalized. The rule also provides a process more proportionate to the narrow issues at stake: partisan-political reasons, marital status, and specified procedural claims involving terminations based in whole or in part on pre-appointment reasons.

OPM also expects the rule to produce administrative efficiencies, including faster disposition of narrow regulatory appeals, clearer claim routing, reduced duplication between MSPB and EEOC processes, more consistent administration of Civil Service Rule XI, and a process that better supports

agency use of probationary and trial periods as meaningful final stages of the examining process.

OPM does not agree that moving these appeals to OPM will create inconsistency across agencies or components. Under the final rule, the employing agency will make the underlying personnel decision, but OPM will adjudicate the limited appealable issues under a single governmentwide regulation. Centralizing these appeals within OPM is more likely to promote consistency than leaving agencies to develop different practices for issues arising under Civil Service Rule XI. OPM has also committed to issue written decisions and to make final merits decisions publicly available, subject to applicable limits protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed. Public availability of final merits decisions will promote consistent interpretation of part 751, provide guidance to agencies and employees, and allow the public to evaluate how OPM applies the rule over time.

The final rule also includes safeguards to address concerns about record integrity and fairness. Agencies must submit a response and all documents in the agency record supporting the action. Appellants may reply. OPM may require additional information, audit or investigate the agency's action when doing so is necessary to determine a material fact, and conduct a hearing where the written record is insufficient or where credibility issues make a hearing necessary and efficient. OPM will issue written decisions and provide reconsideration and Director review before finality. For appeals filed by OPM employees, the final rule provides an additional safeguard by assigning the matter to an administrative law judge. These procedures provide a record-based, reviewable administrative process tailored to the limited rights at issue.

Commenters 0443, 0507, and 0588 claimed that OPM is not more efficient than the current system, citing delays in OPM's retirement appeals branch and arguing that MSPB's quorum issue is an insufficient basis for the rule because appeals can continue to be processed during a lack of quorum. Commenters 0421, 0448, and 0610 suggested that the appropriate solution to MSPB's quorum or efficiency issues is faster Senate confirmation and more funding, rather than a change in venue. Commenter 0421 further stated that the current

system already heavily favors agencies, noting that 94.7 percent of appeals were dismissed in FY 2024 and arguing that OPM has not cited instances of MSPB wrongly overturning agency decisions.

OPM disagrees. OPM's retirement-related processes are governed by different statutes, involve different claims, and do not show that MSAC cannot adjudicate this narrow class of probationary and trial period appeals. The final rule establishes a streamlined process specifically designed for these cases. It uses electronic filing, defined deadlines, required agency records, appellant replies, targeted record development, and hearings only when necessary and efficient. OPM has assessed the expected caseload and resource needs and has determined that MSAC and OPM adjudicatory staff can administer the process efficiently. OPM will monitor implementation and may adjust staffing, case-management practices, and guidance as appropriate.

OPM also does not need to show that MSPB wrongly overturned agency decisions in order to provide a different forum when reestablishing probationary appeals. The question is not whether MSPB reached incorrect results in particular cases. The question is whether the existing forum and procedures remain the best fit for a narrow regulatory appeal right after E.O. 14284 and Civil Service Rule XI. Commenter 0421's assertion that a high percentage of probationary appeals are dismissed does not undermine the rule. To the contrary, a high dismissal rate may indicate that many appeals turn on threshold jurisdictional, timeliness, or appealability issues that can be resolved efficiently through a more tailored written-record process. OPM concludes that such cases do not require the full procedural structure used for broader statutory adverse-action appeals.

Commenters 0351, 0352, 0399, 0400, and 0593 claimed that the current system is working well, that only the most qualified individuals are selected for government employment through rigorous evaluation, and that supervisors already have discretion to ensure successful performance. Commenter 0366 asserted that the government should adopt shorter probationary periods, while Commenter 0506 stated that it is already too easy to fire probationary employees.

OPM does not adopt those views. The final rule is not an assessment of the qualifications or performance of the Federal workforce as a whole. Nor does the rule rest on a premise that most Federal employees are unsuitable. The rule addresses a more specific issue: the procedures and forum for resolving

limited appeals by employees whose appointments have not yet been finalized. A probationary or trial period is part of the examining and assessment process. During that period, the agency must be able to determine whether continued employment advances the public interest and the efficiency of the service. OPM concludes that a limited and streamlined appeal process is consistent with that function.

Commenter 0399 claimed that the proposed rule contains no demonstrated nexus between its guidance and improved performance or accountability. Commenters 0432 and 0585 stated that the rule will increase waste and inefficiency. Commenter 0567 suggested that the rule solves a problem that does not exist and that OPM has ulterior motives. Commenter 0586 maintained that the costs of probationary appeals are a small price to pay for confidence in the system's legitimacy. Commenter 0601 argued that there is no economic sense in separating probationary employees because the government has already incurred the costs of hiring and onboarding them.

OPM disagrees. The nexus between the rule and accountability is straightforward. The probationary and trial period is intended to allow agencies to assess whether an individual should receive a finalized appointment to the Federal service. A lengthy or procedurally disproportionate appeal system can discourage full use of that assessment period and can impose unnecessary costs when the appealable issues are narrow. By creating a focused OPM process, the final rule supports more timely resolution of the limited claims that remain appealable while preserving appropriate protections against unlawful actions.

OPM also rejects the suggestion that prior government investment in an employee should dictate finalization of the appointment. Hiring, onboarding, and training costs are important, but they are not dispositive. Those costs do not establish that continued employment advances the public interest, the agency's organizational goals, or the efficiency of the service. Indeed, treating sunk costs as a reason to retain an employee who has not demonstrated suitability for finalized appointment would undermine the purpose of the probationary and trial period system. The public interest is served by allowing agencies to make a timely and meaningful determination before an appointment becomes final.

Nor does OPM agree that confidence in the system requires reestablishing the prior MSPB forum and procedures. Confidence is promoted by lawful

authority, clear rules, consistent adjudication, a defined record, reasoned written decisions, public availability of final merits decisions, and preservation of independent remedies where Congress or another lawful authority has provided them. The final rule provides those features while avoiding procedures that OPM has determined are not necessary for the limited regulatory appeal rights at issue.

Commenter 0584 stated that OPM should release data on the number of appeals filed since agencies undertook termination actions after January 20, 2025, to provide transparency about the impact of the proposed changes. OPM declines to delay or alter the rule on that basis. This final rule is prospective. It governs covered appeals from terminations effected on or after the effective date of the rule, and it does not reopen, extinguish, or determine the outcome of prior personnel actions, pending appeals, or pending litigation. Data concerning agency actions taken before the effective date would not change the legal authority for this rule or the policy judgment that future covered appeals should be adjudicated under part 751.

OPM has provided the information necessary to support this rulemaking, including the legal basis for the rule, the historical and policy reasons for preserving a limited probationary appeal process, the reasons for moving the forum to OPM, the expected case volume and resource assumptions, and the safeguards included in the final rule. OPM also has committed to public availability of final merits decisions under part 751, subject to applicable legal limits. That commitment will provide ongoing transparency into how OPM applies the rule in future cases.

For these reasons, OPM declines to reestablish MSPB as the adjudicatory forum or to withdraw the rule based on commenters' objections concerning need, benefits, efficiency, or transparency. OPM concludes that the final rule is a lawful and appropriately tailored means of implementing Civil Service Rule XI, preserving the limited substantive appeal rights historically available to covered probationary employees, and establishing a more efficient administrative process for resolving those claims.

B. Regulatory Alternatives

An alternative to this rulemaking is a rule that would mirror the appeal rights and procedures under subpart H of part 315 including allowing employees to file appeals with the MSPB. As explained, reinstituting employee appeals to the MSPB would not be as

efficient as having OPM adjudicate appeals. OPM does not believe that returning appeals of probationary actions to MSPB is the best alternative for agencies or employees.

OPM also considered whether to include an agency's failure to provide written notice required under 5 CFR 11.5(e) as a basis for appeal. OPM stated in the proposed rule that it believed that including this ground for appeal would be unnecessary for two reasons. First, employees serving a probationary or trial period understand that, as a condition of employment, their employment will terminate before the end of their tour of duty on the last day of their appointment unless the agency issues the certification required under 5 CFR 11.5. Second, an agency's failure to adhere to a purely administrative requirement would not affect the outcome of the employee's separation.

Commenter 0341 challenged this reasoning and urged OPM to add an appeal right for an agency's failure to provide written notice under § 11.5(e). OPM also independently considered whether to expand the appeal right for probationary employees under this rule to cover the agency's failure to hold a meeting with the employee as described in section 5(b) of E.O. 14284 and incorporated into § 11.5 by this final rule. After extensive consideration, OPM declines to make those alleged procedural defects independent grounds for appeal under part 751.

OPM emphasizes that agencies must comply with Civil Service Rule XI, E.O. 14284, and the regulations in part 11. The final rule incorporates additional Rule XI procedures into § 11.5 to provide greater clarity and administrative convenience for agencies, employees, supervisors, and human resources practitioners. OPM's decision not to make every Rule XI procedural requirement independently appealable does not make those requirements optional. Rather, OPM concludes that noncompliance with those requirements is better addressed through management oversight, OPM accountability reviews, corrective guidance, agency-level compliance mechanisms, and, where applicable, the administrative-error petition process in § 11.5.

The written notice requirement in § 11.5(e), redesignated in this final rule as § 11.5(i), requires an agency to notify the employee in writing of the effective date of the action before terminating the service of an employee serving a probationary or trial period. That notice requirement serves an important administrative function. It informs the employee of when the separation will

occur and provides clarity for personnel, payroll, benefits, and recordkeeping purposes. But it does not create a substantive standard for determining whether the employee's appointment should be finalized, nor does it provide a right to advance notice of charges, an opportunity to respond, or a hearing before termination.

For that reason, OPM concludes that a failure to provide written notice of the effective date should not be an independent basis for reinstatement or reversal of a termination. The omission of such notice does not establish that the agency's decision was based on partisan political reasons or marital status, and it does not establish that the agency failed to follow the separate procedures applicable when a termination is based in whole or in part on conditions arising before appointment. Nor would the absence of written notice, standing alone, change the substantive public-interest determination required by Civil Service Rule 11.5. OPM may, however, consider the absence or timing of written notice where relevant to a procedural matter properly before OPM, including whether an appeal was timely filed or whether good cause exists for an untimely filing.

OPM also declines to make the meeting described in section 5(b) of E.O. 14284 an independent ground for appeal. That meeting is part of the agency's internal assessment and certification process near the end of an initial probationary or trial period. It is designed to help agency officials evaluate the employee's performance and conduct, the needs and interests of the agency, and whether continued employment would advance the public interest, the organizational goals of the agency or the Federal Government, and the efficiency of the service. It is not an adversarial pre-termination hearing and does not transform a probationary or trial period termination into an adverse action subject to the procedures applicable to tenured employees.

Treating the meeting requirement as an independent appeal right would substantially alter the function of the probationary and trial period system. It would require OPM to adjudicate collateral disputes over the scheduling, timing, content, and adequacy of meetings, even where the employee does not allege partisan-political discrimination, marital-status discrimination, or failure to follow procedures for a termination based on pre-appointment reasons. That result would recreate the type of procedural litigation E.O. 14284 sought to avoid and would undermine the streamlined

appellate framework established in part 751.

OPM also notes that section 7(c) of E.O. 14284 provides that the order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its agencies, officers, employees, or any other person. OPM therefore does not construe the meeting requirement or the written-notice requirement as independently enforceable appeal rights unless OPM expressly provides such a right by regulation. OPM has chosen not to do so here.

Another alternative to this rulemaking is to not issue a rule that provides covered employees with a right to appeal. However, employees terminated during their probationary or trial periods would not be able to seek relief for discrimination based on partisan political reasons or marital status. Supervisors and managers reassigned to nonsupervisory or nonmanagerial positions would still be allowed to appeal to the MSPB under subpart I of part 315, which OPM views as suboptimal given the efficiency gains from having OPM adjudicate these appeals under its own authority.

OPM considered whether an agency's decision not to certify continuation of an appointment, or failure to certify and finalize an appointment, should be independently appealable beyond the grounds specified in § 751.101(c); as reflected in § 751.101(d), OPM declines to make it so. OPM views an agency's inaction or decision not to finalize an employee's appointment beyond the probationary or trial period as the natural conclusion of the appointment akin to the expiration of a term employee's appointment.⁵⁰ Under OPM regulations, the Board similarly views an agency's inaction to renew or extend a term employee's appointment beyond the initial term as not an appealable adverse action.⁵¹

OPM also concludes that granting employees a right to appeal the OPM Director's decision to deny an agency's petition to reinstate an employee to the Federal service under 5 CFR 11.5(j) is inappropriate. Consistent with OPM's view that the employee's appointment naturally comes to an end as described

⁵⁰ In the event an agency fails to make the required certification due to administrative error, the agency head can petition the Director of OPM to reinstate an employee. OPM Memorandum to Heads and Acting Heads of Departments and Agencies, "Initial Guidance on President Trump's Executive Order Strengthening Probationary Periods in the Federal Service" (Apr. 28, 2025).

⁵¹ 5 CFR 752.401(b)(11); *Scott v. Dep't of the Air Force*, 113 MSPR 434, ¶ 9 (2010).

in 5 CFR 11.5(a), the agency, and not the employee, retains the right to seek the OPM Director's approval to reinstate the employee. It would be inconsistent with E.O. 14284 and 5 CFR 11.5 to establish a right to challenge the OPM Director's decision to deny a petition from the agency given the nature of the employee's appointment and the lack of standing of the employee.

Commenter 0516 argued that OPM failed to consider obvious and less restrictive alternatives, including increasing MSPB funding, streamlining procedures within MSPB, improving supervisor training and guidance, and using enhanced case-management tools to improve timeliness. Commenters 0488 and 0500 likewise asserted that OPM has not provided sufficient data showing that the rule will produce cost savings and has failed to consider less disruptive alternatives.

OPM disagrees. OPM has considered these alternatives, but concludes that they either are outside OPM's authority, would not accomplish the objectives of this rule, or are complementary measures rather than substitutes for the final rule. The purpose of this rule is not merely to reduce the number of days needed to process a case. It is to implement E.O. 14284 and Civil Service Rule XI; to prescribe the circumstances and procedures for limited probationary and trial period appeals; to align the adjudicatory forum with OPM's responsibility for administering the civil service rules governing probationary and trial periods; and to establish a process proportionate to the narrow regulatory issues that may be appealed.

Increasing MSPB funding, accelerating Board-member confirmations, or otherwise addressing MSPB quorum and staffing issues are not remedies OPM can adopt by regulation. MSPB appropriations are a matter for Congress, and MSPB membership depends on nomination and confirmation processes outside this rulemaking. Nor may OPM simply direct MSPB to use different procedures for cases that remain before MSPB. When OPM chooses to route appeals to MSPB, it must take MSPB's statutory adjudicatory structure as it exists; OPM may not superimpose its preferred procedures on MSPB adjudications. For that reason, retaining MSPB as the venue while attempting to streamline MSPB procedure is not a viable regulatory alternative for OPM.

OPM also considered whether improved supervisor training and guidance could address the concerns underlying the rule. OPM agrees that training and guidance are important, and OPM expects to continue

supporting agencies in using probationary and trial periods effectively. But training addresses front-end management practices; it does not address the separate question of what forum and procedures should govern appeals after a covered action has occurred. Even with better training, agencies will continue to take probationary and trial period actions, and covered employees will continue to need a clear process for raising the limited appealable claims preserved by this rule. Training therefore complements the final rule, but it is not a substitute for establishing the adjudicatory framework required after E.O. 14284 and Civil Service Rule XI.

OPM likewise considered whether enhanced case-management tools alone would be sufficient. The final rule incorporates several case-management features, including electronic filing, defined filing deadlines, required agency responses, required production of the agency record, appellant replies, OPM authority to require additional information, audits or investigations where necessary to determine a material fact, and hearings where the written record is insufficient or credibility issues make a hearing necessary and efficient. But case-management tools would not, by themselves, resolve the mismatch between the limited regulatory nature of probationary appeals and the more elaborate MSPB procedures developed for broader statutory adverse-action appeals. OPM has therefore adopted case-management tools as part of the final rule, but declines to rely on case-management changes alone.

OPM also disagrees that the rule lacks support because commenters would prefer additional or different cost data. OPM's regulatory analysis identifies the expected case volume, resource assumptions, and costs associated with adjudicating these appeals at OPM, and compares that process to the more resource-intensive adjudication previously available through MSPB. In any event, the rule does not rest solely on monetized cost savings. OPM also relies on non-monetized benefits, including faster resolution of narrow regulatory appeals, greater consistency in administration of Civil Service Rule XI, clearer routing of claims between OPM and other forums, reduced duplication, and a process better tailored to the limited issues available to covered probationary appellants.

OPM further notes that the final rule is not the most disruptive possible alternative. OPM is not eliminating all appeal rights for probationary supervisors covered by subpart I. The

final rule preserves their appeals alleging partisan-political reasons, marital status, and specified procedural defects where a termination is based in whole or in part on conditions arising before appointment, while also establishing such appeals for nonsupervisory employees in their probationary period. It also preserves independent remedies before EEOC, OSC, MSPB, Inspectors General, or other forums where an independent legal basis for jurisdiction exists. And OPM has included procedural safeguards, including a written record, agency record-production requirements, appellant replies, reconsideration, Director review before finality, public availability of final merits decisions subject to applicable legal limits, and assignment of an administrative law judge for appeals filed by OPM employees.

Accordingly, OPM declines to adopt the alternatives proposed by Commenter 0516 and Commenters 0488 and 0500. Those alternatives either fall outside OPM's authority, do not address the adjudicatory structure governed by this rule, or are already reflected in part in the final rule's streamlined case-management procedures. OPM concludes that the final rule is a reasonable and appropriately tailored means of implementing Civil Service Rule XI while preserving the limited substantive appeal rights historically available to covered probationary employees.

C. Impact

The final rule promotes greater accountability while making efficient use of taxpayer resources. Although establishing an appeals process where none currently exists necessarily imposes some cost, streamlining appeals by reducing unnecessary legal processes to adjudicate a narrow set of appealable issues and locating adjudicative responsibilities at OPM holds those costs well below what reinstituting the prior MSPB-style process would have entailed. Employees alleging discrimination will continue, as under the current baseline, to file complaints with the EEOC, and the adjudication of those claims at the EEOC may result in better outcomes as the EEOC administers and oversees nearly all anti-discrimination laws protecting Federal employees. Employees seeking relief before the EEOC may also experience longer times to receive a decision given the number of charges pending at the

end of Fiscal Year 2024.⁵² However, employees will gain the ability to bypass delays in the processing of their complaints by filing a lawsuit in Federal district court under certain circumstances.⁵³

Several commenters, such as 0434, 0475, 0527, and 0586, bring up the perceived unfairness this rule creates for Federal employees. They maintain that employees will have fewer tools to fight their terminations and the process will be more confusing, which could lead to employees filing in the wrong place and losing based on time considerations.

OPM notes that this rule creates an appeals process for probationary employees that does not currently exist. The rule thus gives employees tools they would not otherwise possess to fight, *e.g.*, unlawful politically-motivated terminations. OPM further notes that, while the process for filing appeals and who will hear those appeals may differ from the prior subpart H, the appeal structure remains relatively the same. Furthermore, OPM will provide guidance to managers, supervisors, and employees concerning these changes in order to avoid the types of concerns voiced by commenters.

Several commenters expressed concern that the rule could be used to permit agencies to separate probationary employees for reasons related to lack of funding, lack of work, abolishment of positions, or reorganization, while avoiding the statutory and regulatory requirements governing reductions in force.

The rule does not authorize agencies to use probationary status to evade reduction-in-force requirements. Reductions in force are governed by 5 U.S.C. chapter 35 and 5 CFR part 351, including the rules governing when those procedures apply. Nothing in this rule alters those authorities, expands an agency's ability to separate employees for reasons that constitute a reduction in force, or permits an agency to characterize a reduction-in-force action as a probationary separation in order to avoid applicable statutory or regulatory requirements.

Rather, this rule addresses the scope and processing of appeals from probationary separations. Agencies remain responsible for determining and applying the correct legal authority for any separation action, and the availability or limits of appeal rights under this rule do not change the

substantive requirements applicable to reductions in force.

D. Costs

This final rule affects how a Federal employee may pursue an administrative appeal from a covered probationary or trial period action, including termination during a probationary or trial period, assignment to a nonsupervisory or nonmanagerial position after failure to complete a supervisory or managerial probationary period, noncertification of continuation of an appointment, or failure to certify and finalize an appointment. The final rule grants OPM authority to adjudicate these appeals and removes MSPB authority to adjudicate discrimination claims that previously could attach to certain probationary appeals. Employees may continue to pursue discrimination claims through the Federal-sector EEO process.

The appropriate baseline for this analysis is the current status quo: following E.O. 14284 and the rescission of subpart H of part 315, no administrative appeals process exists for covered probationary and trial period terminations. Measured against that no-appeals baseline, the final rule imposes the new adjudication and agency-defense costs of the OPM appeal process it establishes. For the reasons explained below, OPM estimates that the final rule will result in recurring annual costs of approximately \$1.5 million, and first-year costs of approximately \$2.75 million, including one-time implementation costs. Because discrimination claims are already pursued through the Federal-sector EEO process under the current baseline, EEO-processing costs are not incremental costs of this rule.

1. Changes From the Proposed Analysis

OPM has updated the final cost analysis in several respects.

First, OPM updated labor rates from 2025 to 2026 rates because the final rule will take effect after publication of the proposed rule. The proposed rule used 2025 Washington, DC locality pay rates; this final analysis uses 2026 rates.

Second, OPM revised the annual appeal-volume baseline. The proposed rule cited 622 covered appeals in FY 2024 but calculated the annual baseline using only FY 2021 through FY 2023 data, resulting in an estimate of 457 appeals annually. In the final analysis, OPM includes FY 2024 in the baseline because those appeals occurred before the post-January 20, 2025 period that OPM treats as anomalous. OPM therefore averages FY 2021 through FY 2024 appeal volumes: 486, 424, 461, and

622 appeals, respectively. This produces an annual baseline of approximately 498 covered appeals. This assumption is more conservative than the proposed rule's 457-appeal baseline and better reflects the full scope of covered appeals identified in the proposed rule.

Third, OPM clarifies that the 498-appeal baseline is used as a proxy for all covered actions under part 751. Historical MSPB data are primarily organized around probationary termination appeals and supervisory or managerial probationary-period appeals. Because certification and finalization procedures under Civil Service Rule XI are newly implemented, OPM does not yet have a separate historical dataset for certification-related appeals. OPM expects those appeals generally to arise from the same population of probationary or trial period employees and to substitute for, rather than materially add to, historical probationary termination appeal volumes.

Fourth, OPM corrected and clarified several component calculations. The proposed rule's OPM adjudication discussion stated that each appeal would require 30 hours of adjudicator time, while the proposed per-case cost and annual estimate were consistent with 3 hours of adjudicator time. In the final analysis, OPM uses 3 hours of adjudicator time, which reflects the intended assumption and is consistent with the proposed rule's explanation that most probationary appeals require limited processing time because many are resolved on jurisdictional grounds.

Fifth, OPM uses the same appeal-review rate for comparable MSPB and OPM review stages. The proposed rule used an 11 percent MSPB petition-for-review rate but applied that rate inconsistently. The final analysis applies 11 percent to the revised 498-appeal baseline, resulting in approximately 55 petitions for review or requests for reconsideration annually.

Sixth, OPM has corrected the baseline used in the analysis. The proposed rule implicitly measured costs and savings against the prior MSPB process. That process, however, was rendered inoperative by E.O. 14284 before this rulemaking, and the correct baseline is the current status quo, under which no administrative appeals process exists for covered terminations. Measured against that baseline, the rule imposes the costs of the new OPM adjudication process it establishes. The prior MSPB process is discussed below for comparison purposes only, and EEO-processing costs are not attributed to this rule because discrimination claims are

⁵² Equal Employment Opportunity Commission, *Fiscal Year 2024 Annual Performance Report* (Jan. 17, 2025), available at https://www.eeoc.gov/sites/default/files/2025-01/24-126_EEOC_2024_APR_508_1.16.25_508.pdf.

⁵³ 29 CFR 1614.407.

already routed through the Federal-sector EEO process under the baseline.

2. One-Time Implementation Costs

OPM estimates that this rulemaking will require individuals employed by more than 80 Federal agencies, including MSPB and EEOC, to review the final rule, modify regulations, policies, and procedures, and train human resources practitioners, hiring managers, attorneys, adjudicators, and other relevant personnel.

For purposes of this cost analysis, OPM assumes that Federal employees performing this work will have an average salary equivalent to GS-14, step 5, on the 2026 Washington, DC locality pay table, with an hourly locality rate of \$78.15. OPM assumes that the total dollar value of labor, including wages, benefits, and overhead, equals 200 percent of the wage rate, resulting in a loaded hourly labor cost of \$156.30.

OPM estimates that implementation will require an average of 100 hours per affected agency. This results in one-time implementation costs of approximately \$15,630 per agency, or approximately \$1.25 million governmentwide, assuming 80 affected agencies.

3. Recurring Costs and Savings

OPM estimates that approximately 498 covered appeals will be filed annually. This estimate is based on MSPB appeal volumes for FY 2021 through FY 2024, including 486 appeals in FY 2021, 424 appeals in FY 2022, 461 appeals in FY 2023, and 622 appeals in FY 2024.

OPM does not include post-January 20, 2025 appeal volumes in the recurring annual baseline. OPM continues to view that period as anomalous and not sufficiently predictive of recurring annual appeal volumes. At the same time, including FY 2024 in the final baseline makes the estimate more conservative than the proposed rule's estimate and avoids understating annual appeal volume.

4. EEO-Related Costs

Under both the current baseline and the final rule, discrimination claims by covered probationary and trial period employees are pursued through the appropriate Federal-sector EEO process. E.O. 14284 eliminated the prior MSPB probationary appeal—and with it the ability to attach discrimination claims to such an appeal—before this rulemaking; this rule does not change how discrimination claims are routed.

Accordingly, EEO-processing costs are not incremental costs of this final rule. For transparency, OPM notes that the proposed rule estimated total annual

EEO-related processing costs of approximately \$3.0 million; to the extent such costs are incurred, they arise under the baseline and would be incurred whether or not OPM finalized this rule.⁵⁴

Accordingly, OPM does not attribute EEO-processing costs to this final rule. Any such costs arise under the current baseline—in which discrimination claims are already pursued through the Federal-sector EEO process—and would be identical whether or not OPM finalized this rule.

Commenters argued that routing discrimination claims through the EEO process may increase Federal court litigation. As an initial matter, any change in the routing of discrimination claims resulted from E.O. 14284 and the rescission of subpart H, not from this rule. OPM does not quantify Federal court litigation costs because such costs depend on future claimant choices, agency decisions, case outcomes, exhaustion of administrative remedies, settlement behavior, and judicial proceedings. OPM also notes that some judicial-review costs may already exist under the baseline for discrimination claims attached to MSPB mixed cases. OPM therefore does not have a reliable basis to estimate incremental Federal court costs attributable to this final rule.

5. Comparison: Adjudication Costs Under the Prior MSPB Process

Although the prior MSPB process is not the baseline for this analysis, OPM provides the following estimates for comparison purposes, to illustrate the relative cost of the process this rule establishes. OPM estimates that under the prior MSPB process, each initial appeal would have required 3 hours of MSPB administrative judge time at the GS-15, step 5 level, 1 hour of GS-11, step 5 paralegal time, and 0.25 hours of chief administrative judge review at the GS-15, step 5 level. Using loaded hourly labor costs of \$183.85 for GS-15 time and \$92.81 for GS-11 time, OPM estimates an MSPB initial-adjudication cost of approximately \$690 per appeal. For 498 appeals annually, this results in annual MSPB initial-adjudication costs of approximately \$344,000.

OPM estimates that petitions for review would be filed in approximately 11 percent of appeals, or approximately 55 petitions annually. OPM assumes that each petition for review would require 1 hour each from the MSPB

Chairman and one Board Member,⁵⁵ 2 hours from one GS-15, step 5 attorney, and 6 hours from one GS-13, step 5 attorney. Using loaded hourly labor costs of \$188.98 for each Board official, \$183.85 for the GS-15 attorney, and \$132.27 for the GS-13 attorney, OPM estimates a cost of approximately \$1,539 per petition, or approximately \$85,000 annually.

OPM also estimates agency defense costs under the prior MSPB process. OPM assumes each initial appeal required 15 hours of GS-14, step 5 agency attorney time, 4 hours of GS-11, step 5 paralegal time, and 1 hour of GS-15, step 5 supervisory attorney time. OPM further assumes each petition for review required 10 hours of GS-14, step 5 agency attorney time. Using loaded hourly labor costs of \$156.30, \$92.81, and \$183.85, respectively, OPM estimates total annual agency defense costs under the prior MSPB process of approximately \$1.53 million.

Accordingly, OPM estimates total annual costs under the prior MSPB process of approximately \$2.0 million, consisting of MSPB initial adjudication, MSPB Board-level review, and agency defense costs. These figures are presented for comparison purposes only; because the prior MSPB process is no longer in effect, they are not baseline costs avoided by this rule.

6. OPM Adjudication Costs Under the Final Rule

OPM estimates that each appeal adjudicated by OPM will require 3 hours of GS-13, step 5 adjudicator time, 1 hour of GS-11, step 5 paralegal time, and 1 hour of GS-14, step 5 supervisory adjudicator time. Using loaded hourly labor costs of \$132.27, \$92.81, and \$156.30, respectively, OPM estimates a cost of approximately \$646 per appeal. For 498 appeals annually, OPM estimates annual initial OPM adjudication costs of approximately \$322,000.

OPM estimates that approximately 55 requests for reconsideration will be filed annually. OPM assumes each request will require 4 hours of GS-14, step 5 adjudications officer time and 1 hour of senior executive review. Using loaded hourly labor costs of \$156.30 and \$218.50, respectively, OPM estimates reconsideration costs of approximately \$844 per request, or approximately \$46,000 annually.

OPM also estimates the incremental cost of Director review under § 751.108.

⁵⁴ OPM used Federal Workforce Data (FWD) information to estimate grade levels of MSPB and EEOC personnel assigned to adjudicate appeals covered by this rule.

⁵⁵ Based on the past decade and the current outlook, MSPB is unlikely to have three concurrently sitting Board members for the foreseeable future. Therefore, OPM has estimated the work of only two Board members and staff.

OPM expects that only a small number of cases, approximately 10 annually, will be reviewed by the Director before finality. For purposes of this analysis, OPM assumes that each Director review will require 1 hour of senior executive review and 1 hour of GS–14, step 5 adjudicatory support to prepare the record and decision materials. Using loaded hourly labor costs of \$218.50 and \$156.30, respectively, OPM estimates an incremental Director-review cost of

approximately \$375 per case, or approximately \$4,000 annually. OPM also estimates agency defense costs under the OPM process. OPM assumes each initial appeal will require 10 hours of GS–14, step 5 agency attorney time, 4 hours of GS–11, step 5 paralegal time, and 1 hour of GS–15, step 5 supervisory attorney time. OPM further assumes each request for reconsideration will require 8 hours of GS–14, step 5 agency attorney time. Using loaded hourly labor costs of

\$156.30, \$92.81, and \$183.85, respectively, OPM estimates total annual agency defense costs under the OPM process of approximately \$1.12 million. Accordingly, OPM estimates total annual costs under the OPM adjudication process of approximately \$1.5 million, consisting of OPM initial adjudication, OPM reconsideration, Director review, and agency defense costs.

SUMMARY OF RECURRING ANNUAL COSTS

Cost category	Prior MSPB process (comparison only)	Final OPM process
Initial adjudication	\$344,000	\$322,000
Petition/reconsideration and Director review	85,000	50,000
Agency defense costs	1,530,000	1,124,000
Subtotal: adjudication and defense costs	1,959,000	1,496,000
EEO-related costs (not attributable to this rule; see section 4)		
Total recurring annual cost	1,959,000	1,496,000

Based on these estimates, and measured against the current no-appeals baseline, OPM estimates recurring annual costs of approximately \$1.5 million, consisting of OPM adjudication, reconsideration, Director review, and agency defense costs. In the first year, OPM also estimates one-time implementation costs of approximately \$1.25 million, for total first-year costs of approximately \$2.75 million. For comparison, the prior MSPB process would have cost approximately \$2.0 million annually in adjudication and defense costs; the OPM process established by this rule is thus approximately \$463,000 less costly per year than reinstituting an MSPB-style process would have been.

7. Response to Cost-Related Comments

Commenters 0421, 0501, 0503, 0584, 0599, and 0602 argued that moving discrimination claims to the EEO process may increase costs, including potential costs associated with Federal court litigation. As explained above, EEO-processing costs are not incremental costs of this rule: discrimination claims are routed through the Federal-sector EEO process under the current baseline, and this rule does not change that routing. OPM has not quantified Federal court litigation costs because those costs depend on future decisions by employees, agencies, EEOC administrative judges, and courts, and because any change in the routing of discrimination claims resulted from E.O. 14284 rather than from this rule.

OPM also recognizes that the final analysis reaches a different quantified conclusion than the proposed rule. The proposed rule measured the rule against the prior MSPB process and characterized the rule as likely producing net cost savings. The final analysis instead measures the rule against the current no-appeals baseline and estimates recurring annual costs of approximately \$1.5 million. OPM concludes that providing covered employees a limited appeal—including for claims of partisan-political or marital-status discrimination—is worth those costs, and that the streamlined OPM process holds those costs well below what an MSPB-style process would have entailed. The final rule provides administrative review of covered probationary and trial period appeals where none currently exists, clarifies claim routing, provides a record-based process tailored to the limited issues appealable under part 751, avoids the higher adjudication and agency-defense costs that reinstituting the prior MSPB process would have entailed, and promotes faster finality for employees and agencies. Several benefits, including reduced uncertainty, clearer procedures, better allocation of adjudicatory resources, and improved agency ability to manage probationary and trial period appointments, are difficult to quantify but are substantial. OPM further notes that, even if EEO-processing costs were considered, the proposed rule’s estimate would have substantially overstated any effect of this rule. That estimate assumed that

every appellant would seek EEO counseling, even though not every appellant will allege discrimination, and employees may pursue EEO counseling and complaints under the current baseline regardless of this rule. Because discrimination claims are routed through the Federal-sector EEO process under the baseline in any event, the final analysis does not attribute those costs to this rule. Accordingly, OPM concludes that the final rule will impose quantified recurring annual costs of approximately \$1.5 million, and first-year costs of approximately \$2.75 million including implementation costs, while avoiding the higher costs of an MSPB-style process and producing important non-quantified benefits from a streamlined, OPM-administered appeal process.

E. Benefits

First, and most fundamentally, the final rule provides covered probationary and trial period employees with a limited administrative appeal—including for claims that a termination was based on partisan political reasons or marital status—where the current baseline affords no appeal at all. By creating a forum to adjudicate allegations of politically motivated or marital-status-based terminations, the rule strengthens the nonpartisan character of the civil service and promotes fairness, while keeping those appeals appropriately cabined to the narrow grounds historically available. In addition, OPM expects the final rule to produce further non-quantified benefits

for employees, agencies, and the Federal Government, including prompt resolution of covered appeals, clearer claim routing, avoidance of unnecessary litigation burden, timely corrective action where warranted, and better use of probationary and trial periods as assessment tools.

Second, the final rule will provide employees with a prompt and clear process for resolution of covered appeals—a process that does not exist at all under the current baseline. A probationary or trial period termination, a reassignment following failure to complete a supervisory or managerial probationary period, a noncertification decision, or a failure to certify and finalize an appointment may have significant professional and financial consequences for the affected individual. Timely adjudication benefits employees by providing prompt clarity as to whether the action will be sustained or corrected. If the agency erred, the final rule allows corrective relief to be ordered—relief that is not available at all under the current baseline. If the agency action is sustained, the individual receives earlier certainty for purposes of employment planning, benefits decisions, and future career choices.

Third, prompt adjudication benefits the Government by reducing avoidable remedial exposure. Where an agency action is found to be erroneous, delay may increase potential back pay, interest, attorney-fee exposure, and administrative disruption. A more prompt decision limits the period of uncertainty and allows the agency to implement any required corrective action sooner. This benefit serves both affected individuals and agencies by reducing the time between the challenged action and final administrative resolution.

Fourth, the final rule provides review without imposing an unnecessary litigation burden. Had OPM instead reinstituted the prior MSPB process, even appeals involving narrow probationary or trial period issues could have required substantial agency time for litigation preparation, motion practice, discovery disputes, hearing preparation, and related activity. The final rule instead adopts a record-based OPM process tailored to the limited issues that remain appealable. The rule requires the agency to produce the agency record, permits the appellant to respond, and allows OPM to require additional information or conduct further proceedings when necessary and efficient. This approach preserves meaningful review while avoiding routine use of costly procedures in cases

that can be resolved on the written record.

Fifth, the final rule promotes clearer and more efficient claim routing. Appeals before OPM under part 751 will be limited to the grounds specified in the rule, including claims involving partisan political reasons or marital status and claims that an agency failed to follow required procedures for terminations based in whole or in part on pre-appointment reasons. Other statutory claims, including discrimination claims within the jurisdiction of the EEOC, remain available in the forums Congress or applicable law has designated. This structure reduces confusion over forum, separates limited probationary appeal issues from collateral statutory claims, and allows specialized forums to adjudicate matters within their respective jurisdiction.

Sixth, the final rule supports more effective use of probationary and trial periods. Congress and the civil service rules have long treated probationary and trial periods as a continuation of the examining and assessment process. These periods allow agencies to determine whether a new employee, supervisor, or manager has demonstrated the performance, conduct, judgment, and suitability necessary for continued Federal service. OPM expects that a focused, streamlined appeal process—rather than one modeled on the prior MSPB procedures—will provide accountability without the litigation-driven hesitation associated with those procedures, and will allow supervisors and managers to devote more time to training, mentoring, observing, and evaluating employees during the period in which those assessments are most important.

Seventh, OPM expects the rule to improve the efficiency of the service. When supervisors are able to make timely, evidence-based decisions during probationary or trial periods, agencies are better positioned to retain employees who meet mission needs and address situations in which continued employment does not advance the efficiency of the service. This benefits the public by helping agencies maintain a capable workforce and by reducing the long-term costs associated with retaining employees whose performance, conduct, or supervisory capacity has not been demonstrated during the probationary or trial period.

Eighth, the final rule provides transparency and accountability appropriate to the limited appeal rights at issue. OPM will issue written decisions, provide reconsideration, allow Director review before finality,

and make final merits decisions publicly available subject to privacy, privilege, law-enforcement-sensitive information, and other legal limits. These features will promote consistency, provide guidance to agencies and employees, and permit public understanding of how OPM applies the final rule over time.

OPM recognizes that some of these benefits are difficult to quantify with precision. The absence of precise quantification does not make the benefits less substantial. Faster finality, reduced uncertainty, clearer claim routing, more efficient use of supervisory and human-resources time, and better use of probationary and trial periods are significant operational benefits that support the final rule.

Accordingly, OPM concludes that the final rule will produce benefits beyond the quantified savings reflected in the cost analysis. The rule preserves administrative review of the limited matters appealable under part 751, provides a more focused and timely adjudicatory process, reduces unnecessary litigation burden, allows prompt correction of agency error where warranted, and supports the effective use of probationary and trial periods to promote the efficiency of the Federal service.

VI. Procedural Issues and Regulatory Review

A. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule involves the authority of Federal agencies to adjudicate appeals filed by current and former Federal employees. While small entities representing current or former Federal employees will be affected by the change in venue for appeals and complaints of discrimination, the procedures employed by OPM and EEOC will not cause a significant economic impact on these small entities.

B. Regulatory Review

The Office of Information and Regulatory Affairs in the Office of Management and Budget has designated this as a significant regulatory action under E.O. 12866 section 3(f). Accordingly, OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rulemaking does not reach that threshold. This rule is not considered an E.O. 14192 regulatory action. As explained in the cost analysis above, measured against the current no-appeals baseline, the rule imposes quantified recurring annual costs of approximately \$1.5 million, which OPM concludes are justified by the rule's quantified and non-quantified benefits.

C. Severability

If any of the provisions of this rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

D. Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Aug. 10, 1999), it is determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

This regulation meets the applicable standards set forth in subsections 3(a) and (b)(2) of E.O. 12988 (Feb. 5, 1996).

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or Tribal governments in the aggregate, or on the private sector, in any one year of \$100 million in 1995 dollars, updated annually for inflation.

That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires most final rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

H. Paperwork Reduction Act

This final rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). The final rule establishes procedures for filing and adjudicating appeals before OPM under part 751, including electronic filing, appellant submissions, representative information, requests for e-filing exemptions, agency responses, agency-record submissions, agency certifications, appellant replies, requests for reconsideration, and related case-processing submissions.

The information collected will be used to receive, docket, serve, process, adjudicate, and maintain records of appeals from covered actions under part 751, including terminations during probationary or trial periods, assignments to nonsupervisory or nonmanagerial positions following failure to complete a supervisory or managerial probationary period, noncertification of continuation of an appointment, and failure to certify and finalize an appointment. The final rule requires use of the electronic filing system identified on OPM's website, except where OPM grants an exemption for good cause.

OPM has submitted a request for a new information collection to the Office of Management and Budget for this system (see 91 FR 46802 (July 24, 2026)).

OPM will not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

To the extent the final rule requires Federal agencies to submit agency responses, agency records, certifications, or other documents in their official capacity, those submissions are not collections from "persons" for purposes of the Paperwork Reduction Act. However, submissions from appellants, representatives, or other non-agency parties may constitute information collections subject to the Paperwork Reduction Act.

List of Subjects

5 CFR Part 11

Government employees.

5 CFR Part 230

Civil defense, Government employees.

5 CFR Parts 315 and 432

Government employees.

5 CFR Parts 751 and 752

Administrative practice and procedure, Government employees.

Signing Statement

The Director of OPM, Scott Kuper, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,
Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR parts 11, 230, 315, 432, 751 and 752 as follows:

PART 11—PROBATIONARY AND TRIAL PERIODS (RULE XI)

- 1. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 14284, 90 FR 17729.

§ 11.2 [Amended]

- 2. Amend § 11.2, in paragraph (a)(2), by removing the phrase "Reinstatement Priority List" and adding in its place the phrase "Reemployment Priority List".

- 3. Amend § 11.5 by redesignating paragraphs (e) through (g) as paragraphs (i) through (k) and adding new paragraphs (e) through (h) to read as follows:

§ 11.5 Completion of probationary or trial period.

* * * * *

- (e) Each agency head shall designate, in writing, one or more agency officials responsible for evaluating the continued

employment of employees serving an initial probationary or trial period in the Federal service. The agency head should limit such designations to officials who can properly assess the needs and interests of the agency, the organizational goals of the agency or the Federal Government, and the efficiency of the service.

(f) At least 60 days before the end of an employee's initial probationary or trial period, an official designated under paragraph (e) of this section shall meet with the employee to discuss the employee's performance and conduct, based in part on input from the employee's supervisor; the needs and interests of the agency; and whether the employee's continued employment would advance the public interest, the organizational goals of the agency or the Federal Government, and the efficiency of the service.

(g) Within 30 days before the end of an employee's initial probationary or trial period, the agency head or an official designated under paragraph (e) of this section shall determine, consistent with this section and other applicable law, whether to finalize the employee's appointment to the Federal service or terminate the employee's service.

(h) Before finalizing an employee's appointment to the Federal service at the conclusion of the probationary or trial period, the agency head or an official designated under paragraph (e) of this section must certify in writing that the employee's continued employment will advance the public interest.

* * * * *

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

■ 4. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302. E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 14284, 90 FR 17729. Sec. 230.402 also issued under 5 U.S.C. 1104.

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

■ 5. Amend § 230.402 by revising paragraph (f) to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

* * * * *

(f) *Probationary period.* (1) The first year of service of an emergency-indefinite employee is a probationary period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the probationary period. The employee is entitled to the procedures set forth in part 751 of this chapter as appropriate.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 6. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302. E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted; E.O. 14284, 90 FR 17729. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 43 FR 1917, 3 CFR, 1978 Comp., p. 111. Sec. 315.606 also issued under E.O. 11219, 30 FR 6381, 3 CFR, 1964–1965 Comp., p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 55 FR 31349, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473, 73 FR 56703, 3 CFR, 2009 Comp., p. 241. Sec. 315.613 also issued under 5 U.S.C. 9602. Sec. 315.710 also issued under E.O. 12596, 52 FR 17537, 3 CFR, 1987 Comp., p. 264.

Subpart B—The Career-Conditional Employment System

■ 7. Amend § 315.201 by revising paragraph (a) to read as follows:

§ 315.201 Service requirement for career tenure.

(a) *Service requirement.* A person employed in the competitive service for other than temporary, term, or indefinite employment is appointed as a career or career-conditional employee subject to the probationary period required by part 11 of this chapter. Except as provided in paragraph (c) of this section, an employee must serve at least 3 years of creditable service as defined in paragraph (b) of this section to become a career employee.

* * * * *

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

■ 8. Amend § 315.908 by revising paragraph (b) to read as follows:

§ 315.908 Appeals.

* * * * *

(b) An employee who alleges that an agency action under this subpart was based on partisan political reasons or marital status may appeal to the Office

of Personnel Management using the procedures in 5 CFR part 751.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

■ 9. The authority citation for part 432 is revised to read as follows:

Authority: 5 U.S.C. 4303, 4305; E.O. 14284, 90 FR 17729.

■ 10. Amend § 432.102 by:

■ a. Revising paragraphs (f)(1), (2), and (3);

■ b. Redesignating paragraphs (f)(4) through (13) as paragraphs (f)(5) through (14); and

■ c. Adding a new paragraph (f)(4).

The revisions and addition read as follows:

§ 432.102 Coverage.

* * * * *

(f) * * *

(1) An employee in the competitive service who is serving a probationary period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) A nonpreference eligible employee in the excepted service who has not completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment (see 5 CFR 213.104(a)) limited to 2 years or less;

* * * * *

■ 11. Add part 751 to read as follows:

PART 751—PROBATIONARY AND TRIAL PERIOD APPEALS

Sec.

751.101 Right to appeal.

751.102 Procedures for submitting appeals.

751.103 Form and content of probationary or trial period appeal and agency response.

751.104 Employee representatives.

751.105 Adjudication of appeals.

751.106 Sanctions and protective orders.

751.107 Requests for reconsideration of an initial decision.

751.108 Review by the OPM Director.

751.109 Final decision.

Authority: 5 U.S.C. 1103, 1302, 3301, 3302, 3321, 5596; E.O. 14284, 90 FR 17729; 5 CFR 11.6.

§ 751.101 Right to appeal.

(a) *Right of appeal.* (1) Subject to paragraphs (b) through (d) of this section, an employee may appeal the following actions to the Office of Personnel Management (OPM):

(i) Termination during a probationary or trial period required under 5 CFR part 11 or other authority administered by OPM;

(ii) Assignment to a nonsupervisory or nonmanagerial position for failure to complete a supervisory or managerial probationary period required under subpart I of part 315 of this chapter;

(iii) An agency's decision not to certify the continuation of the appointment of an employee serving a probationary or trial period; or

(iv) An agency's failure to certify and finalize the appointment of an employee serving a probationary or trial period.

(2) An individual serving a probationary or trial period does not have a right to appeal their termination under this part if the individual has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. Such individual may have a right to appeal under the provisions of 5 CFR 432.106 or 752.405, as appropriate, provided that such appeal is not excluded by the provisions of § 432.102(b), (d), or (f), or § 752.401(b) or (d), of this chapter.

(b) *Burden of proof.* The employee (*i.e.*, appellant) bears the burden to demonstrate, by a preponderance of the evidence:

(1) The timeliness of the written appeal,

(2) That OPM possesses jurisdiction over the appeal, and

(3) The agency's action was discriminatory based on partisan political reasons or marital status or failed to follow the procedures for terminating the employee for reasons based in whole or in part on conditions arising before the employee's appointment.

(c) *Appealable issues*—(1)

Discrimination. An employee may appeal one of the following actions that he or she alleges was based on partisan political reasons or marital status:

(i) Termination not required by statute;

(ii) Assignment to a nonsupervisory or nonmanagerial position under § 315.907 of this chapter;

(iii) An agency's decision not to certify the continuation of the appointment of an employee serving a probationary or trial period; or

(iv) An agency's failure to certify and finalize the appointment of an employee serving a probationary or trial period.

(2) *Improper procedure.* An employee whose termination is based in whole or in part on conditions arising before his or her appointment may appeal to OPM challenging that the agency failed to provide:

(i) Advance written notice stating the reasons, specifically and in detail, for the proposed action;

(ii) A reasonable time for filing a written answer to the notice of proposed termination and for furnishing affidavits in support of his or her answer. If the employee answers, the agency shall consider the answer in reaching its decision; and

(iii) A written decision at the earliest practicable date delivered at or before the effective date of the action. The decision shall inform the employee of the reasons for the action, the right to appeal to OPM, the need to include documented supporting facts, and time limits within which the appeal must be submitted under this section.

(d) *Nonappealable issues.* An employee may not appeal under this part any other issue not specified in paragraph (c) of this section.

(e) *Exclusive appeal procedure.* The procedures in this part are the sole means of appealing a covered action under paragraph (a) of this section, but do not otherwise preclude an employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the Equal Employment Opportunity Commission, an Inspector General, the Merit Systems Protection Board, the Department of Labor Veterans' Employment and Training Service, or Office of Special Counsel. A party cannot obtain judicial review of a decision under this part.

(f) *Definition of employee.* For purposes of this part, an employee means an individual appointed:

(1) To the competitive service as described in 5 CFR 11.2 who has not completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(2) To the competitive service and serving a probationary period on an initial appointment to a supervisory or managerial position under subpart I of part 315 of this chapter;

(3) To the competitive service under an emergency-indefinite appointment in a national emergency serving a probationary period under subpart D of part 230 of this chapter and who is in the first year of service; or

(4) To the excepted service before the end of their first year on an initial appointment under part 307 of this chapter. Employees serving in an appointment in the excepted service outside of part 307 of this chapter are

not covered under this section and, therefore, may not appeal a termination during their trial period unless otherwise entitled by statute.

§ 751.102 Procedures for submitting appeals.

(a) *Filing an appeal.* An employee, or his or her authorized representative, seeking to file an appeal or reconsideration under this part must utilize the electronic filing system identified on OPM's website. Unless a party demonstrates good cause and seeks approval from OPM, OPM will not accept pleadings, evidence, or other documents via electronic mail or postal mail.

(b) *Time limits.* An employee may file an appeal within 30 calendar days from the effective date of the action. An appeal is deemed timely when it is electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action.

(1) In computing the number of days allowed for filing an appeal, the first day counted is the day after the effective date of an agency action. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

(2) If an employee does not file an appeal within the time set by this section, the appeal will be dismissed as untimely filed unless the employee demonstrates good cause for an untimely appeal. The determination of good cause will be in the sole and exclusive discretion of OPM.

(c) *E-filing procedures.* (1) All parties and their representatives to an appeal or reconsideration must register as instructed by OPM on its e-filing website using a unique email address.

(2) Registration as an e-filer constitutes consent to accept electronic service of pleadings, evidence, notices, orders, and other documents filed by other e-filers or issued by OPM. No party may electronically file any document with OPM or access an appeal or reconsideration of an appeal unless registered as an e-filer unless exempted under paragraph (c)(7) of this section for good cause.

(3) All notices, orders, decisions, and other documents issued by OPM, as well as all documents filed by parties, will be made available for viewing and downloading at OPM's electronic filing system. Access to documents is limited to the parties and their representatives who are registered e-filers in the cases in which they were filed.

(4) All parties and their representatives must follow the instructions on OPM's website for

properly filing all pleadings, evidence, and other documents. OPM may strike a document where an e-filer repeatedly fails to follow these instructions following receipt of a show cause order.

(5) Each e-filer must promptly update their profile in OPM's electronic filing system and notify OPM and other parties of any change in their address, telephone number, or email address by filing a pleading in each pending case with which they are associated. E-filers are responsible for monitoring case activity regularly in OPM's electronic filing system to ensure that they have received all case-related documents.

(6) A party or representative may withdraw their registration as an e-filer pursuant to the requirements posted on OPM's website. Withdrawing registration in OPM's electronic filing system means that, effective upon OPM's processing of a proper withdrawal, pleadings, evidence, orders, and other documents filed by a party, a party's representative, or OPM will no longer be served on that person electronically and that person will no longer have electronic access to their case records through OPM's electronic filing system. OPM may still process an appeal or request for reconsideration after a party withdraws as an e-filer. Withdrawal of e-filing registration by a party or representative will not be considered good cause for staying a case.

(7) OPM, in its sole and exclusive discretion, may exempt a party or representative from registering as an e-filer for good cause. A party or representative must promptly contact OPM as instructed on OPM's website to request an exemption from the e-filing requirements in this part. OPM will not find good cause for failing to timely file an appeal or seek reconsideration if the party or representative fails to contact OPM to request an exemption before any deadline to appeal or seek reconsideration.

(8) Documents filed in OPM's electronic filing system are deemed received on the date the electronic submission is timestamped by OPM based on the Eastern Time Zone.

§ 751.103 Form and content of probationary or trial period appeal and agency response.

(a) *Initial appeal.* An employee's appeal shall be in writing and shall state the basis of the employee's appeal; the name, address, and email address or phone number of the appellant and appellant's representative, if any; and any documentation supporting the appellant's appeal.

(b) *Agency response.* The agency response to an appeal must be filed within 30 calendar days after service of the initial appeal; contain the name of the appellant and of the agency whose action the appellant is appealing; a statement identifying the agency action taken against the appellant and stating the reasons for taking the action; all documents contained in the agency record of the action; designation of and signature by the authorized agency representative; and any other documents or responses requested by the Office. The agency's 30 calendar days to respond begins upon service of the appeal. The agency record of the action shall include, at a minimum:

(1) All documents considered or relied upon by the agency in taking the action;

(2) The notice of action and effective date;

(3) Documents showing the appellant's appointment, service history, and probationary or trial period status;

(4) Any written certification, noncertification, or failure-to-certify record under 5 CFR part 11;

(5) Any documents supporting the agency's basis for the action under appeal; and

(6) A certification that the agency has produced the complete record considered by the deciding official or otherwise relied upon by the agency.

(i) The agency must produce the complete agency record to OPM.

(ii) The agency must serve the appellant with the agency record, except that the agency may redact or withhold information from the copy served on the appellant to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law.

(c) *Reply.* An employee may file a reply to an agency response to an initial appeal within 15 calendar days of the date the agency submits its response. The reply may only address the factual and legal issues raised by the agency in response to the initial appeal. The reply may not raise new allegations of error unless the basis rests on information first disclosed in the agency response or unless OPM grants leave for good cause.

(d) *Inspection of OPM's appellate record.* The employee, an employee's representative, and the agency will be permitted to inspect OPM's appellate record on request, subject to the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders

issued by OPM, and any other applicable limitation on disclosure required by law.

(e) *Service of documents.* The employee, employee's representative, and agency will serve on each other copies of any and all information submitted to OPM with respect to an appeal, subject to the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law. Such information must be served on all other parties at the same time the information is submitted to OPM and must be accompanied by a certificate of service stating how and when service was made.

(f) *Untimely filings.* Untimely filings may be accepted upon a party's showing of good cause at the sole and exclusive discretion of OPM.

§ 751.104 Employee representatives.

(a) *Designation of representative.* An appellant may select a representative of his or her choice to assist in the preparation and presentation of an appeal, provided that the appellant submits his or her designation of representative in writing related to the specific appeal.

(b) *Federal employee representatives; official time and reimbursement.* If the selected representative is a Federal employee, the representative may not perform such representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), nor may the representative claim agency reimbursement for any expenses incurred while performing such representational function.

(c) *Disallowance of representative.* OPM or the responsible agency may, in its sole and exclusive discretion, disallow an appellant's choice of representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position.

§ 751.105 Adjudication of appeals.

(a) *Appeals by non-OPM employees.* OPM will assign personnel to adjudicate an appeal under this subpart by an employee of an agency other than OPM. OPM personnel assigned to adjudicate an appeal under this part shall be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators shall not consider material *ex parte* communications

concerning the merits of an appeal. If such a communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. In addition, no OPM employee may be assigned to adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, that person was an employee of the agency that is party to the action to be assigned. When necessary, OPM may assign an administrative law judge to preside over the adjudication of an appeal.

(b) *Appeals by OPM employees.* OPM will assign an administrative law judge to adjudicate an appeal under this subpart by an OPM employee and to issue an initial decision. To insulate the adjudication of its own employees' appeals from agency involvement, OPM will not disturb initial decisions in those cases unless a party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge, a clear error of law, or a material factual error that affected the outcome of the appeal. For purposes of this paragraph (b), the term *harmful procedural irregularity* means an irregularity in the application of procedures that was likely to have caused the administrative law judge to reach a conclusion different from the one he or she would have reached in the absence or cure of the irregularity. The assignment of an administrative law judge under this paragraph (b) or under paragraph (a) of this section does not make 5 U.S.C. 554, 556, or 557 applicable to an appeal under this part except to the extent those provisions are independently required by law or expressly incorporated in this part.

(c) *Ascertainment of facts.* OPM may require either party to provide additional information, and it may audit or investigate an agency's action in the course of adjudicating an appeal if it determines, in its sole discretion, that the existing record is insufficient to resolve a material issue within OPM's jurisdiction, and that the audit or investigation is reasonably likely to produce information material to resolving that issue. An individual serving as a representative of either party may not participate in an audit or investigation unless OPM specifically requests them to do so. The review of an agency action must be based solely on the developed written record unless OPM determines that a hearing is necessary and efficient in resolving an appeal. For purposes of this section, the phrase *necessary and efficient* means

circumstances in which the written record is insufficiently developed to make a determination regarding one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility that is material to the outcome of the appeal. Where an investigation or audit is conducted, OPM will:

(1) Inform the employee, the employee's representative, and the agency of an investigation or audit; and

(2) Provide the employee, the employee's representative, and the agency with the results of an investigation or audit, and a reasonable opportunity to submit arguments or additional information to support their positions.

(d) *Initial decision.* OPM will notify the employee, employee's representative, and agency in writing of its decision.

(e) *Remedies.* (1) If the employee is the prevailing party, OPM will order relief including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The employee as a prevailing party is not entitled to compensatory damages or other relief not authorized under 5 U.S.C. 5596(b).

(2) If the agency timely requests reconsideration of an initial decision or OPM reopens and reconsiders an initial decision, the agency must continue to provide the relief ordered unless OPM issues an order staying any such relief. No such stay may be ordered that would deprive the employee of pay and benefits while the initial decision is pending reconsideration.

§ 751.106 Sanctions and protective orders.

(a) *Cease-and-desist directive.* OPM may issue a protective order or cease-and-desist directive to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. OPM may do this *sua sponte*, or at the request of a party, preemptively or at any juncture in the appeal process. A party requesting OPM to issue a protective order or cease-and-desist order must file such request in accordance with § 751.102(c), and must include a statement of reasons justifying the request, together with any relevant documentary evidence. Any protective order issued by OPM must be no broader than reasonably necessary and must not restrict lawful communications protected by law.

(b) *Failure to comply with an OPM directive.* When a party to an appeal fails to comply with an order issued under paragraph (a) of this section, OPM may, except when prohibited by law:

(1) Draw all inferences in opposition to the noncompliant party with regard to the appeal in question;

(2) Prohibit the noncompliant party from introducing evidence, or additional evidence, concerning the appeal, or otherwise relying on the record; or

(3) Eliminate from consideration any appropriate part of the filings or other submissions of the noncompliant party.

(c) *Scope of sanctions.* Any sanction issued under paragraph (b) of this section must be proportionate, causally related to the violation, and no broader than necessary to protect the adjudicatory process.

§ 751.107 Requests for reconsideration of an initial decision.

(a) Upon a timely request from either party to the dispute or upon its own initiative, OPM may, in its sole and exclusive discretion, reopen and reconsider an initial decision issued under this subpart. An employee, the employee's representative, or agency may request reconsideration of an initial decision within 30 calendar days from issuance of the decision. The request for reconsideration must be filed as directed in the initial decision.

(b) Grounds for which OPM may grant a request for reconsideration are:

(1) The initial decision contains erroneous findings of material fact sufficient to warrant an outcome different from that of the initial decision;

(2) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The party must explain how the error affected the outcome of the case;

(3) New and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed; or

(4) OPM finds good cause to reconsider an appeal.

(c) In any case that is reopened or reviewed, OPM may:

(1) Issue a reopened and reconsidered decision ("R&R decision") that affirms, reverses, modifies, vacates, or otherwise decides the case, in whole or in part;

(2) Require the parties to submit argument and evidence;

(3) Take any other action necessary for final disposition of the case; and
(4) Issue an order with a date for compliance with the R&R decision.

(d) There is no further right of administrative appeal from the R&R decision.

§ 751.108 Review by the OPM Director.

The Director may, on the Director's own initiative and before a decision becomes final under § 751.109, reopen and reconsider any initial decision or reopened and reconsidered decision. In determining whether to exercise this authority, the Director may consider, among other things, whether the decision may contain clear legal error; may rest on an erroneous finding of material fact; may involve an issue of exceptional importance, an issue affecting the administration of the civil service laws, rules, regulations, or OPM policy, or a conflict among OPM decisions; or otherwise warrants Director review. This section does not create a right to request Director review. Upon reopening and reconsideration, the Director may take any action described in § 751.107(c).

§ 751.109 Final decision.

(a) The initial decision becomes OPM's final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 751.107 or the Director reopens the decision under § 751.108.

(b) A timely request under § 751.107 suspends finality. If OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes OPM's final decision 30 calendar days after issuance of the denial or dismissal, unless the Director reopens the initial decision under § 751.108 before that time. If OPM grants the request, a reopened and reconsidered decision becomes OPM's final decision 30 calendar days after issuance unless the Director reopens that decision under § 751.108 before that time.

(c) An untimely request under § 751.107 does not suspend or otherwise

affect finality. If OPM accepts and grants an untimely request for good cause, any resulting reopened and reconsidered decision becomes final as provided in paragraph (b) of this section.

(d) A decision by the Director pursuant to § 751.108 that disposes of the appeal is OPM's final decision and is effective upon issuance. If the Director remands the appeal or directs further proceedings, any resulting decision becomes final under this section.

(e) There is no further right of appeal of a final decision of OPM.

(f) Subject to applicable legal limits, including requirements protecting privacy, privileged information, protected personal information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed, OPM shall maintain a publicly accessible website containing final decisions issued under this part that address a party's claim on the merits. Any final merits decision not made publicly available because of such legal limits shall be made available upon request to the Federal employee or former Federal employee involved in a proceeding under this subpart, his or her representative selected pursuant to § 751.104, or a representative of the Federal agency or office involved in the proceeding who has a need to know.

PART 752—ADVERSE ACTIONS

■ 12. The authority citation for part 752 is revised to read as follows:

Authority: 5 U.S.C. 6329b, 7504, 7514, 7515, and 7543; 38 U.S.C. 7403; Sec. 512, Pub. L. 114–328, 130 Stat. 2112; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218; E.O. 14284, 90 FR 17729.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

■ 13. Amend § 752.201 by revising paragraphs (b)(1) and (2) to read as follows:

§ 752.201 Coverage.

* * * * *

(b) * * *

(1) An employee in the competitive service who has completed a probationary period, or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(2) An employee in the competitive service serving in an appointment which requires no probationary period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

* * * * *

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

■ 14. Amend § 752.401 by revising paragraphs (c)(1), (c)(2)(i), and (d)(10) and (12) to read as follows:

§ 752.401 Coverage.

* * * * *

(c) * * *

(1) A career or career conditional employee in the competitive service who is not serving a probationary period;

(2) * * *

(i) Who is not serving a probationary period under an initial appointment; or

* * * * *

(d) * * *

(10) A nonpreference eligible employee serving a trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless he or she meets the requirements of paragraph (c)(5) of this section;

* * * * *

(12) An employee in the competitive service serving a probationary period, unless he or she meets the requirements of paragraph (c)(2) of this section.

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; FY 2027 Hospice Wage Index and Payment Rate
Update and Hospice Quality Reporting Program Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1851–F]

RIN 0938–AV78

Medicare Program; FY 2027 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Program Requirements

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

ACTION: Final rule.

SUMMARY: This final rule updates the hospice wage index, payment rates, and aggregate cap amount for fiscal year 2027. This final rule also includes an analysis of Medicare non-hospice spending, including details regarding a hospice service and spending variation index, and finalizes the requirement that hospices provide the hospice election statement addendum to all Medicare beneficiaries at the time of hospice election. Additionally, this rule finalizes conforming changes to discharge from hospice care regulations and changes to the face-to-face encounter regulations. This final rule also includes a summary of comments received on our requests for information regarding community-based palliative care; the construction of a hospice specific wage index; and the overlap between hospice and medical aid in dying laws. Finally, this rule finalizes changes to the Hospice Quality Reporting Program.

DATES: These regulations are effective on October 1, 2026.

FOR FURTHER INFORMATION CONTACT:

For general questions about hospice payment policy, send your inquiry via email to: hospicepolicy@cms.hhs.gov.

For questions regarding the CAHPS® Hospice Survey, contact Lauren Fuentes at (410) 786–2290.

For questions regarding the hospice quality reporting program, contact Jermama Keys at (410) 786–7778.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

This final rule updates the hospice wage index, payment rates, and cap amount for Fiscal Year (FY) 2027 as required under section 1814(i) of the Social Security Act (the Act). This final rule also includes an analysis of

Medicare non-hospice spending under a hospice election, including details regarding a hospice spending variation index (SSVI). The SSVI includes a scoring system that monitors nine claims-based metrics in order to comprehensively assess hospice services and yield a provider ranking that can be utilized by beneficiaries to make more informed health decisions and support program integrity efforts. This rule also finalizes the requirement that hospices provide the hospice election statement addendum to all Medicare beneficiaries at the time of hospice election. Additionally, this rule finalizes conforming regulation text changes to allow a physician designee or physician member of the interdisciplinary group (IDG), in addition to the hospice medical director, to discharge a patient from hospice care. This final rule also finalizes conforming regulation text changes to the hospice telehealth face-to-face policy for the sole purpose of hospice recertification codified at § 418.22(a)(4)(ii) to align with the end date and new requirement to include modifiers or codes for such encounters as set forth in statute at section 1814(a)(7)(D)(i)(II) of the Act, as well as a subclause that prohibits the use of telehealth to conduct the face-to-face encounter in specific situations related to moratoriums (section 1866(j)(7) of the Act), enhanced oversight (section 1866(j)(3) of the Act), or enrollment status (section 1866(j) of the Act). This final rule also includes summaries of comments received on the RFIs regarding community-based palliative care; the construction of a hospice specific wage index; and the overlap between hospice and Medical Aid in Dying (MAID) laws. Finally, this rule finalizes the addition of an icon to the *Medicare.gov* Compare Tool as part of the Hospice Quality Reporting Program (HQRP).

B. Summary of the Major Provisions

Section III.A.1. of this final rule includes updates to the hospice wage index and makes the application of the updated wage data budget neutral for all four levels of hospice care.

Section III.A.2. of this final rule includes the FY 2027 hospice payment update percentage.

Section III.A.3. of this final rule includes the FY 2027 hospice payment rates.

Section III.A.4. of this final rule updates the hospice cap amount for FY 2027 by the hospice payment update percentage.

Section III.B.1. of this final rule includes analysis of Medicare non-

hospice spending under a hospice election.

Section III.B.2. of this final rule includes details regarding a hospice SSVI.

Section III.C. of this final rule makes the hospice election statement addendum mandatory for all hospice elections.

Section III.D.1. of this final rule clarifies a regulation text change at § 418.26(b) that aligns the Conditions of Participation (CoPs) and payment regulations regarding who may discharge a patient from hospice care.

Section III.D.2. of this final rule includes technical regulation text changes at § 418.22(a)(4)(ii) to extend the end date of the telehealth allowance for the face-to-face encounter until December 31, 2027, as set forth at section 1814(a)(7)(D)(i)(II) of the Act, and to include a new requirement to include modifiers or codes for such encounters, and prohibit the use of telehealth to conduct the face-to-face encounter in specific situations related to moratoriums (section 1866(j)(7) of the Act), enhanced oversight (section 1866(j)(3) of the Act), or enrollment status (section 1866(j) of the Act).

Section III.E.1. of this final rule includes a summary of comments on our RFI on ways to enhance the provision of community-based palliative care outside of hospice care.

Section III.E.2. of this final rule includes a summary of comments on our RFI regarding the construction of a hospice specific wage index.

Section III.E.3. of this final rule includes a summary of comments on our RFI on Medical Aid in Dying laws.

Section III.F. of this final rule provides updates to the HQRP to include public reporting timeframes, future measures and adds a data submission icon to the Care Compare tool.

C. Summary of Impacts

The overall economic impact of this final rule is estimated to be \$755 million in increased payments to hospices in FY 2027.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define “palliative care” as patient and family-centered care that optimizes quality of life by anticipating,

preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary- and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(c)(1), to be certified for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director, physician designee, or physician member of the hospice interdisciplinary group must certify that the individual is "terminally ill," as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual has a medical prognosis that the individual's life expectancy is 6 months or less if the illness runs its normal course (§ 418.22(b)(1)). The regulations at § 418.22(b)(2) require that clinical information and other documentation that support the medical prognosis accompany the certification and be filed in the medical record with the written certification. The regulations at § 418.22(b)(3) require that the certification and recertification forms, or an addendum to the certification and recertification forms, include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice, and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of primarily home-based services. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about

changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary group (as specified at § 418.56(a)(1)), which includes the hospice physician, the patient's symptoms cannot be effectively managed at home, then the patient is eligible for general inpatient care (GIP), a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return home for hospice care (routine home care) (RHC). Limited, short-term, intermittent, inpatient respite care (IRC) is also available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. CHC may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with the regulations at § 418.204. A minimum of 8 hours of nursing care or nursing and aide care must be furnished on a particular day to qualify for the CHC rate (§ 418.302(e)(4)).

Hospices covered by this rule must comply with applicable civil rights laws, including section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, September 26, 1973), the Americans with Disabilities Act (Pub. L. 101–336, July 26, 1990), and section 1557 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, March 23, 2010), which prohibit covered entities from discriminating against individuals based on disability. This includes requiring covered entities to take appropriate steps to ensure that communication with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. Covered entities must also provide appropriate auxiliary aids and services when necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, companions, and members of the public, an equal opportunity to participate in, and enjoy

the benefits of, a service, program, or activity of a covered entity.¹

Covered entities must also take reasonable steps to provide meaningful access to individuals with limited English proficiency. Language assistance services such as the provision of interpreter and translation services must be provided free of charge.

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: nursing care; physical therapy; occupational therapy; speech-language pathology services; medical social services; home health aide services (called hospice aide services); physician's services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute and chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before such care is provided by, or under arrangements made by, the hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice

¹ Hospices receiving Medicare Part A funds or other Federal financial assistance from the Department are also subject to additional Federal civil rights laws, including the Age Discrimination Act, and are subject to conscience and religious freedom laws where applicable. CMS must ensure that pursuant to 42 U.S.C. 1396a(w) facilities provide written information to residents of their rights to have and make advance directives and that care facilities must respect the conscience rights of providers and healthcare workers in caring for patients with respect to advance directives and under 42 U.S.C. 1396a(w)(3).

benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, the Congress also expected hospices to continue to use volunteer services, although Medicare does not pay for these volunteer services (section 1861(dd)(2)(E) of the Act). As stated in the Health Care Financing Administration's (now Centers for Medicare & Medicaid Services (CMS)) proposed rule: Medicare Program; Hospice Care (48 FR 38149), the hospice must have an interdisciplinary group composed of paid hospice employees as well as hospice volunteers, and that "the hospice benefit with the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices." This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and the regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment based on one of four prospectively determined rate categories of hospice care (RHC, CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected the benefit). This per diem payment is meant to cover all hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payment made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, Federal funds cannot be used for prohibited activities, even in the context of a per diem payment. For example, hospices are prohibited from playing a role in medical aid in dying (MAID) where such practices have been legalized in certain States. The Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12, April 30, 1997) prohibits the use of Federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including "mercy killing, euthanasia, or assisted suicide." However, the prohibition does not pertain to the

provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

The Medicare hospice benefit has been revised and refined since its implementation after various Acts of Congress and Medicare rules. For a historical list of changes and regulatory actions, we refer readers to the background section of previous Hospice Wage Index and Payment Rate Update rules.²

III. Provisions of the Final Rule

A. FY 2027 Hospice Wage Index and Rate Update

1. FY 2027 Hospice Wage Index

a. Background

The hospice wage index is used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by the Office of Management and Budget (OMB) to Metropolitan Statistical Area (MSA) definitions.

In general, OMB issues major revisions to statistical areas every 10 years based on the results of the decennial census. On July 21, 2023, OMB issued Bulletin No. 23–01, which updated and superseded OMB Bulletin No. 20–01, issued on March 6, 2020. OMB Bulletin No. 23–01 established revised delineations for the MSAs, Micropolitan Statistical Areas, Combined Statistical Areas (CSAs), and Metropolitan Divisions, collectively referred to as Core Based Statistical Areas (CBSAs). According to OMB, the delineations reflect the 2020 Standards for Delineating Core Based Statistical Areas (the "2020 Standards"), which appeared in the **Federal Register** (86 FR 37770 through 37778) on July 16, 2021, and application of those standards to Census Bureau population and journey-to-work data (for example, 2020 Decennial Census, American Community Survey, and Census Population Estimates Program data). A

copy of OMB Bulletin No. 23–01 is available online at <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>.

The July 21, 2023 OMB Bulletin No. 23–01 contained a number of significant changes. For example, it designated new CBSAs, split some existing CBSAs, and changed some urban counties to rural and some rural counties to urban. We believe it is important for the hospice wage index to use the latest OMB delineations available to maintain the most accurate and up-to-date payment system, reflecting the reality of population shifts and labor market conditions. We further believe that using the most current OMB delineations increases the integrity of the hospice wage index by creating a more accurate representation of geographic variation in wage levels. Therefore, in the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64208 through 64224), we finalized the implementation of new labor market areas based on the revisions in OMB Bulletin No. 23–01 beginning in FY 2025.

b. Hospice Floor and 5 Percent Cap Policies

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. The pre-floor, pre-reclassified hospital wage index values below 0.8000 are adjusted by a 15 percent increase subject to a maximum wage index value of 0.8000. For example, if CBSA "A" has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8000, the CBSA "A's" hospice wage index would be 0.4593. In another example, if CBSA "B" has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15, which equals 0.8556. Because 0.8556 is greater than 0.8000, CBSA "B's" hospice wage index would be 0.8000.

In the FY 2023 Hospice Wage Index and Rate Update final rule (87 FR 45673), we finalized for FY 2023 and subsequent years the application of a permanent 5 percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, so that a geographic

² Hospice Regulations and Notices. <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-regulations-and-notices>.

area's wage index would not be less than 95 percent of its wage index calculated in the prior FY. When calculating the 5 percent cap on wage index decreases, we start with the current FY's pre-floor, pre-reclassification hospital wage index value for a CBSA or statewide rural area, and if that wage index value is below 0.8000, we apply the hospice floor as discussed previously in this section of the proposed rule. Next, we compare the current FY's wage index value after the application of the hospice floor to the final wage index value from the previous FY. If the current FY's wage index value is less than 95 percent of the previous year's wage index value, the 5 percent cap on wage index decreases would be applied and the final wage index value would be set equal to 95 percent of the previous FY's wage index value. If the 5 percent cap is applied in one FY, then in the subsequent FY, that year's pre-floor, pre-reclassification hospital wage index would be used as the starting wage index value and adjusted by the hospice floor. The hospice floor adjusted wage index value would be compared to the previous FY's wage index which had the 5 percent cap applied. If the hospice floor adjusted wage index value for that FY is less than 95 percent of the capped wage index from the previous year, then the 5 percent cap would be applied again, and the final wage index value would be 95 percent of the capped wage index from the previous FY. Using the example previously stated, if CBSA "A" has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. If CBSA "A" had a wage index value of 0.6200 in the previous FY, then we would compare 0.4593 to the previous FY's wage index value. Since 0.4593 is less than 95 percent of 0.6200, then CBSA "A"'s hospice wage index would be 0.5890, which is equal to 95 percent of the previous FY's wage index value of 0.6200. In the next FY, the updated wage index value would be compared to the wage index value of 0.5890.

Previously, this 5 percent cap methodology was applied to all the counties that make up a CBSA or rural area. However, beginning in FY 2025, we finalized a policy that the 5 percent cap methodology also be applied to individual counties. In the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64202), as a transition to the adoption of the revised delineations from OMB Bulletin No. 23–01, we finalized a policy applying the permanent 5 percent cap on wage index

decreases at the county level. Specifically, counties that were impacted by the revised designations beginning in FY 2025 would receive a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior FY. Also, beginning in FY 2025, counties that have a different wage index value than the CBSA or rural area into which they are designated due to the application of the 5 percent cap (including redesignated counties that will receive the 5 percent cap and redesignated counties that move into a CBSA or rural area where all other constituent counties receive the 5 percent cap) would use a wage index transition code. These special codes are five digits in length and begin with "50". The 50XXX wage index transition codes are used only in specific counties. Counties located in CBSAs and rural areas that do not correspond to a different transition wage index value will still use the CBSA number.

Finally, we finalized a policy to apply the 5 percent cap to a county that corresponds to a different wage index value than the wage index value assigned to the CBSA or rural area in which they are designated due to a delineation change until the county's new wage index is more than 95 percent of the wage index from the previous FY. To capture the correct wage index value, the county will continue to use the assigned 50XXX transition code until the county's wage index value calculated for that FY using the new OMB delineations is not less than 95 percent of the county's capped wage index from the previous FY. Once the county's wage index value calculated using the new OMB delineation is higher than 95 percent of their previous FY's wage index, the county will no longer use their assigned transition code. Instead, these counties will use the CBSA or rural county code of the area they were redesignated into based on OMB Bulletin No. 23–01. More information regarding these special codes can be found in the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64220 through 64224). Additionally, the list of counties that must use a 50XXX transition code for a given FY can be found as a separate tab in the hospice wage index file for that FY available on the CMS website at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index>.

While we did not propose any changes to the 5 percent cap policy for FY 2027, we did receive a few comments on these finalized policies. A summary of the comments and our

responses to those comments are as follows:

Comment: A few commenters expressed support for the finalized 5 percent cap policy.

Response: We thank the commenters for their support.

Comment: Other commenters recommended changes to the finalized cap percentage. A commenter recommended that CMS limit any reductions in wage index adjustments to an amount equal to or less than the market basket update. Alternatively, the commenter recommended that CMS only permit upward adjustments in CBSA wage index values. Another commenter recommended lowering the cap to 2.5 or 3 percent in order to protect hospice providers who are already operating with negative or "razor-thin" operating margins.

Response: We appreciate the commenters' recommendations; however, these comments are outside the scope of the proposed rule as we did not propose any changes to the wage index cap. Additionally, we continue to believe that a 5 percent cap on wage index decreases is sufficient as it provides a degree of predictability in payment changes for providers and allows providers time to adjust to any significant decreases they may face year to year. Also, while we appreciate the concerns raised by commenters on the financial impact of wage index decreases, we believe that 5 percent is a reasonable level for the cap because it effectively mitigates any significant decreases in a hospice's wage index for future FYs, while still balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Therefore, we do not believe that it would be appropriate to lower the cap percentage or to only permit upward wage index adjustments.

Final Decision: We did not propose any changes to finalized hospice floor and 5 percent cap policies. Therefore, the FY 2027 hospice wage index will continue to include the hospice floor as well as the 5 percent cap on wage index decreases. For FY 2027, the 5 percent cap on wage index decreases will also continue to be calculated at the county level. While some counties that required a transition code for FY 2025 and FY 2026 will continue to use the same transition code for FY 2027, other counties that previously required a transition code will no longer require a transition code in FY 2027. These counties will use the CBSA or rural county code of the area they were redesignated into based on OMB Bulletin No. 23–01. More information

regarding these special codes can be found in the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64220 through 64224). Additionally, the list of counties that must use a 50XXX transition code for a given FY can be found as a separate tab in the hospice wage index file for that FY available on the CMS website at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index>.

c. FY 2027 Hospice Wage Index

In the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we finalized a policy to use the current FY's hospital wage index data to calculate the hospice wage index values. For FY 2027, we proposed that the hospice wage index would be based on the FY 2027 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2022 and before October 1, 2023 (FY 2023 cost report data). We noted that the FY 2027 hospice wage index would not consider any geographic reclassification of hospitals, including those in accordance with sections 1886(d)(8)(B) or 1886(d)(10) of the Act. The regulations that govern hospice payment do not provide a mechanism for allowing hospices to seek geographic reclassification or to utilize the rural floor provisions that exist for Inpatient Prospective Payment System (IPPS) hospitals. The reclassification provision found in section 1886(d)(10) of the Act is specific to hospitals. Section 4410(a) of the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33, August 5, 1997) provides that the area wage index applicable to any hospital located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. This rural floor provision is also specific to hospitals. Because the reclassification and the hospital rural floor policies apply to hospitals only, and not to hospices, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index is the most appropriate adjustment to the labor portion of the hospice payment rates. This position is longstanding and consistent with other Medicare payment systems, for example, the skilled nursing facility prospective payment system (SNF PPS), the inpatient rehabilitation facility prospective payment system (IRF PPS), and the home health prospective payment system (HH PPS). However, the hospice wage index does include the hospice floor, which is applicable to all CBSAs, both rural and urban. The hospice floor

adjusts pre-floor, pre-reclassified hospital wage index values below 0.8000 by a 15 percent increase subject to a maximum wage index value of 0.8000. We proposed that the FY 2027 hospice wage index would continue to include the hospice floor as well as the 5 percent cap on wage index decreases.

We noted that the appropriate FY 2027 wage index value would be applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. We also noted that the appropriate FY 2027 wage index value would be applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

There exist some geographic areas where there are no hospitals, and thus, no hospital wage data on which to base the calculation of the hospice wage index. In the FY 2006 Hospice Wage Index and Rate Update final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all the CBSAs within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2027, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville, Georgia. As such, we proposed that the FY 2027 hospice wage index for Hinesville, Georgia would be 0.8917. Based on updated wage index data, the final FY 2027 hospice wage index value for Hinesville, Georgia is 0.8915.

In the FY 2008 Hospice Wage Index and Rate Update final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there is a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term “contiguous” means sharing a border (72 FR 50217). In the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64207), as part of our adoption of the revised OMB delineations, rural North Dakota became a rural area without a hospital from which hospital wage data can be derived. Therefore, to calculate the proposed FY 2027 wage index for rural area 99935, North Dakota, we used as a proxy the average pre-floor, pre-reclassified hospital wage data (updated by the hospice floor and 5 percent cap)

from the contiguous CBSAs: CBSA 13900-Bismark, ND, CBSA 22020-Fargo, ND–MN, CBSA 24220-Grand Forks, ND–MN and CBSA 33500, Minot, ND, which would result in a proposed FY 2027 hospice wage index of 0.8299 for rural North Dakota. Based on updated wage index data, the final FY 2027 hospice wage index value for rural North Dakota is 0.8297.

Additionally, in the FY 2026 Hospice Wage Index and Rate Update final rule (90 FR 37410), using our established methodology for rural areas with no hospitals, we finalized a policy that hospices that provide services in the Northern Mariana Islands and American Samoa should use CBSA 99965 (Guam) and should receive the wage index assigned to CBSA 99965 (Guam) of 0.9611. Previously, the only rural area without a hospital from which hospital wage data could be derived was in Puerto Rico. However, for rural Puerto Rico, we did not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity of almost all of Puerto Rico's various urban areas to non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than half of its urban areas). Instead, we used the most recent wage index previously available for that area, which was 0.4047, subsequently adjusted by the hospice floor for an adjusted wage index of 0.4654. For FY 2025, we noted as part of our adoption of the revised OMB delineations, there is now a hospital in rural Puerto Rico from which hospital wage data can be derived. Therefore, we finalized a wage index for rural Puerto Rico based on the hospital wage data for the area instead of the previously available pre-hospice floor wage index of 0.4047, which equaled an adjusted wage index value of 0.4654.

The proposed FY 2027 pre-hospice floor unadjusted wage index for rural Puerto Rico was 0.2577 subsequently adjusted by the hospice floor to equal 0.2964. Because 0.2964 is more than a 5 percent decline in the FY 2026 wage index, the adjusted proposed FY 2027 wage index with the 5 percent cap applied would equal 0.95 multiplied by 0.4200 (that is, the FY 2026 wage index with 5 percent cap), which would result in a proposed FY 2027 wage index value of 0.3990. Based on updated wage index data, the final FY 2027 pre-hospice floor unadjusted wage index for rural Puerto Rico is 0.2572 subsequently adjusted by the hospice floor to equal 0.2962. Because 0.2962 is more than a 5 percent decline from the FY 2026 wage index, the adjusted FY 2027 wage index for rural Puerto Rico with the 5 percent cap

applied would equal 0.95 multiplied by 0.4200 (that is, the FY 2026 wage index with 5 percent cap), which results in a final FY 2027 wage index value of 0.3990.

The hospice wage index applicable for FY 2027 (October 1, 2026 through September 30, 2027) is available on the Hospice Regulations and Notices web page at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-regulations-and-notices> and the Hospice Wage Index web page located at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index>.

We received several comments on the proposed FY 2027 hospice wage index. A summary of the comments and our responses to those comments are as follows:

Comment: Commenters broadly supported the concept of updating the hospice wage index but opposed the current hospital-based methodology as fundamentally misaligned with hospice labor markets. Multiple commenters argued that basing hospice wages on acute care hospital cost report data fails to capture hospice-specific costs such as clinician travel, home-based care delivery, and a workforce mix dominated by nurses, social workers, and aides rather than hospital occupational categories.

A few commenters expressed concern that hospice providers are unable to benefit from IPPS hospital wage index policies such as geographic reclassification and the rural floor. A commenter recommended that CMS develop a hospice-specific geographic reclassification pathway.

Another commenter recommended several smoothing methodologies that better reflect shared labor markets and reduce artificial payment cliffs such as regional rural smoothing across contiguous States; blended wage index methodologies that limit extreme variation unsupported by labor cost data; and transition policies that protect access to care and workforce stability during wage index reform.

Response: We appreciate the commenters' concerns related to the FY 2027 hospice wage index and thank the commenters for their recommendations. While we did not propose any changes to the FY 2027 hospice wage index methodology in the proposed rule, we did request information on changes to the hospice wage index methodology and may consider these recommendations and the comments received on the RFI in future rulemaking. A discussion of the comments received on the RFI for a new hospice specific wage index can be

found in section III.E.2. of this final rule.

Comment: A commenter recommended technical improvements to the Wage Index file. This commenter requested a separate column in the Transition Codes tab of the final Wage Index file that distinguishes those counties that completed their transition in a prior FY from those newly entering or continuing transition in FY 2027. The commenter stated that the addition of this column to the file would help EHR developers and hospice billing staff determine, from the FY 2027 file alone, which county wage index values reflect a completed transition versus an ongoing one.

Response: We thank the commenter for the recommendation. We have updated the FY 2027 Wage Index File with a new column labeled "Transition Code Status". This column outlines whether the transition code should continue to be used for FY 2027 or the FY that the code was phased out.

Final Decision: After consideration of public comments, we are finalizing our proposal to use the FY 2027 pre-floor, pre-reclassified hospital wage index data as the basis for the FY 2027 hospice wage index. The wage index applicable for FY 2027 is available on our website at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index>. The hospice wage index for FY 2027 is effective October 1, 2026, through September 30, 2027.

2. FY 2027 Hospice Payment Update Percentage

Section 4441(a) of the BBA of 1997 amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus one percentage point. Payment rates for FYs since 2002 have been updated as required by section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient hospital market basket percentage increase for that FY. In the FY 2022 IPPS/LTCH PPS final rule (86 FR 45194 through 45204), we finalized the rebased and revised IPPS market basket to reflect a 2018 base year. In the FY 2026 IPPS/LTCH PPS final rule (90 FR 36859 through 36866), we finalized the rebased and revised IPPS market basket to reflect a 2023 base year, to begin in FY 2026.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY

2013 (and in subsequent FYs), the hospice payment update percentage be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The Act defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period (the "productivity adjustment"). The United States Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the United States economy. The productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is published by BLS as private nonfarm business total factor productivity (TFP) (previously referred to as multifactor productivity).³ We refer readers to <https://www.bls.gov/productivity> for the BLS historical published TFP data. A complete description of IHS Global Inc.'s (IGIs) TFP projection methodology is available on the CMS website at <https://www.cms.gov/data-research/statistics-trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information>.

Consistent with our historical practice, we estimate the market basket percentage increase, and the productivity adjustment based on IGI's forecast, using the most recent available data. The proposed hospice payment update percentage for FY 2027 was based on the most recent estimate of the inpatient hospital market basket (based on IGI's fourth quarter 2025 forecast). Due to the requirements at sections 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the proposed inpatient hospital market basket percentage increase for FY 2027 of 3.2 percent was required to be reduced by a productivity adjustment as mandated by section 3401(g) of the Affordable Care Act. The proposed productivity adjustment for FY 2027 was 0.8 percentage point (based on IGI's fourth quarter 2025 forecast). Therefore, the proposed hospice payment update percentage for FY 2027 was 2.4 percent. We also proposed that if more recent data became available after the publication of the proposed rule and before the publication of this final rule (for example, a more recent estimate of the inpatient hospital market basket percentage increase or productivity adjustment), we would use such data, if

³ <https://www.bls.gov/productivity/notices/2021/mfp-to-tpf-term-change.htm>.

appropriate, to determine the hospice payment update percentage in the FY 2027 Hospice Wage Index and Rate Update final rule.

In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42532), we rebased and revised the labor shares for RHC, CHC, GIP, and IRC using Medicare cost report data for freestanding hospices (CMS Form 1984–14, OMB Control Number 0938–0758) from 2018. The current labor portion of the payment rates are: RHC, 66.0 percent; CHC, 75.2 percent; GIP, 63.5 percent; and IRC, 61.0 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. The non-labor portion of the payment rates are as follows: RHC, 34.0 percent; CHC, 24.8 percent; GIP, 36.5 percent; and IRC, 39.0 percent.

We received public comments on our proposal for the FY 2027 hospice payment update percentage. The following is a summary of the comments we received and our responses.

Comment: Numerous commenters, including national associations, State hospice associations, large health systems, and individual providers, expressed strong concerns that the proposed 2.4 percent FY 2027 hospice payment update is insufficient to keep pace with the actual cost of delivering high-quality hospice care. Commenters specifically stated that this proposed update would not sufficiently account for the cost pressures, including rising labor costs, transportation expenses, and medical supply inflation. Commenters stated they continue to grapple with a healthcare workforce shortage causing intense competition for skilled staff, including nurses, social workers, aides, and other professionals, driving wages upward. Commenters referenced the BLS data which indicate that the Employment Cost Index (ECI) for Compensation for Healthcare and Social Assistance increased by 4 percent on average over the most recent year (12 months ending March 2026). Commenters also raised concerns about the impact of rapidly increasing gas prices on transportation costs, particularly for rural and nonprofit hospices that they stated have margins that are extremely limited and at times negative.

A commenter also stated that the hospice Medicare per diem payment increased approximately 16.1 percent from 2018 through the proposed FY 2027 rates while general inflation as measured by the Consumer Price Index (CPI) increased approximately 28.3 percent. The commenter acknowledged that the CPI is not a hospice-specific cost index, but stated it illustrates the

broader inflationary pressure facing the hospice labor and transportation intensive model of care. Several commenters expressed that inadequately funding hospice services risks access for vulnerable Medicare beneficiaries, especially in rural and underserved communities.

Several commenters recommended CMS use the most recent data available to more accurately align the FY 2027 payment update with rising cost pressures (including increasing operational and regulatory costs) and actual inflationary increases. Several commenters also noted that pharmaceutical, durable medical equipment (DME), and supply costs are rising at a faster rate than the proposed payment update. Commenters also pointed out that the new regulatory and compliance burdens introduced in the FY 2027 Hospice Wage Index and Rate Update proposed rule (for example, Hospice Outcomes and Patient Evaluation (HOPE) tool implementation, the Service and Spending Variation Index (SSVI), and the mandatory election statement addendum) require additional staffing and technology investments that the proposed update does not take into account.

Commenters further noted that nonprofit hospice providers are particularly vulnerable, with Medicare Payment Advisory Commission (MedPAC) reporting an aggregate Medicare margin of –1.3 percent for nonprofit hospices in 2023, compared to 13.7 percent for for-profit providers. Several commenters reported that nonprofit and rural hospices are increasingly relying on philanthropic funds to sustain operations. Commenters urged CMS to finalize the highest payment update supported by the most current available data, with specific recommendations ranging from a modest additional increase (for example, +0.6 percent by UHG) to more substantial adjustments (for example, 6 percent by THAH, 8 percent by Pennant).

Several commenters recommended that CMS continue to evaluate whether the inpatient hospital market basket remains an appropriate proxy for hospice cost structures and supported the development of a hospice-specific market basket as a long-term policy priority.

Response: We acknowledge and appreciate the commenters' concerns regarding the proposed FY 2027 hospice payment update and acknowledge the cost pressures described by commenters as they relate to labor, transportation, pharmaceuticals, supplies, and regulatory compliance. We recognize

that hospice care is a labor-intensive, community-based benefit and that providers face real and ongoing financial challenges in the current economic environment. We acknowledge commenters request for a higher FY 2027 update or an alternative payment update that deviates from the statutorily required IPPS market basket percentage increase reduced by the productivity adjustment.

We also appreciate the commenters' request for the development of a hospice-specific market basket; however, we are required to update hospice payments pursuant to section 1814(i)(1)(C)(ii)(VII) of the Act which requires us to update hospice PPS payments by the IPPS market basket percentage increase (as defined in section 1886(b)(3)(B)(iii) of the Act) reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. We do not have discretionary authority to deviate from this statutory formula. We note in the FY 2026 IPPS/LTCH final rule (90 FR 36859 through 36873), we rebased and revised the IPPS market basket to reflect a 2023 base year. Section 1886(b)(3)(B)(iii) of the Act states the Secretary shall update IPPS payments based on a market basket percentage increase estimated by the Secretary before the beginning of the period or FY, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services.

The IPPS market basket is a fixed-weight, Laspeyres-type index that measures price changes over time and would not reflect increases in costs associated with changes in the volume or intensity of input goods and services. As such, the IPPS market basket update would reflect the prospective price pressures described by the commenters during a high inflation period (such as faster wage growth or higher energy prices) but might not reflect other factors that could increase costs such as the quantity of labor used or any shifts between contract and staff nurses. We note that cost changes (that is, the product of price and quantities) would only be reflected when a market basket is rebased, and the base year weights are updated to a more recent time period. As noted previously, we rebased and revised the IPPS market basket to reflect a 2023 base year effective for the FY

2026 IPPS payment update (90 FR 36859 through 36873).

We highlight that the market basket percentage increase is a forecast of the price pressures that hospitals are expected to face in FY 2027. We also note that when developing its forecast for the various price indexes used in the IPPS market basket, IGI considers industry-specific and overall economic conditions (including but not limited to overall economic growth and the impact of rising fuel prices). More specifically for the ECI for hospital workers (which is used to measure compensation prices), IGI considers overall labor market conditions (including the impact of wage pressures on skill mix) as well as trends in contract labor wages, which both have an impact on wage pressures for workers employed directly by the hospital.

As stated in the FY 2027 IPPS/LTCH proposed rule (91 FR 19312), we proposed a FY 2027 applicable percentage increase of 2.4 percent, reflecting the 2023-based IPPS market basket percentage increase of 3.2 percent and a productivity adjustment of 0.8 percent. We also proposed that if more recent data became available, we would use such data, if appropriate, to derive the final FY 2027 IPPS market basket update for the final rule. We appreciate the commenters' concerns regarding inflationary pressure and the request to use more recent data to determine the FY 2027 IPPS market basket update.

For this final rule, we are using an updated forecast of the price proxies underlying the market basket that incorporates more recent historical data and reflects a revised outlook regarding the U.S. economy. Therefore, for FY 2027, based on more recent data available for this final rule (that is, IGI's second quarter 2026 forecast of the 2023-based IPPS market basket percentage increase with historical data through the first quarter of 2026), we estimate that the FY 2027 IPPS market basket increase is 3.2 percent, which is the same as was included in the proposed rule.

Based on IGI's second quarter 2026 forecast, we are also projecting a productivity adjustment of 0.9 percent that is 0.1 percentage point higher than in the proposed rule primarily due to the incorporation of historical TFP data from BLS. Therefore, for FY 2027 a final IPPS market basket update of 2.3 percent (3.2 percent less 0.9 percentage point) will be applicable, which is slightly lower than the proposed IPPS market basket update of 2.4 percent.

We acknowledge commenters' concerns regarding the adequacy of the

inpatient hospital market basket as a proxy for hospice-specific cost structures, particularly with respect to labor, transportation, and community-based care delivery costs. We will continue to monitor hospice payment adequacy, including through MedPAC's annual analyses of hospice margins and access indicators, and will consider whether future rulemaking actions are warranted to better reflect the cost structure of hospice care. We also encourage interested parties to continue working with Congress on legislative solutions to address payment adequacy concerns that fall outside CMS' administrative authority.

Productivity Adjustment

Comment: Multiple commenters raised concerns about the appropriateness of applying the 0.8 percentage point total factor productivity (TFP) adjustment to hospice payment updates. Commenters recognized that CMS is statutorily required to apply the productivity adjustment based on the 10-year moving average of changes in annual economy-wide private nonfarm business total factor productivity; however, they expressed concerns about the adjustment. Commenters stated that the productivity adjustment largely reflects output growth driven by technology, capital investment, and process efficiencies—factors more applicable to manufacturing and other capital-intensive sectors.

Commenters noted that technology has been transformative in other parts of healthcare, such as through the use of artificial intelligence (AI) in imaging and diagnostics, but those gains do not translate to the hands-on, relational work of hospice and note that unlike institutional providers, hospices have limited ability to achieve productivity gains through technology adoption or workflow optimization, as the majority of costs are driven by direct labor and travel. They remained concerned that this adjustment does not fairly reflect the nature of hospice care, which is fundamentally labor-intensive and not amenable to typical economy-wide productivity gains.

Several commenters urged CMS to acknowledge in the final rule that the productivity adjustment does not reflect hospice-specific workforce realities, and several commenters recommended that CMS work with the Congress to repeal or suspend the productivity adjustment for hospice, or at minimum moderate its application for FY 2027. A commenter specifically requested that CMS seek legislative language repealing section

3401(g) of the Affordable Care Act as it applies to hospice reimbursement.

Response: As we noted in the proposed rule, the productivity adjustment is required by section 1886(b)(3)(B)(xi)(II) of the Act, as amended by section 3401(g) of the Affordable Care Act, which mandates that starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage be annually reduced by changes in economy-wide productivity. As required by statute, the FY 2027 productivity adjustment is derived based on the 10-year moving average growth in economy-wide private nonfarm business total factor productivity for the period ending FY 2027. We recognize the commenters' concerns regarding the appropriateness of the productivity adjustment; however, we are required pursuant to section 1886(b)(3)(B)(xi)(II) of the Act to apply the specific productivity adjustment described here.

We acknowledge commenters' observations that the TFP metric, which is derived from economy-wide productivity trends, may not fully reflect the productivity gains realistically achievable in a labor-intensive, home-based care model such as hospice. To the extent that commenters believe the statutory productivity adjustment is inappropriate for hospice, we encourage interested parties to engage with the Congress on potential legislative modifications to section 3401(g) of the Affordable Care Act. We will continue to work with the Congress and interested parties on longer-term payment reform issues that fall within the scope of our current administrative authority.

The general method for calculating the productivity adjustment is available on the CMS website including a link to the most recent BLS historical TFP data, which allows interested parties to obtain historical TFP annual index levels for 1987 through 2025. We also provided the IGI projection model (https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/downloads/tfp_methodology.pdf), which is used to derive annual TFP growth rates for 2026 and 2027. The annual index level derived from this method is then interpolated to quarterly levels, and the FY 2027 productivity adjustment is equal to the percent change in the 40-quarter moving average projected level for the period ending September 30, 2027, relative to the 40-quarter moving average projected level for the period ending September 30, 2026. We believe

our methodology for the productivity adjustment is consistent with section 1886(b)(3)(B)(xi)(II) of the Act which states that the productivity adjustment is equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period).

At the time of this final rule, the 2027 productivity adjustment reflects BLS historical TFP data through 2025 (released on March 19, 2026) and IGI's forecasted TFP growth for 2026 and 2027. The average annual growth rate of historical TFP published by BLS for 2018 through 2025 is currently 1.0 percent and IGI is projecting average TFP growth of about 0.7 percent for 2026 and 2027 based on IGI's second quarter 2026 forecast. Combining the historical and projected TFP data over the entire 10-year time period and interpolating into quarterly index levels results in a 10-year moving average growth rate of TFP of 0.9 percent for FY 2027. The productivity adjustment (based on the 10-year period ending with FY 2027) for the FY 2027 Hospice Wage Index and Rate Update final rule is 0.1 percentage point higher than the productivity adjustment for the FY 2027 Hospice Wage Index and Rate Update proposed rule mainly due to the incorporation of updated BLS historical data.

Forecast Error

Comment: Many commenters raised concerns about the cumulative financial impact of persistent market basket forecast errors on hospice payment adequacy. Commenters noted that CMS' annual payment updates are based on forecasts of future price growth rather than actual historical price inflation, and that these forecasts have consistently underestimated actual inflation over the past 5 years. Many commenters requested CMS make a one-time market basket adjustment to account for the cumulative shortfall in hospice payment rates due to forecast errors from FYs 2022 through 2026. Commenters also stated that because annual payment updates compound, the impact of forecast errors is cumulative. They further stated that Medicare hospice expenditures totaled about \$30.3 billion in FY 2025 so a 4 percent shortfall equates to over \$1 billion in annual underpayments relative to what payments would have been with accurate market basket updates and that hospices are almost entirely dependent on Medicare, which accounts for

approximately 90 percent of hospice payments nationally, leaving providers with no alternative payer source to offset Medicare underpayments.

Commenters urged CMS to consider any and all opportunities to implement one-time catch-up adjustment for hospice payments, as has been done in the past for other payment systems such as the Skilled Nursing Facility PPS. Some commenters requested that CMS establish a formal regulatory mechanism for correcting hospice market basket forecast errors going forward.

Response: We thank the commenters for their recommendations. The inpatient hospital market basket percentage increases are required by law to be set prospectively, which means that the update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. As we have previously indicated (88 FR 51173), there is currently no mechanism to adjust for market basket forecast error in the hospice payment update. Furthermore, beginning in 1989, the Congress gave hospices their first increase (20 percent) in reimbursement since 1986 and tied future increases to the annual increase in the hospital market basket through a provision contained in the Omnibus Budget Reconciliation Act of 1989. While the projected IPPS hospital market basket updates for FY 2021 through FY 2025 (the last historical FY) were under forecast (actual increases less forecasted increases were positive), this was largely due to unanticipated inflationary and labor market pressures as the economy emerged from the COVID-19 public health emergency. The forecast error has been both positive and negative during past years, and over longer periods of time the cumulative forecast has not deviated significantly from the historical measures.

Final Decision: We are finalizing the FY 2027 hospice payment update using the methodology outlined. Based on the more recent IGI second quarter 2026 forecast with historical data through the first quarter of 2026, the 2023-based IPPS market basket increase factor for FY 2027 is 3.2 percent. The FY 2027 productivity adjustment based on the more recent IGI second quarter 2026 forecast is 0.9 percentage point. Therefore, we are finalizing for FY 2027, a hospice payment update percentage of 2.3 percent (3.2 percent market basket percentage increase less a 0.9 percentage point productivity adjustment).

3. Final FY 2027 Hospice Payment Rates

There are four payment categories that are distinguished by the location and

intensity of the hospice services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP care is intended to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for day 61 and subsequent days. In addition, in that final rule, we implemented a Service Intensity Add-On (SIA) payment for RHC when direct patient care is provided by a registered nurse (RN) or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occur on the day of service if certain criteria are met. To maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by an SIA budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate to ensure that SIA payments are budget neutral. At the beginning of every FY, SIA utilization is compared to the prior year in order calculate a budget neutrality adjustment. For FY 2027, the proposed SIA budget neutrality factor is 0.9999 for RHC days 1–60 and 0.9999 for RHC days 61+. With updated FY 2025 claims data (as of May 12, 2026), the final CY 2027 SIA budget neutrality factor is 0.9999 for days 1–60 and 0.9999 for RHC days 61+.

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments to eliminate the aggregate effect of annual variations in hospital wage data. For FY 2027 hospice rate setting, we are continuing our longstanding policy of using the most recent data available. Specifically, we proposed using FY 2025 claims data (as of January 15, 2026) for the FY 2027 payment rate updates. We note that the budget neutrality factors and payment rates would be updated with more complete FY 2025 claims data in the FY 2027 Hospice Wage Index and Rate Update final rule. The wage index

standardization factor is calculated by simulating total payments using FY 2025 hospice utilization claims data with the FY 2026 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor and the 5 percent cap on wage index decreases) and FY 2026 payment rates and compare it to our simulation of total payments using FY 2025 utilization claims data, the FY 2027 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the 5 percent cap on wage index decreases) and FY 2026 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP)

using the FY 2026 wage index and FY 2026 payment rates for each level of care by the FY 2027 wage index and FY 2026 payment rates, we obtain a wage index standardization factor for each level of care.

With updated claims data (as of May 12, 2026), the wage index standardization factor was calculated by simulating total payments using FY 2025 hospice utilization claims data with the FY 2026 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor and the 5 percent cap on wage index decreases) and FY 2026 payment rates and compare it to our simulation of total payments using FY 2025 utilization claims data, the FY

2027 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the 5 percent cap on wage index decreases) and FY 2026 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2026 wage index and FY 2026 payment rates for each level of care by the FY 2027 wage index and FY 2026 payment rates, we obtain a wage index standardization factor for each level of care. The final FY 2027 wage index standardization factors using FY 2025 claims data (as of May 12, 2026) for each level of care are shown in Tables 1 and 2.

TABLE 1: Final FY 2027 Hospice RHC Payment Rates

Code	Description	FY 2026 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2027 Hospice Payment Update	FY 2027 Payment Rates
651	Routine Home Care (days 1-60)	\$230.83	0.9999	1.0010	1.023	\$236.35
651	Routine Home Care (days 61+)	\$181.94	0.9999	1.0013	1.023	\$186.35

TABLE 2: Final FY 2027 Hospice CHC, IRC, and GIP Payment Rates

Code	Description	FY 2026 Payment Rates	Wage Index Standardization Factor	FY 2027 Hospice Payment Update	FY 2027 Payment Rates
652	Continuous Home Care Full Rate = 24 hours of care.	\$1,674.29	1.0080	1.023	\$1,726.50 \$71.94 per hour
655	Inpatient Respite Care	\$532.48	1.0023	1.023	\$545.98
656	General Inpatient Care	\$1,199.86	1.0034	1.023	\$1,231.63

Note: The SIA budget neutrality factors are only applied to the RHC rates, therefore, no SIA budget neutrality factors are used to calculate the rates for CHC, IRC and GIP.

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index and Rate Update final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by those sections. Hospices were

required to begin collecting quality data in October 2012 and submit those quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that for FY 2014 through FY 2023, the Secretary shall reduce the market basket percentage increase by 2 percentage points for any hospice that does not comply with the quality data

submission requirements with respect to that FY. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the Consolidated Appropriations Act (CAA), 2021 (Pub. L. 116–260) to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage

points. Depending on the amount of the annual update for a particular year, a reduction of 4 percentage points beginning in FY 2024 makes a negative payment update more likely than the previous 2 percent reduction. This could result in the annual market basket update being less than zero percent for

a FY and may result in payment rates that are less than payment rates for the preceding FY. We applied this policy beginning with the FY 2024 Annual Payment Update (APU), which we based on CY 2022 quality data. Therefore, the final FY 2027 rates for hospices that do not submit the required quality data

would be updated by – 1.7 percent, which is the final FY 2027 hospice payment update percentage of 2.3 percent minus 4 percentage points. The final payment rates for hospices that do not submit the required quality data are shown in Tables 3 and 4.

TABLE 3: Final FY 2027 Hospice RHC Payment Rates for Hospices That *DO NOT* Submit the Required Quality Data

Code	Description	FY 2026 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2027 Hospice Payment Update of 2.3% minus 4 percentage points = - 1.7%	FY 2027 Payment Rates
651	Routine Home Care (days 1-60)	\$230.83	0.9999	1.0010	0.983	\$227.11
651	Routine Home Care (days 61+)	\$181.94	0.9999	1.0013	0.983	\$179.06

TABLE 4: Final FY 2027 Hospice CHC, IRC, and GIP Payment Rates for Hospices That *DO NOT* Submit the Required Quality Data

Code	Description	FY 2026 Payment Rates	Wage Index Standardization Factor	FY 2027 Hospice Payment Update of 2.3% minus 4 percentage points = - 1.7%	FY 2027 Payment Rates
652	Continuous Home Care Full Rate = 24 hours of care.	\$1,674.29	1.0080	0.983	\$1,658.99 \$69.12 per hour
655	Inpatient Respite Care	\$532.48	1.0023	0.983	\$524.63
656	General Inpatient Care	\$1,199.86	1.0034	0.983	\$1,183.47

Note: The SIA budget neutrality factors are only applied to the RHC rates, therefore, no SIA budget neutrality factors are used to calculate the rates for CHC, IRC and GIP.

We did not receive any comments on the proposed FY 2027 hospice payment rates.

Final Decision: We are finalizing the FY 2027 hospice payment rates, SIA budget neutrality factor, and wage index standardization factors. The final FY 2027 RHC payment rates are shown in Table 1. The final FY 2027 payment rates for CHC, IRC, and GIP are shown

in Table 2. The final payment rates for hospices that do not submit the required quality data are shown in Tables 3 and 4.

4. Hospice Cap Amount for FY 2027

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014

(Pub. L. 113–185, Oct. 6, 2014). Specifically, we stated that for accounting years that end after September 30, 2016, and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the Consumer Price Index for All Urban Consumers (CPI-U). Division CC, section 404 of the CAA, 2021 extended the accounting years

impacted by the adjustment made to the hospice cap calculation until 2030. In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42539), we finalized conforming regulation text changes at § 418.309 to reflect the provisions of the CAA, 2021. Division P, section 312 of the CAA, 2022 (Pub. L. 117–103, March 15, 2022) amended section 1814(i)(2)(B) of the Act and extended the provision that mandates the hospice cap be updated by the hospice payment update percentage (the inpatient hospital market basket percentage increase reduced by the productivity adjustment) rather than the CPI-U for accounting years that end after September 30, 2016 and before October 1, 2031. Division FF, section 4162 of the CAA, 2023 (Pub. L. 117–328, December 29, 2022) amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (the inpatient hospital market basket percentage increase reduced by the productivity adjustment) rather than the CPI-U for accounting years that end after September 30, 2016 and before October 1, 2032. Division G, section 308 of the Consolidated Appropriations Act, 2024 (CAA, 2024) (Pub. L. 118–42, March 9, 2024) extends this provision to October 1, 2033. Therefore, for accounting years that end after September 30, 2016, and before October 1, 2033, the hospice cap amount is updated by the hospice payment update percentage rather than the CPI-U. In the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64202), as a result of the changes mandated by the CAA, 2024, we finalized conforming regulation text changes at § 418.309 to reflect the revisions at section 1814(i)(2)(B) of the Act.

Division J, section 6218 of the Consolidated Appropriations Act, 2026 (CAA, 2026) (Pub. L. 119–75, February 3, 2026) amended section 1814(i)(2)(B) of the Act and extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2035. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI-U beginning on October 1, 2033. Therefore, for accounting years that end after September 30, 2016, and before October 1, 2035, the hospice cap amount is updated by the hospice payment update percentage rather than the CPI-U. As a result of the changes mandated by the CAA, 2026, we proposed conforming regulation text changes at § 418.309 to reflect the

revisions at section 1814(i)(2)(B) of the Act.

The proposed hospice cap amount for the FY 2027 cap year was \$36,210.11, which is equal to the FY 2026 cap amount (\$35,361.44) updated by the proposed FY 2027 hospice payment update of 2.4 percent. We also proposed that if more recent data became available after the publication of the proposed rule and before the publication of this final rule (for example, a more recent estimate of the hospice payment update percentage), we would use such data, if appropriate, to determine the hospice cap amount in the FY 2027 Hospice Wage Index and Rate Update final rule. Using updated FY 2025 hospice claims data (as of May 12, 2026), the final cap amount for the FY 2027 cap year will be \$36,174.75 which is equal to the FY 2026 cap amount (\$35,361.44) increased by the final FY 2027 hospice payment update of 2.3 percent.

We received public comments on our proposed update to the hospice cap for FY 2027. The following is a summary of the comments we received and our responses.

Comment: While some commenters expressed support for the proposed 2.4 percent update to the FY 2027 hospice cap amount, most commenters recommended a higher hospice update percentage than the proposed 2.4 percent increase. A commenter recommended that the cap amount be updated by a minimum of 8 percent to match rising costs and ensure equitable hospice access. Other commenters argued that the current hospice cap methodology disproportionately impacts providers in high-cost States and recommended that the hospice cap amount be geographically adjusted. A commenter suggested that the wage index can at times cause hospice providers in States like California to reach hospice cap payment thresholds in less than 4 months. This commenter recommended that the hospice cap be calculated with a hospice specific wage index and cap threshold across all States.

Several commenters recommended more far-reaching reforms to the hospice cap methodology than the proposed wage index policies outlined in the FY 2027 Hospice Wage Index and Rate Update proposed rule. These commenters recommended replacing the aggregate cap with more targeted program integrity tools such as claims-based analytics, ownership screening and the SSVI, and focusing enforcement on ownership patterns, abnormal utilization, and suspicious billing rather than penalizing compliant providers

through a uniform national dollar threshold.

Several commenters argued that the hospice cap is outdated and may create unintended consequences for compliant hospices as well as beneficiaries. A commenter suggested that the cap creates challenges for responsible hospices that admit patients who are appropriate for hospice but have used multiple benefit periods under care with a bad actor, including hospices that may have admitted or retained patients inappropriately. Another commenter recommended that CMS examine the impact of the hospice aggregate cap on providers serving larger shares of low-income and otherwise economically vulnerable beneficiaries and suggested that the hospice cap can create incentives to avoid patients who are expected to need longer stays or more complex supportive services.

Response: We thank the commenters for their recommendations pertaining to the hospice cap; however, we are required by law to update the hospice cap amount from the preceding year by the hospice payment update percentage, in accordance with section 1814(i)(2)(B)(ii) of the Act. Therefore, we do not have the statutory authority to replace the hospice cap, update the cap amount in a different manner, nor account for regional cost differentials by geographically adjusting the hospice cap.

Final Decision: We are finalizing the update to the hospice cap amount for FY 2027 in accordance with statutorily mandated requirements and the proposed regulation text change at § 418.309 to reflect the revisions at section 1814(i)(2)(B) of the Act, which require that, for accounting years that end after September 30, 2016, and before October 1, 2035, the hospice cap amount be updated by the hospice payment update percentage rather than the CPI-U. The final cap amount for the FY 2027 cap year will be \$36,174.75, which is equal to the FY 2026 cap amount (\$35,361.44) increased by the final FY 2027 hospice payment update of 2.3 percent.

B. Non-Hospice Spending During a Hospice Election

1. Medicare Non-Hospice Spending *a. Background*

The Medicare hospice per diem payment amounts were developed to cover all services needed for the palliation and management of the terminal illness and related conditions, as described in section 1861(dd)(1) of the Act. Hospice services provided under a written plan of care (POC)

should reflect patient and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments as outlined in the hospice CoPs at § 418.56. As referenced in our regulations at § 418.64, a hospice must routinely provide all core services directly by hospice employees and they must be provided in a manner consistent with acceptable standards of practice. Under the current payment system, hospices are paid for each day that a beneficiary is enrolled in hospice care, regardless of whether services are rendered on any given day.

Additionally, when a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the treatment of the terminal illness and related conditions, except for services provided by the designated hospice and

the attending physician. The comprehensive nature of the services covered under the Medicare hospice benefit is structured so that hospice beneficiaries would not have to routinely seek items, services, and medications beyond those provided by hospice. We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life, and we have reiterated since 1983 that “virtually all” care needed by the terminally ill individual would be provided by the hospice (48 FR 56010, 84 FR 38509, 85 FR 47091, 86 FR 19713, 88 FR 20032, 89 FR 64202). Hospices are required to provide the individual (or representative) with information indicating that services unrelated to the terminal illness and related conditions are exceptional and unusual and the hospice should be providing virtually all care needed by the individual who

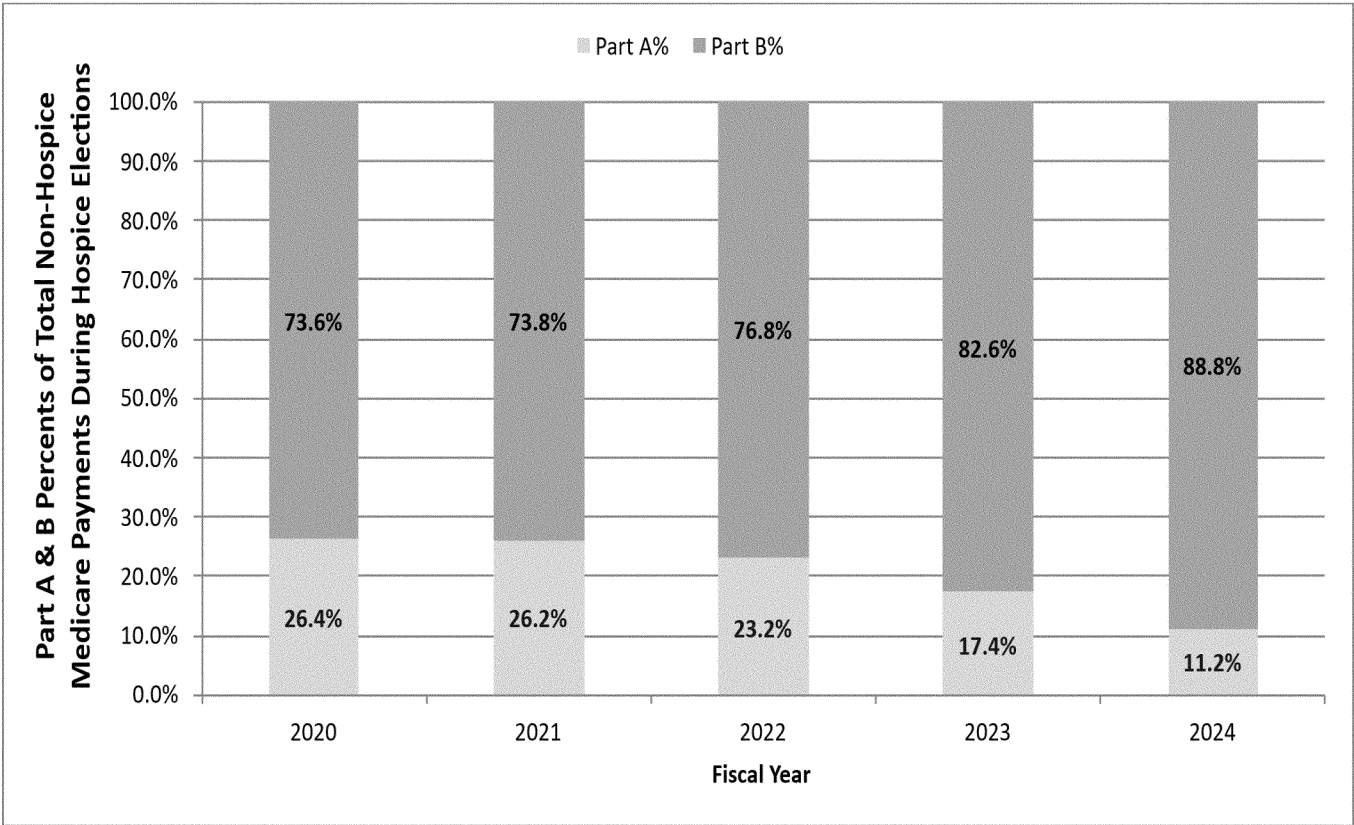
has elected hospice, as codified in regulations at § 418.24(b)(3).

b. Medicare Non-Hospice Spending Since Implementation of the Hospice Election Statement Addendum

Since the implementation of the hospice election statement addendum requirement in FY 2020 (84 FR 38484), which must be provided upon request, Medicare non-hospice spending for beneficiaries who have elected the hospice benefit has shown substantial and consistent growth. In the FY 2027 Hospice Wage Index and Payment Rate Update proposed rule (91 FR 17338), we provided data on nonhospice spending during a hospice election. Specifically, we noted that Medicare paid over \$2.8 billion in non-hospice spending during a hospice election in FY 2024 for items and services under Parts A, B, and D (see Figures B1 and B2).

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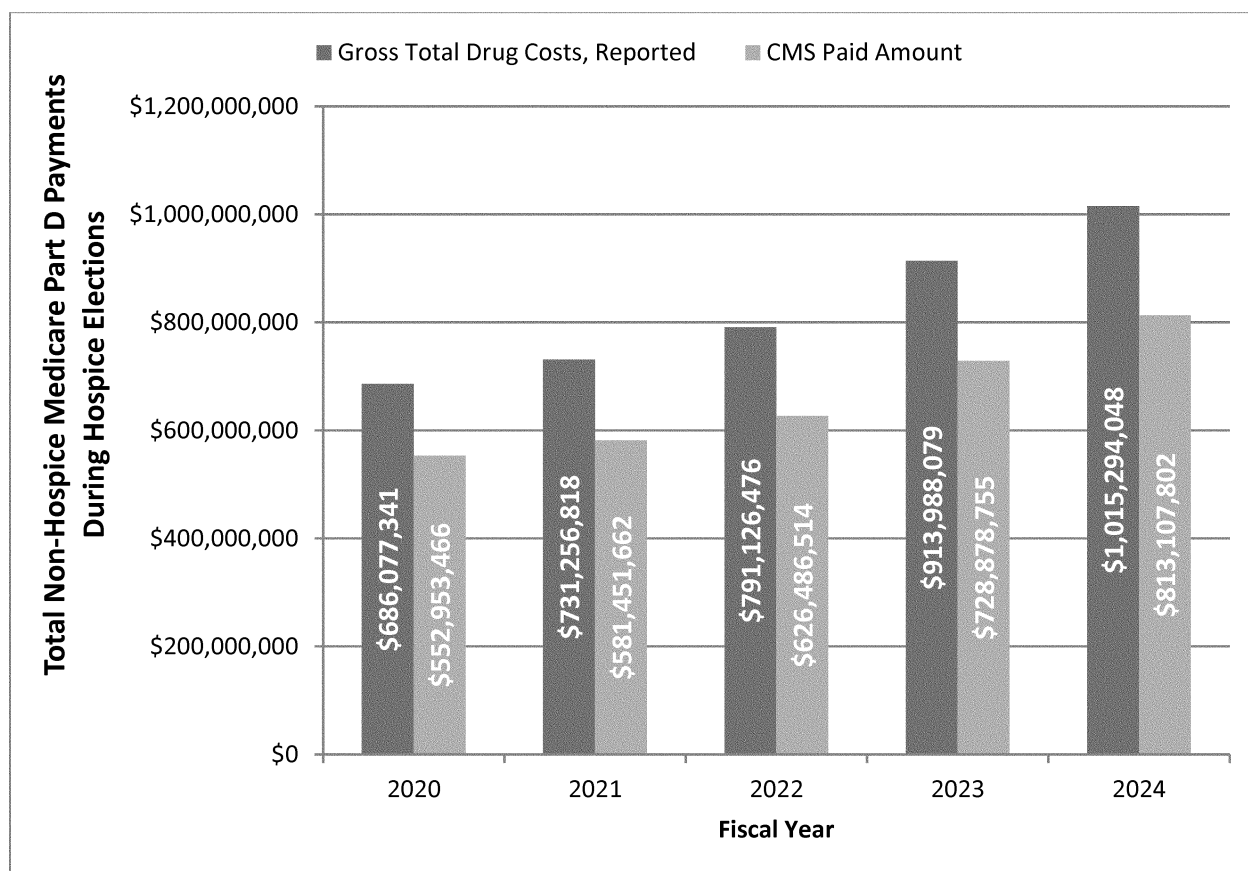
Figure B1: Medicare Payments for Non-Hospice Medicare Part A and Part B Items and Services During Hospice Elections, FYs 2020 – 2024



Source: Analysis of 100 percent Medicare Part A and B claims analytic files, FYs 2020 – 2024, from the Chronic Conditions Data Warehouse (CCW), accessed May 09, 2025.

Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) payments per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Figure B2: Medicare Payments for Non-Hospice Medicare Part D Drugs During Hospice Elections, FYs 2020 – 2024



Source: Analysis of 100 percent Part D prescription drug events (PDEs), FYs 2020 - 2024 from the CCW Virtual Research Data Center (VRDC), accessed May 09, 2025.

Notes: The Medicare paid amounts were assigned to hospice days based on the service date on the PDE. Only service dates that fell within a hospice election and were not hospice admission or live discharge days were counted. The Medicare paid amount includes the low-income cost-sharing subsidy and covered drug plan paid amount on Part D PDEs. Payments are based on the total gross drug cost, excluding utilization on hospice admission or live discharge days.

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Medicare payments for non-hospice Part A and Part B items and services received by hospice beneficiaries during a hospice election increased from nearly \$790 million in FY 2020 to over \$2 billion in FY 2024 (see Figure B1). This represents an increase in non-hospice Medicare spending for Parts A and B of nearly \$1.3 billion, or 160 percent. The most substantial increase in a single year occurred from FY 2023 to FY 2024, which demonstrated an increase in non-hospice Medicare spending for Part A and Part B items and services of \$770 million, or 60 percent.

While there is minimal beneficiary cost sharing under the Medicare hospice benefit,⁴ non-hospice services received

outside of the Medicare hospice benefit are subject to beneficiary cost sharing. In FY 2024, the total beneficiary cost sharing amount for beneficiaries electing the hospice benefit was \$510 million for Parts A and B.⁵ In FY 2024, beneficiaries receiving hospice services from for-profit hospices had, on average, nearly 167 percent higher non-hospice spending per day compared to beneficiaries under non-profit hospice care. This represents a significant increase from FY 2022, when

with the drug copayment schedule established by the hospice, except that the amount of coinsurance for each prescription may not exceed \$5. The amount of coinsurance for each respite care day is equal to five percent of the payment made by CMS for a respite care.

⁵ Part A and B cost sharing is calculated by summing together the deductible and coinsurance amounts for each claim.

beneficiaries receiving hospice services from for-profit hospices had, on average, 60 percent higher non-hospice spending per day compared to beneficiaries under non-profit hospice care.

We also examined non-hospice spending during a hospice election by claim type for Part A and Part B items and services, as shown in Table 5. In percentage terms, we found the most dramatic increase in billing related to carrier/physician supply. From FY 2020 to FY 2024, non-hospice spending related to carrier/physician supply increased 317.5 percent with a notable single year spike from FY 2022 to FY 2023 of 63.5 percent, and the largest increase in one year occurred from FY 2023 to FY 2024 with an increase of 90.8 percent. The diagnosis code for carrier claims with the largest increase in spending in FY 2024 was for pressure

⁴ The amount of coinsurance for each prescription approximates five percent of the cost of the drug or biological to the hospice determined in accordance

ulcers, largely associated with skin substitutes, which accounted for 47 percent, almost half of the carrier claim spending. Carrier claims for ulcers from FY 2020 to FY 2024 increased by almost 4,000 percent, rising from \$18 million in FY 2020 to \$714 million in FY 2024. CMS is aware of the increased provision of skin substitutes overall and changes were made to the reimbursement for skin substitutes beginning in 2026. Effective January 1, 2026, CMS implemented major changes to skin substitute payments, transitioning most products to a single, national unified rate of approximately \$127.14 per cm² (90 FR 49266, 90 FR 53448) in CY 2026, with the intent to propose payment rates that differentiate among three FDA regulatory categories in future years. This policy, applicable to both non-facility and hospital outpatient settings,

classifies products as “incident-to” supplies to eliminate the Average Sales Price (ASP) + 6 percent model, aiming to significantly reduce Medicare spending. Additionally, it is not unusual for terminally ill patients to have skin breakdown as a result of their deconditioned state and where wound care would be appropriate for comfort. As such, we question why hospices would not be providing needed wound care for pressure ulcers (which could potentially require a skin substitute in certain circumstances) given that pressure ulcers generally develop from unrelieved pressure as a result of limited mobility and in terminally ill individuals who are chairbound or bedbound. Additionally, we found notable consistent increases in outpatient and inpatient services in recent years, as

shown in Table 5. From FY 2020 to FY 2024, non-hospice spending related to outpatient services increased 40.4 percent and inpatient services increased by 26.9 percent in the same time frame. Additionally, we found that 30.1 percent and 25.9 percent of the non-hospice spending that occurred in FY 2024 was related to the primary hospice diagnosis of Alzheimer’s disease/dementia/Parkinson’s and heart conditions (Congestive Heart Failure and other heart disease), respectively. We also found that daily rates of non-hospice spending for services in FY 2024 are greater for every claim type, and 166.9 percent higher in total spending per day, for patients receiving hospice services in for-profit vs. non-profit hospices. We also noted that 67 percent of non-hospice spending occurred after hospice election day 60.

TABLE 5: Total Medicare Payments for Non-Hospice Medicare Part A and Part B Items and Services During Hospice Elections (Excluding Admission/Live Discharge Days) By Claim Type [All Beneficiaries], FYs 2020 – 2024

Claim Type	FY2020	FY2021	FY2022	FY2023	FY2024	Total
Durable Medical Equipment	\$62,945,939	\$53,064,592	\$61,786,674	\$70,599,597	\$68,269,227	\$316,666,029
Home Health	\$17,193,724	\$16,639,796	\$16,370,072	\$18,311,448	\$20,575,467	\$89,090,507
Inpatient	\$152,295,116	\$164,275,796	\$157,318,180	\$173,047,031	\$193,298,218	\$840,234,341
Outpatient	\$144,508,467	\$161,409,918	\$163,125,008	\$179,745,517	\$202,855,467	\$851,644,377
Carrier/Physician Supply	\$374,328,285	\$459,346,611	\$500,910,102	\$819,249,739	\$1,562,873,679	\$3,716,708,416
Skilled Nursing Facility	\$38,657,451	\$57,876,223	\$45,206,485	\$34,612,936	\$17,663,078	\$194,016,173

Source: Analysis of 100 percent Medicare Part A and B claims analytic files, FYs 2020 – 2024, from the CCW, accessed May 9, 2025.

Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Hospices are responsible for covering drugs and biologicals related to the palliation and management of the terminal illness and related conditions while the patient is under hospice care. After a hospice election, many maintenance drugs or drugs used to treat or cure a condition are typically discontinued as the focus of care shifts to palliation and comfort measures. However, those same drugs may be appropriately continued, as they may

offer symptom relief for the palliation and management of the terminal prognosis.⁶ Similar to the increase in non-hospice spending during a hospice election for Medicare Parts A and B items and services, non-hospice spending for Part D drugs increased from \$552.9 million in FY 2020 to \$813.1 million in FY 2024, which represents an increase of over a 47 percent (Figure B2).

Table 6 details the various components of Part D spending for patients receiving hospice care for FYs 2020 to FY 2024. The portion of the FY 2020 to FY 2024 Part D spending that was paid by Medicare is the sum of the Low-Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, approximately \$3.3 billion. The beneficiary cost sharing amount was approximately \$335.1 million.⁷

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⁶ Update on Part D Payment Responsibility for Drugs for Beneficiaries Enrolled in Medicare Hospice, November 2016. <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/>

Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf.

⁷ Part D cost sharing is calculated by summing together the “the patient pay amount” and the

“other true out of pocket” amount that are recorded on the Part D PDE.

TABLE 6: Drug Cost Sources for Hospice Beneficiaries' FY 2020-2024 Drugs Received Through Part D

Component	FY2020	FY2021	FY2022	FY2023	FY2024	Total
Patient Pay Amount	\$62,477,174	\$64,484,342	\$67,806,189	\$69,416,624	\$71,000,446	\$335,184,775
Low Income Cost-Sharing Subsidy	\$152,706,016	\$157,276,197	\$170,289,423	\$196,366,976	\$206,193,896	\$882,832,508
Other True Out of Pocket Amount	\$1,408,537	\$1,517,950	\$1,569,171	\$2,440,044	\$2,354,151	\$9,289,853
Patient Liability Reduction due to Other Payer Amount	\$18,463,129	\$21,121,595	\$24,436,108	\$28,588,193	\$35,634,350	\$128,243,375
Covered Drug Plan Paid Amount	\$400,247,450	\$424,175,465	\$456,197,091	\$532,511,779	\$606,913,906	\$2,420,045,691
Non-Covered Plan Paid Amount	\$14,992,169	\$19,290,227	\$23,282,199	\$31,204,341	\$35,049,380	\$123,818,316
Six Payment Amount Totals	\$650,294,475	\$687,865,775	\$743,580,182	\$860,527,958	\$957,146,130	\$3,899,414,520
Unknown/Unreconciled	\$35,782,866	\$43,391,043	\$47,546,294	\$53,460,121	\$58,147,919	\$238,328,243
Gross Total Drug Costs, Reported	\$686,077,341	\$731,256,818	\$791,126,476	\$913,988,079	\$1,015,294,048	\$4,137,742,762
CMS Paid Amount	\$552,953,466	\$581,451,662	\$626,486,514	\$728,878,755	\$813,107,802	\$3,302,878,199

Source: Analysis of 100% Part D PDEs, FYs 2020-2024, from the CCW VRDC, accessed May 09, 2025.

Notes: The Medicare paid amounts were assigned to hospice days based on the service date on the PDE. Only service dates that fell within a hospice election and were not hospice admission or live discharge days were counted. The Medicare paid amount includes the low-income cost-sharing subsidy and covered drug plan paid amount on Part D PDEs.

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We also note hospice beneficiaries with principal diagnoses of neurological and degenerative diseases, circulatory and cerebrovascular diseases, respiratory diseases, and neoplasms have received clinically indicated services for these conditions outside the hospice benefit. This issue may arise from hospices misclassifying conditions, referring patients to non-hospice providers, failing to coordinate care, or deliberately avoiding costs. We have examined principal hospice diagnoses on claims and identified Part B items and services paid outside the hospice benefit and have found concerning trends in non-hospice spending. Our intent in including data regarding non-hospice spending related

to hospice principal diagnosis codes in the proposed rule is to highlight items and services we believe should be covered under the hospice benefit. For example, it is not clear why medications like bronchodilators or oxygen would be considered unrelated to a respiratory condition indicated as the primary hospice diagnosis.

As we discussed previously, the hospice model is interdisciplinary and focuses on symptom management rather than curative treatment. Covering related services under the hospice benefit reinforces this philosophy by ensuring that care for the terminal condition, including medications, equipment, supplies, and therapies, is managed and integrated by the hospice IDG. We question whether increased

spending outside of the hospice benefit is indicative of diminishing comprehensive and patient-centered care. Covering all items and services related to the terminal illness and related conditions ensures that patients receive coordinated medical, nursing, psychosocial, and supportive services that address the full scope of a patient's end-of-life needs. This approach reduces fragmentation, prevents gaps in care, and supports comfort, dignity, and quality of life. Further, it reduces the burden of navigating additional coverage and cost sharing that the patient would not have under the hospice benefit.

As the hospice benefit requires hospice coverage of all items and services related to the terminal illness

and any related conditions, the increase in non-hospice spending, particularly for items and services that appear objectively related to the principal diagnosis, may suggest non-compliance with statutory and regulatory requirements and inappropriate cost-

shifting to other Medicare benefits. Covering items and services related to the principal hospice diagnosis is essential to maintaining the integrity of the hospice benefit, ensuring coordinated and compassionate end-of-life care, protecting beneficiaries, and

supporting responsible stewardship of Medicare resources. In the following section, we describe in more detail spending data on non-hospice services from FY 2024.

TABLE 7: Medicare Payments for Non-Hospice for Part B Items and Services During Hospice Elections Provided to Hospice Beneficiaries, FY 2024

Diagnosis Coding Group	DME and Carrier Claims Payments
Neurological/Degenerative	\$575,587,784
Heart/Cerebrovascular	\$589,991,573
Respiratory	\$95,036,803
Cancer	\$105,884,608
All Other Diseases	\$265,444,840
Total	\$1,631,945,608

Source: Analysis of 100 percent Medicare Part B claims analytic files, FY 2024, from the CCW, accessed May 9, 2025.

Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Additionally, we analyzed the same principal diagnosis coding groups for

Part D drugs paid outside of the hospice benefit.

TABLE 8: Medicare Payments for Non-Hospice for Part D During Hospice Elections Provided to Hospice Beneficiaries (Part D Claims), FY2024

Diagnosis Coding Group	Part D Payments
Neurological/Degenerative	\$205,128,738
Heart/Cerebrovascular	\$276,254,111
Respiratory	\$100,380,848
Cancer	\$86,405,092
All Other Diseases	\$144,939,013
Total	\$813,107,802

Source: Analysis of 100 percent Medicare Part D claims analytic files, FY 2024, from the CCW, accessed May 9, 2025.

Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Neurological and Degenerative Diseases

We grouped claims in this diagnostic coding group using ICD-10-CM codes for G30, G31, and G20. This group includes Alzheimer’s disease, Parkinson’s disease, and other

degenerative diseases of the nervous system. In FY 2024 claims, there are about 48,840,937 hospice days and 1,951,568 hospice claims in this diagnosis coding group. The non-hospice spending for this category for

DME and carrier claim types was about \$576 million. DME services that were billed during hospice stays related to these conditions during the same time included medical/surgical supplies, such as wound care supplies, catheters

and incontinence supplies, tubing, masks, and needles, costing about \$400 million, and wheelchairs, oxygen supplies, and hospital beds together cost about \$0.5 million. Part D drugs that were billed during hospice stays related to these conditions included (but are not limited to) about \$44.5 million for common palliative drugs, such as analgesics, anxiolytics, antiemetics, and laxatives; \$1.7 million for therapeutic nutrients and electrolytes; and \$0.8 million for diuretics.

Circulatory and Cerebrovascular Diseases

We grouped claims in this diagnostic coding group using ICD-10-CM codes for I11, I25, I50, I63, I67, I69, and I13. This group includes circulatory and cerebrovascular diseases, such as heart failure, cerebrovascular diseases (stroke), ischemic heart disease, and hypertensive heart/kidney disease. In FY 2024 claims, there are about 47,380,977 hospice days and 1,938,372 hospice claims in this diagnosis coding group. The non-hospice spending for these conditions for DME and carrier claim types was about \$590 million. DME services that were billed during hospice stays related to these conditions during the same time included (but are not limited to) medical/surgical supplies costing about \$402 million; wheelchairs, oxygen supplies, and hospital beds together cost about \$1.1 million. Part D drugs that were billed during hospice stays related to these conditions included about \$177 million for anticoagulants, blood cell stimulations, beta blockers, vasodilators, and anti-hypertensives; \$18.6 million for common palliative drugs, such as analgesics, anxiolytics, antiemetics, and laxatives; \$3 million for therapeutic nutrients and electrolytes; and \$2.2 million for diuretics.

Respiratory Diseases

We grouped claims in this diagnostic coding group using ICD-10-CM codes for J44 and J96. This group includes chronic obstructive pulmonary disease and respiratory. In FY 2024 claims, there are about 11,101,869 hospice days and 511,917 hospice claims in this diagnosis coding group. The non-hospice spending for this category for DME and carrier claim types was about \$95 million. DME services that were billed during hospice stays related to these conditions during the same time included medical/surgical supplies costing about \$50 million; wheelchairs, oxygen supplies, and hospital beds together costing about \$0.5 million. Part D drugs that were billed during hospice stays related to this condition included

(but are not limited to) about \$24 million for bronchodilators; \$7 million for common palliative drugs, such as analgesics, anxiolytics, antiemetics, and laxatives; \$0.6 million for therapeutic nutrients and electrolytes; and \$0.5 million for diuretics.

All Cancers

We grouped claims in this diagnostic coding group using ICD-10-CM codes for C00-D49. This group included all the diagnosis codes in the Neoplasms (C00-D49) Chapter in the ICD-10-CM. In FY 2024 claims, there are about 18,721,188 hospice days and 1,008,342 hospice claims in this diagnosis coding group. The non-hospice spending for this category for DME and carrier claim types was about \$106 million. DME services that were billed during hospice stays related to these conditions during the same time included medical/surgical supplies costing about \$46 million; wheelchairs, oxygen supplies, and hospital beds together cost about \$0.3 million. Part D drugs that were billed during hospice stays related to these conditions included (but are not limited to) about \$5.6 million for common palliative drugs, such as analgesics, anxiolytics, antiemetics, and laxatives; \$0.5 million for therapeutic nutrients and electrolytes; and \$0.4 million for diuretics.

For more detailed non-hospice spending data, the full file is available in the downloads section found at the FY 2027 Hospice Wage Index and Rate Update final rule link on the Hospice Center web page at <https://www.cms.gov/medicare/enrollment-renewal/providers-suppliers/hospice-center>.

2. Service and Spending Variation Index (SSVI)

CMS currently monitors and publicly shares data related to hospice utilization. Using the most recent, complete claims data, CMS analyzes Medicare spending, utilization by level of care, lengths of stay, live discharge rates, and skilled visits during the last days of life. Interested parties report that such data is useful in highlighting certain issues and trends regarding Medicare policies. Additionally, we monitor a variety of other metrics from claims data including: percent of beneficiaries discharged with length of stay 180 days or more, percent of total discharges that were live discharges, total number of discharges (live or dead), average minutes of direct patient care per RHC day, average visits per RHC day, percent of RHC days on the weekend with at least one skilled visit, non-hospice spending per day, the

percent of live discharges where a beneficiary returns to the same hospice within seven days, and total amount of non-hospice spending. By analyzing hospice utilization and other metrics, CMS can evaluate the behaviors of hospices to combat potential risks to the integrity of the Medicare program. For example, we focus on differences in live discharges because a brief discharge and quick readmittance can disrupt end of life care and may signal an agency is discharging patients to avoid covering costly treatments.

Analyzing these particular Medicare hospice metrics together is important because patterns across them can signal potential program integrity risks, inappropriate utilization, or quality of care concerns, especially when they deviate substantially between different hospices or from expected norms. For example, long lengths of stay combined with high live discharge rates may signal inappropriate enrollment of ineligible beneficiaries. Low number of visits, shorter visits, or fewer weekend visits may indicate minimal service provision. We recognize that patient census could vary year to year for each hospice (for example, in a given year, it may be possible that a hospice had a patient census that did not require any general inpatient level of care) and does not necessarily signal that a hospice is acting in an inappropriate manner. As such, we developed a scoring system, the SSVI, that is calculated using nine claims-based measures, each representing different aspects of hospice utilization as well as non-hospice spending. To calculate the SSVI score, we first determined a threshold for each of the nine metrics. For the non-hospice spending component of the SSVI score, we created eight separate thresholds for total non-hospice spending, as the degree to which a hospice spends outside of the hospice benefit can indicate varying levels of concern. For example, a hospice with higher non-hospice spending levels receives a higher number of points than a hospice with about 12.5 percent less non-hospice spending. Metrics related to utilization reflect visit and discharge patterns. The SSVI can be used to identify hospices that are outliers across many different utilization metrics and those that have a high level of non-hospice spending. We established thresholds using percentiles. For most of the individual measures, we established the threshold at the top or bottom 25 percent of the distribution. It is important to note that falling into this quartile on a single measure does not necessarily indicate poor performance

or improper practices. There are often legitimate operational reasons for a hospice to be an outlier in an isolated area. Instead, this 25 percent threshold acts as a preliminary filter. The objective of the SSVI is not to evaluate hospices based on a single metric, but to identify hospices that are outliers across multiple independent metrics. A hospice triggering the 25 percent threshold on at least one metric is not uncommon. A hospice triggering that threshold across many distinct metrics could indicate unusual utilization that may require further review.

For these utilization metrics, when a hospice's outcome for that metric surpasses the metric's threshold, then the hospice receives one point in its score for that metric. Second, we add each of the nine scores, that is, one score per metric, together to calculate the SSVI score. The total SSVI score is derived by adding together a hospice's

total non-hospice spending score and their utilization score.

The lowest SSVI score a hospice can receive is zero, that is, a score of zero for each of the nine metrics, and the maximum SSVI score is 16, that is, with the highest points assigned for each of the nine metrics. A higher SSVI score represents a potential higher level of concern, as this may signal potential program integrity risks or inappropriate utilization especially when a hospice's SSVI score is substantially higher than its peers. In Table 9, we describe each of the nine metrics and the threshold values for those metrics. Given that we calculate a hospice's SSVI score using an evaluation of nine metrics, a high SSVI score indicates to CMS that a hospice might have more than one area of concern and may require additional targeted education or oversight, such as medical review, education, and investigations that could result in

payment suspension, and revocation, if there is identified fraud, waste, or abuse. In other words, each score used to calculate the SSVI score can be used to identify a specific area of concern for a hospice, and the SSVI score itself provides an aggregate measure to evaluate a hospice as a whole. The SSVI can assist interested parties in comparing hospices on a holistic scale. Likewise, the SSVI is potentially another vehicle to target, and address fraud, waste, and abuse. For example, higher spending outside the Medicare hospice benefit may be indicative of abusive billing because a hospice is paid a comprehensive per diem to cover essentially all care at the end of life. Excessive non-hospice spending, for either unrelated care or services and supplies which should be the hospice's responsibility, may undermine the financial integrity of the hospice benefit.

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TABLE 9: Description of SSVI Metrics, Threshold Values, and Points Allocated

Metric Description	Threshold Value	Points
Providing no Continuous Home Care and no General Inpatient Care (Utilization)	0	1
Percentage of Routine Home Care days that are provided in a nursing home or skilled nursing facility (Utilization)	Greater than or equal to 40%	1
Percent of the last two Routine Home Care days of life with visits (Utilization)	Less than or equal to 25 th percentile (for FY 2025, the 25 th percentile was 85.7%)	1
Percentage of total discharges that are live discharges (Utilization)	Greater than or equal to the 75 th percentile (for FY 2025, the 75 th percentile was 47.5%)	1
Percentage of discharges with a length of stay of over 180 days (Utilization)	Greater than or equal to the 75 th Percentile (in FY 2025, the 75 th percentile was 33.2%)	1
Average skilled nursing minutes on Routine Home Care (Utilization)	Less than or equal to 25 th Percentile (in FY 2025, the 25 th percentile was 9.8 minutes per day)	1
Weekend Routine Home Care days with a skilled visit (nursing, medical social worker, or therapy) as a percentage of total RHC days (Utilization)	Less than or equal to 25 th percentile (in FY 2025, the 25 th percentile was 4.8%)	1
Percentage of live discharges where beneficiaries return to the same hospice in seven days (Utilization)	Greater than or equal to 75 th percentile (in FY 2025, the 75 th percentile was 15%)	1
Total non-hospice spending	Greater than 0 and the lowest spending eighth of hospices (in FY 2025, values greater than 0 and less than or equal to \$6,352.84)	1
	Between the lowest eighth and two-eighths of hospices (in FY 2025, values greater than \$6,352.84 and less than or equal to \$20,612.10)	2
	Between two-eighths and three-eighths of hospices (in FY 2025, values greater than \$20,612.10 and less than or equal to \$42,911.79)	3
	Between three-eighths and half of hospices (in FY 2025, values greater than \$42,911.79 and less than or equal to \$76,801.05)	4
	Between half and five-eighths of hospices (in FY 2025, values greater than \$76,801.05 and less than or equal to \$133,440.80)	5
	Between five-eighths and six-eighths of hospices (in FY 2025, values greater than \$133,440.80 and less than or equal to \$246,123.10)	6
	Between six-eighths and seven-eighths of hospices (in FY 2025, values greater than \$246,123.10 and less than or equal to \$517,204.40)	7
	Between seven-eighths and highest spending eighth of hospices (in FY 2025, values greater than \$517,204.40)	8

We plan to determine the SSVI for individual hospices each FY using that

applicable year's data. In this final rule, we are publishing the SSVI scores

calculated from data for FYs 2024 and 2025 because these are our most recent

and complete years of claims data. In subsequent rulemaking cycles, we would publish the updated SSVI, using the most recent claims data, with the final rule. The FY 2024 hospice SSVI

includes 6,409,155 hospice claims, representing 6,735 hospices and a total of 148,012,785 hospice days. The FY 2025 hospice SSVI includes 6,773,919 hospice claims, representing 6,673

hospices and a total of 156,995,825 hospice days. Table 10 shows the distribution of the number of hospices by their total score for hospices in FYs 2024 and 2025 claims.

TABLE 10: Distribution of SSVI Score for Hospices in FY 2024 and FY 2025 Hospice Claims

Total Score	FY2025		FY2024	
	Number of Hospices	Percent of Hospices	Number of Hospices	Percent of Hospices
0	4	0.1%	6	0.1%
1	87	1.3%	91	1.4%
2	330	4.9%	334	5.0%
3	517	7.7%	564	8.4%
4	721	10.8%	760	11.3%
5	893	13.4%	838	12.4%
6	888	13.3%	918	13.6%
7	912	13.7%	862	12.8%
8	910	13.6%	920	13.7%
9	577	8.6%	629	9.3%
10	397	5.9%	366	5.4%
11	241	3.6%	255	3.8%
12	127	1.9%	116	1.7%
13	53	0.8%	48	0.7%
14	15	0.2%	28	0.4%
15	1	0.0%	0	0.0%
16	0	0.0%	0	0.0%
Total Hospices	6,673	100.0%	6,735	100.0%

Note: The development of the FY 2025 Hospice SSVI included 6,773,919 hospice claims, representing 6,673 hospices and a total of 156,995,825 hospice days. The data used was pulled from the CCW VRDC on May 12, 2026. The development of the FY 2024 Hospice SSVI included 6,409,155 hospice claims, representing 6,735 hospices and a total of 148,012,785 hospice days. The data used was pulled from the CCW VRDC on May 9, 2025.

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We will post the metrics and the SSVI scores for FYs 2024 and 2025, additional data from claims-based measures, and related documentation on the methodology on our Hospice Information web page at <https://www.cms.gov/hospice-information-center>. Our goal is to identify individual hospice vulnerabilities to help focus program integrity efforts, such as conducting medical reviews, providing additional education, and conducting

investigations into individual hospices that could result in administrative actions like payment suspension and/or revocation of hospices demonstrating fraudulent behavior. We also believe the public will benefit from the enhanced transparency this data provides, allowing beneficiaries and their families the ability to make more informed choices regarding care at the end of life. We sought feedback on the metrics used to calculate the SSVI score as well as

thoughts and suggestions regarding the threshold values and point assignments.

We received public comments on the metrics used to calculate the SSVI scores. The following is a summary of the comments we received and our responses.

Comment: We received comments from interested parties opposing the use of the SSVI due to methodological concerns, such as thresholds used for the scoring assignment, the validity of

the measures used, divergence between SSVI and the hospice care index (HCI), and the overemphasis on non-hospice spending in the scoring. Some commenters recommended CMS take down the SSVI from public view, opposed the use of the SSVI for targeting oversight efforts, and recommended delaying the implementation of the SSVI. Many commenters opposed the use of the SSVI and the overall use of administrative data for oversight, stating that claims-based measures may not help target medical reviews and investigations related to fraud, waste, and abuse. Commenters described the current SSVI framework as unable to distinguish between inappropriate utilization and clinically appropriate hospice care. Commenters also requested more transparency, such as provider-specific preview reports, clear attribution rules, threshold and point-assignment logic, and correction and reconsideration rights.

Response: We thank the commenters for their recommendations. We remind commenters that the SSVI is a descriptive tool that uses a scoring system that represents different aspects of hospice utilization, as well as non-hospice spending, thereby scoring hospices comprehensively, rather than on a single care dimension. In other words, the SSVI can be used to identify specific areas of concern indicated for a hospice as well as aggregate different measures to simplify comparison between hospices. This approach supports our transparency efforts for hospices, beneficiaries, and advocacy organizations to have more information about how a specific hospice may be performing relative to other hospices.

The SSVI will be one of several sources of information that contributes to program integrity actions. The concerns about the thresholds used for the scoring assignment, such as the use of the 25th and 75th percentiles as a threshold for flagging hospices, highlight a misunderstanding of how the SSVI tool can be used to compare hospices. We agree that identifying the 25 percent of hospices on each measure is not a valid approach to identifying outliers. The current scoring assignment for the SSVI aims to identify outliers by flagging hospices with a high score based on the thresholds for multiple measures. In other words, when hospices are assigned a point for multiple measures, we can see that those hospices have utilization that is different from their peers. We would consider a hospice with 13 or more points an outlier as it would be at 99th percentile of the hospices based on the

distribution of the SSVI score. We believe that the SSVI is vital to provide information to interested parties, such as beneficiaries and caregivers, about hospice providers that are not publicly available outside of this tool. Therefore, we do not believe it is in the best interest of beneficiaries and their caregivers to remove the SSVI from the CMS website. Providing this information publicly supports CMS' efforts to provide transparent data to interested parties.

Based on the distribution of the SSVI score for FY 2025 claims presented in Table 10, we see that there are 69 hospices that have an SSVI score above 13. The SSVI helps identify hospices that received 13 points or more as above the 99th percentile of total hospices. We can also see that the hospices with 13 points or more have higher levels of non-hospice spending at the 7th or 8th octile and also have a score higher than 4 for the score related to utilization measures. In other words, hospices that have high total non-hospice spending levels also have utilization trends that may be areas of concern. This is important as we are using the SSVI score as a summary to aggregate measures to describe hospices relative to each other.

The measures and scoring assignment for the SSVI may change over time as we consider the comments received and changes in hospice trends. We remind commenters that the SSVI is a tool that aggregates and presents information for the hospice patients, interested party groups, and the general public to be able to compare hospices without needing to conduct analysis and obtain a data use agreement. We describe the score assignment logic and attribution rules in the accompanying document, titled "SSVI Overview", which was posted along with the SSVI. We will continue to provide the document with the SSVI along with this final rule and subsequent rulemaking cycles.

We acknowledge the limits of claim-based measures and are open to learning more about the available data for analysis to distinguish between inappropriate utilization and clinically appropriate hospice care. We believe the measures we chose, including but not limited to "Total Non-Hospice Spending", "Percent of Live Discharges where Beneficiaries Return to the Same Hospice in Seven Days", "Percent of Beneficiaries who Died in Hospice and Last Two Days were RHC with at Least One Skilled Visit During Last Two Days", and "Percent of Discharges (Live or Dead) that Were Live Discharges", are reasonable measures to identify hospices that exceed the criterion

threshold as potential indicators of inappropriate utilization.

For total non-hospice spending, we acknowledge that hospices with a higher hospice beneficiary census would likely have higher non-hospice spending. The SSVI also shows that the top 100 hospices for total non-hospice spending includes hospices with less than 5,000 hospice days to more than 25,000. The range of hospice size that contributes to high levels of total non-hospice spending suggests that non-hospice spending is a behavior that is occurring across the hospice market and warrants further analysis. In addition, we provide a measure of "Non-Hospice Spending per Day (All Days Only From Beneficiaries with Non-Hospice Spending)" that provides a per-capita measure that standardizes total non-hospice spending. If non-hospice spending is a behavior that is occurring across the hospice market, then focusing on non-hospice spending per day may not properly highlight the hospices with high total non-hospice spending and higher census of beneficiaries.

We chose to assign scoring for total non-hospice spending to a distribution using octiles to weigh non-hospice spending in the scoring to reflect the concern of growing non-hospice spending and to highlight the widespread practice of non-hospice spending. We chose octile distribution for score assignment related to non-hospice spending to apply an equal weight to address concerns for non-hospice spending and utilization patterns. We assign eight points for crossing threshold for utilization patterns and points that correspond with the octile for non-hospice spending level. Our scoring assignment decision for comparing individual hospice non-hospice spending levels aims to improve public transparency around the amount billed to other Medicare providers rather than hospices. As stated earlier, non-hospice spending is an issue that may arise from hospices misclassifying conditions, referring patients to non-hospice providers, failing to coordinate care, or deliberately avoiding costs. We chose the scoring assignment to simplify comparison for non-hospice spending patterns between hospices and to account for the total amount billed outside of the Medicare hospice benefit. We want interested parties to be aware of the hospice for which the non-hospice spending is attributed. It is important information relevant to beneficiaries and caregivers because non-hospice services received outside of the Medicare hospice benefit are subject to beneficiary cost sharing. In FY 2024, the total beneficiary cost

sharing amount for beneficiaries electing the hospice benefit was \$510 million for Parts A and B.

We monitor live discharges from hospice as long lengths of stay combined with high live discharge rates may signal inappropriate enrollment of ineligible beneficiaries. We are interested to learn more about what commenters meant by the many legitimate reasons for administrative discharge. When FY 2025 claims show that more than 400 hospices have 90 to 100 percent live discharge rates and 25 hospices have 50 percent or more live discharge rates returning in 7 days, it is unclear whether the high live discharge rates are due to beneficiary choice or whether there is inappropriate enrollment and the hospices warrant further review.

We are also concerned that there are over 100 hospices that have no beneficiaries who died in hospice with the last two days as RHC with at least one skilled visit during last 2 days. The hospices that have 0 to 25 percent of beneficiaries under this measure range in hospice size and total non-hospice spending. We believe that this measure in conjunction with other utilization measures highlight concerning utilization patterns.

The SSVI is designed to complement the HCI's claim-based measures. We expected that the specificity of the SSVI utilization measures with 25 and 75 percentiles as thresholds for score assignment would help identify hospices that have more than one area of concern. Since the measures are claims-based and will not replace any existing measures, it is unclear how we would include a reconsideration process for changing the SSVI score or a provider-specific preview for individual hospices. In other words, the claims-based measures used in the SSVI use data inputs from finalized claims submitted by the hospices. Similarly to the HCI, the SSVI will help patients, families, and caregivers choose between hospice providers based on the factors that matter most to them so they can make the best possible decisions. For these reasons, we believe that we should proceed with publicly releasing information and the SSVI to improve beneficiary choice for hospice care.

Final Decision: We thank commenters for these comments. After consideration of public comments, we are maintaining the design of the SSVI using the current measures and scoring assignments.

C. Election Statement Addendum Changes

1. Background

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of an individual may necessitate a transition from curative to palliative care if the individual so chooses. Medicare hospice care services are virtually all-inclusive, and are focused on meeting the physical, emotional, psychosocial, and spiritual needs of the terminally ill individual and his or her family. In order to make an informed choice about whether to receive hospice care, the patient, family, and caregiver must have an understanding of what services are going to be provided by the hospice and that, because there is no longer a reasonable expectation for a cure, care should now focus on comfort and quality of life. The services covered under the Medicare hospice benefit are comprehensive such that, upon election, the individual waives all rights to Medicare payment for services related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made, except when provided by the designated hospice or attending physician. Because of the significance of this decision, the terminally ill individual must elect hospice care in order to receive services under the Medicare hospice benefit. Since we first implemented the Medicare hospice benefit in 1983, it has been our general view that the waiver required by law requires hospices to provide virtually all the care that is needed by terminally ill patients (48 FR 56010). In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we finalized a policy, for elections beginning on and after October 1, 2020, that requires hospices to provide a hospice election statement addendum to beneficiaries, their representatives, non-hospice providers, or Medicare contractors, upon request. The purpose of the addendum is to notify the hospice beneficiary (or representative) of those conditions, items, services, and drugs the hospice will not be covering because the hospice has determined they are unrelated to the beneficiary's terminal illness and related conditions. The addendum is subject to review and must be updated, as needed, when the plan of care is updated in accordance with § 418.56. The hospice must provide these updates, in writing, to the beneficiary (or representative).

Currently, if the beneficiary (or representative) requests an addendum at the time of hospice election (that is,

within the first 5 days of the hospice election date), the hospice would have 5 days from the date of the request to furnish this information in writing. If the addendum is requested during the course of hospice care (that is, after the first 5 days of the date of the hospice election), the hospice has 3 days from the date of the request to provide the addendum in writing. However, if the beneficiary dies, revokes, or is discharged within the required timeframes, the hospice would not be required to furnish the addendum in this circumstance. These timeframes, and others, for providing the addendum are outlined in § 418.24(d). The required content of the hospice election statement addendum is outlined generally below and described in § 418.24(c) (OMB Control Number: 0938–1067/Expiration date: 2/28/2029):

- The addendum title (“Patient Notification of Hospice Non-Covered Items, Services, and Drugs”);
- Hospice name;
- Individual's name and medical record identifier;
- Identification of the terminal illness and related conditions;
- A list of the individual's conditions present on hospice admission (or upon POC update) and the associated items, services, and drugs not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions;
- A written clinical explanation written in language that the beneficiary (or representative) can understand;
- References to relevant any clinical practice, policy, or coverage guidelines;
- Information on the purpose of the addendum and the right to immediate advocacy through the Medicare Beneficiary and Family Centered Care-Quality Improvement Organization (BFCC-QIO) if the individual (or representative) disagrees with the hospice's determination;
- Individual (or representative) name, signature, and date signed, along with a statement that signing the addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not the individual's (or representative's) agreement with the hospice determinations; and
- The date the hospice furnished the addendum.

2. Mandatory Hospice Election Statement Addendum for All Elections

We proposed requiring that hospices provide the hospice election statement addendum to all Medicare beneficiaries at the time of hospice election for hospice elections beginning on or after

October 1, 2026. Section 1812(d)(1) of the Act requires beneficiaries to affirmatively elect hospice care, and the hospice election involves a significant waiver of Medicare rights, as beneficiaries waive all rights to Medicare payment for services related to the treatment of their terminal illness and related conditions, except for services provided by the designated hospice and attending physician, pursuant to section 1812(d)(2)(A) of the Act. Given the magnitude of this decision and its impact on beneficiary rights and access to care, it is essential that beneficiaries receive complete information about what services will and will not be covered by the hospice at the time of election to ensure truly informed consent. Covered entities must furnish appropriate auxiliary aids and services when necessary to ensure effective communication with individuals with disabilities. They also must take reasonable steps to provide meaningful access to individuals who are limited English proficient including the provision of interpreter and translation services free of charge when needed.

Additionally, section 1871 of the Act provides the Secretary with broad authority to prescribe regulations necessary to carry out the administration of the Medicare program, including the authority to establish provider conditions of participation, payment requirements, and beneficiary rights and protections. Specifically, section 1871(f)(1) specifies that the Secretary should make efforts to reduce inconsistency or conflicts for individuals entitled to Medicare benefits. Under this authority, and consistent with our obligation to ensure beneficiary protection and program integrity, we require that hospices provide comprehensive disclosure of coverage determinations to all beneficiaries electing the hospice benefit.

In the FY 2020 Hospice Wage Index and Payment Rate Update proposed rule (84 FR 17570), CMS reiterated that hospice services should be providing virtually all the care needed by the terminally ill individual. CMS also reiterated that coverage decisions and treatment determinations should take into account multiple factors, including not only the opinion of the treating physician, but also other factors such as the condition of the patient upon admission, the nature of the principal diagnosis, and the existence of comorbid conditions, as these all play an important role in coverage determinations. Determinations about unrelated conditions, items, services,

and drugs for each patient should take into account the needs, preferences, and goals of the terminally ill individual and his or her family; review of all of the beneficiary's conditions, related and unrelated to the terminal illness and related conditions; and current clinically relevant information supporting all diagnoses as required by regulation at § 418.25. This process requires clinical judgment in which hospices need to consider clinical practice guidelines and relevant research when making determinations of whether items, services, and drugs are related or unrelated to the terminal illness and related conditions.

The significant increases in non-hospice spending patterns, as discussed in section III.B.1. of this final rule, suggest that the current framework, where the hospice election statement addendum is provided only upon request, has not achieved the intended accountability objective of ensuring that hospices provide virtually all care needed by terminally ill individuals as required under the comprehensive and holistic Medicare hospice benefit. Most notably, as discussed in section III.B.1. of this final rule, Medicare non-hospice spending for Parts A and B increased from nearly \$790 million in FY 2020 to over \$2 billion in FY 2024, representing a 160 percent increase, demonstrating that the voluntary nature of the current addendum requirement has not adequately addressed coverage transparency concerns or stemmed inappropriate billing of services outside of the hospice benefit. Additionally, many beneficiaries may not understand the importance of requesting the addendum, may not understand their right to receive this information, or may not receive it in time to make fully informed decisions about their care, also not achieving the intended transparency objective. Further, the substantial growth in non-hospice spending, particularly for services that may be related to the terminal illness and related conditions, indicates potential gaps in coverage transparency and coordination between hospice and non-hospice providers.

Per the hospice CoPs at § 418.56(e)(5), hospices are required to develop and maintain a system of communication and integration among all providers furnishing care to the terminally ill patient. This includes the ongoing sharing of information with other non-hospice healthcare providers and suppliers furnishing services unrelated to the terminal illness and related conditions is necessary to ensure coordination of services and to meet the patient, family, and caregiver needs.

Despite this CoP requirement, we continue to receive reports from non-hospice providers stating that they are not provided a beneficiary's addendum when requested from the hospice, are unable to reach, or do not receive communication from the hospice to discuss the hospice beneficiary's coordination of services that the hospice has determined unrelated to his or her terminal illness and related condition(s). Similarly, we have also received reports from non-hospice providers who state that hospices are requesting that services be billed to Medicare Part A and B, other inquiries where non-hospice providers are requesting payment from hospices for services that should be the hospices' coverage responsibility but where the hospices have not paid for such services or do not respond to these requests, and hospices who state they were unaware that patients had received care from non-hospice providers. Additionally, if a beneficiary receives services related to the terminal illness and related conditions and the hospice did not arrange for such care, the beneficiary, potentially unknowingly, would be liable for the costs related to those services. Likewise, Medicare would be making duplicative payments for care related to the terminal illness and related conditions if non-hospice providers bill Medicare for services that should have been the coverage responsibility of the hospice.

Additionally, the Office of Inspector General (OIG) has completed audits on non-hospice spending for outpatient services provided to hospice beneficiaries,⁸ Medicare payments to non-hospice providers for items and services provided to hospice beneficiaries,⁹ and improper Medicare payments for durable medical equipment, prosthetics, orthotics, and supplies provided to hospice beneficiaries.¹⁰ These reports highlight vulnerabilities in the Medicare hospice

⁸ Medicare Improperly Paid Acute-Care Hospitals an Estimated \$190 Million Over 5 Years for Outpatient Services Provided to Hospice Enrollees (A-09-23-03024). November 12, 2024. <https://oig.hhs.gov/documents/audit/10055/A-09-23-03024.pdf>.

⁹ Medicare Payments of \$6.6 Billion to Nonhospice Providers Over 10 Years for Items and Services Provided to Hospice Beneficiaries Suggest the Need for Increased Oversight (A-09-20-03015). February 14, 2022. <https://oig.hhs.gov/documents/audit/9604/A-09-20-03015-Complete%20Report.pdf>.

¹⁰ Medicare Improperly Paid Suppliers an Estimated \$117 Million Over 4 Years for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Provided to Hospice Beneficiaries (A-09-20-03026). November 16, 2021. <https://oig.hhs.gov/documents/audit/9609/A-09-20-03026-Complete%20Report.pdf>.

benefit and describe fragmented care that beneficiaries may experience under a hospice election.

In the FY 2022 Hospice Wage Index and Payment Rate Update proposed rule (86 FR 42528), we requested feedback from interested parties as to whether the hospice election statement addendum has changed the way hospices make care decisions and how the addendum is used to prompt discussions with beneficiaries and non-hospice providers to promote the care needs of hospice beneficiaries. The responses revealed that the FY 2020 addendum provisions (84 FR 38484) enhanced communication during the admission process and prompted hospice providers to ensure patients are receiving all services necessary for symptom management regardless of the primary diagnosis. However, the feedback also included reports that very few patients and their representatives had requested the addendum and that the burden of implementation of the addendum outweighed the benefit.

In the FY 2024 Hospice Wage Index and Payment Rate Update proposed rule (88 FR 20022), we solicited feedback on how to work with hospice providers to ensure Medicare beneficiaries and their families are aware of coverage under the hospice benefit and how to enhance transparency. Comments discussed in the FY 2024 Hospice Wage Index and Payment Rate Update final rule (88 FR 51164) emphasized the critical need for CMS education directed toward patients and families about transitioning from curative to palliative interventions at the time of hospice admission. Specifically, several commenters suggested that the hospice election statement addendum (titled “Patient Notification of Hospice Non-Covered Items, Services, and Drugs”) should be provided to all patients at the time of hospice election or as part of the care plan, rather than only upon request. Commenters noted that hospice providers, non-hospice providers, Medicare beneficiaries, and their families need more information to understand coverage distinctions and that hospice providers must share this information with patients at the time of, and throughout, the hospice election.

Based on the FY 2022 feedback from interested parties indicating a low volume of requests, the continued growth in non-hospice spending, and the FY 2024 feedback from interested parties requesting mandatory provision of the addendum at the time of election, we proposed requiring that hospices provide the hospice election statement addendum to all Medicare beneficiaries at the time of hospice election for

hospice elections beginning on or after October 1, 2026. We noted that we would require hospices to furnish the addendum within the first 5 days of a hospice election (that is, within the first 5 days of the effective date of the hospice election), and any updates to the addendum within 3 days of changes to the plan of care that impact the addendum determinations, in writing, to the individual (or representative), and to make the addendum available for non-hospice providers and Medicare contractors. We also noted that this proposal would modify the current requirement at § 418.24(b)(6), (c), and (d), which establishes the addendum as a condition of payment only when requested by beneficiaries, their representatives, non-hospice providers, or Medicare contractors. As such, we proposed amending § 418.24 to include the previously stated provisions related to making the hospice addendum mandatory at the time of hospice election. We reminded readers that hospices may provide the election statement addendum in any format that best suits their needs, provided that the content requirements at § 418.24(b) and (c) are met (85 FR 47070); however, if desired, a model hospice election statement addendum is available in the Downloads section on the Hospice web page at <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice>.

As discussed in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), and again in section IV.B. of this final rule, hospices are already required to make determinations about related versus unrelated conditions, items, and services as part of their comprehensive assessment and care planning processes. The mandatory addendum requirement would formalize and standardize the communication of these existing determinations to beneficiaries and their representatives. A one-time form development burden estimate was completed in FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484). This burden estimate also accounted for the approximate amount of time it would take a hospice to complete the addendum and used the assumption that hospices would provide the addendum to all beneficiaries; it reflected an estimated \$11.2 million in total costs to hospice providers. Despite this estimated cost to providers, the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484) reflected an estimated \$5.2 million net reduction in total provider (that is, hospice provider and non-

hospice provider) burden. This net reduction resulted from an estimated \$16.5 million burden reduction for non-hospice providers due to reduced time spent by non-hospice providers, including institutional, non-institutional and pharmacy providers on obtaining needed information for treatment decisions and accurate claims submissions.

While the burden estimates completed in FY 2020 (84 FR 38484) already assumed that hospices would provide the addendum to all beneficiaries, we have updated the burden estimates, in section IV.C. of this final rule, with more recent data that reflects the increase in hospices and hospice elections on the estimated hospice burden associated with the mandatory election statement addendum for all elections; this includes a burden reduction estimate for non-hospice providers. The FY 2027 burden estimates continue to demonstrate a significant total overall burden reduction for non-hospice providers of \$40.6 million, as well as a net hospice provider burden reduction of \$20.8 million.

We received a significant number of public comments on our proposal to make the hospice election statement addendum mandatory for all hospice elections, not just upon request. The comments also addressed non-hospice spending and burden estimates associated with the election statement addendum. Commenters included hospices, non-hospice providers, national and State industry associations, individual commenters, as well as the Medicare Payment Advisory Commission (MedPAC). The following is a summary of the comments we received and our responses.

Non-Hospice Spending

Comment: Commenters specifically raised skin substitutes as a primary driver of non-hospice spending growth and argued that hospices should not be held accountable for spending they do not control. Some of the commenters raised concerns for beneficiaries’ safety as they received reports of instances where wound care companies refuse to stop treating hospice enrolled beneficiaries when the hospice has deemed the wound care related to the terminal condition or related conditions. Other commenters raised concerns about hospices frequently classifying wound care inappropriately as unrelated to the terminal illness, specifically for patients with non-cancer diagnoses, such as those with dementia and cardiac disease, who are at higher risk for pressure ulcers; these

commenters questioned whether hospices are performing adequate skin integrity assessments and properly addressing wound care needs. Similarly, several commenters reported that hospices frequently classify chronic conditions such as diabetes, arthritis, gout, hypothyroidism, glaucoma, and macular degeneration as unrelated to the terminal illness. Commenters noted their belief that these situations are significantly contributing to the growth of Part D non-hospice spending. Additionally, one commenter argued that some non-hospice spending is a result of the patient choosing to continue taking medications that they noted promote their well-being, despite hospice education indicating that the medication may no longer be medically necessary. A few commenters also raised concerns related to modifier codes and claims processing workflow concerns that may be contributing to Medicare non-hospice spending such as CC07 and GW modifier bypass mechanisms process claims without semantic interrogation, GV and GW modifier claims incorrectly included in non-hospice spending data, reports that hospices unaware when GV modifiers are attached to non-hospice bills, and a report that 22 percent of claims have no modifier. MedPAC, patient advocacy groups, and a non-hospice provider group submitted comments that were contrary to those of hospice providers and hospice agency advocacy groups, citing concerns regarding duplicate billing and confusion, wasted resources, communication burden, inability to reach hospice providers, as well as unexpected and increased out-of-pocket costs and cost-sharing obligations to beneficiaries. MedPAC specifically expressed significant concern about non-hospice spending for hospice enrollees and reported that they have been tracking non-hospice spending and identified several reasons for their concerns including duplicate Medicare payments, increased beneficiary cost-sharing, and fragmented care that may be increasing confusion not only for beneficiaries, but also for their families, hospices, other providers, pharmacies, and Part D plans.

Response: We acknowledge the commenters' concerns regarding skin substitute fraud as a significant driver of non-hospice spending growth. As documented in this year's proposed rule (91 FR 17338), carrier claims for pressure ulcers increased by nearly 4,000 percent from FY 2020 to FY 2024; these claims are largely associated with skin substitutes. As previously stated in the FY 2027 Hospice Wage Index and

Rate Update proposed rule (91 FR 17338), we have already taken significant action to address this issue, such as implementing major changes to skin substitute payments, and transitioning most products to a single national unified rate, addressing overutilization concerns, and requiring prior authorization for skin allograft HCPCS codes.

However, we disagree with the characterization that skin substitute spending during hospice elections is solely attributable to non-hospice provider fraud outside the hospice's control. Pressure ulcers are a foreseeable and preventable complication of terminal illness, particularly for bedbound and chairbound patients with neurological, cardiac, and respiratory diagnoses, which collectively account for approximately 75 percent of documented non-hospice spending. Additionally, we continue to reiterate that the hospice is required to provide virtually all care needed by the beneficiary who has elected hospice for the management of their terminal illness and any related conditions; any items, services, or drugs that the hospice deems unrelated to the terminal illness or related conditions should be exceptional, rare, and unusual (§ 418.24(b)(3), 48 FR 56010, 84 FR 38509, 85 FR 47091, 86 FR 19713, 88 FR 20032, 89 FR 64202). As such, pressure ulcers that develop as a direct consequence of the patient's deconditioned state, due to their terminal illness or related conditions, would not be exceptional or unusual and, therefore, are expected to be covered under the hospice benefit. As stated in the proposed rule and by some commenters, the high incidence of wound care needs in hospice patients raises concerns as to why hospices are not providing needed wound care for pressure ulcers, given that these wounds generally develop from unrelieved pressure as a result of limited mobility in terminally ill individuals who are chairbound or bedbound, a condition directly related to the terminal illness or related conditions that should be covered under the hospice benefit.

We are also concerned that the dramatic increase in non-hospice skin substitute billing suggests that some hospices may not be conducting adequate skin integrity assessments at admission and on an ongoing basis, properly documenting the relationship between skin breakdown and the terminal illness or related conditions, including wound care in the plan of care, or covering wound care under the hospice benefit as required under §§ 418.54 and 418.56. The proposed

mandatory election statement addendum directly addresses this concern by requiring hospices to document and disclose all items, services, and drugs determined to be unrelated to the terminal illness or related conditions, thereby improving hospice accountability and transparency for the hospice beneficiary. The addendum could also be used by MACs and for program integrity efforts to combat some inappropriate wound care company practices described by some commenters.

Additionally, we acknowledge the clinical complexity of coverage determinations for chronic conditions in patients whose terminal illness or related conditions have a documented metabolic, cardiovascular, or musculoskeletal component. Coverage determinations must be made on an individualized, patient-specific basis. When a patient's terminal illness or related conditions includes a condition with a documented metabolic component, medications needed to treat these chronic conditions are likely related to the terminal illness or related conditions and should be covered under the hospice benefit. Similarly, when a chronic condition has a documented inflammatory or vascular component that interacts with the terminal illness or related conditions, medications to manage these chronic conditions may also be related. Some commenters reported that hospices frequently classify diabetes and arthritis medications as unrelated to the terminal condition without individualized clinical justification; this scenario is inconsistent with our long-standing position that virtually all care needed by the terminally ill beneficiary should be covered by the hospice (48 FR 56010). The proposed mandatory addendum supports appropriate coverage determinations for these conditions by requiring documentation and disclosure of all unrelated determinations, creating a record that MACs can review to assess whether classifications are clinically defensible, and increasing hospices' accountability, transparency, and beneficiary (or representatives) education regarding why specific items, services, or drugs have been determined to be unrelated to the terminal illness or related conditions.

Finally, we appreciate commenters' remarks and suggestions related to modifier codes and claims processing workflow concerns that may be contributing to Medicare non-hospice spending. We routinely provide information on various aspects of the Medicare program, including educational materials on Medicare

benefits and claims processing, MLN® matters articles,¹¹ and the Medicare claims processing manual¹² to provide education and resources to physicians, other providers of services, and MACs. We also appreciate comments that support our efforts to address non-hospice spending, and we agree with commenters' concerns related to beneficiaries' rights, program integrity concerns, duplicate billing, wasted resources, communication burden, inappropriate cost-sharing, and lack of transparency. We will continue to consider the concerns raised and the suggestions provided for future rulemaking, as appropriate.

We received public comments on our proposed burden estimates. The following is a summary of the comments we received and our responses.

Burden Estimates

Comment: Several commenters noted their belief that CMS' burden estimate is outdated, underestimated, or otherwise flawed; reasons reported included current operational realities, staffing shortages, the complexity of individualized addendum preparation, a limited number of beneficiaries currently requesting the addendum and that only a small percentage of admissions have a completed addendum, electronic health record configuration costs, reports of the proposed timeframe requirements creating unintended consequences. In addition, a commenter reported that the addendum process and contents were not changed making the proposal for a mandatory election statement less feasible; another commenter reported that busy hospice agencies will experience a higher administrative burden and that the requirement will be cumbersome. Additionally, one commenter reported that 55 percent of hospice beneficiaries did not have any non-hospice spending in FY 2024, arguing that this statistic supports retaining the current request-only addendum framework. Conversely, a non-hospice provider group supported the projected net burden reduction for non-hospice providers, specifically noting that the amount of time needed to communicate with hospice providers would reduce significantly.

Response: We appreciate the detailed operational feedback provided by commenters regarding the burden estimate for the proposed mandatory

election statement addendum. We acknowledge commenters' concerns and take seriously the operational challenges identified by hospice providers, hospice advocacy groups, and electronic health record vendors. As commenters acknowledge, the burden estimate completed in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38534) was calculated under the assumption that hospices would provide the addendum to all beneficiaries, not just those who request it. This means that the FY 2020 estimate already accounted for the full volume of addenda that would be required under the mandatory proposal. A one-time addendum form development cost was accounted for in the FY 2020 burden estimates and despite the cost for initial form development, there was still a \$5.2 million net reduction in total provider burden. The FY 2027 updated burden estimates continue to demonstrate a significant total overall burden reduction to hospice and non-hospice providers. Furthermore, addenda completed for beneficiaries with no non-covered items would require significantly less time for the hospice to complete given that the form would not have a documented list of items, services or drugs or the hospice could simply acknowledge on the form that there are no unrelated items, services or drugs, thereby reducing the overall estimated burden.

We appreciate commenters reiterating that the FY 2020 burden estimate assumed hospices would provide the addendum to all beneficiaries, and that some individuals do not have any non-covered items; specifically, one commenter reported that 55 percent of hospice beneficiaries did not have any non-hospice spending in FY 2024. Given this information, the burden for those hospice beneficiaries would be lower than what the burden estimate accounts for, as addenda with no non-covered items would be significantly faster to complete and explain to the patient. The addendum for a patient with no non-covered items is, by definition, a straightforward document and the clinical determination that all care is related to the terminal illness or related conditions is one that hospices are already required to make as part of the comprehensive assessment and care planning process under the hospice CoPs.

We reiterate that it is a longstanding CoP (§ 418.56(e)(5)) that hospices are already required to develop and maintain a system of communication and integration among all providers furnishing care to the terminally ill patient. This includes the ongoing

sharing of information with other non-hospice healthcare providers and suppliers furnishing services unrelated to the terminal illness and related conditions, which is necessary to ensure coordination of services and to meet the patient, family, and caregiver needs. The mandatory addendum requirement does not create a new substantive clinical obligation; rather, it formalizes and standardizes the communication of existing determinations that hospices are already required to make. As hospices are already required to review, determine, and document information on unrelated conditions per the hospice regulations and CoPs, the incremental burden of converting those determinations into a written, beneficiary-facing addendum is appropriately characterized in the burden estimates. The numerous comments received regarding concerns about the burden associated with communication obligations that have been longstanding CoP requirements, in conjunction with the drastic increases in non-hospice spending, reports from electronic health record vendors that there are common unrelated items identified for hospice beneficiaries, and the significant opposition from hospice providers to providing addenda to hospice beneficiaries, raise concern as to why hospice providers are opposed to providing written documentation of information that is already required to be communicated among all providers, hospice beneficiaries, and their families, and why hospice providers are stating that more time is needed to complete the addendum when hospices should be providing virtually all of the care that is needed for terminally ill beneficiaries (48 FR 56010, § 418.24(b)(3)), which includes not only the beneficiary's terminal diagnosis but also any related conditions.

We received numerous public comments on our proposal to require the election statement addendum be provided at the time of hospice election. A summary of the comments and our responses to those comments are as follows:

Election Statement Addendum

Comment: Many commenters stated that the proposed mandatory statement addendum would not address the root causes of non-hospice spending, report concerns that the addendum may confuse patients, claim denial concerns, and requested explanations as to why a mandatory election statement addendum is necessary and appropriate first step, even if it does not fully resolve the growth in non-hospice spending. We also received comments

¹¹ <https://www.cms.gov/medicare/payment/prospective-payment-systems/hospice/hospice-educational-resources>.

¹² <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/clm104c11.pdf>.

that supported the proposed mandatory addendum for its potential to save Medicare program expenditures, reduce beneficiary cost-sharing, support more complete corrective architecture to help at-risk elderly populations, and to decrease non-hospice spending. A commenter requested evidence that the proposed mandatory addendum would meaningfully reduce non-hospice spending. Another commenter reported that 55 percent of hospice beneficiaries in FY 2024 had no non-hospice spending and argued that this is a reason to retain the request-only addendum framework. A commenter reported that only 1 in 5 patients requests the addendum, and another commenter reported that 5 to 7 percent of admissions have completed addenda. Some commenters raised concerns regarding the proposed mandatory addendum's impact on claims processing, specifically claims denials. A commenter also recommended that we develop national examples for items, services, and drugs that are commonly identified as related to the terminal illness and related conditions, such as inhalers, oxygen, wound care supplies, durable medical equipment, anticoagulants, diabetic supplies, and medications used for both disease treatment and symptom relief, to assist hospices in making and documenting individualized relatedness determinations.

Response: We acknowledge commenters request for evidence that the proposed mandatory addendum would meaningfully reduce non-hospice spending and concerns that the proposed mandatory hospice election statement addendum does not, by itself, resolve all root causes of non-hospice spending growth. We agree that non-hospice spending is a multifactorial problem with various contributing causes. As referenced in this year's proposed rule (91 FR 17338), audits completed by the OIG found that Medicare improperly paid for services provided to hospice enrollees, specifically, one audit noted that in situations where Medicare improperly paid for services, neither the beneficiary nor the non-hospice provider had access to the addendum; the OIG identified that having an addendum available would have assisted non-hospice providers in appropriately billing Medicare for hospice beneficiary services.¹³

However, we disagree with the characterization that the proposed mandatory election statement addendum is unnecessary or ineffective. The data documented in the proposed rule, along with comments received in support of requiring the addendum to be provided at the time of hospice election, raises serious and specific concerns about whether hospices are fulfilling their existing statutory and regulatory obligations; obligations that exist independent of the proposed addendum requirement. Specifically, the data shared in this year's proposed rule (91 FR 17338) identify that non-hospice spending is heavily concentrated in the same diagnostic categories that define the most common hospice terminal diagnoses. We are particularly concerned by the data showing that items, services, and drugs that are foundational to hospice care, and are not exceptional or unusual, such as, but not limited to, wheelchairs, hospital beds, oxygen supplies, wound care supplies, incontinence supplies, catheters, needles, and common palliative drugs, are being billed outside the hospice benefit for patients whose terminal diagnoses directly and foreseeably give rise to the need for these items. Our concerns are further amplified by anecdotal reports from beneficiary representatives who are inquiring whether there is a limit to basic supplies that are provided by the hospice, such as adult diapers, as hospices are not providing or limiting the amount supplied to beneficiaries. These anecdotal reports, combined with the support of patient advocacy groups and other commenters who have been requesting increased transparency since before the implementation of the addendum in FY 2020, and the ongoing support and requests for a mandatory requirement underscores the need to empower beneficiaries to make informed decisions about their care during their most vulnerable time in life. Commenters who support the proposal to make the addendum mandatory report that beneficiaries are not fully aware of the services available to them under the hospice benefit and that some hospices may not be fulfilling their coverage obligations.

In response to a comment that reported 55 percent of hospice beneficiaries in FY 2024 had no non-hospice spending and argued that this is a reason to retain the request-only addendum framework, this statistic underscores the importance of ensuring that the 45 percent of beneficiaries who do incur non-hospice spending, and who are most likely to be experiencing

coverage gaps, inappropriate cost-shifting, or inadequate care coordination, have timely, written access to the hospice's coverage determinations.

In response to the comments that only 1 in 5 patients request the addendum and that 5 to 7 percent of admissions have completed addenda, we note that the exceptionally low reported request rate raise concerns about whether hospices are fulfilling their required obligations and properly informing beneficiaries of their rights and coverage determinations. In addition, comments from patient advocacy groups, non-hospice provider groups, and other commenters supporting the availability of the addendum for all hospice beneficiaries and anecdotal reports of non-hospice providers reporting inability to obtain the addendum when requested raise the same concerns. We remind readers that section 1812(d)(1) of the Act requires beneficiaries to affirmatively elect hospice care, and that the hospice election involves a significant waiver of Medicare rights, as beneficiaries waive all rights to Medicare payment for services related to the treatment of their terminal illness and related conditions. Hospice beneficiaries are among the most vulnerable Medicare population, and they, along with their entire care team, need to have access to complete information about what services will and will not be covered by the hospice at the time of election to ensure that the beneficiary is truly informed when providing consent to elect the hospice benefit, which waives significant Medicare rights.

Covered entities must furnish appropriate auxiliary aids and services when necessary to ensure effective communication with individuals with disabilities. They also must take reasonable steps to provide meaningful access to individuals who are limited English proficient including the provision of interpreter and translation services free of charge when needed.

Additionally, as described in detail in this year's proposed rule (91 FR 17338), we identified that non-hospice spending growth increased 160 percent from FY 2020 to FY 2024, despite the addendum's availability upon request. The growth in non-hospice spending also means that beneficiaries' out of pocket costs have also significantly increased. Therefore, CMS believes that beneficiaries should not have to expend additional effort to request coverage information that §§ 418.52(c)(7)–(8) set out as a patient right, and that CMS believes should be proactively provided to every beneficiary, in language the

¹³ Medicare Improperly Paid Acute-Care Hospitals an Estimated \$190 Million Over 5 Years for Outpatient Services Provided to Hospice Enrollees (A–09–23–03024). November 12, 2024. <https://oig.hhs.gov/documents/audit/10055/A-09-23-03024.pdf>.

individual (or representative) can understand, at the time of hospice election.

We are particularly concerned by reports that non-hospice providers have at times been unable to obtain the addendum when requested, a circumstance that raises serious questions about how difficult it must be for beneficiaries, who are terminally ill and often cognitively or physically impaired, to obtain the same information. If non-hospice providers, who are healthcare professionals with knowledge of the system, cannot reliably obtain the addendum upon request, it is unreasonable to expect that beneficiaries and their families, navigating one of the most difficult periods of their lives, can do so.

Additionally, we remind readers that under § 418.24(b)(3), hospices are required to inform beneficiaries that virtually all care needed by the beneficiary who has elected hospice will be provided by the hospice, and that services unrelated to the terminal illness and related conditions are exceptional and unusual. Further, under § 418.24(b)(6), hospices are already required to notify beneficiaries of their right to receive the addendum if there are conditions, items, services, or drugs the hospice has determined to be unrelated. A written document outlining the hospices' determination of what is covered and what is not covered under the hospice election would assist beneficiaries in adequately advocating for themselves, help them understand coverage determinations, and facilitate coordination with non-hospice providers.

In response to commenters that raised concerns regarding the proposed mandatory addendum's impact on claims processing, specifically claims denials, we note that the proposed mandatory addendum serves a distinct and complementary function to the claims processing workflow. Without a universally documented and delivered addendum, there is no reliable record against which a MAC could evaluate whether a non-hospice claim is consistent with the hospice's documented relatedness determinations. The mandatory addendum and the claims process are not competing alternatives, but rather sequential steps in a more complete program integrity process.

Finally, we acknowledge the commenter's recommendation that we develop national examples for items, services, and drugs. Due to each beneficiary having a unique, patient-specific situation, we are unable to enumerate all situations where specific

items, services, or drugs would be applicable or provide standardized mechanisms to confirm relatedness. However, we continue to remind readers that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life, and we have reiterated since 1983 that virtually all care needed by the terminally ill beneficiary would be provided by the hospice (48 FR 56010, 84 FR 38509, 85 FR 47091, 86 FR 19713, 88 FR 20032, 89 FR 64202). CMS will continue to consider commenters' requests and update sub-regulatory guidance as appropriate to assist hospices in making individualized, patient-specific determinations of whether items, services, and drugs are related or unrelated to the terminal illness and related conditions.

Comment: Some hospice provider advocacy groups and hospices raised concerns that requiring that the election statement addendum which was described by a hospice as a highly technical instead of clear and compassionate communication, be provided to every beneficiary at admission risks overwhelming the beneficiary, creating confusion, distress and administrative burden during a vulnerable time. Additionally, several commenters stated that they disagree with requiring beneficiaries to acknowledge and sign the information on the addendum arguing that this requirement is neither appropriate nor effective. A hospice provider group also reported concerns with having to update the addendum, especially as beneficiaries approach the end-of-life and their needs quickly evolve. Similarly, one hospice provider group commented that hospice beneficiaries want to focus on end of life needs rather than distinguishing between hospice and non-hospice coverage. A patient advocacy group and a non-hospice provider group submitted comments that were contrary to those of hospice providers and hospice advocacy groups. The patient advocacy group stated that the addendum is needed for beneficiaries who are facing financial hardship and need to be aware of situations involving a risk of cost-shifting to the patient or family, as well as alternative sources of coverage, appeal rights, and awareness that an addendum can be requested, and requested that the addendum be written in plain language with clear explanations that beneficiaries and their families, especially those with limited health literacy or language barriers, can understand. The non-hospice provider

group reported that the mandatory addendum would save health care providers time, increase beneficiary and family awareness of coverage determinations, and reduce overall Medicare spending. There was also mixed support from various commenters who identified benefits of the addendum; however, these comments also include overarching themes of administrative burden concerns and challenges with beneficiaries understanding the addendum as the addendum is often described as not being written in plain language.

Response: We acknowledge the overwhelming opposing views from hospice provider groups, the support from hospice beneficiary advocates and non-hospice providers, as well as the mixed support from various commenters. The significant number of comments from hospice providers and hospice advocacy groups raising concerns about beneficiary burden and administrative complexity is particularly notable given that the addendum has been a condition of payment since FY 2020 and hospices have been required to provide it upon request since that time; if hospices had been routinely fulfilling this existing obligation, the administrative processes and workflows necessary to support a mandatory requirement should already be largely in place. Combined with reports from non-hospice providers and patient advocacy groups describing difficulty or inability to obtain the addendum when requested, this raises serious concerns that some hospices may be avoiding providing the addendum altogether. We are deeply concerned that the overwhelming volume of comments citing administrative burden, combined with hospice providers potentially making unilateral determinations that beneficiaries do not want the addendum or may feel overwhelmed by coverage information, may reflect a pattern of non-compliance with existing disclosure obligations rather than a genuine patient-centered concern. We note that the decision of whether a beneficiary wants or needs coverage information is not the hospice's determination to make, it is the beneficiary's right to receive.

We are further concerned by reports from all parties, including hospice providers, non-hospice providers, and patient advocates, describing the addendum as complex and not written in plain language. We remind all hospices that the addendum is explicitly required under § 418.24(c)(6) to include "a written clinical

explanation, in language the individual (or representative) can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the terminal illness and related conditions.” The requirement that the addendum be written in language that the beneficiary can understand is not a suggestion, it is a regulatory requirement. If hospices are producing addenda that are not written in language the individual (or representative) can understand, as required in the regulations at § 418.24(c)(6), this represents a failure of compliance with the existing regulatory standard, not a reason to oppose the mandatory requirement.

Comment: Several commenters requested a standardized plain-language addendum template and implementation guidance. In addition, several commenters specifically requested that CMS remove the signature requirement, stating that obtaining signatures is logistically difficult, time-consuming, and particularly challenging when beneficiaries are cognitively impaired, in rapid decline, or when representatives are unreachable or unavailable to sign. Some commenters requested specific guidance and clarification on how to document the addendum when all items are covered. A few commenters argued that generating a blank form would be cumbersome, clinically meaningless, and an unnecessary administrative burden. One commenter reported that 55 percent of hospice beneficiaries in FY 2024 had no non-hospice spending, arguing that this statistic supports limiting the mandatory addendum requirement to only those beneficiaries with identified non-covered items, services, or drugs. Additionally, a commenter reported that electronic health records have the capability to pre-populate common unrelated items based on terminal diagnosis and prompt the IDG to review and confirm but would still require clinical judgment.

Response: We acknowledge commenters’ requests for a standardized, plain-language addendum template and appreciate the feedback regarding the operational complexity of developing and implementing the addendum. However, as stated in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), CMS believes that hospices are best positioned to develop an addendum, with the required content elements, that meets their patients’ needs and aligns with their current admission processes and other business procedures. We remind readers that hospices were

expected to develop their own addenda in a format that suits them to best meet the requirements and patient needs while minimizing operational burden by the (delayed) implementation date of FY 2021. Additionally, the burden estimate completed in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484) already accounted for the assumption that hospices would provide the addendum to all beneficiaries. As such, hospices have been on notice since FY 2020 that their processes and systems should be capable of producing an addendum for every beneficiary, in writing, if requested. The transition to a mandatory framework in the FY 2027 Hospice Wage Index and Rate Update proposed rule formalizes what the FY 2020 burden estimate already assumed and hospices have had since FY 2020 to develop the necessary workflows, documentation processes, and, where applicable, electronic health record configurations to support this requirement. Additionally, we acknowledge the electronic health records capabilities and appreciate that the commenter identified that clinical judgement is required to make final determinations; however, the commenter identifying that there are common unrelated items that are populated raise concerns as to why hospices are not covering items when they are commonly noted which supports that the commonly reported items are likely contributing factors to the beneficiaries’ terminal prognosis that requires hospice care. We remind readers that the terminal diagnosis should not be the only diagnosis considered as the hospice benefit should cover all items, services, and drugs related to not only the terminal illness but also any related conditions; items, services, and drugs not covered under the hospice benefit should be exceptional, rare, and unusual as articulated since the hospice benefit was implemented in 1983 (48 FR 56008, 56010, December 16, 1983).

The signature concerns raised by commenters are already addressed in our existing regulations; hospices are not required to obtain a signature in every circumstance, and the inability to obtain a signature does not result in a claim denial provided the hospice documents the reason it was unable to obtain the signature. The signature is an acknowledgment of receipt, not an agreement with the hospice’s determinations.

We appreciate commenters’ concerns surrounding documentation of addenda for beneficiaries with no non-covered items and disagree with the

characterization that an addendum reflecting no non-covered items is clinically meaningless or an unnecessary administrative burden. Since the addendum is required to include a list of the individual’s conditions present on hospice admission (or upon plan of care update) and the associated items, services, and drugs not covered by the hospice, if there are no such items, the list would reflect that determination. An addendum documenting that all items, services, and drugs have been determined to be related to the terminal illness and related conditions is not a blank form; it is a meaningful clinical record that confirms the hospice conducted the required individualized assessment and determined that all care is covered under the hospice benefit. This documentation serves an important program integrity function, as it creates an auditable record of the hospice’s coverage determination that beneficiaries and their representatives, MACs, and other oversight entities can reference and utilize when advocating for beneficiary rights or evaluating the appropriateness of non-hospice claims submitted for a specific hospice beneficiary. As stated in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we continue to believe that once a beneficiary elects the hospice benefit, most items, services, and drugs would be for the palliation and management of the terminal illness and related conditions and that there would be few things that would be unrelated; for this reason, we believe most addenda, not just 55 percent as reported by one commenter, should reflect the determination that there are no items, services, or drugs that are not covered by the hospice. This further supports that the burden of completing an addendum for beneficiaries with no non-covered items would be minimal, as the determination is straightforward and the documentation brief. The argument that such an addendum is cumbersome or clinically meaningless is inconsistent with the hospice’s existing obligation to conduct and document individualized coverage determinations for every beneficiary as part of the comprehensive assessment and care planning process CoPs at §§ 418.54 and 418.56; the addendum simply formalizes and communicates that determination in writing, in language the individual (or representative) can understand, to the beneficiary.

We have already stated that the format of the addendum is not standardized (84 FR 38484); the format should be presented in a way that best suits the

hospice, while meeting the requirements and patient needs, and minimizing operational burden. Similarly, there is no standardized method to document that all services are covered by the hospice; if there are no non-covered items, the addendum would reflect that determination in plain language that the beneficiary or representative understands. The proposed mandatory addendum would serve a very meaningful purpose, strengthening program integrity efforts and improving consistency, transparency, accessibility, and clarity for not only hospice providers, but also non-hospice providers, MACs, beneficiaries, and their families. This consistency could also improve the workflow and decrease confusion for hospices, non-hospice providers, and MACs, as the addendum would be always available in the beneficiary's medical record.

Additionally, in response to comments in previous rules requesting a template for the addendum, we developed a model hospice election statement addendum to assist hospices in developing their own. As stated in this year's proposed rule (91 FR 17338), there is no required standardized form for the addendum; however, if desired, hospices can use the model hospice election statement addendum that is available on the hospice center web page.¹⁴ Additionally, while a written addendum is required to be provided to the beneficiary, a supplemental copy via an electronic delivery option can also be made available to the beneficiary if the hospice agency chooses to include this option in their workflow. We want to ensure that every beneficiary has access to their coverage determinations and that access to these determinations is not confusing or dependent on having and managing electronic devices, unique applications, or other resources, such as a printer, when beneficiaries are focusing on their end-of-life needs. Providing beneficiaries and their families with an option for a supplemental electronic copy could be beneficial; therefore, we appreciate and agree with commenters' suggestions regarding ways to provide beneficiaries with additional resources during their most vulnerable time in life.

Specifically, regarding signatures on the addendum, electronic or written signatures are acceptable; however, a hospice cannot require an electronic signature in lieu of a written signature if the beneficiary or representative does not have access to the necessary

resources or the understanding required to complete the electronic method of acknowledgement.

We will also consider comments provided when updating educational materials including sub-regulatory guidance.

Comment: Many commenters requested that CMS delay implementation for up to 18 months. Additionally, a few commenters requested that the proposed mandatory addendum timeframe be extended; with requests ranging from beyond 5 days and up to 15 days.

Response: We acknowledge the widespread requests for a delayed implementation timeline and an extended requirement timeline to provide beneficiaries with the proposed mandatory addendum. However, hospices have had since FY 2020, when the addendum was initially finalized, to implement the addendum requirements with the assumption that every beneficiary could request an addendum. We remind readers we provided a delayed implementation date of FY 2021 in response to commenters' requests in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484).

Similarly, in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we extended the timeframe for furnishing the addendum from 48 hours to 5 days to align with the comprehensive assessment requirements, in response to commenters' requests for additional time and to align the addendum timeframe with existing hospice admission regulations. Moreover, if a beneficiary dies prior to the addendum being furnished, within the required timeframe, the hospice is not required to complete the addendum; this circumstance accounts for about 19 percent of hospice beneficiaries who may not be provided with necessary information regarding their care and services when they need it most. If the addendum timeframe was potentially delayed until day 14 or 15, the proportion of beneficiaries who may not be provided with necessary information regarding their care and services would drastically increase to almost 34 percent and 35 percent, respectively.

For these reasons, we do not agree with extending the implementation timeline as this would negate what the majority of commenters requested in FY 2020, specifically, to align the addendum implementation timeline with the comprehensive assessment requirement timeline; changing the current requirements' implementation timeline could be more detrimental to

hospice beneficiaries as they could easily be confused by their inability to receive an addendum in the timeframe that current hospice beneficiaries have already been educated on; and each additional day that the addendum is delayed significantly increases the proportion of beneficiaries and their families that may not have access to the transparency, patient protections, and information regarding the risks of inappropriate cost-sharing related to items, services, and drugs when they need it most. Every beneficiary should have timely, written access to the coverage information they are already entitled to under existing regulations and the appropriate resources to advocate for themselves and question inappropriate coverage determinations, and assurance that hospices are fulfilling their existing obligation to provide virtually all care needed by the beneficiary who has elected hospice and services unrelated to the terminal illness and related conditions are exceptional, rare, and unusual (§ 418.24(b)(3)).

Final Decision: After considering the public comments received, we are finalizing as proposed our proposal to make the election statement addendum mandatory for all hospice elections, not just upon request.

D. Clarifying Regulation Text Changes

1. Discharge From Hospice Care

In the FY 2025 Hospice Wage Index and Rate Update final rule (89 FR 64202), we finalized conforming text changes to align the medical director CoP and the hospice payment requirements. Specifically, we amended § 418.102(b) by adding the physician member of the hospice interdisciplinary group (IDG), as defined in § 418.56(a)(1)(i), as an individual who may provide the initial certification of terminal illness. We also amended the medical director CoP in § 418.102(c) to include the medical director, or physician designee, as defined at § 418.3, if the medical director is not available, or physician member of the IDG among the specified physicians who may review clinical information as part of the recertification of the terminal illness. Further, to align payment regulations regarding the certification of the terminal illness and admission to hospice care under §§ 418.22 and 418.25 with the CoPs at § 418.102, we added "physician designee (as defined in § 418.3)" to clarify that when the medical director is not available, a physician designated by the hospice, who is assuming the same responsibilities and obligations as the medical director, may certify terminal

¹⁴ <https://www.cms.gov/medicare/enrollment-renewal/providers-suppliers/hospice-center>.

illness and determine admission to hospice care. We clarified that this does not connote a change in policy; rather, we stated that we believe aligning the language at §§ 418.22(c) and 418.25 with the CoPs at § 418.102 allows for greater clarity and consistency between key components of hospice regulations and policies (89 FR 64231).

In response to comments received on the proposed amendments to §§ 418.22 and 418.25, in the FY 2025 Hospice Wage Index and Rate Update proposed rule (89 FR 64202) to add physician designee to the hospice certification and admission payment policies, we again agreed with commenters who stated that our regulations at § 418.25 identifying which physicians can determine admission to hospice care should be consistent with those at § 418.22 identifying who can provide the certification of terminal illness. Accordingly, in the FY 2026 Hospice Wage Index and Rate Update final rule (90 FR 37416), to align with the updated payment and CoP regulations at §§ 418.22(c)(1)(i) and 418.102(b), respectively, we finalized the addition of “the physician member of the hospice interdisciplinary group” at § 418.25(a) and (b) to indicate that, in addition to the medical director or physician designee, the physician member of the hospice IDG may also determine admission to hospice care. We stated that we believe aligning the language at § 418.25(a) and (b) with the language at §§ 418.102(b) and 418.22(c)(1)(i) would allow for greater consistency between key components of hospice regulations and policies.

We noted that § 418.26(b) requires that prior to discharging a patient for any reason listed in § 418.26, the hospice must obtain a written physician’s discharge order from the hospice medical director. To align with the updated payment regulations at §§ 418.22, 418.102(b), and 418.25(a) and (b) and to create greater consistency between key components of hospice regulations and policies, we proposed conforming additions to § 418.26(b) to state the hospice may also obtain the written physician’s discharge order from the physician designee, as defined at § 418.3, or physician member of IDG.

We received public comments on our proposal to make conforming additions to § 418.26(b) to state the hospice may also obtain the written physician’s discharge order from the physician designee, as defined at § 418.3, or physician member of IDG. A summary of the comments and our responses to those comments are as follows:

Comment: All commenters supported this proposal, stating that they would

welcome the clarification that hospices may obtain written physician discharge orders from a physician designee (as defined at § 418.3) or a physician member of the IDG. Commenters broadly noted that this change would reflect current real-world practice, align with other recent regulatory language changes, and would allow hospices to complete discharge orders on a timelier basis. One commenter applauded CMS’ willingness to broaden authorizations and encouraged CMS to extend similar flexibilities to qualified non-physician health professionals such as physician assistants (PAs) where possible.

Response: We thank commenters for their support.

Final Decision: We are finalizing the proposed additions to § 418.26(b) as proposed.

2. Face-to-Face Encounter

Section 6209(f)(1)(A) of the CAA, 2026 amended section 1814(a)(7)(D)(i)(II) of the Act to extend the use of telehealth by a hospice physician or hospice nurse practitioner to conduct a face-to-face encounter for the sole purpose of recertifying the patient’s eligibility for hospice, through December 31, 2027. Additionally, section 6209(f)(1)(B) of the CAA, 2026 amended section 1814(a)(7)(D)(i)(II) of the Act to include a prohibition on the use of telehealth to conduct the face-to-face encounter in the case of such an encounter with an individual occurring on or after January 31, 2026, if such individual is located in an area that is subject to a moratorium on the enrollment of hospice programs under this title pursuant to section 1866(j)(7) of the Act, if such individual is receiving hospice care from a provider that is subject to enhanced oversight under this title pursuant to section 1866(j)(3) of the Act, or if such encounter is performed by a hospice physician or nurse practitioner who is not enrolled under section 1866(j) of the Act and is not an opt-out physician or practitioner. Section 6209(f)(2) of the CAA, 2026 amended section 1814(a)(7)(D)(i)(II) of the Act to require (for face-to-face encounters conducted via telehealth occurring on or after January 1, 2027) that hospice claims include one or more modifiers or codes (as specified by the Secretary) to indicate that such encounter was conducted via telehealth.

In accordance with section 6209(f) of the CAA, 2026, we proposed amending § 418.22(a)(4)(ii) to align with the provisions described previously. The regulatory language would require the hospice to collect data reflecting face-to-face encounters furnished using

telecommunications technology, which includes, at a minimum, the use of audio and video equipment permitting two-way, real-time interactive communication between the patient and the distant site hospice physician or hospice nurse practitioner, and the hospice would do so by reporting a G-code identifying that a face-to-face encounter was furnished using such technology, that is, telehealth. We solicited comments on these amendments and on the use of the new G-code identifying face-to-face encounters furnished via telehealth. The coding requirement will enable CMS to enforce the prohibition on the use of telehealth to conduct the face-to-face encounter when the circumstances described in section 6209(f)(1)(B) of the CAA, 2026 are present because we will be able to identify those face-to-face encounters conducted via telehealth. We will not require that in-person face-to-face encounters for the purposes of recertification to be collected on claims. In accordance with section 6209(h) of the CAA, 2026, we will issue further subregulatory guidance on implementation of this provision, including the exclusion from this permissible use of telehealth, via a Change Request (CR).

Comment: The majority of commenters support the proposal to amend § 418.22(a)(4)(ii) in alignment with the CAA 2026, agreeing that the requirement to report a G-code identifying telehealth-conducted face-to-face encounters would not be overly burdensome and is feasible for most hospice providers. No commenters directly opposed the proposal.

Response: We thank commenters for their support.

Comment: Some commenters raised significant clarification concerns, including ambiguity around the scope of the telehealth prohibition (nationwide vs. regional/State/county moratorium), the inability to search nurse practitioner enrollment status in the Order and Referring dataset, and the lack of face-to-face practitioner identification on hospice claims, recommending CMS pause enforcement until an identifying G-code is established and all interested parties have sufficient implementation notice. Key suggestions include making telehealth flexibilities for face-to-face encounters permanent (particularly for rural and underserved providers), extending the flexibility to physician assistants, and ensuring MACs and audit contractors refrain from issuing claim denials during the interim period before full implementation guidance is issued.

Response: The CAA, 2026 only temporarily extends the telehealth flexibilities for face-to-face recertifications and therefore, we are statutorily prohibited from making this provision permanent, nor does it extend recertification to physician assistants at this time. In addition, there is no need to delay enforcement as the G-code along with its reporting guidance and instructions will be issued prior to implementation of this requirement, which does not take effect until January 1, 2027. Further, the use of the G-code is not intended to be used to check provider identification or enrollment status. We note that hospices that are already enrolled in Medicare can continue to utilize telehealth to conduct recertification face-to-face encounters and are not impacted by the home health and hospice nationwide moratorium. We issued clarification regarding the home health and hospice nationwide moratorium and its impact on the hospice face-to-face telehealth flexibility, which can be found at <https://www.cms.gov/files/document/hh-hospice-moratorium-faqs.pdf>.

Final Decision: After considering the public comments received, we are finalizing as proposed our proposal to amend § 418.22(a)(4)(ii).

E. Requests for Information on Medicare Services and Payment Structure

1. Request for Information on Ways To Enhance the Provision of Palliative Care Outside of Hospice Care: Current Coverage, Billing Practices, and Opportunities for Improvement

Palliative care is often thought of in concert with hospice care; however, it is not mutually exclusive to the end of life. Medicare defines palliative care as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (§ 418.3). The Medicare hospice benefit provides comprehensive interdisciplinary palliative care once a patient is certified as having a life expectancy of 6 months or fewer; however, many palliative care patients are not yet ready or eligible for hospice. Therefore, as palliative care is a method of care delivery that is provided throughout the continuum of illness, it can be furnished under various Medicare benefits prior to a beneficiary's decision to elect hospice care. In particular, community-based

palliative care plays an essential role in improving the quality of life for individuals living with serious illness. The home is an ideal environment for individuals to receive palliative care services, as remaining in the home during a serious illness may help alleviate psychological and mental distress and allow for more intimate caregiving to be provided by family members. Although Medicare does not currently offer a dedicated palliative care benefit, because palliative services are offered across existing Medicare programs, we solicited public feedback regarding ways in which we can optimize current coverage and billing practices under various outpatient or home-based benefits to result in more cohesive, integrated, person-centered care as beneficiaries approach hospice care. We stated that understanding how Medicare providers currently support palliative care, how providers bill for these services, and where gaps persist is critical to strengthening community-based palliative care within today's regulatory and payment structure.

Although Medicare covers many services that are core to palliative care, coverage can be indirect. Most community palliative care services fall under Medicare Part B, which reimburses for reasonable and medically necessary outpatient care. Medicare Part B also supports access to mental and behavioral health services, including counseling provided by clinical social workers, and rehabilitation therapies such as physical, occupational, and speech therapy aimed at reducing symptom burden and maintaining function. Telehealth, expanded in recent years, further enhances access to palliative expertise for homebound or mobility-limited patients. Medicare Part B also covers certain medical supplies and equipment needed for palliative care, such as oxygen and wheelchairs.

While Medicare Part A primarily covers inpatient services, it does provide limited outpatient-related support. Care delivered in hospital outpatient departments may be covered, as well as home health services for patients who are homebound and require skilled care. These benefits, though not palliative-specific, can provide essential nursing, social work, aide, and therapy support that aligns with palliative goals.

Medicare Part D further contributes to outpatient palliative care by covering prescription medications for symptom management, such as analgesics, antiemetics, and anxiolytics.

Understanding Billing Practices and Delivering Palliative Care

Because Medicare does not recognize palliative care as a distinct billable service, providers must rely on a variety of codes and benefit categories. Physicians and advanced practice providers typically bill evaluation and management (E/M) visits for outpatient or home-based palliative encounters. Clinicians may provide symptom management, chronic disease support, advance care planning (ACP), and behavioral health care through standard E/M visits or specialized billing codes. For example, ACP services are reimbursable through CPT codes 99497 and 99498, allowing providers to conduct structured discussions about patient values, goals, and treatment preferences. Similarly, chronic care management (CCM), complex CCM, principal care management (PCM), and transitional care management (TCM) codes support ongoing coordination of care, which is central to high-quality palliative care for complex conditions. Code Z51.5 *Encounter for Palliative Care* can be used; however, it does not specify what services this code encompasses. These codes also may not reflect the time-intensive nature of holistic, interdisciplinary palliative care. We requested comments regarding ways in which community providers bill for palliative services, which CPT or HCPCS codes they rely on, and what barriers they face in using ACP, care management, or telehealth codes. Specifically:

- Do the E/M codes, care management codes, and ACP codes represent the majority of the billing codes providers use to capture community palliative care services?
- What services are typically provided when Z51.5 is billed?
- Are there challenges in meeting documentation requirements or integrating non-billable team members, such as social workers, chaplains, or nurses who are crucial to palliative care delivery?
- Is there uncertainty about compliance requirements or concern that billing for palliative care will result in claims denials?
- What non-medical services, such as caregiver training or spiritual care, would most benefit patients if reimbursed? And what enhancements to existing benefits (not requiring legislation) could strengthen palliative care? These might include expanding social worker billing privileges or creating standardized codes or definitions for serious-illness care.

Understanding Program and Beneficiary Needs

Gathering information from providers and beneficiaries is essential to identify how outpatient or community palliative care is currently provided under Medicare and where gaps remain. In addition to providing feedback on billing practices, we requested interested parties offer insight into broader systemic challenges, staffing limitations, claim denials, and palliative services they provide but cannot bill for under Medicare's current structure. Specifically:

- What aspects of palliative care are financially unsustainable for providers?
- What documentation requirements do providers typically use, or suggest using, to identify the provision of palliative care?
- Do providers commonly refer patients for home health services when a patient needs palliative care concurrently with curative or life-sustaining care?
- What services do providers typically offer patients who are not eligible or ready to elect hospice care but require palliative services?

The Path Forward

Medicare's current structure provides several pathways for delivering community palliative care; however, these programs may seem siloed, making it difficult for patients to understand how palliative services are provided outside of the hospice benefit. We stated that interested party feedback is essential for guiding CMS toward policies that expand access to high-quality community palliative care without requiring legislative reform or the creation of an entirely new benefit. By gathering detailed input from those who deliver and manage palliative care services, we can better understand how to strengthen community palliative care under existing benefits. In addition to the questions previously listed, we solicited input on any additional targeted enhancements within current benefits, such as expanding billable services, simplifying documentation, standardizing definitions, or increasing beneficiary education that could meaningfully expand access to palliative care services. As the population ages and the prevalence of serious illness grows, refining how Medicare supports community palliative care, prior to hospice care, is both a practical necessity and an opportunity to enhance the well-being of millions of beneficiaries.

We received public comments on our request for information on ways to

enhance the provision of palliative care outside of hospice care. A summary of the comments and our responses to those comments are as follows:

Comment: Commenters broadly support CMS' interest in expanding community-based palliative care, citing strong evidence that palliative care reduces avoidable hospitalizations, improves symptom management, and facilitates more timely and appropriate hospice elections. Many commenters stated that existing evaluation and management, care management, and advanced care planning codes do not capture the full interdisciplinary scope of palliative care, particularly services provided by nurses, aides, social workers, chaplains, and community health workers, leaving many programs financially unsustainable. Commenters suggested creating a new comprehensive palliative care assessment and care planning G-code; establishing palliative care as a defined Medicare benefit with a bundled or capitated payment model; adding billing codes for nursing case management, social work, and community health workers; making telehealth for palliative care permanent; incorporating social risk and financial hardship factors into any future model design; creating a "palliative track" within the Home Health Quality Reporting Program (HHQRP); and developing a formal 'Serious Illness Transition Program' to bridge the gap between serious illness diagnosis and hospice election. Several commenters stated that the home health benefit is utilized for palliative care and appreciated the acknowledgment in the proposed rule. Some commenters supported retaining the existing coding structure, stating that existing codes (mainly the chronic care management, advanced care planning, and evaluation and management codes) are sufficient to capture palliative care services, and adding additional codes would likely introduce unnecessary complexity. Another commenter recommended implementing a modifier that designates services as palliative care and suggested that the modifier should also differentiate between inpatient and home-based services.

Response: We appreciate the feedback and will take all suggestions into consideration to the extent possible.

2. Request for Information Regarding Construction of a Hospice Specific Wage Index

The hospice wage index is used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels, based on the location where services are

furnished, as determined by the Secretary, in accordance with sections 1814(i)(1)(A) and 1814(i)(2)(D) of the Act. As described in the FY 1998 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Additionally, our regulations at § 418.306(c) require that each labor market be established using the most current hospital wage data available, including any changes made by the Office of Management and Budget (OMB) to Metropolitan Statistical Area (MSA) definitions.

However, CMS has received numerous comments regarding the use of the Inpatient Prospective Payment System (IPPS) wage index to adjust for the geographic variation of wages for hospice staff through the annual hospice rulemaking. Specifically, commenters have stated that the IPPS wage index uses data from four FYs prior to the current payment year and that the time lag may underestimate the changes in relative wages for hospice staff. Commenters have also stated that hospitals may have different labor costs and occupational mix than hospices and have requested that, like inpatient hospitals, hospices be able to reclassify their wage index in some instances. Additionally, we have received feedback opposing our proposals to adopt the new revised OMB CBSA delineations and the wage index values assigned to their geographic areas, wage index values assigned to rural areas, and adjusting wage index differences between high wage index and low wage index hospices in adjacent local areas through exceptions.

We have also received recommendations from MedPAC to include all-employer, occupation-level wage data to establish different weights for setting-specific occupational labor mix to capture labor costs faced by all employers of the related occupations. In 2007 and 2022, MedPAC proposed using the BLS for wage data and to construct new wage indexes to more accurately reflect local area differences in labor costs between and within MSAs and statewide rural areas.^{15 16} Following the MedPAC analysis, a CMS-commissioned study issued in 2009 concluded that despite some limitations, BLS wage information is more accurate and reliable than the

¹⁵ MedPAC, Report to Congress, 2007, p.124–125.

¹⁶ MedPAC, Report to Congress, 2023, p.386.

current source of wage information.¹⁷ In a separate commissioned study from the Institute of Medicine (IOM), the committee examined ways to improve the accuracy of data sources and methods used for making the adjustments to payment to reflect geographic variation in labor prices.¹⁸

In response to these numerous, ongoing comments from interested parties regarding the hospice wage index, we have examined possible alternatives to using the IPPS wage index for geographically adjusting hospice payments. We note that other non-hospital settings have also investigated alternatives to the IPPS wage index, as hospital cost reports may not be representative of the occupations relative to the post-acute care settings. Most recently, in the CY 2025 End Stage Renal Disease (ESRD) PPS final rule (89 FR 89116), we finalized changes to the ESRD PPS wage index using BLS Occupational Employment and Wage Statistics (OEWS) data. Furthermore, in the 2023 Report to Congress, MedPAC recommended using county-level wage data from the BLS with an occupational mix to construct a wage index that is more specific to the payment setting.¹⁹

CMS hosted a Technical Expert Panel (TEP) on September 10, 2025, inviting 14 participants representing various interested parties including industry associations, academia, and hospices, to seek feedback on a proposed alternative to the current hospice wage index. We also provided a technical report for the TEP panelists that gave additional details regarding the potential methodology that could be used to construct a new hospice specific wage index and preliminary results for how specific hospices would be impacted. The TEP summary report, which summarizes the discussion and recommendations of the TEP, as well as the TEP technical report, which provides a detailed examination of the discussed alternative approaches, may be found at <https://www.cms.gov/medicare/payment/prospective-payment-systems/hospice/hospice-educational-resources>. In the proposed rule, we sought feedback on how the BLS OEWS data, and other public data can be used to construct a hospice specific wage index.²⁰ CMS requests input to understand the advantages and limitations of the suggested approach in using BLS data and cost reports to

support the construction of a hospice specific wage index. In addition, as discussed elsewhere in the **Federal Register**, we note that we are also considering the potential use of alternative data sources in other payment systems including the Inpatient Rehabilitation Facilities (IRF) PPS and Skilled Nursing Facilities (SNF) PPS. We sought feedback on the unique considerations applicable to hospices that should inform how CMS considers the potential use of alternative data sources. We sought comment on the following suggested components of how a new hospice specific wage index would be constructed:

(1) *Source data for determining area wages:* When considering a source for wage data, we believe it is important that the data used is public to promote transparency, such that relevant interested parties would have access to the data and can conduct their own analyses. The IPPS hospital wage index is updated annually, based on a survey of wages and wage-related costs of short-term, acute care hospitals, as required by section 1886(d)(3)(E) of the Act. The final FY 2026 hospice wage index is based on the FY 2026 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2021 and before October 1, 2022 (using FY 2022 cost report data).

The BLS OEWS data provides MSA-level wage data for health professionals, including clinical and administrative office staff, that is updated annually using a pooled sample of six semi-annual surveys.²¹ BLS OEWS data includes information on the wages that employers paid to their employees. It does not include self-employed contract labor wages or benefits paid to employees.

The hospice specific wage index would also include the use of freestanding hospice cost reports, claims, and Census Bureau population data. We would only be using freestanding hospice cost reports to ensure cost accuracy, as facility-based reports may share costs with the larger facility. Claims data is used to retrieve the total minutes of care delivered by the seven different disciplines of care (physical therapy, occupational therapy, speech language pathology, skilled nursing, medical social service, and home health aide) that are currently

billed as visits on the claims form. Census Bureau population data is used to calculate weighted averages when aggregating wage data.

(2) *Occupational mix weights:* In the IOM study, the committee recommended using a fixed national set of weights based on the hours of each occupation employed nationwide. When considering the construction of a hospice specific wage index, we need to better understand how hospices currently employ staff and determine what would be appropriate for using as fixed national weights. We want to gather feedback on relevant occupational categories to include in this calculation, which may include billable occupations, such as aides, registered nurses, licensed practical nurses, nurse practitioners, nurse assistants, medical social workers, physicians, occupational therapists, physical therapists, and speech pathologists. Since the full-time equivalent hours for the occupations are not reported in hospice cost reports, we would need to estimate using the most complete claims data available.

The occupational mix determines how much weight each occupation's wage receives in the overall calculation of the wage level for each geographic area and the national level. Our suggested approach uses expenses reported in hospice cost reports and minutes reported in hospice claims data for 10 occupational categories (hospice aide, registered nurses, nursing administration, physician services, licensed practical nurse, licensed vocational nurse, medical social services, nurse practitioner, physical therapy, occupational therapy, and speech language pathology) shown in Table 11. Three occupations are available on cost reports but not claims (Nursing Administration, Physician Services, Nurse Practitioner). Those three occupations accounted for 22.05 percent of costs on the cost report and their share of the occupational mix was set to this percentage. The remaining 77.95 percent of the occupational mix was allocated among the other seven occupations based on their respective shares of minutes from claims data. We sought input on this suggested approach, as well as any other potential methodologies.

¹⁷ MaCurdy et al., Revision of Medicare Wage Index.

¹⁸ Committee on Geographic Adjustment Factors in Medicare Payment; Board on Health Care Services; Institute of Medicine; Edmunds M, Sloan

FA, editors. Geographic Adjustment in Medicare Payment: Phase I: Improving Accuracy, Second Edition. Washington (DC): National Academies Press (US); 2011 Jun 1. Available at [https://](https://www.ncbi.nlm.nih.gov/books/NBK190070/)

www.ncbi.nlm.nih.gov/books/NBK190070/ doi: 10.17226/13138.

¹⁹ MedPAC, Report to Congress, 2023, p.386.

²⁰ <https://www.bls.gov/oes/>.

²¹ https://www.bls.gov/oes/current/oes_tec.htm.

TABLE 11: National Estimated Occupational Mix Using Hospice Cost Reports and Claims

Occupation	Share of Costs from Cost Reports	Share of Minutes from Claims	National Estimated Occupational Mix
Hospice Aide	16.52%	48.89%	38.11%
Registered Nurses	45.89%	36.51%	28.46%
Nursing Administration	10.98%	N/A	10.98%
Physician Services	8.86%	N/A	8.86%
LPN/LVN	7.39%	8.32%	6.49%
Medical Social Services	7.65%	6.21%	4.84%
Nurse Practitioner	2.21%	N/A	2.21%
Physical Therapy	0.39%	0.06%	0.04%
Occupational Therapy	0.09%	0.01%	0.01%
Speech/Language Pathology	0.02%	0.01%	0.01%

(3) Hospice Specific Wage Index

Construction: Similar to as described in the CY 2025 ESRD PPS final rule (89 FR 89104), we could construct a wage index for each CBSA by calculating an hourly wage for each CBSA (reflecting a weighted average of the occupational mix) and dividing by the aggregate hourly wage (reflecting a weighted average of the occupational mix). The specific computational steps used to calculate the new ESRD PPS wage index were provided in the supplementary document Addendum C of the CY 2025 ESRD PPS proposed rule.²² In the following sections we present a potential methodology for constructing a potential hospice specific wage index:

Step 1: Estimate the Hospice National Average Occupational Mix

We would use the combination of the share of costs from cost reports and share of minutes from claims to develop a hospice national occupational mix (as shown in Table 11).

Step 2: Calculate Occupation-Specific, CBSA-Level Wage Estimates

To determine how hourly wages in an area compare with national wage levels for specific occupations, we would calculate a CBSA-level wage estimate for each occupation included in the hospice labor mix. The hourly wages provided in areas available in the BLS data do not exactly align with the CBSAs and State-wide rural areas for which wage index values are calculated, therefore we would first map the BLS data to counties. We then impute

missing wage estimates at the county-level. Wages for an area could be missing due to small sample size or data quality issues. Finally, we would aggregate county-level hourly wage estimates to the CBSA level using a county population-weighted average of the county-level wage estimates.

Step 3: Calculate Cross-Occupation, CBSA-Level Wage Estimates

For each CBSA, we calculate an average wage by multiplying the occupation-specific, CBSA-level wages by the hospice national occupational mix percentage (that is, registered nurse hourly wage times the 28.46 percent in Table 11) and then summing the wages for all occupations in Table 11. This is the numerator for the CBSA's hospice specific wage index value before adjustments.

Step 4: Calculate the Cross-Occupation, National Wage Estimate

We would calculate the cross-occupation, national wage estimate, which is the denominator of the hospice specific wage index value before adjustments. We calculate a national weighted average of each occupation-specific wage estimate by weighting the occupation-specific wage estimate in each CBSA by the population in a CBSA. We would then weight the national averages by the share in the national occupational mix to obtain a cross-occupation, national wage estimate.

Step 5: Calculating Initial Hospice Wage Index Values

The initial hospice wage index value for each CBSA would be calculated by dividing the cross-occupation, CBSA-

level wage estimate from Step 3 by the cross-occupation, national wage estimate from Step 4.

Step 6: Adjustments to the Initial Wage Index Values

We would recalibrate to ensure center of distribution equals the center of the legacy wage index. We would then apply the hospice floor and 5 percent cap on decreases to calculate the final hospice wage index.

We sought feedback on any steps that may need to be modified to be applicable to the data available for hospices and related occupations.

(4) **Labor market areas:** The final FY 2026 hospice wage index does not consider any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The final FY 2026 hospice wage index includes a 5 percent cap on wage index decreases. The appropriate wage index value would be applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC. MedPAC recommended applying the wage index to a blend of MSA/statewide rural and counties as geographic delineation to set wage index values and smooth wage index differences greater than 10 percent between adjacent areas.²³ Currently, county information is not

²² <https://www.cms.gov/files/document/addendum-c-cms-1805-p-esrd-pps-proposed-wage-index-construction-methodology.pdf>.

²³ <https://www.medpac.gov/wp-content/uploads/2022/07/Wage-index-March-2023-SEC.pdf>.

available to examine geographic variation of hospice labor costs.

For the purpose of constructing a hospice specific wage index, we sought feedback on the level of geographic delineation of labor market area to be applied to a new wage index and considerations for when neighboring areas have large differences in wage index values. In past rules, we have stated that OMB's geographic area delineations represent a useful proxy for differentiating between labor markets and that the geographic area delineations are appropriate for use in determining Medicare hospice payments. While we continue to hold this belief, we sought feedback from interested parties on what other delineation would be appropriate and what data sources could be used to support the changes.

(5) *Transition policy:* We sought feedback on what an appropriate transition policy may be when shifting from a wage index using hospital IPPS wage data to a hospice specific wage index using BLS wage data.

We appreciate hospices and national organizations sharing their support and commitment to offering meaningful comments for consideration. In addition to the methodological questions, we solicited public comment on the following questions:

- What data sources and changes should be considered to develop a wage index specific for hospices?
- What are the advantages of the suggested approach to constructing wage indexes, relative to the current system?
- What are the main limitations of the suggested approach?
- Can any limitations be addressed through changes to the data sources mentioned, such as cost reports and claims?
- What occupations should be included in the occupational mix to estimate geographic differences in expected prices to employ healthcare staff in hospices?
- What additional labor categories, if any, should be added to cost reports to support the revision of the hospice wage index? Are any other changes to the cost reports required for this purpose?
- How should we appropriately compare wages between geographic areas that match the way hospice services are delivered? Should we maintain the use of CBSA, or consider other geographic delineation, such as county, census area, etc.?
- How should we reduce large differences in wage index values for adjacent geographic areas?

- How should we consider policy to support the transition between the current hospice wage index approach to a new one?

We received several public comments on our request for information regarding the development of a hospice specific wage index. A summary of the comments and our responses to those comments are as follows:

Comment: In general, commenters expressed support in the difference in labor used in hospitals relative to hospices and interest in the creation of a wage index that captures the occupations used in hospices. Many commenters were concerned about whether the methodology would be appropriate to capture local geographic variation with the national occupational mix and wages. Several commenters raised concerns such as transparency of the information used to reflect the hospice labor mix, rural service areas and the non-billable work needed to provide home-based care. Specific concerns about the preliminary hospice occupational mix included opposition to the occupational mix because occupations that are not tied directly to billable reimbursement were excluded from the occupational mix, such as chaplains. Some commenters recommended that CMS account for rural travel, mileage, on-call coverage, provider-level impact modeling, and delay in implementation to avoid abrupt geographic disruptions.

Response: We thank all the commenters for these comments and for raising their concerns regarding the development of a hospice-specific wage index. While we are not responding to specific comments in response to the RFI in this final rule, we will take this feedback into consideration as we continue to examine possible alternatives to using the IPPS wage index for geographically adjusting hospice payments.

3. Request for Information Regarding Medical Aid in Dying (MAID)

The Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12, April 30, 1997) prohibits the use of Federal funds (through Medicare, Medicaid, and other Federal programs) to provide or pay for any health care item or service, or health benefit coverage, for the purpose of causing, or assisting to cause, the death of any individual including mercy killing, euthanasia, or assisted suicide, sometimes referred to as “medical aid in dying” (MAID).²⁴ This law amended

section 1862(a) of the Act (exclusions from coverage and Medicare as secondary payor) by adding a new paragraph (16) to the list of programs for which no payment may be made under Part A or Part B. CMS codified the exclusion of assisted suicide from coverage in regulation at § 411.15(q). This regulation clarifies that the prohibition does not pertain to the withholding or withdrawing of medical treatment or care, nutrition or hydration or to the provision of a service for the purpose of alleviating pain or discomfort, even if the use may increase the risk of death, so long as the service is not furnished for the specific purpose of causing death. MAID is not legal under Federal law; however, it is considered an end-of-life option for terminally ill adults to self-administer life-ending medication prescribed by a physician in certain States where it is allowed under State law. It is currently legal in 11 States and Washington, DC, and under these existing State laws, strict criteria require a prognosis of 6 months or less to live. More States are passing laws allowing MAID, creating new challenges for hospices and other providers that participate in Federal health programs on how to navigate relevant State and Federal laws.

Because of State requirements (where MAID is allowed under State law) that a patient be terminally ill, we requested

1553 prohibits the Federal Government, and any State or local government or health care provider that receives Federal financial assistance under the ACA, or any health plan created under the ACA from discriminating against an individual or health care entity on the basis that the individual or entity does not provide any health care item or service for assisted suicide, euthanasia, or mercy killing. Section 1553 clarifies it does not apply to withholding or withdrawing medical treatment or medical care, nutrition or hydration, abortion, or use of item or service to alleviate pain or discomfort withholding or withdrawing of medical treatment or care, nutrition or hydration or to the provision of a service for the purpose of alleviating pain or discomfort, even if the use may increase the risk of death, so long as the service is not furnished for the specific purpose of causing or assisting in causing, death, for any reason. CMS also notes that covered entities violate 42 U.S.C. 14406 if they interpret 42 U.S.C. 1395cc(f) or 1396a(w) to require covered entities or their employees “to inform or counsel any individual regarding any right to obtain an item or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of the individual, such as by assisted suicide, euthanasia, or mercy killing; or to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.” 42 U.S.C. 14406.

The Office for Civil Rights investigates complaints related conscience statutes such as Section 1553, 42 U.S.C. 14406, or religious nondiscrimination provisions. See <https://www.hhs.gov/conscience/your-protections-against-discrimination-based-on-conscience-and-religion/index.html>.

²⁴ CMS notes that entities must also comply with Section 1553 of the Affordable Care Act. Section

information in the proposed rule from hospice providers and other interested parties regarding issues that may arise when a Medicare hospice patient requests MAID. In particular we asked:

- What information do hospice providers give to these patients and how often is there overlap when a patient pursues MAID? In other words, do hospices generally continue to provide clinical care while a patient seeks qualification for MAID and do patients generally remain on service until death?
- Conversely, do hospices encourage patients to revoke their election if they choose to utilize MAID?
- Is there confusion amongst hospices regarding visits or other comfort measures that can be provided during this process, especially on the day of death?
- Do hospices have written policies regarding caring for patients using MAID? We are especially interested in understanding what hospices do with any unused lethal medications prescribed for MAID.

We also reiterated that no Medicare funds, including hospice payments, may be used to facilitate MAID, including physician consultation services, prescribing or dispensing of medications used for the purpose of causing death, or assistance with the ingestion of such medications. As such, we requested information on any additional CMS oversight mechanisms that should be in place to safeguard the use of Federal funds for the provision of MAID items and services. We requested additional information regarding hospices' experience with patients choosing to utilize MAID, with the expectation that hospice providers and staff are adhering to Federal law.

We received public comments on our request for information regarding State MAID laws and the provision of hospice care. A summary of the comments and our responses to those comments are as follows:

Comment: A few commenters, while acknowledging funds for MAID are federally prohibited, urged CMS to consider that integrating MAID into comprehensive hospice care is in the best interest of terminally ill patients. These commenters stated patients often must revoke hospice to pursue MAID and in doing so lose access to continuity of care, pain management, and emotional support. A few commenters (who identified themselves as hospice providers) stated that most hospices continue to provide hospice care to patients who choose MAID until the day of death, while still respecting the restrictions outlined in the Assisted Suicide Funding Restriction Act of

1997. These commenters noted that, in States where MAID laws exist, patients should have the right to receive hospice care regardless of their decision to seek MAID, and that hospices have very clearly outlined policies (including for unused medication) in place for these patients in order to adhere to Federal law. These commenters also noted that hospices do not encourage revocation of hospice care when patients express an interest in MAID.

Overwhelmingly, commenters opposed any potential CMS policy that would integrate MAID into Medicare-funded hospice care, primarily citing the Assisted Suicide Funding Restriction Act, ethical concerns rooted in the Hippocratic tradition, risks to vulnerable populations, and the importance of using different terminology ("assisted suicide," rather than MAID). Several physician commenters also raised concerns about billing fraud and the need for stronger CMS oversight, such as service audits. Another commenter stated that accreditation requirements should clearly outline how the hospice agency complies with Federal statutes on funding in those States where assisted suicide is allowed.

Response: We thank all commenters for their comments and would like to note that this request for information was in no way intended to precede a proposal or to indicate that we are considering the integration of MAID into hospice care. Our intent was to gain a better understanding of the landscape around hospice care and MAID to determine whether more oversight is required to safeguard the use of Federal funds from the provision of MAID items and services.

F. Updates for the Hospice Quality Reporting Program (HQRP)

1. Background and Statutory Authority

Section 1814(i)(5) of the Act requires the Secretary to establish and maintain a quality reporting program for hospices. The Hospice Quality Reporting Program (HQRP), consisting of Hospice Outcomes and Patient Evaluation (HOPE) administrative data, and Consumer Assessment of Healthcare Providers and Systems (CAHPS®), Hospice Survey, specifies reporting requirements that hospices complete and submit a standardized set of items for each patient to capture patient-level data, regardless of payer or patient age (§ 418.312(b)). Beginning with FY 2014, section 1814(i)(5) of the Act requires the Secretary to reduce the market basket update by 2 percentage points for those hospices failing to meet

quality reporting requirements. Section 407(b) of Division CC, Title IV of the Consolidated Appropriations Act (CAA), 2021 amended section 1814(i)(5)(A)(i) of the Act to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage points beginning in FY 2024 for any hospice that does not comply with the submission requirements provided for that FY. In the FY 2024 Hospice final rule (88 FR 51164), we codified the application of the 4-percentage point payment reduction for failing to meet hospice quality reporting requirements and set completeness thresholds at § 418.312(j).

Depending on the amount of the annual update for a particular year, a reduction of 4 percentage points beginning in FY 2024 could result in the annual market basket update being less than zero percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the specified year.

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234, 48257 through 48262), and in compliance with section 1814(i)(5)(C) of the Act, we finalized a new standardized patient-level data collection vehicle called the Hospice Item Set (HIS). We also finalized the specific collection of data items that support eight consensus-based entity (CBE)-endorsed measures for hospice.

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452), we finalized national implementation of the CAHPS® Hospice Survey, a component of the CMS HQRP which is used to collect data on the experiences of hospice patients and the primary caregivers listed in their hospice records. Readers who want more information about the development of the survey, originally called the Hospice Experience of Care Survey, may refer to the FY 2014 and FY 2015 Hospice Wage Index and Payment Update final rules (78 FR 48234 and 79 FR 50452, respectively) or to <https://www.hospicecahpsurvey.org/>. National implementation commenced January 1, 2015. We adopted eight CAHPS® survey-based measures for the CY 2018 data collection period and for subsequent years. These eight measures are publicly reported on the Care Compare website.

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142, 47186 through 47188), we finalized the policy for retention of

HQRP measures adopted for previous payment determinations and seven factors for removal. In that same final rule, we discussed how we would provide public notice through rulemaking of measures under consideration for removal, suspension, or replacement. We also stated that if we had reason to believe continued collection of a measure raised potential safety concerns, we would take immediate action to remove the measure from the HQRP and not wait for the annual rulemaking cycle. The measures would be promptly removed, and we would immediately notify hospices and the public of such a decision through the usual HQRP communication channels, including but not limited to listening sessions, email notifications and web postings. In such instances, the removal of a measure would be formally announced in the next annual rulemaking cycle.

On August 31, 2020, we added correcting language to the FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Correcting Amendment (85 FR 53679) hereafter referred to as the FY 2021 HQRP Correcting Amendment. In the correcting amendment, we made updates to § 418.312 to correct technical errors identified in the FY 2016 Hospice Wage Index and Payment Rate Update final rule. Specifically, the FY 2021 HQRP Correcting Amendment (85 FR 53679) added paragraph (i) to § 418.312 to reflect our exemptions and extensions requirements for reporting, which were referenced in the preamble but inadvertently omitted from the regulations text. Thus, these exemptions or extensions can occur when a hospice encounters certain extraordinary circumstances.

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule, we finalized the “Hospice Visits When Death is Imminent” measure pair (HVWDII, Measure 1 and Measure 2), effective April 1, 2017. We refer the public to the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52144, 52163 through 52169) for a detailed discussion.

As stated in the FY 2019 Hospice Wage Index and Rate Update final rule (83 FR 38622, 38635 through 38648), we launched the “Meaningful Measures Initiative” (which identifies high priority areas for quality measurement and improvement) to improve outcomes for patients, their families, and providers while also reducing burden on clinicians and providers. The Meaningful Measures Initiative is not intended to replace any existing CMS quality reporting programs but would help such programs identify and select individual measures. The Meaningful Measures Initiative priority areas are intended to increase measure alignment across our quality programs and other public and private initiatives. Additionally, it would point to high priority areas where there may be gaps in available quality measures while helping to guide our efforts to develop and implement quality measures to fill those gaps. More information about the Meaningful Measures Initiative can be found at <https://www.cms.gov/medicare/quality/meaningful-measures-initiative>.

In the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), we finalized two new measures using claims data: (1) Hospice Visits in the Last Days of Life (HVLDL); and (2) Hospice Care Index (HCI). We also removed the HVWDII measure, as it was replaced by HVLDL. We also finalized a policy that claims-based

measures would use 8 quarters of data, which would allow CMS to publicly report on more hospices. Additionally, the rule indicated that public data reflecting hospices’ reporting of the two new claims-based quality measures (QMs), the HVLDL and the HCI measures, would be available on the Care Compare/Provider Data Catalogue (PDC) web pages as of the August 2022 refresh.

In addition, we removed the seven HIS Process Measures from the program as individual measures, and ceased their public reporting because, in our view, the HIS Comprehensive Assessment Measure is sufficient for measuring care at admission without the seven individual process measures. In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42553), we finalized § 418.312(b)(2), which requires hospices to provide administrative data, including claims-based measures, as part of the HQRP requirements for § 418.306(b). In that same final rule, we provided CAHPS Hospice Survey updates. In the FY 2023 and FY 2024 Hospice Wage Index final rules, we did not propose any new quality measures. However, we provided updates on already-adopted measures. In the FY 2025 Hospice Wage Index final rule, the HQRP finalized two measures, including new data collection through the Hospice Outcomes and Patient Evaluation (HOPE) tool and plans for further development. The FY 2026 Hospice Wage Index final rule provided updates on the HOPE instrument and public reporting.

Table 12 shows the current quality measures in effect for the FY 2027 HQRP, which were updated and finalized in the FY 2025 Hospice Wage Index and Payment Rate Update final rule.

TABLE 12: Quality Measures in Effect for the FY 2027 Hospice Quality Reporting Program

Hospice Quality Reporting Program	
Hospice Outcomes and Patient Evaluation (HOPE)	
Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment Measure at Admission includes:	
1.	Patients Treated with an Opioid who are Given a Bowel Regimen
2.	Pain Screening
3.	Pain Assessment
4.	Dyspnea Treatment
5.	Dyspnea Screening
6.	Treatment Preferences
7.	Beliefs/Values Addressed (if desired by the patient)
Administrative Data, including Claims-based Measures	
Hospice Visits in the Last Days of Life (HVLDL)	
Hospice Care Index (HCI)	
1.	Continuous Home Care (CHC) or General Inpatient (GIP) Provided
2.	Gaps in Skilled Nursing Visits
3.	Early Live Discharges
4.	Late Live Discharges
5.	Burdensome Transitions (Type 1)—Live Discharges from Hospice Followed by Hospitalization and Subsequent Hospice Readmission
6.	Burdensome Transitions (Type 2)—Live Discharges from Hospice Followed by Hospitalization with the Patient Dying in the Hospital
7.	Per-beneficiary Medicare Spending
8.	Skilled Nursing Care Minutes per Routine Home Care (RHC) Day
9.	Skilled Nursing Minutes on Weekends
10.	Visits Near Death
CAHPS Hospice Survey	
CAHPS Hospice Survey	
1.	Communication with Family
2.	Getting Timely Help
3.	Treating Patient with Respect
4.	Emotional and Spiritual Support
5.	Help for Pain and Symptoms
6.	Training Family to Care for Patient
7.	Care Preferences
8.	Rating of this Hospice
9.	Willing to Recommend this Hospice

2. Updates Regarding the HOPE Measures

The HOPE tool was developed as the new patient data collection tool to replace the HIS as part of the HQR. HOPE was finalized in the FY 2025 Hospice Wage Index final rule (89 FR 64202) and implemented on October 1, 2025. Additional information regarding HOPE and its associated costs and burden can be found in the FY 2025 Paperwork Reduction Act of 1995 (PRA) submission (CMS–10390; OMB Control Number: 0938–1153).

As finalized in the FY 2025 Hospice Wage Index final rule (89 FR 64202), public reporting of the HOPE quality measures would be implemented no

earlier than FY 2028. CMS still expects to begin public reporting in November 2027, but this may change based on the quality and reportability of the data as determined by the CMS analysis of CY 2026 data, which would begin in CY 2027.

To meet the assessment timeliness threshold under the Annual Payment Update (APU), hospices must achieve a timely submission rate of 90 percent or higher for FY2027. This means that 90 percent of all HIS and/or HOPE assessments must be submitted to, and accepted by, CMS within 30 days of the patient's admission or discharge date. For HIS assessments, the reporting period is based on the submission of

HIS admission or discharge assessments between January 1, 2025, and September 30, 2025. HOPE assessments began submission on October 1, 2025; therefore, the reporting period is based on the submission of the HOPE admission, discharge, and/or HOPE Update Visit (HUV) records between October 1, 2025, and December 31, 2025.

Due to the newness of the HOPE tool along with the migration to the iQIES platform, CMS has granted a waiver to all HOPE records dated October 1, 2025, through December 31, 2025, and as a result, all HOPE records with a target date in 2025 will be considered timely.

CMS continues to offer many trainings and educational opportunities through our websites, which are available 24/7, 365 days per year, to enable hospice staff to learn at the pace and time of their choice. Available trainings can be found on the HQRP Training and Education Library web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-training-and-education-library> and additional resources are located on the Requirements and Best Practices web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-requirements-and-best-practices>.

We received several public comments on the updates regarding the HOPE measures. The following is a summary of the comments we received and our responses.

Comment: Commenters generally supported CMS' transition to the HOPE tool and appreciate the temporary timeliness waiver for 2025 assessments, viewing it as a necessary accommodation during early implementation. Generally, interested parties emphasized that hospices continue to face major operational challenges, including vendor readiness, iQIES transition issues, workflow redesign, staff training needs, and existing workforce shortages. Many commenters recommend phased implementation, expanded technical assistance, clearer guidance, hardship or reconsideration pathways, and continued flexibility so compliance expectations remain realistic and do not divert resources from patient care. Several commenters also requested that CMS ensure HOPE measures are clinically meaningful and actionable, including consideration of telehealth flexibility for reassessments and stronger attention to psychosocial, spiritual, and access-to-care dimensions.

Response: We appreciate the input on the implementation of the HOPE tool, which began October 1, 2025. We understand some providers still face challenges in implementing the HOPE tool and transitioning to iQIES; however, we believe the timeliness waiver finalized in this rule for all 2025 HOPE records will mitigate challenges and the transition to iQIES. When considering future updates to the HOPE tool, we will take these comments into consideration regarding implementation. We have also reiterated in this final rule, where providers can seek resources regarding the HOPE tool.

3. Adding an Icon for Hospices on Medicare.gov Compare Tool To Indicate Failure To Meet Reporting Requirements

Since the creation of the Medicare.gov Compare Tool (<https://www.medicare.gov/care-compare/>) in 2020, CMS has made improvements to the information available to consumers to drive quality improvement among care settings. Due to the unique challenge of caring for patients in their last days of life, the HQRP has very few publicly reported measures compared to other care settings. Therefore, this lack of information in comparison can make it more challenging for consumers to differentiate between hospices when searching for end-of-life care. To help provide additional information and context to consumers, while also serving to highlight non-compliant hospices, we proposed to add an icon identifying hospice facilities, on the Medicare.gov Compare Tool, that have failed to meet reporting requirements for the HQRP.

We stated that the proposed icon will identify hospices failing to submit any data or submitting less than the required 90 percent of HOPE submissions within 30 days of the target dates for HOPE admission, HUVs, and discharge within a year period. Despite the APU penalty increase from 2 percent to 4 percent in FY 2024, we have not observed a significant improvement in the number of hospices meeting the QRP reporting requirements. In FY 2023, prior to the APU percentage increase to 4 percent, 20.07 percent of hospices were found to be non-compliant with the HIS reporting requirements. In FY 2024, the first year of the 4 percent APU penalty, 22.06 percent of hospices were found to be non-compliant. In FY 2025, the percentage of non-compliant hospices increased to 23.53 percent and in FY 2026 the percentage of non-compliant hospices was 20.37 percent. The consistent lack of data for approximately one-fifth of hospices limits the ability of CMS to accurately measure the quality of care provided by hospices and limits the amount of data available to a consumer. We proposed to add an icon to provide an incentive for hospices to comply with the quality data submission requirements, while also communicating to consumers that CMS may not have enough data to adequately determine the quality of the hospice.

We proposed to add the icon to the Medicare.gov Compare Tool no earlier than FY 2028 (October 1, 2027) to align with the addition of HOPE data to the Medicare.gov site, and the data will be based on CY 2026 APU submission data

received from January 1, 2026, through December 31, 2026. We stated that the proposed icon will be added or removed on an annual basis to give hospices an ample amount of time to review and correct data, and to comply with the 90 percent threshold. We also stated that the proposed icon would be visible both on the provider search page, as well as the individual hospice page on the Compare Tool, similar to how the icons appear for nursing homes and hospitals on the Medicare.gov site. Additional information will be added to the Compare Tool to ensure consumers are aware of what the icon means and how it should be taken into consideration. The aim of the icon would be to notify consumers that the hospice did not report sufficient data to CMS. Additional information about HQRP reporting requirements and APU penalty can be found on the HQRP Requirements and Best Practices website at <https://www.cms.gov/medicare/quality/hospice/hqrp-requirements-and-best-practices>. We sought public comment on our proposal to include an icon for hospices on the Medicare.gov Compare Tool to identify hospices that do not comply with the quality data submission requirements for the APU.

We would like to clarify that the icon will only be based on HOPE submissions (admissions, HUVs, and discharges) and will not include CAHPS data submission compliance. As many hospices are exempt from CAHPS due to size limitations, we made the decision to not include CAHPS reporting compliance at this time. We would also like to make clear that any hospice that is exempted from HQRP reporting requirements due to extraordinary circumstances will not be identified by the icon. This may also apply to new hospices that receive a CCN letter late in the calendar year, whereby the hospice will be excluded from the HQRP reporting requirements and APU penalty for the corresponding FY. For more information, please see the HQRP Extension and Exemption Requests webpage (<https://www.cms.gov/medicare/quality/hospice/hqrp-extensions-and-exemption-requests>).

We received 42 public comments on adding an icon for Hospices on the Medicare.gov Compare Tool. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposal to add an icon to the Medicare.gov Compare Tool, noting the icon is an appropriate measure to promote transparency and improve quality reporting compliance. Among the commenters who supported

the icon, there were requests for CMS to ensure the icon is presented in a consumer-friendly way so that it is easily understandable by consumers. They noted the importance of using clear language indicating that the presence of the icon is due to a failure to meet reporting requirements and not due to quality of care or safety issues at the hospice. There were also requests to clarify how CAHPS non-participation would be included in the icon and how exemptions would be applied with the icon.

Response: We appreciate all commenters input regarding the proposal to add an icon to the Medicare.gov Compare Tool. In this final rule, we clarify whether CAHPS reporting will be included in the icon, and whether hospices that are excluded from the reporting requirements will be identified with the icon. We understand that many commenters are worried about how the icon will affect consumers searching for hospices, not wanting patients and families to confuse failing reporting requirements with the quality or safety of care provided by a hospice. We will work to ensure that the icon will not cause undue concern and will include a plain-language explanation of what the icon means. We will also ensure nondiscrimination in the use of the icon and will, on an ongoing basis, make reasonable efforts to identify uses of patient care decision support tools that employ input variables or factors that measure race, color, national origin, sex, age, or disability.

Comment: Many commenters requested that CMS distinguish between two groups, those that do not submit any data to the HQRP and those that do submit data but fall below the 90 percent threshold in the 30 day period. Their concern was for hospices that may make good faith efforts, but experience technical or administrative challenges that may affect their ability to submit timely data to meet requirements, particularly for small and rural providers.

Response: We understand commenters' concerns around trying to differentiate hospices that consistently submit no HOPE data and those that submit data but fall short of the 90 percent minimum within the 30-day period. However, as the percentage of hospices not meeting HQRP reporting requirements has remained consistent at around 20 percent since FY 2023, we believe this indicates a consistent lack of improvement and not that hospices are just falling short of the guidelines every so often. We want to remind commenters that we offer many

trainings and educational opportunities through our websites, which are available 24/7, 365 days per year, to enable hospice staff to learn at the pace and time of their choice. We want hospices to be successful with meeting the HQRP requirements and encourage hospices to review the available trainings that can be found on the HQRP Training and Education Library web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-training-and-education-library> and the additional resources that are located on the Requirements and Best Practices web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-requirements-and-best-practices>.

We also plan to monitor the number of hospices that continue to meet, and miss, the HOPE reporting requirements for the APU to understand the effect the icon may have on HQRP compliance across all hospices beginning in FY 2028.

Comment: Other commenters were strongly opposed to the addition of an icon to the Compare Tool. A few commenters opposed the icon as they feared it would mislead consumers, duplicate existing penalties, and not distinguish between hospices that do not submit any data and those that are not able to submit timely data due to technical issues. One commenter thought that CMS should only use positive icons, such as those used to designate Birthing-Friendly hospitals, rather than negative icons. Lastly, one commenter believed the icon would be insufficient and instead requested that CMS adopt stronger incentives for participation.

Response: We recognize that many providers would prefer that CMS not add an icon to the Compare Tool. As noted, we will work to ensure the icon includes plain-language to ensure consumers understand the meaning of the icon. Regarding the desire to only have positive icons on the Compare Tool, we note that multiple provider settings use negative icons, such as Nursing Homes which uses a negative icon to note when a facility has been cited for abuse. We believe a negative icon is a more effective incentive for hospices to meet HQRP requirements rather than a positive icon.

We also appreciate that some commenters stated stronger enforcement related actions are needed to increase the number of hospices meeting the HQRP requirements. We may consider strong reporting-related enforcement to increase transparency and accountability processes in future rulemaking proposals.

Comment: A small handful of commenters also requested that CMS add a confidential preview period, where providers who will have the icon applied to their hospice have an opportunity to review their data and request a reconsideration of the icon.

Response: Regarding a preview period, providers currently have a reconsideration request process if a hospice is found to be non-compliant with the HQRP requirements. Once a hospice receives a letter of non-compliance, hospices have 30 days to submit a reconsideration request to CMS. Given this existing mechanism, we will not provide an additional review period for the icon. More information about the APU reconsideration process can be found on the HQRP Reconsiderations Request web page (<https://www.cms.gov/medicare/quality/hospice/hqrp-reconsideration-requests>).

After consideration of public comments, we are finalizing the icon as proposed.

4. Future Measures Update

In the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), we finalized two new measures using claims data: (1) HVLDL; and (2) HCI. Our measure selection activities for the HQRP take into consideration input we receive from the CBE, as part of a pre-rulemaking process that we have established and are required to follow under section 1890A of the Act. The CBE convenes interested parties from multiple groups to provide CMS with recommendations on the Measures Under Consideration (MUC) list. This input informs how CMS selects certain categories of quality and efficiency measures as required by section 1890A(a)(3) of the Act. By February 1st of each year, the CBE must provide that input to CMS.

A Technical Expert Panel (TEP) convened in November 2024 provided input on potential new HCI indicators. This report can be found at <https://www.cms.gov/files/document/fall-2024-hqrp-tep-summary-report508c.pdf>. Based on this feedback, along with input from other interested parties and additional analysis of the measure and its indicators, CMS is currently considering making changes to the HCI measure and plans to submit the updated measure to the 2026 MUC list. The aim of re-specifying the HCI measure is to make it more useful and important to providers and consumers.

We received several public comments on the future measure updates regarding HCI. The following is a summary of the

comments we received and our responses.

Comment: Commenters generally supported CMS’ effort to refine and re-specify the HCI, viewing it as an opportunity to improve the measure’s validity, reliability, and usefulness for providers and consumers. Several commenters agreed with the TEP’s concerns that some existing indicators—particularly those related to continuous home care, general inpatient care, and certain burdensome transition and live discharge measures—may not accurately reflect hospice quality and can be affected by billing rules, patient preferences, or hospice case-mix. Multiple commenters called for reducing redundancy, such as removing measures that overlap with existing hospice visit indicators, and for greater transparency around CMS’ methodology, testing, and impact analyses before finalizing changes. Commenters also emphasized the need for risk adjustment and equity review to ensure the revised HCI does not unfairly penalize small, rural, or clinically complex hospices. Overall, commenters encouraged CMS to preserve meaningful quality measurement while revising scoring and indicator design to better distinguish true differences in hospice performance.

Response: We thank the commenters for their thoughts and input into the re-specification of HCI. These comments will be taken into consideration as CMS continues to further develop the revised HCI.

5. Form, Manner, and Timing of Quality Measure Data Submission

a. Statutory Penalty for Failure To Report

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act was amended by the CAA, 2021 and the payment reduction for failing to meet hospice quality reporting requirements was increased from 2 percent to 4 percent beginning with FY 2024. During FYs 2014 through 2023, the Secretary reduced the market basket update by 2 percentage points for non-compliance. Beginning in FY 2024 and for each subsequent year, the Secretary will reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality measure data submission requirements for that FY. In the FY 2023 Hospice Wage Index final rule (87 FR 45669), we revised our regulations at § 418.306(b)(2) in accordance with this statutory change.

b. Compliance

HQRP Compliance requires understanding the different timeframes for both HIS (or HOPE) and CAHPS: The relevant Reporting Year, the payment FY, and the Reference Year.

- The “Reporting Year” (HIS or HOPE) or “Data Collection Year”

(CAHPS) is based on the calendar year (CY). It is the same CY for both HIS (or HOPE) and CAHPS. If the CAHPS Data Collection year is CY 2025, then the HIS (or HOPE) reporting year is also CY 2025.

- In the “Payment FY”, the APU is subsequently applied to FY payments based on compliance in the corresponding Reporting Year/Data Collection Year.
- For the CAHPS Hospice Survey, the Reference Year is the CY before the Data Collection Year. The Reference Year applies to hospices submitting a size exemption from the CAHPS survey (there is no similar exemption for HIS or HOPE).²⁵ For example, for the CY 2025 data collection year, the Reference Year is CY 2024. This means providers seeking a size exemption for CAHPS in CY 2025 will base it on their hospice size in CY 2024.

Submission requirements are codified at § 418.312. Table 13 summarizes the three timeframes. It illustrates how the CY interacts with the FY payments, covering the CY 2025 through CY 2028 data collection periods and the corresponding APU application from FY 2027 through FY 2030. Please note that for the final quarter of CY 2025, CMS has granted a waiver to all HOPE records dated October 1, 2025 through December 31, 2025, and as a result, all HOPE records with a target date in 2025 will be considered timely.

TABLE 13: HQRP Reporting Requirements and Corresponding Annual Payments Updates

Reporting Year for HIS/HOPE and Data Collection Year for CAHPS data (Calendar year)	Annual Payment Update Impacts Payments for the FY	Reference Year for CAHPS Size Exemption (CAHPS only)
CY 2025	FY 2027 APU	CY 2024
CY 2026	FY 2028 APU	CY 2025
CY 2027	FY 2029 APU	CY 2026
CY 2028	FY 2030 APU	CY 2027

As illustrated in Table 13, CY 2025 data submissions compliance impacts the FY 2027 APU. CY 2026 data submissions compliance impacts the FY 2028 APU. CY 2027 data submissions compliance impacts FY 2029 APU. This

CY data submission impacting FY APU pattern follows for subsequent years.

c. Submission of Data Requirements

As finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47142, 47192), hospices’ compliance with HIS

requirements beginning with the FY 2020 APU determination (that is, based on HIS Admission and Discharge records submitted in CY 2018) are based on a timeliness threshold of 90 percent. This means CMS requires that hospices submit 90 percent of all required HIS

²⁵ CAHPS Hospice Survey, Participation Exemption for Size. [https://www.hospice](https://www.hospicecahpsurvey.org/en/participation-exemption-for-size/)

[cahpsurvey.org/en/participation-exemption-for-size/](https://www.hospicecahpsurvey.org/en/participation-exemption-for-size/).

records within 30 days of the event (that is, patient's admission or discharge). The 90-percent threshold is hereafter referred to as the timeliness compliance threshold. Ninety percent of all required HIS records must be submitted and accepted within the 30-day submission deadline to avoid the statutorily mandated payment penalty.

We applied the same submission requirements for HOPE admission, discharge, and up to two hospice update visit (HUV) records. Hospices will continue to be required to submit 90 percent of all required HOPE records to

support the quality measures within 30 days of the event or completion date (patient's admission, discharge, and based on the patient's length of stay up to two HUV timepoints).

Hospice compliance with claims data requirements is based on administrative data collection. Since Medicare claims data are already collected from claims, hospices are considered 100 percent compliant with the submission of these data for the HQRP. There is no additional submission requirement for administrative data.

To comply with CMS' quality reporting requirements for CAHPS,

hospices are required to collect data monthly using the CAHPS Hospice Survey. Hospices comply by utilizing a CMS-approved third-party vendor. Approved Hospice CAHPS vendors must successfully submit data on the hospice's behalf to the CAHPS Hospice Survey Data Center. A list of the approved vendors can be found on the CAHPS Hospice Survey website at <https://www.hospicecahpsurvey.org/>.

Table 14, HQRP Compliance Checklist, illustrates the APU and timeliness threshold requirements.

TABLE 14: HQRP Compliance Checklist

Annual Payment Update	HIS/HOPE	CAHPS
FY 2027	Submit at least 90 percent of all HIS/HOPE records within 30 days of the event date (for example, patient's admission or discharge) for patient admissions/discharges occurring 1/1/25-12/31/25	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2025-12/31/2025
FY 2028	Submit at least 90 percent of all HOPE records within 30 days of the event or completion date (for example, patient's admission date, HUV completion date or discharge date) for patient admissions/discharges occurring 1/1/26-12/31/26	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2026-12/31/2026
FY 2029	Submit at least 90 percent of all HOPE records within 30 days of the event or completion date (for example, patient's admission date, HUV completion date or discharge date) for patient admissions/discharges occurring 1/1/27-12/31/27	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2027-12/31/2027
FY 2030	Submit at least 90 percent of all HOPE records within 30 days of the event or completion date (for example, patient's admission date, HUV completion date or discharge date) for patient admissions/discharges occurring 1/1/28-12/31/28	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2028-12/31/2028

Note: The data source for the claims-based measures will be Medicare claims data that are already collected and submitted to CMS. There is no additional submission requirement for administrative data (Medicare claims), and hospices with claims data are 100-percent compliant with this requirement.

Most hospices that fail to meet HQRP requirements do so because they miss the 90 percent threshold. We offer many trainings and educational opportunities through our websites, which are available 24/7, 365 days per year, to

enable hospice staff to learn at the pace and time of their choice. We want hospices to be successful with meeting the HQRP requirements. We encourage hospices to visit the frequently updated HQRP website at <https://www.cms.gov/>

[medicare/quality/hospice](https://www.cms.gov/medicare/quality/hospice). Available trainings can be found on the HQRP Training and Education Library web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-training-and-education-library> and additional

resources are located on the Requirements and Best Practices web page at <https://www.cms.gov/medicare/quality/hospice/hqrp-requirements-and-best-practices>. We also encourage readers to stay informed about HQRP by visiting the HQRP Provider and Stakeholder Engagement web page at <https://www.cms.gov/medicare/quality/hospice/provider-and-stakeholder-engagement> to sign-up for the Hospice Quality Lists.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520, we are required to provide notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to

the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, 44 U.S.C. 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. Wage Data Used for the Mandatory Election Statement Addendum

To derive average (mean) costs, we are using May 2024 data from the U.S. Bureau of Labor Statistics’ (BLS’s) National Industry-Specific Occupational Employment and Wage Estimates for all wage estimates (<https://www.bls.gov/oes/special-requests/oesm24in4.zip>). In this regard, Table 15 outlines BLS’s median hourly wage, our estimated cost of fringe benefits and other overhead costs (calculated at 100 percent of salary), and our adjusted hourly wage. Table 15 contains our wage rate data for the mandatory Election Statement Addendum: “Patient Notification of Hospice Non-Covered Items, Services, and Drugs” discussed in section III.B. of this final rule.

TABLE 15: Adjusted Hourly Wages Used in Burden Estimates

Occupation Title	Occupational Code	Median Hourly Wage (\$/hr.)	Fringe Benefits and Overhead (\$/hr.)	Adjusted Hourly Wage (\$/hr.)
Registered Nurse	29-1141	\$39.34	\$39.34	\$78.68
Pharmacy Technicians	29-2052	\$22.90	\$22.90	\$45.80

Source: Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics (OEWS), May 2024, NAICS 621600 – Home Health Care Services, <https://www.bls.gov/oes/special-requests/oesm24in4.zip>.
<https://data.bls.gov/oes/#/industry/621600>.

B. Information Collection Requirements (ICRs)

1. Burden Related to Mandatory Election Statement Addendum: “Patient Notification of Hospice Non-Covered Items, Services, and Drugs”

TABLE 16: Mandatory Election Statement Addendum: “Patient Notification of Hospice Non-Covered Items, Services, and Drugs” Burden Estimate Assumptions

Number of Medicare-Billing Hospices from FY 2024 Medicare Enrollment Database, Provider of Service Files	6,732
Number of Hospice Elections in FY 2024	$(1,873,148 \times 0.81) = 1,517,250$

Source: FY 2024 hospice claims data.
Notes: Nineteen percent of beneficiaries die within the first 5 days of hospice care. Hospices are exempt from completing the hospice election statement addendum if the beneficiary dies within the first 5 days of care.

Section 1814(a)(7) of the Act requires that for the first 90-day period of a hospice election, the individual’s attending physician (as defined in section 1861(dd)(3)(B) of the Act) (which for purposes of this subparagraph does not include a nurse practitioner or a physician assistant), and the medical director (or physician member of the interdisciplinary group (IDG) described in section 1861(dd)(2)(B) of the Act) of the hospice program providing (or arranging for) the care, each certify in writing, at the beginning of the period, that the

individual is terminally ill (as defined in section 1861(dd)(3)(A) of the Act). The regulations codified at §§ 418.22 and 418.25 provide the requirements regarding the certification of terminal illness and admission to hospice care. The hospice medical director must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. Additionally, clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification. The physician must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification. The aforementioned regulations also require that the hospice medical director must consider both related and unrelated conditions and current clinically relevant information when making the decision to certify the individual as terminally ill. Likewise, the hospice CoPs at § 418.102(b) provide the requirements regarding the certification responsibility of the hospice medical director or hospice physician designee, which includes a review of the clinical information, including both related and unrelated conditions, for each hospice patient.

To receive hospice services under the Medicare hospice benefit, eligible beneficiaries must elect to receive hospice care by completing an election statement. By signing this election statement, the individual acknowledges that he or she waives all rights to Medicare payments for treatment related to the terminal illness and related conditions. The required content of the hospice election statement is outlined in part below and described in § 418.24(b):

- Identification of the particular hospice and of the attending physician that will provide care to the individual. The individual or representative must acknowledge that the identified attending physician was his or her choice.
- The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.
- Acknowledgement that certain Medicare services, as set forth in § 418.24(d), are waived by the election.
- The effective date of the election, which may be the first day of hospice care or a later date but may be no earlier than the date of the election statement.
- The signature of the individual or representative.

Once a beneficiary is certified as terminally ill and elects the Medicare hospice benefit, the hospice conducts an initial assessment visit in advance of furnishing care. During this visit, the hospice must provide the patient or representative with verbal and written notice of the patient's rights and responsibilities as required by the CoPs at § 418.52. Likewise, the regulations at § 476.78 state that providers must inform Medicare beneficiaries at the time of admission, in writing, that the care for which Medicare payment is sought will be subject to Quality Improvement Organization (QIO) review.

The beneficiary needs identified in the initial and comprehensive assessments drive the development and revisions of an individualized written plan of care for each patient as required by the hospice CoPs at § 418.56. The hospice plan of care is established, reviewed, and updated by the hospice IDG and must include all services necessary for the palliation and management of the terminal illness and related conditions. While needs unrelated to the terminal illness and related conditions are not the responsibility of the hospice, the hospice may choose to furnish services for those needs regardless of responsibility. However, if a hospice does not choose to furnish services for those needs unrelated to the terminal illness and related conditions, the hospice is to communicate and coordinate with those health care providers who are caring for the unrelated needs, as described in § 418.56(e). In accordance with the CoPs, the hospice must document the services and treatments that address how they will meet the patient and family-specific needs related to the terminal illness and related conditions in the plan of care, and those needs unrelated to the terminal illness and related conditions that are present when the patient elects hospice should also be documented. This documentation ensures that the hospice is aware of those unrelated needs and who is addressing them. This documentation provides the support for the hospices' financial responsibility for the hospice services they will be providing. There is limited beneficiary financial liability for hospice services upon election of the Medicare hospice benefit. However, for any services received that are unrelated to the terminal illness and related conditions, the beneficiary would incur any associated copayments and coinsurance.

Hospices already are required to review, determine, and document

information on unrelated conditions per the hospice regulations and CoPs. The FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484) finalized the requirement at § 418.24(b) and (c) for an election statement addendum titled "Patient Notification of Hospice Non-Covered Items, Services, and Drugs" that must be issued to the patient (or representative), upon request, within 5 days of the hospice election date, or within 3 days of the request during the course of hospice care (that is, after the first 5 days of the hospice election date), to ensure that Medicare beneficiaries are fully informed whether or not all items, services, and drugs identified on the hospice plan of care will be furnished by the hospice. The addendum statement is not required if the beneficiary dies within the required timeframe for furnishing the addendum. This addendum accompanies the hospice election statement. This requirement for payment is codified in the regulations at § 418.24(b) and (c).

To ensure Medicare beneficiaries are provided disclosure of those conditions, items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions at the time of admission, we proposed to make the issuance of the hospice election statement addendum, in writing, mandatory for all elections at the time of election, rather than upon request of the beneficiary (or representative). Currently, the regulations at § 418.24(b) and (c), require the election statement addendum titled "Patient Notification of Hospice Non-Covered Items, Services, and Drugs" to be issued to the individual (or representative) upon request. We proposed that the issuance of the hospice election statement addendum would be mandatory for all elections made on or after October 1, 2026, and would accompany the hospice election statement at the time of hospice election.

A one-time burden estimate for each hospice to develop and design their own addendum template to best meet their needs was completed in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484). In the same rule, we also estimated the hospice's burden to complete the addendum; however, we will update these burden estimates to account for changes in the number of hospice elections and number of hospices. As mentioned in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we believe there is no associated burden for hospices to communicate/coordinate with non-hospice providers regarding

the content of the addendum statement because the hospice CoPs, as described previously, have always required hospices to have a system of communication with non-hospice providers in place. However, we believe that making the election statement addendum mandatory would reduce burden for non-hospice providers through a consistent and streamlined process by which non-hospice providers can make informed treatment decisions and accurately submit claims with the appropriate condition code or modifier. This requirement for payment is included in regulations at § 418.24(b) and (c).

The relevant information collection requirements are currently approved under OMB Control Number: 0938–1067/Expiration date: 2/28/2029.

C. Estimated Hospice Burden Related to Mandatory Election Statement Addendum

1. Estimated Time for Hospice To Complete Addendum

In accordance with the hospice CoPs at § 418.56(a), the hospice must designate a registered nurse that is a

member of the IDG to provide coordination of care and to ensure continuous assessment of each patient’s and family’s needs and implementation of the interdisciplinary plan of care. The hospice CoPs at § 418.54 require that a registered nurse conduct the initial assessment, therefore, the registered nurse would be responsible for completing the addendum for each hospice election as part of the routine admission paperwork. We estimate that there would be 1,873,148 hospice elections in a year based on FY 2024 claims data. However, if a beneficiary dies within the first five days of the hospice election, an addendum would not be required to be provided. Approximately 19 percent (0.19) of hospice beneficiaries die within the first five days of hospice care. Therefore, the estimated total number of hospice elections in FY 2027 that would require the hospice election statement addendum would be $(1,873,148 \times 0.81) = 1,517,250$. There are 6,732 Medicare-certified hospices, so on average there would be $(1,517,250/6,732) = 225$ hospice elections per hospice. The estimated burden for the hospice

registered nurse to extrapolate this information from the existing documentation in the patient’s hospice medical record and complete this addendum would be 10 minutes ($10/60 = 0.1667$). At \$78.68 per hour for a registered nurse over 10 minutes ($0.1667 \times \$78.68 = \$13.12$), we estimate the total cost of RN time to complete the addendum per hospice in FY 2027 to be $(\$13.12 \times 225) = \$2,952.00$, and the total cost of RN time to complete the addendum for all hospices in FY 2027 would be $(\$2,952.00 \times 6,732) = \$19,872,864.00$. The estimated total per hospice and total annual hospice cost associated with the mandatory addendum in FY 2027 are shown in Table 17. These total costs only include the cost for the RN to complete the addendum statement, as a one-time burden estimate for the addendum form development was accounted for in FY 2020 (84 FR 38484). Additionally, providing this information to the beneficiary is currently part of the routine admissions process and, as such, incurs no additional burden to that process.

TABLE 17: FY 2027 Estimated Per Hospice and Total Hospice Costs for Election Statement Addendum

	Average # of Elections Per Hospice	Total # of Hospice Elections (Based on FY 2024)
Number of Hospice Elections	225	1,517,250
Total # of Hospices		6,732
	Average Cost Per Hospice	Total Annual Costs for All Hospices
RN Form Completion per Hospice	\$2,952.00	
Total Hospice Estimated FY 2027 Costs		\$19,872,864.00

2. Burden Estimate Without Election Statement Addendum for Non-Hospice Providers

In order for non-hospice providers to make treatment decisions regarding services, items, and drugs for hospice beneficiaries and to submit the appropriate modifier or condition code on Medicare claims, they need supporting information from the hospice regarding related and unrelated conditions. As such, we first estimate the current burden associated with this communication and coordination in the absence of the election statement addendum. We believe this would require the non-hospice providers to contact the hospice and have a detailed phone call to obtain and document the

information on unrelated conditions, items, services, and medications. For non-hospice providers submitting institutional claims (including inpatient acute care hospitals, SNFs, HHAs, and institutional outpatient providers), typically nurse case managers provide coordination of care for those beneficiaries in these settings who are receiving inpatient services or who are preparing to transition to a post-acute care setting or home. The estimated burden for the registered nurse to contact the hospice to obtain the needed information would be 15 minutes ($15/60 = 0.25$). The average number of hospice beneficiaries receiving services per institutional, non-hospice provider is 15.6 per year, which would mean each

institutional, non-hospice provider would have an average of 15.6 communication encounters with hospice. The total number of institutional, non-hospice providers servicing hospice beneficiaries in FY 2024 was 24,068. At \$78.68 per hour for a registered nurse ($0.25 \times \$78.68$) = \$19.67, we estimate the total cost per institutional, non-hospice provider furnishing services to hospice beneficiaries in FY 2027 to be $(\$19.67 \times 15.6) = \$306.85$ and the annual total cost for all institutional, non-hospice providers in FY 2027 would be $(\$306.85 \times 24,068) = \$7,385,265.80$.

For non-institutional, non-hospice providers (including physicians), we also expect that a nurse would contact

the hospice to obtain the needed clinical information on unrelated conditions, items, services and drugs. The estimated burden for the registered nurse to contact the hospice to obtain the needed information would be 15 minutes ($15/60 = 0.25$). The average number of hospice beneficiaries receiving services per non-institutional, non-hospice provider is 15.5 per year, which would mean each provider would have an average of 15.5 communication encounters with a hospice. The total number of non-institutional, non-hospice providers servicing hospice beneficiaries in FY 2024 was 135,407. At \$78.68 per hour for a registered nurse ($0.25 \times \$78.68$) = \$19.67, we estimate the total cost per non-institutional, non-hospice provider furnishing services to hospice beneficiaries in FY 2027 to be $(\$19.67 \times 15.5) = \$304.89$ and the annual total cost for all non-institutional, non-hospice providers in FY 2027 would be $(\$304.89 \times 135,407) = \$41,284,240.23$.

For pharmacies dispensing Part D drugs to hospice beneficiaries, the estimated burden for the pharmacy technician at the point of service to contact the hospice to obtain the needed clinical information regarding the drugs deemed by the hospice as unrelated to the terminal illness and related conditions would be 15 minutes ($15/60 = 0.25$). The average number of hospice beneficiaries receiving services per pharmacy dispensing Part D maintenance drugs is 18.6 per year, which would mean each pharmacy would have an average of 18.6 communication encounters with

hospice. The total number of pharmacies dispensing Part D maintenance drugs to hospice beneficiaries in FY 2024 was 57,642. At \$45.80 per hour for a pharmacy technician ($0.25 \times \$45.80$) = \$11.45, we estimate the total cost per pharmacy dispensing Part D maintenance drugs to be $(\$11.45 \times 18.6) = \$212.97$ and the annual total cost for all pharmacies dispensing Part D maintenance drugs to be $(\$212.97 \times 57,642) = \$12,276,016.74$. The estimated total annual burden for all non-hospice providers furnishing services, items and medications to hospice beneficiaries in FY 2027 without the availability of the hospice election statement addendum identifying unrelated conditions, items, services and drugs would be $\$60,945,522.77$ ($\$7,385,265.80 + \$41,284,240.23 + \$12,276,016.74$).

3. Burden Reduction Estimate With the Mandatory Election Statement Addendum for Non-Hospice Providers

With the availability of the “Patient Notification of Hospice Covered/Non-Covered Items, Services, and Drugs” election statement addendum, we believe the estimated burden would be reduced for non-hospice providers through a streamlining of the communication and coordination process. Following the same approach used in FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we analyzed all Medicare Parts A and B non-hospice claims for beneficiaries under a hospice election in FY 2024. We also examined the Part D claims for drugs provided to hospice

beneficiaries under a hospice election. Specifically, we analyzed the following:

- The total number of non-hospice, institutional claims with condition code 07 (to indicate the services were unrelated to the terminal illness and related conditions).
- The total number of non-hospice, non-institutional claims with “GW” modifier (to indicate the services were unrelated to the terminal illness and related conditions).
- The total number of Part D claims for beneficiaries under a hospice election.
- The average number of hospice beneficiaries per non-hospice provider with institutional claims with condition code 07.
- The average number of hospice beneficiaries per non-hospice provider with non-institutional claims with “GW” modifier.
- The average number of hospice beneficiaries per non-hospice provider with Part D claims.

To calculate the average number of hospice beneficiaries per non-hospice provider, we count the number of unique beneficiaries associated with each non-hospice provider as beneficiaries may receive services by more than one non-hospice provider. This means that some beneficiaries are double-counted. Because we double-counted beneficiaries, we expect that average to be larger than the ratio of unique beneficiaries to unique non-hospice providers. Table 18 summarizes Part A, B and D claims that overlap with hospice episodes in FY 2024.

TABLE 18: Summary of Part A, B, and D Claims That Overlap With Hospice Episodes, FY 2024

Non-Hospice Claim Type	Number of Hospice Beneficiaries	Number of Non-Hospice Providers	Number of Hospice Providers	Sum of Beneficiaries Across Non-Hospice Providers	Average Number of Hospice Beneficiaries per Non-Hospice Provider (Column 5 / Column 3 = Column 6)
Part A & B, Non-Hospice Total	744,296	156,721	6,612	2,446,354	15.6
Institutional Claims with 07	285,457	24,068	6,238	375,835	15.6
Non-Institutional Lines with GW	711,483	135,407	6,601	2,101,062	15.5
Part D	806,709	57,642	6,648	1,072,624	18.6

Source: FY 2024 Part A/B claims and Part D PDEs data accessed from the CCW on May 9, 2025.

For institutional, non-hospice providers (those who would submit claims for unrelated services with condition code 07), the estimated burden for the registered nurse to contact the hospice to obtain the needed information would be reduced from 15 minutes in the absence of the addendum to 5 minutes ($5/60 = 0.0833$). The average number of hospice beneficiaries receiving services per institutional non-hospice provider is 15.6 per year. The total number of institutional non-hospice providers servicing hospice beneficiaries in FY 2024 was 24,068. At \$78.68 per hour for a registered nurse ($0.0833 \times \$78.68$) = \$6.55, we estimate the total cost per institutional non-hospice provider in FY 2024 to be ($\$6.55 \times 15.6$) = \$102.18 and the annual total cost for all institutional non-hospice providers in FY 2024 would be ($\$102.18 \times 24,068$) = \$2,459,268.24, an annual decrease in burden by ($\$7,385,265.80 - \$2,459,268.24$) = \$4,925,997.56.

For non-institutional, non-hospice providers (those who would submit claims for unrelated services with modifier GW), the estimated burden for the registered nurse to contact the hospice to obtain the needed

information would be reduced to 5 minutes ($5/60 = 0.0833$). The average number of hospice beneficiaries receiving services per non-institutional, non-hospice provider is 15.5 per year. The total number of non-institutional, non-hospice providers servicing hospice beneficiaries in FY 2024 was 135,407. At \$78.68 per hour for a registered nurse ($0.0833 \times \$78.68$) = \$6.55, we estimate the total cost per non-institutional, non-hospice provider in FY 2024 to be ($\$6.55 \times 15.5$) = \$101.53 and the annual total cost for all non-institutional, non-hospice providers in FY 2024 would be ($\$101.53 \times 135,407$) = \$13,747,872.71, an annual decrease in burden by ($\$41,284,240.23 - \$13,747,872.71$) = \$27,536,367.52.

For pharmacies dispensing Part D drugs to hospice beneficiaries, the estimated burden for the pharmacy technician at the point of service to contact the hospice to obtain the needed clinical information regarding the drugs deemed by the hospice as unrelated to the terminal illness and related conditions would be reduced to 5 minutes ($5/60 = 0.0833$). The average number of hospice beneficiaries receiving services from pharmacies dispensing Part D maintenance drugs is

18.6 per year. The total number of pharmacies dispensing Part D maintenance drugs to hospice beneficiaries in FY 2024 was 57,642. At \$45.80 per hour for a pharmacy technicians ($0.0833 \times \$45.80$) = \$3.82, we estimate the total cost per pharmacy dispensing Part D maintenance drugs to be ($\$3.82 \times 18.6$) = \$71.05 and the annual total cost for all pharmacies dispensing Part D maintenance drugs to be ($\$71.05 \times 57,642$) = \$4,095,464.10, an annual decrease in burden by ($\$12,276,016.74 - \$4,095,464.10$) = \$8,180,552.64.

The estimated total annual burden for all non-hospice providers furnishing services, items, and drugs to hospice beneficiaries in FY 2024 with the availability of the hospice election statement addendum identifying unrelated conditions, items, services, and medication would be \$20,302,605.05 ($\$2,459,268.24 + \$13,747,872.71 + \$4,095,464.10$) for an overall burden reduction of ($\$60,945,522.77 - \$20,302,605.05$) = \$40,642,917.72. The total reduction in burden for all institutional, non-institutional, and Part D pharmacy non-hospice providers is summarized in Table 19.

TABLE 19: FY 2027 Estimated Total Overall Burden Reduction for Non-Hospice Providers Using Election Statement Addendum

Non-Hospice Claims	Estimated Burden without Addendum	Estimated Burden with Addendum	Estimated Burden Reduction for Non-Hospice Providers with Use of the Addendum*
Institutional Claims with Condition Code 07	\$7,385,265.80	\$2,459,268.24	\$4,925,997.56
Non-Institutional Claims with GW Modifier	\$41,284,240.23	\$13,747,872.71	\$27,536,367.52
Part D Maintenance Drugs	\$12,276,016.74	\$4,095,464.10	\$8,180,552.64
Total	\$60,945,522.77	\$20,302,605.05	
Total Burden Reduction for Non-Hospice Providers			\$40,642,917.72

*Note: Estimated burden reduction for non-hospice providers with use of the addendum=burden without addendum (column 2) minus burden with addendum (column 3).

The use of the “Patient Notification of Hospice Non-Covered Items, Services, and Drugs” election statement

addendum would result in an estimated, annual net reduction in burden of \$20,770,053.72 (\$40,642,917.72 –

\$19,872,864.00) in FY 2027. Table 20 summarizes the FY 2027 estimated total burden reduction.

TABLE 20: FY 2027 Estimated Total Provider Burden Reduction Using Election Statement Addendum

Item	Amount
FY 2027 Estimated Hospice Burden for Election Statement Addendum	\$19,872,864.00
FY 2027 Estimated Non-Hospice Provider Burden Reduction	\$40,642,917.72
FY 2027 Estimated Annual Net Reduction in Burden	\$20,770,053.72

Additionally, the use of the “Patient Notification of Hospice Non-Covered Items, Services, and Drugs” election statement addendum would result in an estimated, annual net reduction in burden of \$20,770,053.72 (\$40,642,917.72 – \$19,872,864.00) in

FY 2027, compared to an estimated annual net reduction in burden of \$5,228,457.00 (\$16,505,172.00 minus \$11,276,715.00) in FY 2020, representing an increase in the estimated net burden reduction of \$15,541,596.72 between FY 2020 and

FY 2027. Table 21 summarizes the difference in the estimated total provider burden between FY 2020 and FY 2027 resulting from provision of the election statement addendum.

TABLE 21: Estimated Total Provider Burden Between FY 2020 and FY 2027 Using the Election Statement Addendum

Item	FY 2020 Amount	FY 2027 Amount	Difference in the Estimated Total Provider Burden Between FY 2020 and FY 2027 with the Use of the Addendum *
Estimated Hospice Burden for Election Statement Addendum	\$11,276,715	\$19,872,864.00	\$8,596,149
Estimated Non-Hospice Provider Burden	\$16,505,172	-\$40,642,917.72	-\$24,137,745.72
Estimated Annual Net Reduction in Burden	\$5,228,457	-\$20,770,053.72	-\$15,541,596.72

***Note:** Difference in the estimated total provider burden reduction between FY 2020 and FY 2027 with the use of the addendum = FY 2027 estimated hospice and non-hospice burden for election statement addendum (column 3) minus FY 2020 estimated hospice and non-hospice burden for election statement addendum (column 2).

We received public comments on our burden estimates associated with the election statement addendum. Refer to section III.C.2. of this final rule for a summary of the comments we received and our responses.

V. Regulatory Impact Analysis (RIA)

A. Statement of Need

1. Hospice Payment

This final rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the Hospice Wage Index based on the most current available CMS hospital wage data, including any changes to the definitions of Core Based Statistical Areas (CBSAs)

or previously used Metropolitan Statistical Areas (MSAs), as well as any changes to the methodology for determining the per diem payment rates. This final rule updates the payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2027 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act.

2. Hospice Election Statement Addendum

This final rule will make the hospice election statement addendum mandatory for all hospice elections.

This will require hospices to furnish the hospice election statement addendum within the first 5 days of a hospice election (that is, within the first 5 days of the effective date of the hospice election), and any updates to the addendum within 3 days of changes to the plan of care that impact the addendum determinations, in writing, to the individual (or representative), and to make the addendum available for non-hospice providers and Medicare contractors. This change will become effective for hospice elections on and after October 1, 2026. The election statement addendum will add no additional burden for communicating with non-

hospice providers, as this decision-making process has been a long-standing CoP requirement, as described in the preamble of this final rule. As reviewed in section IV.B.1. of this final rule, hospices already are required to review, determine, and document information on unrelated conditions per the hospice regulations and CoPs. Additionally, our previous burden estimate, completed in FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), assumed that an addendum would be requested by every hospice beneficiary (or representative) receiving non-hospice services. While the number of hospice elections, and therefore the number of election statement addendums, have increased since our last burden estimate was completed, we continue to believe the actual burden would be less as hospices are already required to be comprehensive in their approach to covered services. As such, there will be hospices that will spend less time, than estimated, to complete the addendum as the hospice will be providing all items, services, and drugs. However, we believe that making the election statement addendum mandatory will reduce burden for non-hospice providers, including institutional, non-institutional and pharmacy providers because less time will be spent trying to obtain needed information for treatment decisions and accurate claims submissions.

3. Quality Reporting Program

This final rule announces that CMS will add an icon to the *Medicare.gov* Compare Tool to identify hospices that fail to meet the reporting submission requirements for the Annual Payment Update (APU). These requirements require hospices to submit 90 percent of HOPE assessments within 30 days of a patient's admission or discharge date. This new icon will allow consumers to identify hospices that may lack sufficient data to accurately gauge quality and provide another incentive for hospices to meet the 90 percent threshold.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, "Regulatory Planning and Review"; Executive Order 13132, "Federalism"; Executive Order 13563, "Improving Regulation and Regulatory Review"; Executive Order 14192, "Unleashing Prosperity Through Deregulation"; the Regulatory Flexibility Act (RFA) (Pub. L. 96–354); section 1102(b) of the Social Security Act; section 202 of the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) of E.O. 12866. Accordingly, we have prepared a regulatory impact analysis that presents the costs and benefits of the rulemaking to the best of our ability. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

1. Hospice Payment

We estimate that the aggregate impact of the payment provisions in this final rule will result in an estimated increase of \$755 million in payments to hospices, resulting from the final hospice payment update percentage of 2.3 percent for FY 2027. The impact analysis of this final rule represents the projected effects of the changes in hospice payments from FY 2026 to FY 2027. Using the most recent complete data available at the time of rulemaking, in this case FY 2025 hospice claims data as of May 12, 2026, we simulate total payments using the final FY 2027 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, and the 5 percent cap on wage index decreases) and FY 2026 payment rates and compare it to our simulation of total payments using FY 2025 utilization claims data, the final FY 2026 Hospice Wage Index (pre-floor, pre-reclassified hospital wage index

with hospice floor, and the 5 percent cap on wage index decreases) and FY 2026 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2026 wage index and payment rates for each level of care by the FY 2027 wage index and FY 2026 payment rates, we obtain a wage index standardization factor for each level of care. We apply the wage index standardization factors so that the aggregate simulated payments do not increase or decrease due to changes in the wage index.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time-period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

2. Hospice Election Statement Addendum

As a result of this election statement addendum, we estimate that this rule will generate \$20.8 million in annualized cost savings to providers, beginning in FY 2027. The estimated burden reduction for this requirement is detailed in section IV.C. of this final rule and the total annual estimated reduction is included in Table 20.

3. Hospice Quality Reporting Program

This final rule will add an icon to the *Medicare.gov* Compare Tool for hospices. There are no associated economic impacts for hospices.

C. Detailed Economic Analysis

1. Hospice Payment Update for FY 2027

The FY 2027 hospice payment impacts appear in Table 22. We tabulate the resulting payments according to the classifications (for example, provider type, geographic region, facility size) and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government, other), facility location, and facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2027 updated wage index data with a 5 percent cap on wage index decreases. The aggregate impact of the change in column three is zero percent, due to the hospice wage index standardization

factors. However, there are distributional effects of using the FY 2027 hospice wage index. The fourth column shows the effect of the hospice payment update percentage as mandated by section 1814(i)(1)(C) of the Act and is consistent for all providers. The hospice payment update percentage of 2.3 percent is based on the final 3.2 percent inpatient hospital market basket percentage increase reduced by a final

0.9 percentage point productivity adjustment. The fifth column shows the total effect of the updated wage data and the hospice payment update percentage on FY 2027 hospice payments. As illustrated in Table 22, the combined effects vary by specific types of providers and by location. We note that simulated payments are based on utilization in FY 2025 as seen on Medicare hospice claims (accessed from

the Chronic Conditions Warehouse (CCW) on May 12, 2026) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 22, the combined effects vary by specific types of providers and by location.

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TABLE 22: Impact to Hospices for FY 2027

Hospice Subgroup	Hospices	FY 2027 Updated Wage Data	FY 2027 Hospice Payment Update (%)	Overall Total Impact for FY 2027
All Hospices	6,673	0.0%	2.3%	2.3%
Hospice Type and Control				
Freestanding/Non-Profit	782	0.0%	2.3%	2.3%
Freestanding/For-Profit	4,856	0.0%	2.3%	2.3%
Freestanding/Government	34	0.7%	2.3%	3.0%
Freestanding/Other	0	0.0%	2.3%	2.3%
Facility/HHA Based/Non-Profit	258	0.0%	2.3%	2.3%
Facility/HHA Based/For-Profit	3	1.2%	2.3%	3.5%
Facility/HHA Based/Government	94	1.0%	2.3%	3.3%
Facility/HHA Based/Other	0	0.0%	2.3%	2.3%
Subtotal: Freestanding Facility Type	5,672	0.0%	2.3%	2.3%
Subtotal: Facility/HHA Based Facility Type	355	0.2%	2.3%	2.5%
Subtotal: Non-Profit	1,050	0.0%	2.3%	2.3%
Subtotal: For Profit	5,172	0.0%	2.3%	2.3%
Subtotal: Government	128	0.9%	2.3%	3.2%
Subtotal: Other	6	0.7%	2.3%	3.0%
Hospice Type and Control: Rural				
Freestanding/Non-Profit	203	0.9%	2.3%	3.2%
Freestanding/For-Profit	408	0.4%	2.3%	2.7%
Freestanding/Government	22	0.6%	2.3%	2.9%
Freestanding/Other	0	0.0%	2.3%	2.3%
Facility/HHA Based/Non-Profit	108	0.7%	2.3%	3.0%
Facility/HHA Based/For-Profit	0	0.0%	2.3%	2.3%
Facility/HHA Based/Government	68	1.1%	2.3%	3.4%
Facility/HHA Based/Other	0	0.0%	2.3%	2.3%
Hospice Type and Control: Urban				
Freestanding/Non-Profit	579	-0.1%	2.3%	2.2%
Freestanding/For-Profit	4,448	-0.1%	2.3%	2.2%
Freestanding/Government	12	0.7%	2.3%	3.0%
Freestanding/Other	0	0.0%	2.3%	2.3%
Facility/HHA Based/Non-Profit	150	-0.1%	2.3%	2.2%
Facility/HHA Based/For-Profit	3	1.2%	2.3%	3.5%
Facility/HHA Based/Government	26	1.0%	2.3%	3.3%
Facility/HHA Based/Other	0	0.0%	2.3%	2.3%
Hospice Location: Urban or Rural				

Hospice Subgroup	Hospices	FY 2027 Updated Wage Data	FY 2027 Hospice Payment Update (%)	Overall Total Impact for FY 2027
Rural	857	0.6%	2.3%	2.9%
Urban	5,816	-0.1%	2.3%	2.2%
Hospice Location: Region of the Country (Census Division)				
New England	162	0.8%	2.3%	3.1%
Middle Atlantic	282	0.6%	2.3%	2.9%
South Atlantic	653	-0.1%	2.3%	2.2%
East North Central	661	-0.2%	2.3%	2.1%
East South Central	252	-0.3%	2.3%	2.0%
West North Central	446	0.4%	2.3%	2.7%
West South Central	1,302	-0.4%	2.3%	1.9%
Mountain	697	-0.2%	2.3%	2.1%
Pacific	2,137	0.2%	2.3%	2.5%
Outlying	81	1.1%	2.3%	3.4%
Hospice Size				
0 - 3,499 RHC Days (Small)	1,611	0.2%	2.3%	2.5%
3,500-19,999 RHC Days (Medium)	2,984	0.2%	2.3%	2.5%
20,000+ RHC Days (Large)	2,078	0.0%	2.3%	2.3%

Source: FY 2025 hospice claims data from CCW accessed on May 12, 2026.

Note: The overall total impact reflects the addition of the individual impacts, which includes the wage index impact as well as the hospice payment update of 2.3 percent.

Due to missing Provider of Services file and Cost Report information (from which hospice characteristics are obtained), some subcategories in the impact tables have fewer agencies represented than the overall total (of 6,673). Subtypes involving ownership only add up to 6,356 while subtypes involving facility type only add up to 6,027.

Region Key:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Middle Atlantic=Pennsylvania, New Jersey, New York

South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia

East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin

East South Central=Alabama, Kentucky, Mississippi, Tennessee

West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

West South Central=Arkansas, Louisiana, Oklahoma, Texas

Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming

Pacific= Alaska, California, Hawaii, Oregon, Washington

Outlying=Guam, Puerto Rico, Virgin Islands

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We received a comment on the detailed economic analysis and impact table. A summary of this comment and our response follows:

Comment: A commenter stated that they disagree with CMS's characterization of the proposed FY 2027 payment provisions as a

meaningful \$785 million increase. This commenter expressed concern that while significant at the national level, the proposed 2.4 percent update does

not reflect the financial realities providers are facing; such as increases in labor costs driven by workforce shortages, along with ongoing inflationary pressures related to transportation, medications, medical supplies, contracted services, and compliance requirements.

Response: We acknowledge and appreciate the commenter's concerns regarding the adequacy of the proposed FY 2027 hospice payment update and acknowledge the cost pressures individual providers may be experiencing. We recognize that hospice care is a labor-intensive, community-based benefit and that providers face real and ongoing financial challenges in the current economic environment. We reiterate that we are required to update hospice payments pursuant to section 1814(i)(1)(C)(ii)(VII) of the Act which requires CMS to update hospice PPS payments by the Inpatient Hospital PPS (IPPS) market basket percentage increase (as defined in section 1886(b)(3)(B)(iii) of the Act) reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. We do not have discretionary authority to deviate from this statutory formula. Furthermore, we estimate that the aggregate impact of the payment provisions in this final rule will result in an estimated increase of \$755 million in payments to hospices, resulting from the final hospice payment update percentage of 2.3 percent for FY 2027. The impact analysis of this final rule represents the projected effects of the changes in hospice payments from FY 2026 to FY 2027 using the most recent complete data available at the time of rulemaking, in this case FY 2025 hospice claims data as of May 12, 2026. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time-period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

D. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with the regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on this year's proposed rule will be the number of reviewers of this

final rule. However, we acknowledge that this assumption may understate or overstate the costs of reviewing this final rule. It is possible that not all commenters reviewed this year's proposed rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. Despite these limitations, we believe that the number of commenters on this year's proposed rule is a fair estimate of the number of reviewers of this final rule. We welcomed any public comments on the approach in estimating the number of entities that would review the proposed rule. We did not receive any public comments specific to our solicitation.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We sought public comments on this assumption. We did not receive any public comments specific to our solicitation.

Using the May 2024 National median hourly wage rate (doubled for benefits and overhead) for medical and health service managers (Code 11-9111); we estimate that the cost of reviewing this rule is \$113.42 per hour, including overhead and fringe benefits (<https://www.bls.gov/oes/tables.htm>). Assuming an average reading speed we estimate that it will take approximately 1.76 hours for staff to review half of this final rule. For each hospice that reviews the rule, the estimated cost is \$199.62 (1.76 hours × \$113.42). Therefore, we estimate that the total cost of reviewing this regulation is approximately \$43,118 (\$199.62 × 216 reviewers; which is based on the number of comments received on the proposed rule, as described previously).

E. Alternatives Considered

1. Hospice Payment

Since the hospice payment update percentage is determined based on statutory requirements, we did not consider alternatives to updating the hospice payment rates by the final hospice payment update percentage. The final 2.3 percent hospice payment update percentage for FY 2027 is based on a final 3.2 percent inpatient hospital market basket percentage increase for FY 2027, reduced by a final 0.9 percentage point productivity adjustment. Payment rates since FY 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent years must

be the market basket percentage increase for that FY. Section 3401(g) of the Affordable Care Act also mandates that, starting with FY 2013 (and in subsequent years), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. For FY 2027, since the hospice payment update percentage is determined based on statutory requirements at section 1814(i)(1)(C) of the Act, we did not consider alternatives for the hospice payment update percentage.

2. Hospice Election Statement Addendum

CMS considered not finalizing the requirement to make the election statement addendum mandatory but rather keep the existing policy where the addendum is only required when requested by the beneficiary, their representative, non-hospice providers, or the Medicare administrative contractors. However, as described in section III.C. of this final rule, the intent of the election statement addendum is to increase coverage transparency for beneficiaries. We believe that requiring the provision of this addendum only when requested does not fulfill this intent and that all beneficiaries deciding to elect hospice care in lieu of curative care should have all the information they need to make an informed election. We also stated our concerns that the continued increase of non-hospice spending during a hospice election may signal that beneficiaries are not being made aware of hospice coverage responsibility and this may result in increased beneficiary cost sharing and fragmented care which is counter to the comprehensive and holistic nature of hospice care.

3. Quality Reporting Program

CMS considered proposing an icon that would indicate if a hospice does not meet the submission requirements for HOPE, CAHPS, and claims. However, since claims are required for payment, there is high compliance, and, as many hospices are exempt from CAHPS due to size limitations, CAHPS submissions would be excluded for a large number of hospices so both CAHPS and claims were omitted. CMS also proposed an icon that will indicate if a hospice has met the submission requirements, however CMS is trying to induce the non-submitting hospices to change behavior and believe a negative icon will be more effective than a positive icon. Additionally, creating a positive icon will also cause, at times, hospices with poor quality indicators to

receive this icon and possibly give mixed messages to the consumer as to whether the hospice provides good quality of care.

CMS considered proposing a star rating, similar to those seen in other care settings on the *Medicare.gov* Compare Tool. However, this change will require the need for more public feedback and additional analyses to create a star rating that will accurately reflect the care a hospice is providing.

There was also a desire to not add something to the Compare Tool that may interfere with the changes that may be made by the Hospice Special Focus Program (SFP).

F. Accounting Statement and Table

Consistent with OMB Circular A-4 (available at <https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf>), we have prepared an accounting statement in Table 23 showing the classification of

the expenditures associated with the provisions of this final rule. Table 23 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this final rule. This estimate is based on the data for 6,673 hospices in our impact analysis file, which was constructed using FY 2025 claims (accessed from the CCW on May 12, 2026). All expenditures are classified as transfers to hospices.

**TABLE 23: Accounting Statement
Classification of Estimated Transfers to Medicare Hospices**

	HOSPICE PAYMENT UPDATE (FROM FY 2026 TO FY 2027)
Category	Transfers
Annualized Monetized Transfers	\$755 million*
From Whom to Whom?	Federal Government to Medicare Hospices
HOSPICE ELECTION STATEMENT ADDENDUM (FY 2027)	
Category	Cost
Net Burden for Completion of the Election Statement Addendum	-\$15.5 million**

*The increase of \$755 million in transfer payments is a result of the final 2.3 percent hospice payment update compared to payments in FY 2026.

**The estimated annual net provider burden reduction of \$15.5 million is a result of the difference between the estimated hospice burden for completion of the election statement addendum and the estimated non-hospice provider burden reduction for obtaining the election statement addendum.

G. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small jurisdictions. We consider all hospices as small entities as that term is

used in the RFA. The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. There is no NAICS code specific to hospice services. Therefore, we utilized the NAICS U.S. industry title “Home Health Care Services” and corresponding NAICS code 621610 in determining impacts for small entities.

The NAICS code 621610 has a size standard of \$19 million.²⁶ Table 24 shows the number of firms, revenue, and estimated impact per home health care service category. Table 25 shows the number of nonemployer establishments, total, and average revenue per nonemployer establishment.

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²⁶ https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_

*Effective%20March%2017
%2C%202023%20%281%29%20%281%29_0.pdf.*

TABLE 24: Number Of Firms, Revenue, and Average Revenue Per Firm of Home Health Care Services for NAICS Code 621610

NAICS	NAICS Description	Enterprise Size (\$1,000)	Number of Firms	Receipts (\$1,000)	Average Receipts Per Firm (\$1,000)
621610	Home Health Care Services	<100	6,361	232,967	37
621610	Home Health Care Services	100-499	7,099	1,869,713	263
621610	Home Health Care Services	500-999	3,866	2,829,374	732
621610	Home Health Care Services	1,000-2,499	5,218	8,370,496	1,604
621610	Home Health Care Services	2,500-4,999	2,560	8,833,076	3,450
621610	Home Health Care Services	5,000-7,499	885	5,275,636	5,961
621610	Home Health Care Services	7,500-9,999	450	3,789,016	8,420
621610	Home Health Care Services	10,000-14,999	466	5,256,982	11,281
621610	Home Health Care Services	15,000-19,999	235	3,621,448	15,410
621610	Home Health Care Services	>20,000	1,058	73,271,709	69,255
621610	Home Health Care Services	Total	28,198	113,350,417	4,020

Source: Data obtained from United States Census Bureau table “us_6digitnaics_rcptsize_2022” (SOURCE: 2022 SUSB Annual Data Tables by Establishment Industry) Release Date: 4/10/2025: https://www2.census.gov/programs-surveys/susb/tables/2022/us_6digitnaics_rcptsize_2022.xlsx.

Notes: The ‘Average Receipts Per Firm’ column is calculated as the Receipts (\$1,000)/Number of firms. The ‘Total’ row represents all the home health care services firms under NAICS 621610. Overall receipts (revenue) for the 28,198 firms (NAICS 621610) are approximately \$113 billion.

TABLE 25: NUMBER, TOTAL, AND AVERAGE REVENUE OF NONEMPLOYER ESTABLISHMENTS OF HOME HEALTH CARE SERVICES BY NAICS CODE 621610

NAICS	NAICS Description	Establishments With Sales, Value of Shipments, or Revenue Size of Establishments Code	Number of Nonemployer Establishments	Total Nonemployer Sales, Value of Shipments, Or Revenue (\$1,000)	Estimated Average Revenue (\$1,000)
621610	Home Health Care Services	All Establishments	412,098	9,525,542	\$23.115

Source: Data obtained from United States Census Bureau table title “All Sectors: Nonemployer Statistics by Legal Form of Organization and Receipts Size Class for the U.S., States, and Selected Geographies: 2023” (SOURCE: U.S. Census Bureau, 2023 Economic Surveys) Release Date: 05/15/2025: <https://data.census.gov/table?q=NONEMP2023.NS2300NONEMP&codeset=naics~62161>.

Notes: Estimated average revenue is calculated as Total Nonemployer Sales, Value of Shipments, or Revenue (\$1,000)/Number of Nonemployer Establishments. For the total, this is the average estimated impact across all number of firms.

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The Department of Health and Human Services’ practice in interpreting the RFA is to consider effects economically “significant” only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of hospice visits are Medicare paid visits,²⁷ and

²⁷ The Medicare Payment Advisory Commission has observed that in 2022 “Medicare accounts for about 90 percent of hospice days[.]” Medicare Payment Advisory Comm’n, March 2024 Report to Congress, Ch. 9, at 22 (March 15, 2024).

therefore the majority of hospice agency revenue consists of Medicare payments. Based on our analysis, we conclude that the policies finalized in this rule will not result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of hospices. Therefore, the Secretary has determined that this hospice final rule will not have significant economic impact on a substantial number of small entities. Table 22 details the total percentage payment increase by number of 30-day periods and impact by facility

type, size, and location. As shown in Table 22, when examining the distribution of projected payment impacts across individual agency groups, a marginal share of hospices are projected to receive a payment increase of 3 percent or more. For example, only agencies in the New England (162 hospices, 3.1 percent) and outlying (81 hospices, 3.4 percent) census regions are estimated to receive an increase over 3.0 percent. Hospices in these regions represent roughly 3.6 percent of all 6,673 hospices.

Additionally, we estimate that the net impact of the policies in this rule is 2.3 percent or approximately \$755 million in increased revenue to hospices in FY 2027. The 2.3 percent increase in expenditures when comparing FY 2026 payments to estimated FY 2027 payments is reflected in the last column of the first row in Table 22 and is driven solely by the impact of the final hospice payment update percentage reflected in the fourth column of the impact table. In addition, hospices with less than 3,500 RHC days will experience a higher estimated increase (2.5 percent), compared to hospices with greater than 20,000 RHC days (2.3 percent) due to the updated wage index. We estimate that in FY 2027, hospices in urban areas will experience, on average, a 2.2 percent increase in estimated payments compared to FY 2026; while hospices in rural areas will experience, on average, a 2.9 percent increase in estimated payments compared to FY 2026. Hospices providing services in the Outlying region will experience the largest estimated increases in payments of 3.4 percent. Further detail by hospice type and location is presented in Table 22.

The statement of need for the various proposed policies in this rule is discussed in section V.A. of the RIA.

Additionally, the alternatives considered for the various finalized policies in this rule are discussed in section V.E. of the RIA. We considered potential alternatives for the policies finalized in this rule, including the hospice payment update percentage and the hospice election statement addendum. Because the hospice payment update percentage is established annually in accordance with the statutory requirements of section 1814(i)(1)(C) of the Act, we did not evaluate alternative approaches for this provision. Similarly, we did not consider alternatives for the regulatory text revisions, as these changes either conform to policies already codified in regulation or are mandated by the Consolidated Appropriations Act, 2026. For the hospice election statement addendum, the proposed policy is expected to generate savings for all hospices, including small entities. We also considered an alternative in which the hospice statement addendum would be optional rather than mandatory. However, this approach would not fulfill the intended objective, as described in Section III.C. of this final rule, of enhancing transparency for beneficiaries seeking to elect the hospice benefit. We solicited comments on our proposed cost analysis but did not receive any comments.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. As this rule will only affect hospices, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

H. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2026, that threshold is approximately \$193 million. This rule will not have an unfunded effect on state, local, or tribal governments, in the aggregate, or on the private sector that exceeds this threshold in any 1 year.

I. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this rule under these criteria of Executive Order 13132 and have determined that it will not impose substantial direct costs on State or local governments.

J. E.O. 14192, “Unleashing Prosperity Through Deregulation”

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation” was issued on January 31, 2025, and requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” Therefore, this final rule is expected to be an E.O. 14192 deregulatory action. We estimate that this final rule will generate \$12.69 million in annualized cost savings at a 7 percent discount rate, discounted to relative to 2024, over a perpetual time horizon.

K. Conclusion

We estimate that aggregate payments to hospices in FY 2027 will increase by \$755 million as a result of the final 2.3 percent hospice payment update, compared to payments in FY 2026. We estimate that in FY 2027, hospices in urban areas will experience, on average, a 2.2 percent increase in estimated payments compared to FY 2026; while hospices in rural areas will experience, on average, a 2.9 percent increase in estimated payments compared to FY 2026. Hospices providing services in the Outlying region will experience the largest estimated increases in payments of 3.4 percent. Hospices serving patients in the West South Central region will experience, on average, the lowest estimated increase of 1.9 percent in FY 2027 payments.

Mehmet Oz, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 28, 2026.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 418 as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 418.22 is amended by revising paragraph (a)(4)(ii) to read as follows:

§ 418.22 Certification of terminal illness.

(a) * * *

(4) * * *

(ii) During a Public Health Emergency, as defined in § 400.200 of this chapter, or through December 31, 2027, whichever is later, if the face-to-face encounter conducted by a hospice physician or hospice nurse practitioner is for the sole purpose of hospice recertification, such encounter may occur via telecommunications technology and is considered an administrative expense. Telecommunications technology means the use of interactive multimedia communications equipment that includes, at a minimum, the use of audio and video equipment permitting two-way, real-time interactive communication between the patient and the distant site hospice physician or hospice nurse practitioner. For face-to-face encounters occurring on or after

January 1, 2027, hospices must report any such encounters occurring via telecommunications technology on the claim, in accordance with guidance issued by CMS. Beginning January 31, 2026, telehealth may not be used for the face-to-face recertification encounter if any of the following conditions apply:

(A) The hospice patient is located in an area subject to a hospice enrollment moratorium under section 1866(j)(7) of the Act;

(B) The patient is receiving care from a hospice provider that is subject to enhanced oversight pursuant to section 1866(j)(3) of the Act; or

(C) The face-to-face encounter is conducted by a hospice physician or nurse practitioner who is not enrolled in Medicare under section 1866(j) and is not an opt-out physician or practitioner (as defined in section 1802(b)(6)(D) of the Act.

* * * * *

■ 3. Section 418.24 is amended by revising paragraphs (b)(6), (c) introductory text, (c)(9) and (10), and (d) to read as follows:

§ 418.24 Election of hospice care.

(b) * * *

(6) For Hospice elections beginning on or after October 1, 2026, the hospice must provide the individual (or representative) an election statement addendum, as set forth in paragraphs (c) and (d) of this section, which includes any conditions, items, services, and drugs the hospice has determined to be unrelated to the individual's terminal illness and related conditions and would not be covered by the hospice.

* * * * *

(c) *Content of hospice election statement addendum.* For hospice elections beginning on or after October 1, 2026, the hospice must provide the individual (or representative) an election statement addendum. The election statement addendum (and its updates) must include the following:

* * * * *

(9) Name and signature of the individual (or representative) and date signed, along with a statement that signing this addendum (and its updates) is only acknowledgement of receipt of the addendum and not the individual's

(or representative's) agreement with the hospice's determinations. If the individual (or representative) refuses to sign the addendum, the hospice must document on the addendum the reason the addendum was not signed and the addendum would become part of the patient's medical record. The addendum must also be available for non-hospice providers and Medicare contractors, although non-hospice providers and Medicare contractors are not required to sign the addendum.

(10) Date the hospice furnished the addendum to the individual (or representative).

(d) *Timeframes for the hospice election statement addendum.* (1) For hospice elections beginning on or after October 1, 2026, the hospice must provide the individual (or representative) an election statement addendum, in writing, as set forth in paragraph (c) of this section, at the time of the hospice election (that is, within the first 5 days of the effective date of the hospice election). The hospice must also file this information with the election statement, as set forth in paragraphs (a) and (b) of this section, to be available for the individual (or representative), non-hospice providers, and Medicare contractors.

(2) If there are any changes to the plan of care during the course of hospice care that impact the addendum determinations, the hospice must update the addendum, within 3 days, with the contents described in paragraph (c) of this section, and provide these updates, in writing, to the individual (or representative), as well as update the addendum on file in order to communicate these changes to the individual (or representative), non-hospice providers, and Medicare contractors.

(3) If the individual dies, revokes, or is discharged within the required timeframe for providing the addendum (and its updates) (as outlined in paragraphs (d)(1) and (2) of this section), and before the hospice has provided the addendum (and its updates), the addendum would not be required to be provided, in writing, to the individual (or representative). The hospice must note the reason the addendum (and its

updates) was not completed and/or provided, in writing, to the individual (or representative) and this note would become part of the patient's medical record. If completed, the hospice must still file the addendum (and its updates) with the election statement, as set forth in paragraphs (a) and (b) of this section, to be available for the individual (or representative), non-hospice providers, and Medicare contractors.

(4) If the individual dies, revokes, or is discharged prior to signing the addendum (or its updates) (as outlined in paragraphs (d)(1) and (2) with the required contents described in paragraph (c) of this section), the addendum would not be required to be signed in order for the hospice to receive payment. The hospice must note (on the addendum itself) the reason the addendum (and any updates) was not signed and the addendum would become part of the patient's medical record.

* * * * *

■ 4. Section 418.26 is amended by revising paragraph (b) to read as follows:

§ 418.26 Discharge from hospice care.

* * * * *

(b) *Discharge order.* Prior to discharging a patient for any reason listed in paragraph (a) of this section, the hospice must obtain a written physician's discharge order from the hospice medical director (or physician designee, as defined at § 418.3) or physician member of the interdisciplinary group. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.

* * * * *

§ 418.309 [Amended]

■ 5. Section 418.309 is amended in paragraphs (a)(1) and (2) by removing "2033" and adding in its place "2035".

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026-15686 Filed 7-30-26; 4:15 pm]

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Part VI

Office of Personnel Management

5 CFR Parts 316, 330, 351, et al.
Reduction in Force; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Parts 316, 330, 351, 353, 359,
362 and 430**

[Docket ID: OPM–2025–0107]

RIN 3206–AO86

Reduction in Force

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its reduction in force (RIF) regulations to make the RIF regulations more streamlined, efficient, and merit-based by prioritizing performance over tenure and length of service when determining which employees will be retained in a RIF and by modifying the types of employees who are excluded from RIF competition. OPM is also revising its regulations regarding the reemployment priority list (RPL), career transition assistance program (CTAP), the interagency career transition assistance program (ICTAP), and transfers of function.

DATES: This rule is effective September 2, 2026. An agency that issued a RIF notice before the effective date of the rule must process the RIF under the regulations in effect when the RIF notice was issued. An agency that issues a RIF notice on or after the effective date must apply the RIF provisions as amended by this final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Gottesman at (202) 606–0960 or by email at employ@opm.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

OPM is revising its regulations governing RIFs and making related changes to its regulations under statutory authority found at 5 U.S.C. 1103, 1104, 1302, 3304, 3320, 3330, 3502, 3503, 3596, 4305, and 4315, and 38 U.S.C. 4331. The rule makes the following changes:

1. *Replaces the current tenure-group framework with a simplified competitive service and excepted service structure.* The rule consolidates current tenure groups I, II, and III into a “competitive service tenure group” and an “excepted service tenure group,” with two subgroups in each.

2. *Excludes certain employees from RIF competition.* Employees serving initial probationary periods, trial periods, temporary or time-limited appointments of one year or less, and Schedule C and Schedule G employees

are not “competing employees” for RIF purposes and can be retained, furloughed, separated, demoted, or reassigned without using RIF procedures.

3. *Reorders retention standing to place performance first.* Agencies will maintain separate retention registers for competitive service and excepted service employees; within each group, employees will be ranked by performance credit, augmented by veterans’ preference, with tenure subgroup and length of service used as tie-breakers.

4. *Creates a new numerical performance credit methodology.* Agencies will calculate performance credit using the three most recent ratings of record from the relevant four-year period, assigning 7 points for Level 5, 5 points for Level 4, 3 points for Level 3, and 0 points for Level 1 or Level 2 ratings, with special rules for missing ratings and differing appraisal patterns.

5. *Applies veterans’ preference by adding points to performance credit.* Preference eligibles with a compensable service-connected disability of 30 percent or more receive 5 additional points; other preference eligibles receive 3 additional points; non-preference eligibles receive no additional points.

6. *Adds definitions of key terms.* The rule defines “competing employee,” “competitive service tenure group,” “excepted service tenure group,” “reduction in force,” “initial probationary period,” “trial period,” “government obligation,” and “military spouse.”

7. *Excludes emergency shutdown furloughs from the RIF furlough definition.* The rule excludes emergency shutdown furloughs caused by lapses in appropriations from the RIF furlough definition.

8. *Removes erosion of duties reclassifications from actions requiring RIF procedures, while adding an anti-manipulation safeguard.* Agencies will no longer need to use RIF procedures for such reclassifications but could not undertake an erosion of duties reclassification after announcing a RIF if it would adversely affect an employee’s retention standing.

9. *Narrows and simplifies transfer-of-function requirements.* The rule narrows transfer-of-function requirements to transfers between agencies, rather than transfers within a single agency, and simplifies identification of employees tied to a transferring function by focusing on whether the employee performs the function at least half of the time.

10. *Clarifies how agencies define competitive areas.* Under this rule,

competitive areas may be based on official organizational units or combinations of units. Agencies may define certain geographic locations as separate competitive areas, while employees working at approved alternate locations remain assigned to their official organizational unit for competitive area purposes. In addition, an organizational unit for RIF purposes must be clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight.

11. *Clarifies and simplifies procedures when an entire competitive area is being abolished.* When abolishing all positions in a competitive area within 180 days, agencies may release employees without ranking them on a retention register or applying assignment rights, and with a simplified notice.

12. *Revises and simplifies assignment rights by replacing “bump and retreat” concepts with assignment rights to a position held by an employee with a lower-retention-standing.* A released employee in the competitive service will receive assignment rights to a qualifying position held by another employee with lower retention standing in the same tenure group, generally within three grades below the released employee’s position, or five grades for certain 30-percent-or-more disabled veterans.

13. *Requires skills-based assessments for RIF assignment qualifications and RPL selection.* Agencies must assess whether employees or RPL candidates have the capacity, adaptability, and skills needed for the position through job-related assessments based on job analysis (unless the employee held the same or substantially similar position within five years of the RIF and achieved a rating of Level 3 (Fully Successful), or higher, or equivalent, for performing the duties of the position). This change requires agencies to use more rigorous assessments in accordance with the Chance to Compete Act of 2024 (Pub. L. 118–188) to determine whether the individual is qualified.

14. *Updates RPL, CTAP and ICTAP rules to conform to the new RIF framework.* The rule replaces references to prior tenure groups with the new competitive service tenure group, preserves preexisting eligibility through appointments, updates selection methods to emphasize skills-based assessments, and adds exceptions allowing agencies to retain or finalize appointments of probationary employees.

15. *Updates Pathways and post-secondary student regulations to conform to the new RIF framework.* The rule modifies regulations in 5 CFR parts 316 and 362, pertaining to post-secondary students and Pathways Programs, to clarify how such appointments are treated for RIF purposes in conformance with the changes made by this rule.

16. *Revises RIF exceptions, notices, and records, and makes various conforming changes in other regulatory sections.* The rule clarifies continuing and temporary exceptions allowing agencies to retain employees who would otherwise be separated via a RIF, including for government obligations, parental leave, sick-leave-related circumstances, annual leave, and military spouses; fixes retention standing as of the date the employee receives a specific RIF notice (rather than the date the RIF is executed); updates required notice content; and makes conforming changes for post-secondary students, Pathways interns, compensable-injury restoration rights, Senior Executive Service (SES) furloughs, and performance management cross-references.

In addition, in this rule, OPM is modifying the proposed rule in the following ways:

1. *Clarifying how retention and restoration rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) apply in a RIF.* In response to public comments, this rule provides additional clarity regarding how USERRA applies to RIFs. It requires that agencies apply USERRA retention protections and restoration rights as a mandatory exception to the order of release under a RIF. When an entire competitive area is abolished pursuant to § 351.605, an employee entitled to USERRA retention protections or restoration rights must be assigned to a different position at the agency. If an entire agency is abolished, OPM will provide placement assistance elsewhere in the Executive Branch.

2. *Reinforcing Merit System Principles.* OPM is revising § 351.204 to clarify that agencies have a responsibility not only to follow and apply the regulations in Part 351 when conducting a RIF, but to ensure that the RIF regulations are administered and applied consistent with all applicable laws, including the merit system principles set forth in 5 U.S.C. 2301(b).

3. *Providing additional competitive area safeguards.* OPM is requiring that, when a competitive area will be in effect less than 90 days prior to a specific RIF notice, or has been materially modified,

an agency must submit a description of the competitive area and provide, for OPM review, a written explanation of the bona fide organizational basis for the competitive area.

4. *Clarifying exclusions of employees from RIF competition in § 351.202(d).* The final rule clarifies that if the individuals among the categories of employees specified in § 351.202(d) as excluded from RIF competition are released for the reasons described in § 351.201(a)(2) (i.e., lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment rights or restoration rights), they must receive a modified RIF notice, unless the release is the natural expiration of the temporary or time-limited appointment.

5. *Making various clarifying and conforming changes and updating an outdated reference.* The final rule makes changes to the wording of § 351.605, dealing with abolishment of a competitive area, to further clarify the meaning of this provision; makes minor changes to the definition of “emergency shutdown furlough” in § 351.203 and § 359.802 to remove potentially confusing language; updates § 353.110 to replace outdated OPM contact information for placement assistance; adds an introductory phrase to § 351.802(a); and makes conforming changes to § 351.805, dealing with successive RIF notices, and § 362.306, dealing with Pathways recent graduates, to ensure consistency with other changes made in this rulemaking.

6. *Not finalizing changes to RIF furlough procedures.* In response to input from public comments, OPM has elected not to finalize a further change to provide greater flexibility for agencies to conduct unpaid furloughs of more than 30 days.

II. Digest of Public Comments

During the 60-day comment period, OPM received 721 unique comments from current and former Federal employees, Federal agencies, unions, veterans’ groups, professional organizations, think tanks, and other interested parties. One comment was submitted as 100 entries; following review, OPM determined that the submission in fact represented the views of one commenter.

Some commenters supported the rule, contending that Federal agencies should be able to retain their highest-performing employees when downsizing, and applauding OPM for seeking to simplify an unnecessarily complicated regulatory structure. Many other commenters objected to the proposal, arguing that it would conflict

with the relevant statutory framework and weaken tenure, seniority, and veterans’ preference. OPM appreciates the many thoughtful comments it received, and it has closely considered them. Responses to the most common issues raised by commenters are below; other section-specific comments are addressed in the section-by-section analysis.

A. The Rule Is Consistent With the Statutory RIF Framework

Several commenters (for example, 0660, 0672, 0532 and 0157) argued that the proposed rule is inconsistent with the statutory framework governing RIFs. OPM disagrees.

The relevant statute, 5 U.S.C. 3502, directs OPM to prescribe RIF regulations giving “due effect” to four factors: tenure of employment, military preference, length of service, and efficiency or performance ratings. The statute does not prescribe the current regulatory order of retention, does not require performance to be converted into additional years of service (as under the current 5 CFR part 351 regulations), and does not require OPM to retain the current adjusted-service-computation-date model. Nor does the statute require OPM to rank tenure, veterans’ preference, length of service, and performance in the precise order reflected in current 5 CFR part 351. As Commenter 0673 pointed out, 5 U.S.C. 3502 “demands no hierarchy among the four retention factors in terms of how each is weighted.” Commenter 0673 contended that Congress’s decision not to rank the factors supports the view that OPM may weigh them flexibly.

The final rule continues to give due effect to all statutory factors, but in a more transparent, administrable, and merit-based sequence. Employees will be placed on separate registers by tenure group. Performance credit will then be calculated from ratings of record. Veterans’ preference will be applied by adding preference points. Tenure subgroup will resolve ties, and service computation date (SCD) will resolve remaining ties. OPM is not eliminating tenure, veterans’ preference, or length of service as factors in RIF retention. Rather, OPM is changing the way those factors are integrated into retention standing, consistent with its statutory authority to prescribe RIF regulations and give “due effect” to all four statutory factors in 5 U.S.C. 3502(a).

The current regulatory formula is not mandated by statute. It is a regulatory choice, and OPM may revise that choice when it reasonably concludes that a different approach better serves the statutory purposes and the needs of the

civil service. In the context of an earlier rulemaking that also gave greater weight to performance in RIF determinations, the D.C. Circuit noted expressly that OPM’s decision about how much weight to give to performance in RIF retention is “a policy decision, not a technical question for which data can provide a mathematically ‘correct’ answer.” *Am. Fed’n of Gov’t Emps., AFL–CIO v. Off. of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (“*AFGE v. OPM*”).

The various weights given by OPM to each of the four statutory factors have varied over time. For example, as Commenter 0687 noted, the initial RIF regulations issued by the Civil Service Commission in 1943 weighed performance much more heavily than OPM’s current regulations. Seniority began to play a more prominent role as the regulations were revised through successive Civil Service Commission rulemakings. In the 1980s, OPM revised the RIF regulations to give more effect to performance ratings. However, performance and veterans’ preference currently remain subordinate to tenure, with performance being applied as an additional credit to length of service.

OPM concludes, consistent with 5 U.S.C. 3502, that giving “due effect” to the four prescribed statutory factors is best achieved by giving greater practical weight to performance, while still preserving tenure, veterans’ preference, and length of service as factors in determining the RIF register. The

current rules are cumbersome, intricate, resource-intensive, and prone to error. The complexity of the current rules, and their failure to weight employee performance as the primary consideration in retaining an employee, justify replacing the performance-adjusted-SCD model with a more direct scoring model.

Commenter 0680 argued that the rule fails to give due effect to tenure subgroup and length of service because those factors will matter only in ties. OPM disagrees with the premise that a factor lacks “due effect” unless it alters every ranking in every retention register. The current rule itself does not cause every factor to affect every comparison. For example, performance and length of service do not allow a Group II disabled veteran to outrank a Group I non-veteran under current rules, because tenure controls first. The current rules therefore also contain factors that may be dispositive in some comparisons and irrelevant in others.

The rule gives due effect to all four factors as follows: tenure determines whether the employee is placed on the competitive-service or excepted-service register and, within those registers, tenure subgroup resolves ties; military preference is converted into additional retention points; performance is measured directly through ratings of record; and length of service is reflected through actual SCD as the final tie-breaker. The statute does not require

equal weight, identical sequencing, or universal decisiveness for each factor in every case.

Commenters 0458 and 0680 contended that tenure is unlawfully diminished because current Groups I, II, and III would be replaced with a competitive-service tenure group and an excepted-service tenure group, each with two tenure subgroups. Commenter 0678 argued that non-performance factors, including tenure and length of service, would be rendered “functionally irrelevant” under the rule. OPM disagrees.

The rule continues to account for tenure and length of service. It first separates competitive service and excepted service employees into distinct tenure-group registers. It then uses tenure subgroup I and II to resolve ties within those registers when employees have the same performance credit, as augmented by veterans’ preference, with length of service as a second tiebreaker. OPM reasonably concluded that reducing the current tenure structure is appropriate because the current system gives tenure a controlling effect that can require agencies to release higher-performing employees before lower-performing employees. This rule gives tenure effect as a tiebreaker when two employees have the same performance credit after augmenting for veterans’ preference, but not the overriding effect that tenure currently enjoys, as illustrated below:

Rank	Name	Tenure group	Vets preference subgroup	Rating of record summary levels	Performance credit total	Tenure subgroup	Service comp date
1	Rivera	CS	B	5/5/4	19	I	2018–04–02
2	Singh	CS	A	5/4/3	18	I	2013–08–15
3	Morgan	CS	A	5/4/3	18	I	2020–01–27
4	Taylor	CS	AD	4/4/3	18	II	2023–07–10
5	Nguyen	CS	A	4/4/4	18	II	2023–11–06
6	Owens	CS	B	5/5/3	17	I	2016–05–12

In the example above, Rivera ranks first because Rivera has the highest total performance credit. Singh, Morgan, Taylor, and Nguyen all have the same total score of 18, so the tie is broken first by tenure subgroup: Singh and Morgan in subgroup I rank ahead of Taylor and Nguyen in subgroup II. Within each subgroup, SCD breaks the remaining tie:

Singh ranks ahead of Morgan because Singh has the earlier SCD, and Taylor ranks ahead of Nguyen because Taylor has the earlier SCD. Owens has subgroup I status and more service than Taylor and Nguyen, but Owens ranks below them because Owens has a lower total performance credit.

If one position were abolished, Owens would be released first. If two positions were abolished, Owens and Nguyen would be released first.

The example below illustrates how length of service is given due effect as a second tiebreaker:

Rank	Name	Tenure group	Vets preference subgroup	Rating of record summary levels	Performance credit total	Tenure subgroup	Service comp date
1	Bennett	CS	B	5/5/5	21	I	2021–09–13
2	Alvarez	CS	AD	5/4/3	20	I	2014–02–24
3	Chen	CS	A	5/5/3	20	I	2016–11–01
4	Diaz	CS	AD	5/4/3	20	I	2019–06–17
5	Evans	CS	A	5/5/3	20	II	2023–08–21
6	Flores	CS	B	5/5/4	19	I	2015–04–10

In the example above, Bennett ranks first because Bennett has the highest score: 21. Alvarez, Chen, Diaz, and Evans all have a total score of 20, so tenure subgroup breaks the first tie: Alvarez, Chen, and Diaz in subgroup I rank ahead of Evans in subgroup II. Alvarez, Chen, and Diaz are still tied because they have the same score and the same tenure subgroup, so SCD determines their order: Alvarez first, then Chen, then Diaz. Flores has more service than Evans and is in subgroup I, but Flores ranks below Evans because Flores has a lower total score. If one position were abolished, Flores would be released first. If two positions were abolished, Flores and Evans would be released first.

Commenter 0680's position would effectively freeze the current tenure-group hierarchy. Nothing in 5 U.S.C. 3502 or any other provision, statute or law requires that result. Congress required OPM to give due effect to tenure; it did not mandate current Groups I, II, and III as permanent statutory categories.

B. The Rule Preserves Veterans' Preference as a Substantial Factor in RIF Retention

Many commenters (for example, 0005, 0660, 0672, 0680, and 0157) criticized

OPM's proposal because, in their view, the proposal undermines veterans' preference. OPM disagrees. The relevant statute, 5 U.S.C. 3502, requires that preference eligibles under 5 U.S.C. 2108 receive preference in RIF retention, with 30-percent-or-more disabled veterans receiving preference above other veterans. However, the statute does not require the current regulatory subgroup structure and does not forbid OPM from giving more weight to performance in RIF retention.

OPM gives veterans' preference due and substantial effect through an explicit point augmentation that changes an employee's relative standing in the retention register. The rule retains veterans' preference as a meaningful part of retention standing by adding 5 points for preference eligibles with a compensable service-connected disability of 30 percent or more and 3 points for other preference eligibles. Those points are added to performance credit before tenure subgroup and service computation date are considered. This level of veterans' preference meaningfully honors veterans' sacrifice and service¹ while appropriately balancing the government's interest in retaining top performers when an agency undergoes

restructuring. This rule thus gives effect to Congress's direction that disabled veterans be retained "in preference to" other veterans, 5 U.S.C. 3502(b), and that veterans be retained "in preference to other competing employees." 5 U.S.C. 3502(c).

Notably, the amount of veterans' preference provided under these provisions is much greater than the preference veterans receive in competitive examining for hiring using numerical rating and ranking under 5 U.S.C. 3309 and 5 CFR 337.101(a). Under these authorities, disabled veterans receive an additional 10 points on a 100-point scale, while veterans receive an extra 5 points on a 100-point scale. By contrast, this rule adds 5 points (for disabled veterans) or 3 points (for other preference eligibles) out of an ordinary maximum performance credit score of 21. Thus, on a scale-normalized basis, veterans' preference points in RIF retention are far greater than in typical competitive hiring. This is illustrated by the chart below showing how veterans' preference is applied in ordinary competitive examining with numerical rating and ranking:

Hiring preference category	Earned-rating scale	Preference points	Preference as percent of 100-point scale
5-point preference eligible	100	+5	5
10-point preference eligible	100	+10	10

Compare this to how RIF retention will work under the revised RIF regulations:

RIF preference category	Performance-credit scale	Preference percent points	Preference as percent of 21-point scale
Other preference eligible, Subgroup A	21	+3	14.3
30%+ compensably disabled preference eligible, Subgroup AD	21	+5	23.8

Thus, the RIF preference can offset a much larger share of the performance scale than hiring preference offsets of the examining scale. In hiring, a 10-point preference eligible with an earned score of 90 reaches an augmented score of 100. A 5-point preference eligible with an earned score of 95 reaches an augmented score of 100. That means hiring preference bridges the top 10% or 5% of the 100-point earned-rating scale.

Under this rule, a 30%+ disabled preference eligible with a raw performance-credit score of 16 reaches 21 after the +5 preference addition. Other preference eligibles with a raw performance-credit score of 18 reach 21 after the +3 preference addition. Because the maximum ordinary performance-credit score is 21, the RIF preference bridges the top 23.8% or 14.3% of the performance-credit scale.

That makes the revised RIF veterans' preference materially stronger than hiring preference as a scoring weight.

Further, the practical effect of veterans' preference under this rule is far greater than preference in competitive hiring, because RIF performance-credit increments are relatively small. Under the new RIF formula, the difference between a Level 5 rating and a Level 4 rating is only 2

¹ This rule also allows consideration for the sacrifice endured by other categories of preference

eligibles under 5 U.S.C. 2108(3), such as certain close family members of veterans.

points, and the difference between a Level 4 rating and a Level 3 rating is also only 2 points. That means a +3 veterans' preference credit is larger than one ordinary one-level rating difference, and a +5 credit is larger than two ordinary one-level rating differences. For example:

Employee	Ratings	Raw performance credit	Veterans' preference	Augmented RIF score
Non-preference employee	5/5/4	19	+0	19
30%+ disabled preference eligible	4/4/4	15	+5	20

In this example, the 30%+ disabled preference eligible with three Level 4 ratings ranks ahead of a non-preference employee with two Level 5 ratings and one Level 4 rating. Similarly:

Employee	Ratings	Raw performance credit	Veterans' preference	Augmented RIF score
Non-preference employee	5/4/4	17	+0	17
Other preference eligible	4/4/4	15	+3	18

In that example, the non-disabled preference eligible with three Level 4 ratings ranks ahead of a non-preference employee with one Level 5 and two Level 4 ratings. These examples show that Commenter 0157's contention that veterans' preference would be "largely illusory" under these revised regulations is not accurate; instead, it provides substantial retention preference for both disabled veterans and non-disabled veterans.

OPM believes that veterans' preference under 5 U.S.C. 3502(b) and (c) may lawfully be operationalized through a points-based addition to performance credit. The statute provides that a preference eligible employee with a compensable service-connected disability of 30 percent or more whose performance has not been rated "unacceptable" is entitled to retention preference ahead of other veterans. 5 U.S.C. 3502(b). Other preference eligibles whose performance has not been rated "unacceptable" are entitled to retention "in preference to other competing employees." 5 U.S.C. 3502(c).

Commenters 0660 and 0680 read 5 U.S.C. 3502(b) and (c) to mean that a preference eligible whose performance is not unacceptable must always be retained ahead of every non-preference eligible, regardless of comparative performance. OPM disagrees. The statute does not require that disabled veterans and other preference eligibles must always appear first on the retention register, only that they be retained "in preference to" other competing employees. These provisions create an entitlement to a meaningful retention preference, not a categorical right to be retained ahead of every non-veteran regardless of performance.

Further, sections 3502(b) and (c) must be read together with section 3502(a). Subsection (a) requires OPM to issue regulations that give "due effect" in a RIF not only to military preference, but also to tenure, length of service, and performance ratings, without establishing any categorical hierarchy concerning how the factors must be applied.

This lack of specific direction is notable, because Congress has elsewhere directed *specifically* that disabled veterans with a compensable service-connected disability of 10 percent or more "be entered on appropriate registers or list of eligibles" before other candidates for positions other than scientific and technical positions in GS-9 or higher. 5 U.S.C. 3313; *see also Legislative History of the Civil Service Reform Act of 1978* at p. 789 ("Certain other disabled veterans go to the top of the list of eligibles, except in competition for professional and scientific positions in grade and [sic] GS-9 and above"). This provision was codified at the same time as the modern RIF statute. *See* Pub. L. 89-554, Sept. 6, 1966. Congress's use of much more general language—"is entitled to be retained in preference to" other preference eligibles or competing employees, as applicable—in the RIF statute, when contrasted with the specific direction in 5 U.S.C. 3313 that disabled veterans appear before other candidates on hiring registers—indicates that Congress did not intend to create a rigid structure under which disabled veterans or veterans must always appear at the top of the retention register.

As a further example, USERRA states expressly that veterans who are required to be reemployed by their employers

after a tour of duty in the uniformed services "shall not be discharged from such employment, except for cause" for periods of six months (for military service between 30 days and 180 days) or one year (for military service of more than 180 days). 38 U.S.C. 4316. This provision underscores that Congress speaks directly when it means to give absolute retention rights to certain groups of employees, as opposed to a preference.

Indeed, OPM's current RIF regulations subordinate veterans' preference to another factor, namely tenure. That is, employees are currently ranked according to tenure groups I, II, III, and veterans only enjoy preference ahead of other employees in their tenure group. Thus, a veteran in tenure group II is ranked below a non-veteran in tenure group I in retention standing.

This longstanding feature of OPM's RIF regulations reflects the fact that, in 5 U.S.C. 3502, Congress did not prescribe that veterans or disabled veterans must always appear first on the register. As the Director of the Civil Service Commission's Bureau of Recruitment and Examining testified in 1977 concerning RIF regulations:

In retention, veterans have the right to be retained over competing non-veterans in a reduction in force. Retention standing under the law is based on four factors: type of appointment, veterans preference, performance rating, and length of service. Although this gives veterans a significant advantage, it is not absolute. For example, in fiscal year, 1976, 1800 veterans were separated in Reduction in Force actions versus 3,000 nonveterans. An equal number of veterans and nonveterans (approximately 4,500) were also reduced in grade. (quoted in

Legislative History of the Civil Service Reform Act of 1978 at p. 789; emphasis added)

Under OPM's current RIF rules, a Group II preference eligible can be

released—and ultimately separated—before a Group I non-veteran, even if the preference eligible has a stronger performance credit, as in the example below (which assumes that both employees are in the same competitive

area and competitive level, one position is abolished, no mandatory or permissive exception applies, and there is no position for Employee B to bump or retreat to):

Rank	Employee	Veteran status	Tenure group	Veterans' preference subgroup	Adjusted SCD	Result
1	Employee A	Non-veteran	Group I	Subgroup B	2002-01-01	Retained.
2	Employee B	30%+ disabled veteran.	Group II	Subgroup AD	1995-01-01	Released.

However, under this rule, the higher-performing preference eligible may be

retained over the longer-tenured non-veteran, as shown below:

Rank	Employee	Tenure group	Vets pref group	Rating of record summary levels	Vets pref points	Total performance credit	Tenure subgroup	SCD	Result
1	Employee B	CS	AD	5/5/5	+5	26	II	2024-01-01	Retained.
2	Employee A	CS	B	4/5/4	+0	17	I	2015-01-01	Released.

In this example, Employee B will fare better than Employee A because the revised regulations no longer rank all Group I employees ahead of all Group II employees. Instead, both will be placed in the competitive-service tenure group, and Employee A's former Group I status will function as tenure subgroup I, while Employee B's former Group II status will function as tenure subgroup II. Tenure subgroup would operate as a tie-breaker after performance credit, as augmented by veterans' preference.

In sum, this rule changes the method of operationalizing preference, but not the underlying principle. Current rules operationalize preference through categorical subgroups within tenure groups. This final rule operationalizes preference through numerical augmentation of performance credit. Both are regulatory methods for giving effect to military preference within a multi-factor RIF system.

Title 5 elsewhere confirms that veterans' preference can be implemented through points. As noted above, in competitive examining, 5 U.S.C. 3309 provides that preference eligibles who receive passing scores are entitled to additional points above their earned rating: 10 points for certain preference eligibles and 5 points for others. OPM's regulation implements that provision on a 100-point examining scale, adding 5 or 10 points to passing applicants' earned numerical ratings. See 5 CFR 337.101(b).

The general veterans' preference policy in 5 U.S.C. 1302(b) and (c) states that preference shall be given in certification, appointment, reinstatement, reemployment, and

retention. OPM has discretion under 5 U.S.C. 1302(b) to "prescribe and enforce regulations for the administration of" veterans' preference in the civil service. In the examining context, Congress and OPM implement that preference through a point credit, not an automatic selection entitlement. The same conceptual approach is available in RIF retention unless the RIF statute clearly forecloses it. Section 3502 does not. It requires due effect to military preference and specifically grants a retention preference, but it does not prescribe a fixed subgroup hierarchy or prohibit OPM from implementing that preference through a substantial numerical credit.

Commenter 0532's example, in which a non-veteran with three Outstanding ratings may rank above a disabled veteran with three Fully Successful ratings, does not show that veterans' preference has been erased. Instead, the example confirms that veterans' preference operates as a significant preference within a performance-centered RIF system rather than as an absolute rule that overrides all performance distinctions. OPM considers that approach consistent with the statutory direction to give due effect to all required factors.

Commenter 0680 similarly offers an example in which a veteran with ratings of 4/4/5 and 40 years of service receives 20 total points, while a non-veteran with ratings of 5/5/5 and 4 years of service receives 21 points. Commenter 0680 argues that the non-veteran's higher ranking shows that veterans' preference has been unlawfully denied.

OPM disagrees. The example shows only that, under the rule, a non-preference eligible with a materially stronger performance record may rank ahead of a preference eligible in some circumstances. That is a feature of a system designed to give meaningful effect to both veterans' preference and performance, not evidence that veterans' preference has been erased. The veteran in the commenters' example receives an additional 3 points solely by virtue of preference status. Without that preference, the veteran's performance score would be 17, not 20. The preference therefore materially improves the veteran's standing, but it does not operate as an absolute override of all higher performance. It operationalizes Congress's direction that veterans be retained "in preference to other competing employees." 5 U.S.C. 3502(c).

C. Giving Greater Weight to Performance in RIF Retention Standing is Consistent With Merit-System Principles

Commenter 0673 strongly supported the proposed rule because, in its view, it "helps correct a longstanding imbalance between tenure and merit in policies governing federal employee retention during" a RIF. OPM agrees.

Commenter 0673 pointed out that the Merit System Principles demand that "[e]mployees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards." 5 U.S.C. 2301(b)(6). The Merit System Principles further

direct that “selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills.” *Id.* sec. 2301(b)(1). The Merit System Principles were codified by Congress into Federal law in the Civil Service Reform Act of 1978 (“CSRA”), reinforcing the centrality of merit to modern Federal workforce management.

In addition, Commenter 0673 pointed out that the CSRA requires agencies to create performance appraisal systems for their employees and to “use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.” 5 U.S.C. 4302(a)(3). In so doing, Commenter 0673 argued that OPM’s changes to give performance more weight in RIF retention more closely align OPM’s RIF regulations with the Merit System Principles and the overall CSRA statutory scheme, which emphasizes the importance of performance ratings of record in determining retention and advancement in the Federal civil service.

Commenter 0091, the U.S. Office of Special Counsel, agreed that OPM’s changes are more aligned with the Merit System Principles and the overall CSRA statutory scheme because the rules now make performance the primary retention factor.

OPM concurs with Commenters 0091 and 0673 that the Merit System Principles, particularly Merit System Principle 6 (“[e]mployees should be retained on the basis of the adequacy of their performance”) strongly support making performance ratings of record the main factor in RIF retention. In addition, allowing agencies to restructure efficiently helps fulfill Merit System Principle 5, that “[t]he Federal work force should be used efficiently and effectively.” 5 U.S.C. 2301(b)(5). OPM also agrees that the CSRA’s requirement that agencies use “the results of performance appraisals as a basis for,” *inter alia*, reassigning, reducing in grade, retaining, and removing employees, 5 U.S.C. 4302(a)(3), provides significant support for making performance ratings of record the main factor in RIF retention.

OPM also agrees with Commenter 0685, who concluded that “elevating performance within the RIF framework is not only reasonable but also consistent with broader principles of effective workforce management.”

Commenters 0532, 0672, and 0678 alleged that OPM’s RIF reforms are part of a larger plan to undermine the merit system and non-partisan civil service. But OPM believes that putting performance first in RIF retention

enhances the merit system, as do the other changes in this final rule that allow more streamlined restructuring. To underscore that agencies must not use RIFs in a targeted manner against particular employees, OPM is adding a new provision to § 351.204 requiring that agencies must administer OPM’s RIF regulations consistent with the merit system principles set forth in 5 U.S.C. 2301. OPM notes that existing law continues to prohibit discriminatory, retaliatory, politically motivated, or otherwise unlawful personnel actions.

D. Concerns About Subjectivity in Performance Ratings do not Justify Retaining the Current RIF Formula

Many commenters (0002, 0532, 0672, and 0683, for example) objected to the reliability of agency performance-management systems. Many commenters (for example, 0504, 0532, 0672, 0678 and 0617) also asserted that the current system properly relies on objective measures such as tenure and length of service, while the proposed rule gives too much weight to performance ratings. OPM disagrees.

Performance is not an extraneous or improper factor in RIF retention. Instead, Congress expressly included “efficiency or performance ratings” among the factors to which OPM must give due effect in RIF regulations. This rule changes how performance is credited, not whether it is considered. In addition, 5 U.S.C. 4302 provides that agencies must use the results of performance appraisals as a basis for, among other things, rewarding, reassigning, promoting, retaining, and removing employees. Performance appraisal systems also must establish performance standards that, to the maximum extent feasible, permit accurate evaluation of job performance based on objective criteria related to the job. 5 U.S.C. 4302(c). It is therefore consistent with the statutory framework to give performance a more central role in determining which employees are retained during a RIF.

That some agencies may need to improve rating practices does not make it unreasonable for OPM to give greater effect to the performance factor that Congress expressly included in 5 U.S.C. 3502. As the D.C. Circuit noted in rejecting similar arguments against an earlier OPM RIF rulemaking that gave more weight to performance, “[t]he federal government has long employed subjective performance evaluations to help make RIF decisions.” *AFGE v. OPM*, 821 F.2d at 765. As in that prior rulemaking, the commenters “allege potential problems associated with the

general use of performance evaluations, and not with their increased importance” in the RIF context. *Id.*

OPM believes that concerns over performance appraisal systems are better addressed through the rules governing performance appraisal systems and rating administration. Indeed, OPM revised its performance appraisal regulations at 5 CFR part 430, subpart B, to enable more meaningful distinctions in performance by allowing a standardized distribution of at least some rating levels, while continuing to require ratings of record to be based on actual job performance and objective criteria.² That rulemaking requires OPM to engage in biennial review of agency performance appraisal systems to ensure that they make meaningful distinctions in relative performance and comply with applicable laws, including the Merit System Principles codified in 5 U.S.C. 2301. It also reduces the number of permissible patterns of summary levels to reduce variation between agency performance appraisal systems. These reforms tackle head-on the issues identified by commenters, such as ratings inflation (identified by Commenters 0683 and 0678) and differing ratings systems across agencies (identified by Commenter 0683).

OPM has taken concrete steps to ensure the accuracy and fairness of employee ratings systems. It has provided guidance to agencies that employee performance plans “should be written as clearly and specifically as possible to provide a firm benchmark towards which employees must aim their performance and permit the accurate evaluation of job performance on the basis of objective criteria.”³ Further, it has emphasized that “[p]erformance elements and standards should be measurable, understandable, verifiable, and achievable,” and that performance standards “must include a clear result to achieve and a specific measure of success reflecting ‘fully successful’ performance.”⁴ While OPM believes that there is room for improvement in performance ratings, it disagrees with Commenter 0683’s contention that performance ratings are

² Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees, 91 FR 41521 (July 7, 2026). OPM proposed similar reforms to its performance appraisal regulations at 5 CFR part 430, subpart E. Managing Senior Professional Performance, 91 FR 8763 (Feb. 24, 2026).

³ OPM, *Performance Management for Federal Employees* (June 17, 2025), <https://www.opm.gov/chcoc/latest-memos/performance-management-for-federal-employees.pdf>.

⁴ *Id.*

too subjective to be given additional weight in RIF retention.

Commenter 0672 suggested that OPM's proposal to give greater weight to performance ratings should be viewed against a background of alleged efforts to target particular employees or functions. But using performance ratings in administering a RIF is not a license for arbitrary action or targeting employees based on favoritism. This rule does not change the basic premise that a RIF is a position-based workforce-restructuring action, not a disciplinary or conduct-based removal tool. The rule's definition of a "reduction in force" continues to tie a RIF action to reasons such as lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights. Allegations that an agency might misuse RIF authority do not justify retaining unnecessarily complex governmentwide procedures for all agencies.

Further, OPM has built in safeguards to prevent performance ratings from being manipulated to target individual employees in the RIF context. Ratings of record must be generated under applicable performance-management requirements. And RIF retention standing must be calculated under the regulatory formula. This rule makes the formula more transparent by converting ratings into stated numerical values and adding veterans' preference points, rather than burying performance within an adjusted SCD calculation.

This rule also contains several provisions that reduce the risk of manipulation and retaliation, thus addressing concerns expressed by several commenters (0003, 0677, 0064, for example). It uses the three most recent ratings of record during the four-year period before RIF notices, and it permits agencies to establish a cutoff date after which no new rating will be considered. It also freezes the effective date of RIF retention standing at the date that the RIF notice is issued, meaning that agencies cannot alter RIF retention standing by altering ratings of record after RIF notices are issued. For agencies using appraisal systems that do not meaningfully distinguish among higher levels of performance, the rule permits enhanced performance credit where the agency specifies and documents the basis for doing so in advance, makes the information available before running the RIF, and applies the criteria consistently to all competing employees.

Existing law also continues to prohibit discriminatory, retaliatory, politically motivated, or otherwise unlawful personnel actions.

Performance evaluations and awards are personnel actions covered by the prohibited-personnel-practice framework, and the statute prohibits discrimination, political coercion, reprisal, unauthorized preferences, and actions violating veterans' preference requirements. In addition, in the final rule, OPM is adding an express provision in § 351.204 that agencies must administer OPM's RIF regulations consistent with the merit system principles set forth in 5 U.S.C. 2301, and to underscore that agencies must not use RIFs in a targeted manner against particular employees.

E. OPM Has Adequately Justified the Need for the Changes

Commenters 0672 and 0532 asserted that OPM has not justified the changes. OPM disagrees.

Federal agencies perform essential public functions: national defense, border and transportation security, veterans' care, public-health protection, disaster response, cybersecurity, financial oversight, benefits administration, scientific research, law enforcement, and stewardship of public lands and infrastructure. Many of these functions involve substantial public resources and critical services.

Agency needs and missions are constantly shifting in response to external events, changing priorities, and evolving public needs. OPM's Human Capital Framework recognizes that agencies must align workforce decisions with agency missions "even in the midst of constant change," and that modern agencies face budget fluctuations, changing public expectations, unforeseen crises, and other complex and unpredictable external factors.⁵ Agencies therefore must be agile and responsive in managing talent to accomplish their missions, and must continuously adapt to new requirements and expectations. Merit System Principle 5 demands that "[t]he Federal work force should be used efficiently and effectively," 5 U.S.C. 2301(b)(5), which means that Federal agencies must be able to restructure efficiently in response to evolving mission needs and the public interest. OPM has repeatedly emphasized that agencies must be able to restructure efficiently to align their workforces with changing missions, budget realities, technology, and service-delivery needs.⁶

⁵ OPM, *Human Capital Framework*, <https://www.opm.gov/policy-data-oversight/human-capital-framework/>.

⁶ See OPM, *Implementing Reshaping Options*, [https://www.opm.gov/policy-data-oversight/workforce-restructuring/reshaping/implementing-](https://www.opm.gov/policy-data-oversight/workforce-restructuring/reshaping/implementing-reshaping-options/)

Commenter 0687 observed that "the government should not presume that it has the right talent today for the missions of tomorrow"—particularly as technology rapidly advances—and thus the government needs flexible personnel systems to accommodate this reality. OPM agrees with Commenter 0687's observation that, "if the goal of personnel policymaking is to ensure agencies are staffed with the right people, at the right time, for the missions they're given, it is sometimes necessary to reduce headcount in some areas while bolstering it in others."

OPM believes that Federal agencies should be able to retain their highest-performing employees during a RIF. A RIF is a workforce-reshaping action that determines whether an agency will still have the people needed to carry out its statutory mission after the reduction is complete. Thus, OPM agrees with Commenter 0687, who supports the decision to elevate performance above other statutory retention factors, and explains that this change will help avoid some historical adverse selection effects (release of junior but higher-performing staff as opposed to those with longer tenure but who are less highly rated) historically associated with RIFs.

Indeed, when an agency is reducing positions because of budget, reorganization, lack of work, or changing priorities, the employees who remain often must absorb mission-critical work, maintain continuity, solve new operational problems, and implement new statutory, technological, or policy requirements with fewer resources. OPM believes that employees with a demonstrated record of high performance, as reflected in their rating of record, are more likely to possess the technical expertise, judgment, adaptability, and execution capacity needed to maintain essential operations after restructuring. They are also more likely to help agencies implement new priorities, train or support remaining staff, and sustain service quality when staffing levels decline.

Current RIF rules prioritize tenure and length of service over performance, which can result in high-performing employees being separated while lower-performing, more senior employees are retained. OPM believes that agencies need a more streamlined and merit-based RIF framework and that these regulatory changes will give

[reshaping-options/](https://www.opm.gov/policy-data-oversight/workforce-restructuring/reshaping/accelerating-the-gears-of-transformation/executive-playbook-for-workforce-reshaping.pdf); OPM, *Executive Playbook for Workforce Reshaping*, <https://www.opm.gov/policy-data-oversight/workforce-restructuring/reshaping/accelerating-the-gears-of-transformation/executive-playbook-for-workforce-reshaping.pdf>.

performance a more central role in determining retention standing.

Federal agencies have confirmed that they would like greater ability to retain their highest-performing employees during a RIF. Commenter 0720, a Federal agency, stated that it “would like to be able to retain its higher performing employees during RIF actions and this rule would enable it to do so.” Commenter 0720 noted that OPM’s proposed performance-weighted RIF framework “offers a more accurate reflection of employee contributions and reduces the likelihood that restructuring disproportionately affects high performers.” Under the current rules, performance affects retention standing only after tenure group and veterans’ preference subgroup are applied, and only by being translated into additional years of service. As Commenter 0720 observed: “Under the current RIF rules an employee’s performance functions primarily as a modest supplement to their seniority.” OPM believes that this structure can cause higher-performing employees to be released ahead of lower-performing employees and that a more direct performance-credit system better promotes an efficient and effective civil service.

In OPM’s view, current RIF rules are unnecessarily cumbersome, inflexible, intricate, time-consuming, and resource-intensive, and they can create unnecessary risk of implementation error. In the proposed rule, OPM cited a longtime Federal employee who described the current RIF rules and regulations as “complex and cumbersome,” creating a “time-consuming and demoralizing process” that leads to outcomes that are “haphazard and invariably negative.” Fred Mills, *Civil Disservice: Federal Employment Culture and the Challenge of Genuine Reform*, at p. 42 (iUniverse 2010). Commenter 0720 noted recent difficulties in implementing workforce reshaping that imposed unnecessary costs and burdens and contended that these difficulties “provide compelling evidence of the need for the streamlined, modernized, and more administratively feasible framework

proposed by OPM.” Commenter 0720 states that OPM’s reforms “will simplify execution, reduce administrative errors, and increase consistency across agency components.”

Commenter 0685 noted that “[a] central feature of the current [RIF] framework is its administrative complexity, which can significantly impede implementation.” Commenter 0685 observed that “[t]he procedural demands of the current system also contribute to significant delays in the execution of workforce restructuring decisions.” Further, Commenter 0685 noted that the current framework imposes substantial resource costs on agencies. Implementing a RIF under existing rules often requires human resources specialists, legal counsel, and management personnel to dedicate significant time and effort to navigating procedural requirements. Commenter 0091, a Federal agency, noted that the current rules contribute to an existing “critical weakness”; namely, the “federal government’s historic lack of agility in dynamic environments.”

Indeed, the current rules require agencies to classify employees by tenure group, veterans’ preference subgroup, service computation date, and performance-adjusted service credit, and then apply additional rules governing release, assignment rights, bumping, retreating, notices, and related placement obligations. They increase the likelihood of error, impede timely restructuring, and make it more difficult for agencies to retain top performing employees in a RIF. OPM believes that a clearer register based on performance points, veterans’ preference points, tenure subgroup, and actual SCD will be easier for agencies to apply and easier for employees to understand.

Commenter 0680 argued that the current regulations do not prioritize length of service over performance because performance credit and length of service are added together. OPM disagrees.

Under the current RIF rules, performance and length of service are combined only after tenure group and veterans’ preference subgroup have already been applied. In addition,

performance is capped through the current additional-service-credit formula, while actual service may continue to accumulate over an employee’s career. That means current RIF ordering is not a simple comparison of Employee A’s performance against Employee B’s performance. Agencies must first place employees into tenure groups, then veterans’ preference subgroups, then calculate adjusted service dates. Performance affects ranking only inside the employee’s already-determined tenure/veterans’ category. The current formula therefore does not give performance the same effect as this final rule does.

The current system therefore does not allow performance to overcome many of the most important retention categories. A high-performing employee in a lower tenure group cannot outrank a lower-performing employee in a higher tenure group; and within the same tenure group, performance cannot overcome veterans’ preference subgroup placement. Performance matters only within the employee’s already-determined group and subgroup. That means current performance credit is not a true performance-first retention rule; it is a service-date adjustment applied at the end of a categorical ranking system.

Even within the same tenure group and veterans’ preference subgroup, the current system gives performance a relatively narrow practical effect. The difference between three Level 5 ratings and three Level 3 ratings is only 8 years of adjusted service credit: 20 years versus 12 years. So a long-serving employee with three Fully Successful ratings can still outrank a much higher-performing employee with three Outstanding ratings if the long-serving employee has more than an 8-year service advantage. Current 5 CFR 351.504 requires the performance credits to be averaged, rounded, and expressed as additional years of service. Level 5 ratings add 20 years, Level 4 ratings add 16 years, and Level 3 ratings add 12 years to the employee’s retention-service credit.

For example, assume two employees are in the same tenure group and veterans’ preference subgroup:

Employee	Actual SCD	Ratings	Current performance credit	Adjusted SCD	Current rule outcome
Employee A	1996	3/3/3	+12 years	1984	Ranks higher.
Employee B	2021	5/5/5	+20 years	2001	Ranks lower.

Employee B is clearly the higher performer, but Employee A is retained because Employee A’s longer service

overwhelms the 8-year performance differential. That illustrates the core problem: the current system does not

really prioritize performance but merely gives performance a modest service-date boost.

The current method is also opaque. It requires agencies and employees to translate ratings into artificial years of service, average those values, round them, subtract them from the employee's actual SCD, and then rank employees by the resulting adjusted SCD. That makes performance harder to see and harder to explain because the final ranking appears as a date rather than as a performance score.

The approach in this final rule is more transparent. Performance remains performance, measured in points. Length of service remains length of

service, measured by actual SCD. OPM reasonably concluded that this system is easier to administer and easier for employees to understand than a performance-adjusted SCD. These regulations still give length of service effect as a tie-breaker when employees have the same augmented performance credit and tenure subgroup.

The direct point system that OPM adopts in this rule better advances the goal of a merit-based workforce because it makes performance a central, visible, and auditable factor in determining retention standing. Under these

regulations, agencies will assign direct point values to ratings (Level 5 = 7 points, Level 4 = 5 points, Level 3 = 3 points, and Level 1 or 2 = 0 points) and then sum the values for the employee's three most recent ratings. Employees will then be ranked within the same tenure group by performance credit as augmented by veterans' preference points; only if employees tie would the agency use tenure subgroup and then actual SCD.

Using the same example under the proposed rule:

Employee	Ratings	Proposed performance credit	Result
Employee A	3/3/3	9	Ranks lower.
Employee B	5/5/5	21	Ranks higher.

That outcome better reflects merit. The employee with three Outstanding ratings outranks the employee with three Fully Successful ratings, regardless of the fact that the lower-performing employee has longer service. Length of service is still considered, but only as a tie-breaker after performance credit, veterans' preference, and tenure subgroup have been applied.

In short, the current system gives performance nominal credit but not meaningful priority. It buries performance inside seniority, lets long service overwhelm even large performance differences, and prevents performance from crossing tenure and veterans' preference subgroup boundaries. This final rule makes performance visible, direct, auditable, and outcome-affecting, while still preserving veterans' preference, tenure, and length of service in the retention framework.

F. The Final Rule Reasonably Balances Retention of Institutional Knowledge With Retention of High Performers

Commenter 0672 argued that the rule may harm recruitment, retention, and institutional knowledge. OPM acknowledges that length of service and institutional knowledge are important. However, OPM believes that the current system overvalues tenure at the expense of performance. This final rule does not eliminate length of service; it uses length of service as the final tie-breaker after performance credit, veterans' preference, and tenure subgroup are considered. OPM has reasonably determined that the public interest is better served by a RIF system that allows agencies to retain employees with the strongest demonstrated

performance while still recognizing tenure, veterans' preference, and service.

Long service may reflect valuable experience. But performance ratings are a more direct measure of how well an employee is contributing to agency mission needs than seniority alone. As Commenter 0720, a Federal agency, noted: "Where more senior employees have gained experience that makes them more effective in advancing the agency's mission this greater effectiveness is typically reflected in their performance ratings." Thus, Commenter 0720 stated that "it makes more sense for the RIF regulations to target retaining high performers directly, by prioritizing performing as a retention criterion, than indirectly through seniority," as in its experience, "employee performance ratings are more strongly correlated with their performance and effectiveness than pure seniority."

Commenter 0686, another Federal agency, noted that prioritizing performance over tenure and length of service "ensures top performance, regardless of tenure, continues to be prioritized for retention decisions. This revision acknowledges that tenure is not always a reflection of an employee's knowledge or capabilities" and "ensures that merit-based performance takes precedence over seniority, which is a more effective way to retain skilled and high-performing staff."

OPM agrees with Commenters 0720 and 0686 that a RIF system that retains higher performers better serves the public and better supports agency operations after restructuring—and that high performance is more accurately measured through performance ratings, not pure seniority. OPM rejects

Commenter 0653's assertion that performance appraisals cannot capture the value of institutional knowledge; instead, OPM believes that institutional knowledge that meaningfully advances agency missions will be appropriately reflected in performance ratings of record issued under 5 U.S.C. 4302.

OPM agrees that agencies must protect mission delivery during and after a RIF but disagrees that a tenure-first system is the best way to do so. A RIF leaves an agency with fewer employees, making it especially important that the employees retained are those with the strongest demonstrated ability to perform the agency's evolving mission-critical work.

OPM rejects Commenter 0532's characterization that the proposal assumes longer-serving employees are poor performers. The rule does not rest on any such assumption. It simply recognizes that length of service and performance are distinct statutory factors, and that a modern RIF system should give greater weight to demonstrated performance when agencies must make difficult retention decisions.

A merit-based RIF system should not operate solely based on how long employees have served or on the formal category into which they fall. It should also reflect demonstrated performance and the government's need to retain an effective workforce during restructuring. Congress made performance one of the statutory RIF factors, and this rule gives that factor more transparent and meaningful effect.

G. The Size of Recent Workforce Reductions Does Not Undermine the Basis for the Rule

Commenters 0532, 0320, and 0616 contended that, because the Government was able to reduce the workforce under existing rules, OPM cannot claim the current RIF rules are burdensome. OPM disagrees.

The ability to reduce workforce size through a combination of tools does not establish that the current RIF regulations are efficient, clear, or optimal. Workforce reductions may occur through attrition, retirements, voluntary separation incentives, voluntary early retirement authority, term expirations, resignations, or other tools that do not require full part 351 RIF procedures. The question in this rulemaking is not whether agencies can ever reduce headcount under the current framework, but whether the current part 351 RIF process is unnecessarily complex and whether the rules should better enable agencies to retain high performers when a RIF is necessary.

OPM reasonably concluded that the current RIF framework imposes unnecessary burdens and that the changes in this rule will provide agencies with a more efficient, merit-based process. The revised rules are intended to work alongside other downsizing tools, such as Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP), and to reduce burden when agencies must invoke RIF procedures.

Further, as Commenter 0687 noted, voluntary downsizing tools like VERA and VSIP have clear downsides. For example, VERA is only available to those in a narrow eligibility group and can impose burdens on public pension funds. VSIP has a dollar cap that has not been updated since the mid-1990s and which limits its utility as a workforce reshaping tool. With respect to RIFs, as Commenter 0687 noted, the main downside is their complexity and the primacy of non-performance factors like tenure and seniority, meaning that such layoffs are often disproportionately targeted at newer employees that have the most marketable skills. OPM agrees and notes that its revision to the RIF rules addresses these very issues: the complexity of RIFs and the primacy of non-performance factors in determining retention.

Commenter 0685 observed that one of the more significant consequences of the over-complexity of RIF procedures is that it discourages agencies from utilizing RIF authority even when it

may be the most appropriate tool. Commenter 0685 noted that reliance on voluntary separation programs or attrition can be effective in certain contexts, but they do not always provide the level of control or precision needed to align workforce structures with mission requirements. Commenter 0680 argued that the current regulations have been in place for decades and that this longevity shows they work. OPM disagrees. Longevity is not the same as effectiveness. The fact that agencies have struggled for many decades to conduct RIFs under the current rules does not mean the rules are efficient, easy to administer, or properly aligned with modern merit-based workforce needs. OPM reasonably concluded that current rules have not kept pace with the complexity of modern agency missions, organizational structures, funding arrangements, work schedules, hiring authorities, and skill requirements. OPM is not required to keep in place RIF regulations that one longtime former Federal employee described as “the ultimate bureaucratic poison pill” merely because they have largely been unchanged for decades. Fred Mills, *Civil Disservice: Federal Employment Culture and the Challenge of Genuine Reform*, at p. 42 (iUniverse 2010).

H. OPM Reasonably Relied on the Department of Defense’s Experience as Relevant Support

Commenter 0532 argued that OPM’s reliance on Department of Defense (“DOD”) RIF procedures is misplaced because DOD has a separate statutory framework, including congressional-notice provisions for certain RIFs. OPM disagrees.

DOD is by far the largest employer within the Federal government. It adopted a performance-first RIF system in January 2017. The change was prompted by language in Section 1101 of the National Defense Authorization Act for 2016 directing DOD to make RIF separation decisions “primarily on the basis of performance.” The language was codified at 10 U.S.C. 1597(e).

Congress later revised that language in the FY 2022 NDAA to remove the phrase “primarily on the basis of performance.” The current version of 10 U.S.C. 1597(e) instead requires DOD RIF procedures to “account for employee performance,” among other factors determined by the Secretary of Defense. But the revision did not prohibit a performance-first system. DOD has retained a performance-first RIF framework, even though its statutory authority currently only requires it to

account for employee performance as one factor in RIF retention.

The existence of this DOD-specific statutory provision does not make DOD’s experience irrelevant. OPM remains responsible for prescribing Government-wide RIF regulations under 5 U.S.C. 3502, and it may consider other federal personnel systems in determining whether a revised approach is workable and beneficial.

Indeed, DOD’s current statutory RIF framework no longer requires that it place performance first in determining RIF retention—yet DOD continues to do so, reflecting its judgment that prioritizing performance supports mission readiness and retention of a high-performing workforce. DOD’s continued use of performance-first after the FY 2022 NDAA undercuts the argument that performance-first RIF retention is legally permissible only when Congress uses the word “primarily.” The current DOD statute requires DOD to account for performance among other factors determined by the Secretary, and DOD has continued to implement a performance-first system under that broader language.

OPM is not importing DOD’s statutory scheme wholesale. Rather, DOD’s experience serves as powerful evidence that a performance-focused RIF system can support mission readiness and workforce effectiveness. DOD’s experience demonstrates that a performance-first RIF system is both administrable and consistent with statutory direction to consider multiple retention factors. OPM reasonably relies on that experience in elevating performance in governmentwide RIF retention standing while continuing to give effect to tenure, veterans’ preference, and length of service.

Further, OPM believes there is an independent interest in ensuring some level of consistency across government in RIF procedures, in that all agencies should place performance first in determining RIF retention.

I. This Final Rule Does Not Violate the APA Because the Proposed Rule Was Issued Alongside Other Rulemakings

Several commenters argued that OPM’s RIF procedures proposal should have been issued in a single consolidated rulemaking with OPM’s separate proposals concerning performance appraisal and RIF appeals. Commenter 0532, for example, argued that OPM’s RIF proposal must be viewed together with OPM’s separate proposals concerning RIF appeals and performance appraisal, and that OPM violated the APA by issuing the

proposals separately. OPM has considered these comments and disagrees that the Administrative Procedure Act (“APA”) required OPM to combine the rulemakings, delay this rulemaking, reopen the comment period, or provide a separate comment period devoted solely to the interaction among the three proposals.

The APA requires a notice of proposed rulemaking to identify the time, place, and nature of the proceeding, the legal authority for the proposal, and either the proposed rule’s terms or substance or a description of the subjects and issues involved; after notice, the agency must provide interested persons an opportunity to submit written data, views, or arguments and must consider relevant matter presented. 5 U.S.C. 553(b)–(c). The RIF proposal satisfied those requirements. It identified the statutory authorities for the rulemaking, identified the affected CFR Parts, described the proposed changes to the RIF regulations and related provisions, provided proposed regulatory text, invited public comment on the RIF proposal, and set a comment deadline. In addition, OPM provided a section in the proposed rule titled “Other regulatory changes” that identified the concurrent rulemakings with respect to RIF appeals and performance appraisals as potentially intersecting with the current rulemakings.

The APA does not require an agency to combine every related regulatory initiative into a single notice-and-comment proceeding. Agencies routinely address related but distinct issues in separate rulemakings, particularly where the rules amend different regulatory provisions, address different legal questions, rest on different administrative records, and can operate independently. That is the case here. This rule concerns the substantive procedures for conducting RIFs, including RIF coverage, retention standing, release from competitive level, assignment rights, notices, RPL, CTAP, ICTAP, transfers of function, and related conforming provisions. The performance-appraisal proposal concerned the standards and procedures for rating employee performance under part 430. The RIF appeals proposal concerned the forum and procedures for administrative review of RIF actions. Those subjects are related, but they are not the same rulemaking.

The fact that OPM also proposed related personnel-management reforms around the same time does not make the RIF proposal procedurally defective. Agencies may address related subjects in separate rulemakings, particularly

where, as here, the rulemakings address distinct regulatory parts and distinct issues: RIF retention procedures, performance appraisal administration, and RIF appeals. Indeed, OPM’s proposals involving performance appraisal and RIF appeals have separate administrative records, involve separate regulatory provisions, tackle distinct issues and problems, and are based on distinct justifications.

Nor did OPM conceal the existence or potential relevance of the related rulemakings. The RIF proposed rule contained a section titled “Other Regulatory Changes,” which expressly identified other pending rulemakings that included proposed changes to part 351 or part 430 and explained that OPM might need to make conforming cross-reference changes depending on how those rulemakings were finalized. The RIF proposed rule specifically identified the RIF appeals rulemaking as addressing subpart I, which this rulemaking did not address, and separately identified the performance-appraisal rulemaking as potentially requiring conforming changes to part 351. That disclosure gave interested parties fair notice that OPM was proceeding through separate, related rulemakings and that commenters could address any asserted interactions they believed relevant. Indeed, numerous commenters did so, which confirms that the public had a meaningful opportunity to raise interaction-based objections.

Many commenters (0003, 0678, and 0606, for example) who objected to giving greater weight to performance ratings in RIF retention cited the separate OPM rulemaking allowing a standardized distribution of performance ratings as part of their objection. But OPM notes that the intent of its separate rulemaking is to increase meaningful differentiation in performance ratings and thus address concerns raised by commenters about compression of performance ratings. As Commenter 0720 stated, “If OPM finalizes its proposed rule to require performance ratings follow a standardized distribution, then performance ratings would even more effectively distinguish between employees’ relative performance.”

The performance-appraisal proposal does not contradict this rule. This rule determines how ratings of record, once issued under applicable performance-management systems, are converted into RIF retention-standing credit. The separate performance appraisal proposal addresses how agencies evaluate employee performance in the first instance and how performance appraisal

systems may be structured to better distinguish levels of performance. OPM explained in that separate proposal that recent rating distributions showed substantial concentration in the highest rating levels and very few ratings below Fully Successful, and that OPM sought to improve performance differentiation and accountability. Those objectives are consistent with, not contrary to, this rule’s decision to give greater effect to ratings of record in RIF retention standing. A rule that makes performance matter more in RIF retention and a rule that seeks to improve the accuracy and differentiation of performance ratings address complementary parts of the same merit-based personnel system.

This rule also does not depend on the performance-appraisal rule. Regardless of the performance-appraisal rule, this rule still operates using ratings of record issued under then-applicable performance-management rules. This rule does not require a standardized distribution to function. It does not change the legal standards governing issuance of ratings of record, and it does not adjudicate whether any individual rating was properly assigned. It simply establishes the RIF consequence of ratings of record lawfully issued under applicable appraisal systems. For that reason, objections directed to the separate performance-appraisal proposal are properly addressed in that rulemaking, while this rulemaking addresses the RIF use of ratings once they exist. As the D.C. Circuit has noted, “[t]he federal government has long employed subjective performance evaluations to help make RIF decisions,” and broader concerns regarding agency administration of these performance appraisal systems do not undermine OPM’s decision to give greater weight to this factor as opposed to non-merit factors like tenure and length of service. *See AFGE v. OPM*, 821 F.2d at 765.

Many commenters also expressed opposition to OPM’s separate proposed rulemaking to transfer RIF appeals from the Merit Systems Protection Board to OPM’s Office of Merit Systems Accountability and Compliance. The RIF appeals rule concerns where and how challenges to those RIF actions may be reviewed. The validity of the retention-standing formula, competitive-area rules, notice provisions, and related RIF procedures does not turn on whether RIF appeals are heard by MSPB, OPM, or another lawfully designated forum. OPM explained in the RIF appeals rule that MSPB review of RIF actions is regulatory rather than statutory, that OPM had delegated RIF appeal review to MSPB by regulation,

and that the rule addressed whether RIF appeals should instead be reviewed through OPM procedures. Regardless of which forum hears administrative appeals, agencies will still need a substantive rule governing how RIFs are conducted. This rule supplies that substantive framework.

OPM notes that the changes proposed in its RIF appeals rule are broadly consistent with its broader policy goal of streamlining the execution of RIFs across the Federal government while ensuring accuracy and legal and regulatory compliance in implementation. However, OPM also believes that the changes in the two rules are distinct and may reasonably be evaluated separately. This rule concerns retention standing and related RIF procedures, not the full scope of RIF appeal rights. The two proposals address different subjects and concerns, and OPM believes that the two proposals are sensibly treated in separate rulemakings. OPM notes that the changes in this rule do not depend on OPM's finalizing the RIF appeals rule (and vice versa), and it would have proposed and finalized the changes in this final rule regardless of whether OPM or the MSPB were adjudicating RIF appeals. Further, while OPM acknowledges concerns about transferring the administrative adjudication of RIF appeals to OPM, it does not believe that those concerns impact the reforms proposed in this rulemaking such that another comment period is required or helpful. Instead, those concerns are best dealt with in the context of the separate RIF appeals rulemaking.

OPM also disagrees with the assertion that it was required to provide a separate opportunity for comment on the combined effect of the three rules. The APA requires notice and comment on the rule being proposed, not a single omnibus proceeding for every related agency initiative. The RIF proposed rule provided the terms and substance of the RIF proposal and invited comment. The performance-appraisal and RIF appeals proposals likewise provided notice and opportunities for comment in their respective dockets. Interested parties who believed the proposals interacted were free to say so, and many did. The fact that commenters submitted detailed arguments about those interactions demonstrates that they were not deprived of a meaningful opportunity to participate.

Commenter 0683 urged OPM to delay finalization of this rule until the rulemakings on performance management and RIF appeals are completed, or else reopen the comment

period for this rulemaking after the other two rulemakings are finalized. OPM disagrees. As noted, concerns about agency performance management systems are longstanding. OPM believes that improvements to those systems are properly addressed in separate rulemakings, and do not affect the decision as to whether to weight performance ahead of non-merit factors like tenure and length of service. While OPM agrees that current performance ratings systems should be improved to reduce ratings inflation, OPM disagrees with Commenter 0683 that the Federal government must wait until performance management systems have achieved an ideal state before it may increase the relative weight given performance vis-à-vis the other statutory retention factors. The fact that OPM is seeking to address two different problems in two different rulemakings—a RIF retention order that does not adequately value performance, and performance appraisal systems that too often yield inflated ratings—does not make its approach irrational or contradictory.

OPM also declines to delay this rule until the performance-appraisal and RIF-appeals rulemakings are complete. Delay would leave in place a RIF system that OPM has found overly complex, costly to administer, and insufficiently aligned with merit and mission needs. Supportive commenters (for example, 0685, 0719 and 0720) similarly emphasized that the current framework is resource-intensive, difficult to administer, and insufficiently responsive to modern workforce needs.

Finally, OPM does not adopt Commenter 0532's characterization of the three proposals as a coordinated effort to evade the APA or dismantle the civil service. OPM issued separate proposals because they amend different regulatory provisions and address different problems: how performance is appraised, how RIF actions are conducted, and how RIF appeals are reviewed. Separate rulemakings allowed the public to comment in a focused way on each proposal's legal authority, operational effects, and regulatory text. Consolidating all three into one proceeding would not have improved notice; it would have made the record less clear by combining distinct statutory and regulatory issues. The APA does not require that result.

III. Section-by-Section Analysis and Response to Comments

OPM responds to comments regarding specific sections of this rule below.

A. Part 351, Subpart B: Changes in Definitions, Coverage, Use of Regulations, and Agency Responsibilities

1. Erosion of Duties Reclassifications

OPM is modifying § 351.201(a)(2) to remove from the list of actions that require agencies to use RIF procedures reclassification of an employee's position due to erosion of duties if the action would take effect after an agency had formally announced a RIF in the employee's competitive area and the RIF would take effect within 180 days.

Commenter 0532 argued that OPM has not justified removing erosion-of-duties reclassifications from the actions requiring RIF procedures. OPM disagrees.

The proposed rule explains the history of the erosion-of-duties provision. In 1986, OPM generally removed erosion-of-duties reclassifications from the categories of actions subject to RIF procedures, but retained a narrow RIF-procedure requirement for reclassifications occurring after announcement of a RIF and within 180 days of the RIF effective date. OPM is now removing that narrow procedural trigger because it is unreasonable and impracticable to require agencies to build a retention register for such reclassifications, and OPM is not aware of any agency actually executing an erosion-of-duties reclassification action using RIF procedures since the 1986 revision.

Commenter 0037 argued that the "erosion of duties" changes could be used to constructively demote disfavored employees. OPM disagrees. Erosion of duties reclassifications have generally been excluded from RIF procedures since 1986, except in the narrow circumstance where the reclassification will take effect after an agency has formally announced a RIF in the employee's competitive area that will take effect within 180 days. This rule directly addresses concerns that erosion-of-duties reclassifications could be used to undermine the RIF retention order. Rather than requiring a full RIF process for erosion-of-duties reclassifications, this rule will bar agencies from undertaking an erosion-of-duties reclassification between the formal announcement and completion of a RIF if the action would adversely affect an employee's retention standing in the RIF. This is a more direct and administrable safeguard than the current rule. Notably, commenters 0037 and 0532 do not identify any concrete instance in which the existing erosion-of-duties RIF trigger has been necessary to protect employees, nor do

commenters 0037 or 0532 explain why the proposed anti-manipulation prohibition would be inadequate.

Instead, OPM agrees with Commenter 0720, a Federal agency, that the current erosion-of-duties provision is outdated, and OPM's approach in this rule "reduces unnecessary confusion and risk while preserving safeguards against improper alterations to retention outcomes."

2. Employees Excluded From RIF Competition

This rule modifies the definition of the term *Competing employee* in § 351.203 to mean an employee in the competitive service tenure group or the excepted service tenure group. It also adds a definition of *Competitive service tenure group* to mean all employees within competitive service tenure subgroups I and II; that is, all employees in the competitive service who, as of the date of the RIF notice, are not serving an initial probationary period or a temporary appointment of 1 year or less under subpart D of 5 CFR part 316. This rule defines the *Excepted service tenure group* as all employees within excepted service tenure subgroups I and II; that is, all excepted service appointees serving in a career position (that is, not in Schedule C or G) who, as of the date of the RIF notice, are not serving a trial period or in a temporary or time-limited appointment of 1 year or less.

OPM is also adding definitions of *initial probationary period* and *trial period* to § 351.203. With respect to these provisions, OPM notes that a supervisory or managerial employee with career tenure who is only on probation with respect to those supervisory or managerial functions (i.e., is entitled to be returned to a nonsupervisory or non-managerial position rather than being subject to removal under 5 CFR part 315, subpart I) would be included in the RIF in the supervisory or managerial position, and would not be subject to the exclusion from RIF procedures applicable to individuals serving an initial probationary period under 5 CFR 11.2. Further, an employee who is serving both an initial probationary period and a supervisory probationary period simultaneously is exempt from RIF procedures.

In the proposed rule, OPM proposed to add a § 351.202(d) that lists categories of employees excluded from RIF retention procedures, as they fall outside the definition of "competing employees" under 5 U.S.C. 3502(a). Under OPM's definition of "competing employees," employees in the competitive service who are serving an

initial probationary period would be excluded from RIF procedures, as would employees in the excepted service who are serving a trial period. In addition, competitive and excepted service employees who are serving temporary or time-limited appointments of 1 year or less would be excluded from RIF competition, as would Schedule C and Schedule G employees.

In this final rule, OPM is revising the wording of § 351.202(d). The revised wording narrows § 351.202(d) from a broad statement that certain employees are excluded from part 351 altogether to a more precise statement that they are not "competing employees" for RIF purposes. The final rule clarifies the consequences of this classification: an agency may retain such an employee while releasing a competing employee, and may furlough, separate, demote, or reassign such an employee for a reason described in § 351.201(a)(2) (lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment rights or restoration rights) without determining the employee's retention standing under subparts D and E, applying the order-of-release provisions in subpart F, or providing assignment rights under subpart G, provided the action is otherwise consistent with the terms of the employee's appointment and applicable law. Further, the revised text clarifies that these excluded employees are still subject to the notice provisions of § 351.801 where they are furloughed for more than 30 days, separated, demoted, or reassigned for the reasons described in § 351.201(a)(2), and the action is not merely the expiration of a temporary or time-limited appointment according to its terms. Under such circumstances the agency must provide the employee a modified written notice that includes the action to be taken, the reasons for the action, and its effective date; a link to 5 CFR part 351 and access to the agency's records pertinent to the reduction in force being taken; information on reemployment rights; and any appeal rights.

In addition, the final rule makes other wording changes to § 351.202(d). It revises the Schedule C and Schedule G language by referring to employees "serving under" those appointments and removes a proposed reference to term appointments under part 316 subpart C, making clear that the competitive-service temporary-appointment exclusion is limited to temporary appointments of 1 year or less under part 316 subpart D.

Commenter 0719, a Federal agency, supported the proposed changes excluding initial probationary period

and trial period employees from RIF competition, noting that the current RIF rules demand that probationary and trial period employees be released first in a RIF. Commenter 0719 noted that this results in "the loss of high potential individuals essential for long term succession planning and mission continuity." The agency noted that "[r]emoving these groups from RIF competition will allow [it] greater flexibility to retain high potential early career employees even in constrained budget conditions." Commenter 0687 noted that termination of probationary employees as part of workforce reshaping activities can "weaken[] early career pipelines" and result in the loss of some of the agency's "best talent." OPM agrees.

Commenter 0678 claimed that these exclusions would mean that the RIF regulations would no longer provide a comprehensive system to govern workforce reductions, while Commenter 0684 argued that this change would conflict with 5 U.S.C. 3501(b)'s broad coverage provision. OPM disagrees. OPM has long used its authority under 5 U.S.C. 3502 to define the otherwise-undefined statutory term "competing employees" subject to RIF competition to exclude certain groups of employees from RIF retention procedures. For example, in its regulations at 5 CFR 316.911, OPM recognizes that employees "whose initial appointment [is] for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF." In its regulations at 5 CFR 353.209, OPM stated that an employee performing duty with the uniformed services "is not a 'competing employee' under" the RIF regulations. And OPM's regulations at 5 CFR 351.705 have long provided that an agency may, but is not required to, provide assignment rights to excepted service employees.

Related statutory provisions, and the broader history of probationary and trial periods in the Federal service, support OPM's determination that probationary and trial period employees should not be considered "competing employees" for purposes of 5 U.S.C. 3502. The phrase "competing employee" in 5 U.S.C. 3502 must be read against a long background tracing to the Pendleton Act of 1883 whereby Congress has consistently and deliberately maintained a distinction between employees whose appointments have become final and employees still serving a probationary or trial period. This distinction reflects a longstanding congressional and regulatory judgment that competitive selection alone is not the final test of fitness for Federal

service. Rather, an initial period of actual service has always served as the Government's final opportunity to determine whether an employee should receive the full procedural protections associated with continuing Federal employment.

The Pendleton Act (22 Stat. 403) required that the "there shall be a period of probation before any absolute appointment or employment aforesaid." That statutory formulation indicates that Congress did not treat appointment and final appointment as the same event. It preserved a two-step process—competitive appointment first, with final appointment only after satisfactory completion of probation.

In its first annual report in 1884, the Civil Service Commission characterized the probationary period as lasting "six months before any absolute appointment can be made. At the end of this time the appointee goes out of the service unless then reappointed."⁷ Two years later, the Commission wrote in its third annual report that "doing the public work is precisely what the Merit System provides. If at its termination the appointing officer is not . . . willing to make an unconditional appointment, the probationer is . . . absolutely out of the service without any action on the part of the Government."⁸

With the enactment of the Lloyd-La Follette Act of 1912, Congress created the first legislative codification of protection against removal for civil servants. The Act established "[t]hat no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service."⁹ The Act also imposed certain procedural requirements on removals including advance notice and an opportunity to respond in writing. However, Congress did not establish employment protections for probationary employees, and has maintained this exclusion through every subsequent recodification of the civil service laws.

Congress legislated against this backdrop in using the term "competing employees" in the Veterans' Preference Act of 1944¹⁰—the direct legislative predecessor of 5 U.S.C. 3502. The

Veterans' Preference Act of 1944 did not define "competing employees" to include all individuals serving in Federal positions. Instead, Section 12 of that Act provided that, in a reduction in personnel, "competing employees" would be released in accordance with Civil Service Commission regulations giving due effect to the statutory retention factors. Congress thus left the identification of the competitive group to regulation.

This is particularly significant because, in Section 14, the Veterans' Preference Act expanded civil service protections to preference eligible Federal employees, but it explicitly excluded probationers, limiting its protections to a "permanent or indefinite preference eligible, who has completed a probationary or trial period." Section 12 and section 14 were enacted in the same statute. If Congress believed probationary and trial-period employees necessarily had to be treated the same as final appointees for all retention-related purposes, it would be odd for Congress, two sections later, to condition major procedural protections on completion of probationary or trial service. The better reading is that the 1944 Act preserved a two-step civil-service model: an employee could enter Federal service and receive whatever preference rights the statute and regulations afforded, but the employee did not necessarily become part of the competitive retention workforce before completing the probationary or trial period.

The statutory text of 5 U.S.C. 3502(a) therefore does not compel OPM to include employees serving an initial probationary or trial period in RIF competition; rather, it permits OPM to determine by regulation that such employees are not "competing employees" for purposes of retention registers and order of release, while preserving any independently applicable statutory or regulatory protections.¹¹

The current 5 U.S.C. 7511 codifies the longstanding exclusion of probationary and trial period employees from the adverse-action definition of "employee." Under 5 U.S.C. 7511, an "employee" in the competitive service or excepted service generally means an individual who is not serving a probationary or trial period under an

initial appointment or who has completed one year of current continuous service under other than a temporary appointment limited to one year or less.

Courts interpreting section 7511 and related CSRA provisions have repeatedly recognized that Congress intended agencies to retain substantial flexibility over probationary and trial-period employees. In *Department of Justice v. FLRA*, the D.C. Circuit relied on the CSRA's structure and legislative history in concluding that probationary employees could not obtain through negotiated grievance procedures the kind of review Congress deliberately withheld from them in chapter 75.¹² 709 F.2d 724, 730 (D.C. Cir. 1983). In *United States v. Connolly*, the Federal Circuit likewise treated the exclusion of probationary employees from chapter 75 appeal rights as a deliberate congressional choice, not a statutory gap for courts or agencies to fill.¹³ And in *National Treasury Employees Union v. FLRA*, the D.C. Circuit reaffirmed that the CSRA's treatment of probationary employees reflects Congress's judgment that agencies must have latitude to assess and separate employees who have not yet completed the testing period for Federal service.¹⁴ This history does not mean that section 7511 directly controls chapter 35 RIF procedures. It does, however, confirm that OPM's treatment of probationary, trial-period, and short-term temporary employees in this rule is consistent with the broader civil-service framework Congress enacted.

In addition, 5 U.S.C. 3502 should be read consistent with 5 U.S.C. 3321, which contemplates a probationary period before an appointment becomes final and allows the President to issue rules and regulations effectuating probationary periods. Current Civil Service Rule 11, issued by the President under Executive Order (E.O.) 14284, already supplies a comprehensive framework for probationary and trial-period employment. It requires agencies to use probationary and trial periods to evaluate whether an employee's continuation in Federal service advances the public interest and expressly permits agencies to consider agency needs and interests, whether continued employment would advance agency or Government organizational goals, and whether continued

⁷ First Annual Report of the United States Civil Service Commission to the President (1884), p. 29, <https://babel.hathitrust.org/cgi/pt?id=nnc1.cu09006737&seq=9>.

⁸ Third Annual Report of the United States Civil Service Commission to the President (1886), p. 36, <https://babel.hathitrust.org/cgi/pt?id=njp.32101073361022&seq=40>.

⁹ The Lloyd-La Follette Act, 37 Stat. 555 (1912), as amended, 62 Stat. 354 (1948), 5 U.S.C.A. 652(a).

¹⁰ Public Law 78–359, 58 Stat. 387 (codified, as amended in part, at 5 U.S.C. 3309–3320).

¹¹ Commenter 0684 points to *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009), but that case is inapposite. Here, OPM is not defining "employee" in 5 U.S.C. 3501(b) to nullify statutory coverage. Instead, it is defining the narrower, undefined term "competing employee" in section 3502(a), a term Congress expressly left for implementation through OPM regulations.

¹² See *Dep't of Justice v. FLRA*, 709 F.2d 724, 730 (D.C. Cir. 1983).

¹³ See *U.S. v. Connolly*, 716 F.2d 882, 886 (Fed. Cir. 1983).

¹⁴ See *Nat'l Treasury Emps. Union v. FLRA*, 848 F.2d 1273, 1275 (D.C. Cir. 1988).

employment would advance the efficiency of the service.

Those considerations substantially overlap with the reasons agencies conduct RIFs, including lack of work, shortage of funds, and reorganization. Requiring agencies to apply full part 351 retention-register, order-of-release, and assignment-right procedures to employees whose appointments have not yet become final would duplicate Rule 11 and could produce inconsistent outcomes. For example, Rule 11 might support retaining a probationary employee because the employee has scarce skills, strong actual performance, and is needed for the agency's future mission. But a part 351 retention register would likely place the same employee low because the employee has little service time and may lack a rating of record. Thus, excluding probationary and trial period employees from the statutory definition of "competing employees" in 5 U.S.C. 3502(a) eliminates duplication and makes sense of the overall statutory scheme.

With respect to temporary employees, OPM's regulations at 5 CFR part 316, subpart D make clear that such appointments are only appropriate to meet short-term needs, including "for such reasons as abolishment, reorganization, or contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload." 5 CFR 316.401(a)(2). Further, "[t]he supervisor of each position filled by temporary appointment must certify that the employment need is truly temporary and that the proposed appointment meets the regulatory time limits." *Id.* 316.401(b). Thus, these regulations indicate that temporary employees do not have a reasonable expectation of long-term employment and thus should not be considered "competing employees" for purposes of 5 U.S.C. 3502.

Further, in the final rule, OPM has clarified that the employees excluded from RIF competition are not entirely outside the regulatory scheme and must receive a notice in accordance with 5 U.S.C. 3502(d) when they are furloughed for more than 30 days, separated, demoted, or reassigned for reasons of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment rights or restoration rights and the action is not merely the expiration of a temporary or time-limited appointment according to its terms. In addition, the regulations provide in § 351.605 that all positions in the competitive area, including those of employees excluded from RIF

competition under § 351.202(d), must be abolished within 180 days for an agency to permissibly use the streamlined procedures of that subpart.

Commenter 0672 objected that probationary employees can be covered by the proposal's missing-rating rules and therefore should remain in RIF competition. OPM does not agree that the proposed modal-rating provision eliminates the need to exclude probationary and trial-period employees from RIF competition. The modal-rating rule is a limited proxy for competing employees who lack ratings in the applicable lookback period; it does not provide an individualized measure of performance for employees whose appointments have not yet been finalized and who often have not served long enough to receive a rating of record. In a performance-first RIF system, assigning retention standing to such employees based on the most common rating assigned to other employees would fail to measure the employee's own performance. OPM therefore reasonably treats probationary and trial-period employees outside the retention-register process and permits agencies to retain, finalize, or separate them under the rules applicable to their appointments, instead of the RIF rules.

Further, the modal-rating approach does not address the separate legal and personnel-management function of probationary and trial periods. Civil Service Rule 11 provides that agencies must use probationary and trial periods to evaluate an employee's fitness and whether continued employment advances the public interest; the agency may consider performance and conduct, agency needs, organizational goals, and efficiency of the service before finalizing the appointment. A modal RIF rating cannot replace that appointment-finalization judgment. It does not tell the agency whether the employee has demonstrated sufficient fitness, adaptability, conduct, judgment, or mission fit to warrant final appointment. It simply imputes a rating based on how other employees were rated. That is a poor fit for employees who are still in the government's final assessment period.

Commenters 0674 and 0680 argued that excluding temporary, probationary and trial period employees from RIF procedures could mean that certain employees still covered by RIF regulations would be released ahead of more junior employees, thus undermining tenure as a statutory retention factor. But 5 U.S.C. 3502 does not prescribe a strict "last in, first out" system. It does not define "competing employees," does not require every

employee in an agency to compete against every other employee, and does not require agencies to retain every more senior employee ahead of every less senior employee in all circumstances. Instead, it directed OPM to create regulations for the release of competing employees and to give "due effect" to several factors. "Due effect" does not mean controlling effect, equal effect, or absolute effect in every possible comparison. Nor does it mean that tenure must always override appointment status, performance, agency needs, or the threshold question whether an employee has a finalized appointment and belongs in RIF competition at all. OPM therefore may reasonably distinguish between employees who have completed the period necessary to obtain a finalized appointment and employees who remain in a temporary, probationary, or trial status.

Commenter 0115 expressed concern that excluding probationary and temporary employees from RIF procedures might hurt efforts to recruit early-career talent. However, probationary, trial period, and temporary employees are the most likely to be separated under the current RIF rules, which require agencies to place these employees at the bottom of the retention register due to their lack of tenure and seniority. The changes in this rulemaking make it much more likely that an agency will be able to retain these employees post-restructuring, as the decision to retain or separate these employees would no longer depend on their retention standing.

Commenter 0683 urged OPM to consider the impact of the exclusion of probationary employees from RIF procedures on leadership pipeline investments, and to recommend that agencies account for leadership development considerations in their workforce planning. OPM agrees that agencies should closely consider the impact on leadership pipelines in determining whether agencies should release probationary employees in a reduction in force. Indeed, OPM notes that the regulatory flexibility to exclude probationary employees from RIF procedures is essential to protecting investments that agencies have made in recruiting outstanding early career employees.

Commenters 0037 and 0678 argued that the changes remove procedural protections from these employees, while Commenters 0680 and 0672 referenced past instances where probationary employees were allegedly subject to termination without regard to their

performance. However, probationary, trial period and temporary employees will continue to be protected by the Merit System Principles codified in 5 U.S.C. 2301, which require that Federal employees receive fair and equitable treatment in personnel management without regard to political affiliation, and that they receive protection against arbitrary action or coercion for partisan political purposes. In addition, probationary and trial period employees will also continue to be subject to applicable procedures under Civil Service Rule 11, while probationary employees would be able to appeal their terminations to OPM under the proposed rule “Streamlining Probationary and Trial Period Appeals” (90 FR 61070). In addition, in the final rule, OPM is revising § 351.202(d) to note specifically that actions to retain, furlough, separate, demote or reassign employees excluded from RIF competition must be consistent with the terms of the employee’s appointment and applicable law, and that such employees must be provided a modified RIF notice.

Thus, these changes will not subject probationary and trial period employees to arbitrary action, retaliation, or pretextual decision-making without redress. Instead, the changes make it more likely that these employees could be retained post-restructuring and recognize relevant differences between these categories of employees and others (namely, their limited performance history) while maintaining the procedural rights appropriate to their employment.

Commenter 0685 urged that OPM adopt a presumption of retention for probationary employees. OPM does not adopt this suggestion, as the subject of probationary employment is covered comprehensively in E.O. 14284 and Civil Service Rule 11 (5 CFR part 11), which provide clear processes for evaluating probationary employees. In addition, OPM notes that the Merit System Principles codified in 5 U.S.C. 2301 and OPM’s parallel rulemaking regarding appeals for probationary employees provide further protections for this group of employees.

3. Emergency Shutdown Furloughs

OPM is modifying the definition of the term *furlough* in § 351.203 to exclude an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough. Commenters generally supported this change. Commenter 0687 noted that because “Congress has

subsequently guaranteed backpay to federal employees in a law signed by President Trump in 2019” and thus “all employees are eventually compensated by law for time they would otherwise be at work” (unlike in the case of an unpaid RIF furlough), a RIF furlough notice should not be required in emergency shutdown furloughs. Commenter 0686, a Federal agency, commented that “[t]his change improves efficiency and ensures employees are not subject to repeated, unnecessary notices when a furlough is based on a lack of appropriations.” In the final rule, OPM is making a minor, non-substantive change to remove the limitation that the length of the furlough must be “dependent entirely on congressional action, rather than agency action” to avoid confusion (as agencies often call employees back to work during government shutdowns of unknown length that are caused by lapses in appropriations).

4. Transfers of Function

OPM is revising § 351.203 to modify the definition of *transfer of function* to adhere to the text of the applicable statute enacted by Congress to govern transfers of function, 5 U.S.C. 3503. That statute only applies to a situation “[w]hen a function is transferred from one agency to another . . .” (emphasis added).

Commenters 0672 and 0674 argued that narrowing transfer-of-function procedures would weaken employee protections and allow agencies to evade RIF rules through internal reorganizations. OPM disagrees. This rule does not allow agencies to evade RIF requirements when an internal reorganization results in release from a competitive level for RIF reasons. Rather, it distinguishes between interagency transfers of function, where governmentwide transfer-of-function protections are statutorily required, and internal management realignments, where ordinary reassignment principles can address any resulting personnel actions and offer adequate protections for employees. Specifically, transfers and reassignments of employees in the competitive service within agencies will continue to be governed by 5 CFR part 335. Transfers and reassignments of employees within agencies in the excepted service will continue to be governed by 5 CFR parts 213 and 302. Further, 5 U.S.C. 2301 requires agencies to adhere to Merit System Principles in personnel management, including transfers and reassignments of employees, and in the final rule OPM is amending § 351.204 to provide specifically that its 5 CFR part 351

regulations must be administered and applied consistent with all applicable laws, including the Merit System Principles set forth in 5 U.S.C. 2301(b).

Commenter 0719, a Federal agency, stated that “[t]he updated definition for transfer of function will remove constraints that currently impede timely organizational adjustments,” noting that existing rules result in “administrative obstacles that slow [its] ability to adapt quickly to emerging needs.” Commenter 0719 noted that, “[u]nder existing regulations, even straightforward internal realignments can require extensive procedures, discouraging agencies from implementing changes that could reduce duplication, improve efficiency, or better align staff with mission priorities.” OPM agrees.

5. Other Definitions

In this rule, OPM is providing a formal definition of “reduction in force”: the release of a competing employee from his or her competitive level by furlough for more than 30 days, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights. OPM did not receive significant comments regarding its definition of “reduction in force,” as this definition closely tracks the longstanding coverage of OPM’s RIF regulations, as reflected in 5 CFR 351.201(a)(2).

This rule modifies the current definitions in § 351.203 for *current rating of record* and *rating of record*. The revision to *current rating of record* updates the cross reference within part 351. The revision to *rating of record* clarifies that only the annual performance evaluation—and not a mid-year within-grade evaluation—can be used when computing the performance credit, which is used for determining standing on the retention register. OPM did not receive significant adverse comment regarding these changes.

OPM is also adding meanings for *agency*, *Government obligation* and *military spouse*, and to correct a typo in § 351.204 to change “reduction force” to “reduction in force.” OPM did not receive significant adverse comment regarding these proposed changes. As discussed further below, OPM is also adding a definition for *restoration protected employee*.

Commenter 0687 suggested that OPM add an anti-manipulation provision to state clearly that agencies may not manipulate competitive areas to purposefully target employees in ways

that are inconsistent with Merit System Principles. OPM agrees, in part, and is adding a provision to § 351.204, setting forth the responsibilities of agencies, to clarify that agencies are not only responsible for following and applying the RIF regulations, but for ensuring that such regulations are administered and applied consistent with the Merit System Principles set forth in 5 U.S.C. 2301(b). OPM agrees with Commenter 0687 that “[t]his issue is the crux of what OPM has historically attempted to do with its regulations.”

B. Part 351, Subpart C: Changes in Transfer of Function Procedures

OPM is substituting the word “agency” for “competitive area” throughout subpart C and making other conforming changes, so as to align with the text of the statute Congress enacted governing transfers of functions (5 U.S.C. 3503), which applies to transfers of functions *between* agencies, not *within* agencies. Notably, the regulations governing transfers of function applicable to the SES apply only to “the transfer of the performance of a continuing function from one *agency* to one or more other *agencies*.” 5 CFR 359.608 (emphasis added); *see also* 5 U.S.C. 3595 (providing to the SES rights comparable to those provided by 5 U.S.C. 3503). Similarly, OPM’s regulations in § 353.109 regarding restoration to duty from uniformed service or compensable injury only speak of transfers between agencies.

Commenter 0687 suggested that “OPM should require agencies to provide advance notice and the opportunity to follow one’s function when functions are transferred between competitive areas within a single agency, even if the full transfer-of-function procedures of Subpart C are not required.” OPM disagrees. It believes that agencies will appropriately seek to retain talented and knowledgeable employees during intra-agency transfers of function even without a regulatory requirement to provide advance notice and the opportunity to transfer when a function is transferred within a single agency. OPM believes that this current regulatory requirement unduly inhibits agencies from carrying out internal restructurings and generates litigation without a corresponding benefit to the government.

OPM is revising § 351.302(b) to remove the unclear term “liquidation” and make the meaning of this section more plain by adapting language from OPM’s *Workforce Reshaping Handbook* explaining its practical operation. OPM did not receive significant adverse

comment regarding this provision and is therefore finalizing it. In addition, in this rule, OPM is revising § 351.302(b) to state that, except as permitted in paragraph (e) of this section, the losing agency must use the adverse action procedures found in 5 CFR part 752, if applicable, or other procedures required by law, regulation, or the terms of the employee’s appointment, if it chooses to separate a competing employee who declines to transfer with his or her function. That is because some employees affected by transfer-of-function procedures may not be covered by part 752, and some separations may be governed by other procedures.

OPM is revising § 351.302(g) to clarify the procedures that agencies must follow in asking employees whether they wish to transfer with the function, when functions are transferred between agencies. OPM is also revising § 351.303 to simplify the process for identifying which employees are identified with the transferring function. OPM did not receive significant adverse comment regarding these provisions and is finalizing them.

C. Part 351, Subpart D: Changes in How Competitive Areas Are Defined and Approved

This rule revises § 351.402(b) to allow agencies to designate a competitive area as being any organizational unit, or combination of organizational units, on an agency’s official organizational chart. Organizational charts must be available on the agency’s public facing web page or otherwise appropriately documented by the agency. An organizational unit for these purposes must be designated/approved by the head of the agency, or designee, and the designation or approval cannot be redelegated to an official below the agency’s headquarters level.

In addition, OPM is revising § 351.402(b) to require that an organizational unit for purposes of a RIF must be clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight. In addition, OPM is clarifying that field or regional offices officially established by the agency as discrete organizational units and shown on the agency’s official organizational chart may be their own competitive area(s).

Commenter 0684 contended that the previous regulatory phrase “under separate administration” was not vague but had an accepted meaning as encompassing “the authority to take or direct personnel actions.” Commenter 0684 argued that the requirement in this rule that an organizational unit be

differentiated from other organizational units with regard to its operation, work function, staff, and supervisory oversight is not equivalent to the previous phrase.

However, the previous OPM rulemaking and Federal Circuit case cited by Commenter 0684 state that “under separate administration” may be satisfied by as little as the authority to “assign duties,” a power that any front-line supervisor would possess. Further, OPM’s current *Workforce Reshaping Operations Handbook* rejects Commenter 0684’s definition of “under separate administration,” as OPM states that the definition “[r]ecognizes that individual organizational components may be under separate administration even though many agencies reserve final approval of certain personnel actions to a higher level in the agency.”¹⁵ Ultimately, Commenter 0684 only underscores that the phrase “under separate administration” is confusing, and that OPM was correct in the proposed rule in stating that “the current terminology is not aligned with the operational realities of Federal agencies, where many components may be ‘under separate administration’ in some important respects, but under centralized administration in other important respects.”

Commenter 0684 also contended that § 351.402(b) “no longer specifies that the definition is the *minimum* competitive area, and thus strips agencies of the flexibility to expand a small competitive area to allow for competition.” But that is not so: section 351.402(b) continues to state that a “competitive area may consist of any organizational unit or combination of units established on the agency’s official organizational chart,” which allows agencies to expand a small competitive area to allow for greater competition.

Commenter 0687 expressed appreciation that “OPM is taking competitive area manipulation seriously and agree[d] with OPM’s stated intent to preserve rules against it,” but presented several issues with OPM’s new proposed definition. The commenter noted that Federal agencies are not required to maintain a single “official” organizational chart, and in practice agencies or their subparts may maintain several organizational charts for different purposes, which may not reflect how the agency manages itself on a day-to-day basis. Therefore, Commenter 0687 suggested that OPM

¹⁵ OPM, *Workforce Reshaping Operations Handbook*, at pp. 30–31, https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force-rif/workforce_resaping.pdf.

“pick a single, authoritative dataset for the purposes of competitive area definition: the hierarchy utilized during administration of the Federal Employee Viewpoint Survey [FEVS] in the most immediately prior year.”

OPM appreciates Commenter 0687's suggestion but does not adopt it. OPM believes that administration of FEVS should remain flexible and responsive to agency needs and not be tied to administration of RIFs. OPM also believes that agencies may reasonably adopt new organizational charts that deviate from the structure reflected in their previous year's administration of FEVS based on evolving mission needs, including changes in agency budgets, technology, and presidential and congressional priorities. Indeed, the RIF regulations have long applied where release is required due to, *inter alia*, “reorganization,” *see* 5 CFR 351.201(a)(2), defined as “the planned elimination, addition, or redistribution of functions or duties in an organization,” *see* 5 CFR 351.203. OPM believes that the limitations in § 351.402(c) against recognizing new competitive areas that will be in effect for less than 90 days before issuance of RIF notices, as augmented by changes described below, provide sufficient guardrails against competitive area manipulation.

Commenter 0683 also expressed concern about the “potential for gerrymandering competitive areas to target particular employees or groups of employees.” It suggested that “OPM require agencies to establish competitive area designations through a transparent process, with documentation available for review, and to prohibit agencies from establishing or modifying competitive areas after a decision to conduct a RIF has been made.”

OPM agrees with this suggestion, in part. In this final rule, OPM is adding an additional safeguard against competitive area manipulation: when agencies are seeking approval from OPM for a new competitive area that has existed for less than 90 days prior to issuing specific RIF notices, the agency shall submit a description of the competitive area, along with a written statement explaining the bona fide organizational basis for the competitive area, to OPM for approval in advance of the RIF. Such approval is also required where an agency materially modifies a competitive area. In addition, descriptions of all competitive areas, and accompanying explanations submitted to OPM, must be made readily available for review consistent

with national security considerations and applicable laws including the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a). In addition, as noted above, OPM is requiring expressly that the RIF regulations be administered consistent with the merit system principles set forth in 5 U.S.C. 2301. OPM believes that these suggestions adequately address the concerns expressed by Commenters 0683 and 0687 regarding competitive area manipulation. These further advance Commenter 0685's call for OPM to “strengthen requirements related to transparency and documentation” in the final rule.

D. Part 351, Subpart E: New Method of Deriving Retention Standing, Revised Order of Retention Examples, and Additional Examples

OPM is finalizing its changes to 5 CFR part 351, subpart E “Retention Standing,” including revised and reorganized content in §§ 351.501 through 351.504. In addition, OPM is renumbering current § 351.505 *Records* and § 351.506 *Effective date of retention standing* to § 351.506 *Records* and § 351.507 *Effective date of retention standing*, respectively.

As noted above, under this rule (and particularly § 351.501 *Order of retention*), when determining the order in which employees are placed on a RIF retention register, agencies will now do so based on whether the employee is in the competitive service tenure group or excepted service tenure group. Within each group, employees will be ranked based on performance, as augmented by additional points for veterans' preference. Where employees are tied, the employee in the higher tenure subgroup (with subgroup I ranked ahead of subgroup II) will be ranked ahead. When employees are still tied, the employee with the longer service will be ranked ahead.

In § 351.502 *Tenure of employment*, OPM is redefining the tenure groups for both the competitive and excepted services. The competitive service tenure group will consist of all competitive service employees (in accordance with the provisions of § 315.201) who are not (as of the date of the RIF notice) serving an initial probationary period or a temporary or time-limited appointment of 1 year or less under 5 CFR part 316. The excepted service tenure group will consist of excepted service employees occupying a career position (as defined in § 213.101) who are not serving a trial period and are not serving in a temporary or time-limited appointment of 1 year or less.

In addition, competitive service tenure subgroup I will include each career employee in the competitive service who, as of the date the employee receives a specific reduction in force notice, is not serving an initial probationary period. This definition is substantially the same as the current competitive service tenure group I.

Competitive service tenure subgroup II will consist of every other competitive service employee who, as of the date of the RIF notice, is not serving an initial probationary period or a temporary or term appointment of 1 year or less. For example, an employee serving under a career-conditional competitive service appointment who has completed a probationary period but not yet completed the service requirements for career tenure (under 5 CFR 315.201) would be included in subgroup II.

Excepted service tenure subgroup I will include all employees occupying a career position (that is to say, not in Schedule C or G) in the excepted service who, as of the date the employee receives a specific reduction in force notice, are not serving a trial period and whose appointment carries no restriction or condition such as conditional, indefinite, or specific time limit. This definition is substantially the same as current excepted service tenure group I.

Excepted service tenure subgroup II will consist of all other career employees in the excepted service (that is to say, not in Schedule C or G) who are not serving a trial period or a temporary or time-limited appointment of 1 year or less. Examples of employees in excepted service tenure subgroup II include employees occupying career positions in the excepted service who have completed any required trial period and who are serving under conditional, indefinite, or specific time-limited appointments of more than 1 year.

OPM revises § 351.503 *Performance* to state that an agency will list employees on a RIF retention register (within the same tenure group) based on each employee's calculated performance credit. Generally, the three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices may be considered; however, an agency may establish a cut-off date after which no new rating of record will be considered. Ratings of record will be assigned a numerical value in conjunction with the patterns of summary level in 5 CFR 430.208(e) as follows:

Summary level	Rating description	Performance credit
Level 5	Outstanding or equivalent	7
Level 4	Exceeds Fully Successful or equivalent	5
Level 3	Fully Successful or equivalent	3
Level 2	Minimally Satisfactory or equivalent	0
Level 1	Unacceptable	0

Agencies will list competing employees on the retention register in descending order (within the same tenure group) based on each employee's performance credit, which is the sum of the values assigned for their three most recent ratings of record received during the 4-year period prior to the issuance

of RIF notices. Employees would then receive additional performance credit based on veteran status: each preference eligible veteran with a compensable service-connected disability of 30 percent or more receives an additional 5 points added to their total performance credit, while every other

preference eligible veteran would then receive an additional 3 points added to their total performance credit.

For example, the employees below are covered under a pattern C four-summary level rating performance appraisal system as described in 5 CFR 430.208(e). Their ratings and totals are:

Employee	Ratings	Performance credit	Total
Alice	5/4/4	7/5/5	17
Bill	4/3/3	5/3/3	11
Carol	4/4/3	5/5/3	13
Fred	3/4/5	3/5/7	15

These employees would be listed on the retention register in the following order: Alice, Fred, Carol, then Bill.

Section 351.503(b) *Ratings used* establishes which ratings of record may be used as the basis for calculating an employee's performance credit. For most employees, an employee's ratings of record are those recorded pursuant to subpart B of 5 CFR part 430.

Section 351.503(c) *Consideration of performance* includes language currently in § 351.504(b) but modifies this language by removing the reference to "additional retention service credit" (*i.e.*, credit for performance will no longer be added to an employee's length of service). Performance will now be the primary basis for rating employees within each tenure group. Performance will be measured based on performance credit, *i.e.*, the total of each employee's summary level ratings for the employee's three most recent ratings of record for performance consistent with § 351.503(a), which will then be augmented by additional credit for veterans' preference status as set forth in § 351.504.

New paragraph § 351.503(d) *Single rating pattern* describes how agencies list employees who have been covered under the same rating pattern of summary levels during the 4-year period

prior to the date of issuance of the reduction in force notice or the agency-established cutoff date. Paragraph (d) provides that, for employees covered under a summary level appraisal system in which the highest summary level is a level "3" rating (*i.e.*, a pattern A ('pass/fail'), or pattern D system authorized under 430.208(d) prior to the final rule prescribed at 91 FR 41521), the agency may, in its sole and exclusive discretion, give additional credit for employees who have documented exceptional performance to give more weight to certain performance-related actions than others for purposes of listing some level "3" employees ahead of other employees on a retention register. Evidence of exceptional performance may include documentation showing an agency has awarded: an employee with the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a special act or service award, a quality step increase (QSI), or other performance awards or bonuses (*e.g.*, a "time-off" award for demonstrated performance above expectations).

Commenter 0683 expressed concern that this could "create[] a system in which the same level of actual performance could yield materially different retention outcomes depending

on which agency the employee works for and what award budget was available." OPM disagrees. Instead, it believes this change will provide a method by which an agency may make meaningful distinctions among employees in a pattern A performance appraisal program (*i.e.*, the highest summary level rating is a "3" or satisfactory) who have documented performance above expectations in these appraisal systems. It thus directly addresses Commenter 0683's concern that existing performance appraisal systems do not always meaningfully differentiate relative performance, along with Commenter 0683's concerns regarding variations in rating patterns across agencies.

For example, the employees below are covered under a three-summary level pattern as described in 5 CFR 430.208(e). Their agency has an established policy of providing enhanced performance credit by assigning 7 points for agency awards, 5 points for organizational awards, and 4 points for various performance awards. (An agency award is designated by "A"; a component-level award is designated by "O"; and a performance award or QSI is designated by "P".) Their ratings and totals are:

Employee	Ratings	Performance credit	Award(s)	Assigned values for awards	Total
Carol	3/3/3	3/3/3	O/O/A	5/5/7	3+3+3+5+5+7=26
Alice	3/3/3	3/3/3	A/-/P	7/0/4	3+3+3+7+4=20
Bill	2/3/3	0/3/3	-/-/P	0/0/4	0+3+3+0+0+4=10

Employee	Ratings	Performance credit	Award(s)	Assigned values for awards	Total
Fred	3/3/3	3/3/3	-/-	0/0/0	3+3+3+0+0=9

New paragraph § 351.503(e) *Multiple rating patterns* addresses situations in which an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as described in 5 CFR 430.208(e). An agency may, in its sole and exclusive discretion, choose to provide enhanced performance credit to employees under disparate pattern summary levels. It may do so by transmuting or assigning an employee a higher summary level rating than what he or she received under a previous rating system when there is documented evidence of exceptional or higher-level performance consistent with the criteria in revised § 351.503(d).

In addition, for an employee who goes from an appraisal system which uses a higher pattern of summary levels to a lower one (e.g., an employee who goes from a 5 summary level appraisal program to a two level system (i.e., pass/fail system)), an agency may adopt policies which would allow employees with ratings above the highest summary level of the lower pattern system to be listed ahead of any employee on the retention register who does not have documented evidence of exceptional performance as described above. This method allows agencies to adopt policies that would prevent exceptional performers from being disadvantaged because they may be covered under two or more patterns of summary rating levels which may not make meaningful distinctions for performance among employees. Further, § 351.503 will require RIF performance ratings and assigned summary levels, including adjustments, to be uniformly and consistently applied within the competitive area and consistent with the agency's implementing issuances. Where an agency elects to assign additional performance credit, the agency must specify and document the criteria in advance and make them available for review.

Paragraph (f) of § 351.503 describes how an agency should factor performance ratings into the RIF process when an employee does not have three actual ratings of record during the 4-year period prior to the date of issuance of RIF notices, or the 4-year period prior to the agency-established cut-off date. It uses the modal rating concept for employees with no ratings during the 4-year period prior to the RIF, as currently

found in § 351.504(c)(1), but modifies the current provisions by removing the reference to "additional retention service credit."

Section 351.504 *Veterans' preference* defines how veterans' preference will be applied in a RIF in both the competitive and excepted services. Each preference eligible employee with a compensable service-connected disability of 30 percent or more will receive an additional 5 points added to their performance credit, while every other preference eligible employee will receive an additional 3 points added to their performance credit. "Preference eligibles" is defined in 5 U.S.C. 2108(3) to include not only veterans, but also certain close family members of deceased or service-disabled veterans. Non-preference eligible employees do not receive any additional points added to their performance score.

Commenter 0660 asserted, without any additional information, that "the proposed rules are vague and unclear as to exactly how performance and veterans' issues are to be determined," but does not indicate in what manner the proposed rule is vague or unclear, providing no supporting information whatsoever. Commenter 0660 contended that "[t]he proposed regulation will make it likely that the classifications will result in numerous appeals challenging the order and create chaos in their implementation as a result," but failed to explain how the new regulation is more complicated than the current rules.

OPM disagrees with Commenter 0660's assertions. The current rules require agencies to categorize employees based on tenure group and veterans' preference subgroup. Employees are ranked first by tenure group I, II, III; then within each tenure group by veterans' preference subgroup AD, A, B; and only then by years of service as augmented by performance credit, starting with the earliest service date. Agencies then prepare an "adjusted SCD" calculation where extra years of service are added to an employee's actual service computation date. That means current RIF ordering is not a simple comparison of Employee A's performance against Employee B's performance. Agencies must first place employees into tenure groups, then veterans' preference subgroups, then calculate adjusted service dates.

Performance affects ranking only inside the employee's already-determined tenure/veterans' preference category.

Agencies then must undergo multiple rounds of complicated bumping and retreating before arriving at a final retention register. Notably, "bump and retreat" can create a chain. If Employee A bumps Employee B, then Employee B is released from that competitive level, and the agency must determine whether Employee B has his or her own bump or retreat right. This process is highly burdensome and prone to errors.

This rule replaces the current rules with a streamlined system that eliminates the need for multiple, complicated rounds of bump and retreat, replacing it with a straightforward comparison of employee performance as augmented by veterans' preference, with ties broken by tenure and length of service. Further, OPM's new rules are simpler because they eliminate the most confusing features of the current rules: using performance to manufacture an adjusted service computation date and complicated bump-and-retreat procedures.

This rule addresses that problem by making performance credit more transparent and direct: Level 5 ratings receive 7 points, Level 4 ratings receive 5 points, Level 3 ratings receive 3 points, and Level 1 or 2 ratings receive no points. Veterans' preference is then added to that performance credit.

This rule's use of defined point values—Level 5 = 7 points, Level 4 = 5 points, Level 3 = 3 points, and Level 1 or 2 = 0 points—also makes the RIF calculation easier to understand and audit than an artificial performance-adjusted SCD. As Commenter 0687 noted, this reform simplifies the composition of retention registers.

In addition, this rule does not change the basic record-keeping requirements in current § 351.505 (renumbered to § 351.506) or the notice requirements in § 351.802, except to conform their provisions to other changes made in this rulemaking. Thus, OPM does not agree with Commenter 0678's assertion that the rule "reduces notice and transparency" regarding RIFs. Instead, OPM agrees with Commenter 0687, who noted that the revisions "simplify[] the composition of retention registers . . . such that retention standing is faster to compute, more transparent, and more equitably applied."

In the proposed rule, OPM provided order of retention examples. Commenter 0680 points out correctly that some of the tables illustrating the operation of the proposed rule contained errors, as they incorrectly ranked employees in a higher tenure subgroup ahead of employees with a greater performance credit. OPM is therefore correcting these examples below. OPM is also publishing further examples of how retention standing will work under the new regulations to aid with administration of the new rules.

OPM disagrees with Commenter 0680 that these inadvertent errors show a lack of reasoned decision-making, that the new rules increase the risk of mistakes, or that OPM or agencies are unprepared to administer the new rules. Such a correction is consistent with ordinary rulemaking practice: agencies often revise, add, delete, or correct examples to conform them to the operative regulatory standard or to respond to comments.¹⁶ The binding rule is the regulatory text, which provides that employees are ranked by performance credit as augmented by veterans' preference, with tenure subgroup and service computation date used as tie-breakers. The proposed rule text clearly stated that, within each tenure group, employees are ranked by performance credit as augmented by veterans' preference, and only when employees have the same augmented performance

credit are they further ranked by tenure subgroup and then by length of service.

Indeed, OPM believes the new RIF formula is much simpler to understand and apply than the current formula, as it involves a simple calculation of performance credits adjusted for veterans' status, with tenure subgroup and length of service serving as tiebreakers. The current system, by contrast, involves a multi-layered system where employees were sorted into three tenure groups, with veterans' status subgroups within each tenure group, with employees then further sorted by service computation date that is adjusted based on performance. That process required agencies to translate performance into years, average the credited years, round where necessary, and then move the employee's service date backward to create an "adjusted SCD." That made the register harder to understand because the service computation date was not the employee's actual service date, but an artificial service date reflecting both service and performance. Further, agencies were then required to engage in complicated "bump and retreat" exercises between employees in different tenure groups, often encompassing multiple rounds of RIF competition governed by detailed rules that were understood by very few beyond a very small group of Federal HR specialists and consultants.

Under this rule, by contrast, performance remains a score that corresponds to direct numerical values, augmented by consistent numerical values for veterans' preference. Thus, the new rules will likely result in far fewer errors than the old rules. They are also easier and more streamlined, making them easier to apply and understand by both HR offices and Federal employees. Employees who inspect the register will be much more likely to understand how their retention standing was calculated and be able to spot errors.

Several commenters agree that the new regulations are simpler than the current ones. Commenter 0687 noted that the new rule simplifies the composition of retention registers and the application of assignment rights, versus the current complicated "bump and retreat" process. Commenter 0685 noted that the benefits of OPM's simplification of RIF rules are "substantial and should not be understated," and that "the proposal's effort to simplify the RIF framework represents a meaningful and constructive reform."

The following examples illustrate and contrast the impact of performance ratings of record and their summary levels on a retention register under the current rules and this final rule. Consider the following employees in a General Schedule (GS) 201–12 position:

Name	Tenure group	Vets pref subgroup	Rating of record summary levels	Service comp date
Al	I	A	3/3/3	01/01/1998
Barb	I	A	5/4/5	01/01/2020
Carl	II	A	3/4/4	01/01/2022
Dave	I	A	4/5/4	01/01/1990
Emma	II	A	3/4/4	01/01/2024

Example 1: Current Rules

Under the current rules, a retention register for these employees would look

like this, based on retention factors considered in this order: Tenure | Vets Pref | Adjusted Service Computation Date (ASCD)—*i.e.*, the service

computation date (SCD) adjusted for additional service credit (ASC) based on ratings of record summary levels:

¹⁶ Compare Internal Revenue Service, *Qualified Business Income Deduction*, 84 FR 2952 (2019) with Internal Revenue Service, *Qualified Business*

Income Deduction; Correction, 84 FR 15954 (2019). Also compare EEOC, *Implementation of the*

Pregnant Workers Fairness Act, 89 FR 29096 (2024) with final interpretive guidance.

Name	Tenure Group	Veterans' Preference Subgroup	Rating of Record Summary Levels	SCD	ASC	ASCD
Dave	I	A	4 / 5 / 4	01/01/1990 – 18 years	$[(16+20+16)/3] =$	01/01/1972
Al	I	A	3 / 3 / 3	01/01/1998 – 12 years	$[(12+12+12)/3] =$	01/01/1986
Barb	I	A	5 / 4 / 5	01/01/2020 – 19 years	$[(20+16+20)/3] =$	01/01/2001
Carl	II	A	3 / 4 / 4	01/01/2022 – 15 years	$[(12+16+16)/3] =$	01/01/2007
Emma	II	A	3 / 4 / 4	01/01/2024 – 15 years	$[(12+16+16)/3] =$	01/01/2009

Example 2: Final Rule

Under this final rule, the retention register for these same competing employees will look like this, based on considering retention factors in this order: Tenure, Performance based on the total of the employee's summary levels augmented by Veterans' Preference, Tenure Subgroup, and Service Computation Dates:

Name	Tenure group	Veterans' preference subgroup	Rating of record summary levels	Performance credit totals	Tenure subgroup	Service computation date
Barb:	CS	A	5/4/5	7+5+7+3 = 22	I	01/01/2020
Dave:	CS	A	4/5/4	5+7+5+3 = 20	I	01/01/1990
Carl:	CS	A	3/4/4	3+5+5+3 = 16	II	01/01/2022
Emma:	CS	A	3/4/4	3+5+5+3 = 16	II	01/01/2024
Al	CS	A	3/3/3	3+3+3+ 3 = 12	I	01/01/1998

Example 3: Final Rule

The following illustrates how veterans' preference and length of service apply under this final rule. Assume the same group of employees but with one difference: Emma receives additional performance credit based on status as a veteran with a compensable service-connected disability, as follows:

Name	Tenure group	Vets pref subgroup	Rating of record summary levels	Performance credit totals	Tenure subgroup	Service comp date
Barb	CS	A	5/4/5	22	I	01/01/2020
Dave	CS	A	4/5/4	20	I	01/01/1990
Emma	CS	AD	3/4/4	18	II	01/01/2024
Carl	CS	A	3/4/4	16	II	01/01/2022
Al	CS	A	3/3/3	12	I	01/01/1998

Under this final rule, the retention register for these employees would look like this, based on considering retention factors in this order: Tenure | Performance based on the total of the employee's summary levels | Vets Pref | Service Computation Date. In this example Emma is listed ahead of Carl because she receives additional performance credit as a veteran with a compensable service-connected disability, despite being in the same tenure subgroup and having less service credit than Carl.

Name	Tenure group	Vets preference sub-group	Rating of record summary levels	Performance credit totals	Tenure subgroup	Service comp date
Barb:	CS	A	5/4/5	22	I	01/01/2020
Dave:	CS	A	4/5/4	20	I	01/01/1990
Emma:	CS	AD	3/4/4	18	II	01/01/2024
Carl:	CS	A	3/4/4	16	II	01/01/2010
Al:	CS	A	3/3/3	12	I	01/01/1998

To aid in implementation, OPM is providing additional examples of how the new rules will work below.

Example 4: Final Rule

Name	Tenure group	Vets preference subgroup	Rating of record summary levels	Performance credit totals	Tenure subgroup	Service comp date
Harper	CS	B	5/5/5	21 + 0 = 21	II	2024-06-01
Imani	CS	B	5/4/4	17 + 0 = 17	I	2016-02-15
Jorge	CS	AD	4/3/3	11 + 5 = 16	II	2002-11-01
Kai	CS	A	3/3/3	9 + 3 = 12	I	2008-07-20
Lena	CS	B	3/3/3	9 + 0 = 9	I	1996-04-05

Under the final rule, Harper ranks first even though Harper is in tenure subgroup II and has the latest service computation date, because Harper has

the highest augmented performance-credit total. Lena has the earliest service computation date, but the lowest performance credit. If two employees

must be released from this competitive level, the agency would release Lena first, then Kai.

Example 4: Current Rules

Name	Current tenure group	Vets preference subgroup	Current performance service credit	Service comp date	Adjusted service comp date	Current-rule reason
Kai	I	A	12 years	2008-07-20	1996-07-20	Group I, subgroup A ranks ahead of Group I, subgroup B.
Lena	I	B	12 years	1996-04-05	1984-04-05	Within Group I/B, earliest adjusted SCD.
Imani	I	B	18 years	2016-02-15	1998-02-15	Same Group I/B as Lena, but later adjusted SCD.
Jorge	II	AD	14 years	2002-11-01	1988-11-01	Group II ranks after all Group I employees.
Harper	II	B	20 years	2024-06-01	2004-06-01	Group II/B ranks after Group II/AD.

Harper moves from last under current rules to first under this final rule because the final rule makes performance credit the primary ordering

factor within the competitive-service tenure group. Kai moves from first under current rules to fourth under this final rule because veterans' preference

and tenure no longer control ahead of performance; veterans' preference adds points to the performance score instead.

Example 5: Final Rule

Name	Tenure group	Vets preference subgroup	Rating of record summary levels	Performance credit totals	Tenure subgroup	Service comp date
Mallory	CS	B	5/5/5	21 + 0 = 21	II	2024-03-01
Nikhil	CS	AD	4/4/4	15 + 5 = 20	I	2012-01-30
Olivia	CS	B	5/4/3	15 + 0 = 15	I	1998-09-01
Priya	CS	A	4/3/missing	12 + 3 = 15	II	2024-05-10

For Priya, the final rule's missing-rating method gives a proxy value equal to the average of the two actual final rule point values: Level 4 = 5 and Level 3 = 3, so the missing rating is 4 points and Priya's raw performance total is 5

+ 3 + 4 = 12. Priya is also given 3 points as a preference eligible veteran for a total performance credit of 15.

Under this final rule, Mallory ranks first because Mallory's augmented performance-credit total is highest. Olivia and Priya tie at 15, so the tie is

broken by tenure subgroup: Olivia's subgroup I beats Priya's subgroup II. If one competitive-service position is abolished, Priya would be released first from this register.

Example 5: Current Rules

Name	Current tenure group	Vets preference subgroup	Current performance service credit	Service comp date	Adjusted service comp date	Current-rule reason
Nikhil	I	AD	16 years	2012-01-30	1996-01-30	Group I/AD ranks first.
Olivia	I	B	16 years	1998-09-01	1982-09-01	Group I ranks before Group II.
Priya	II	A	14 years	2024-05-10	2010-05-10	Group II/A ranks ahead of Group II/B.

Name	Current tenure group	Vets preference subgroup	Current performance service credit	Service comp date	Adjusted service comp date	Current-rule reason
Mallory	II	B	20 years	2024–03–01	2004–03–01	Group II/B ranks after Group II/A.

Mallory moves from fourth under current rules to first under this final rule because Mallory's three Level 5 ratings become the dominant factor. Nikhil remains high in both systems, but for different reasons: under current rules, Nikhil is protected first by Group I/AD status; under this final rule, Nikhil ranks high because AD preference adds 5 points to a strong performance-credit total.

OPM is modifying § 351.506(c) to make these provisions consistent with changes in § 351.505. It did not receive significant adverse comment on these provisions. In this final rule, OPM is also clarifying § 351.506(d) that employees who have not received specific RIF notices may have rights to review retention registers and related records under other laws such as the Freedom of Information Act (FOIA).

OPM is revising § 351.507 to make clear that the effective date of retention standing is measured as of the date the employee receives a specific reduction in force notice, not the date a RIF separation actually occurs. Commenters did not express significant concerns regarding this change, which will make it more administratively feasible for agencies to conduct a RIF in instances where the actual date of RIF separation is delayed due to litigation or other unforeseen factors. This change also addresses concerns expressed by some commenters (like Commenter 0449) that agencies might change performance ratings between announcement and execution of a RIF.

OPM is making additional changes to § 351.805(b), *New notice required*, to conform with the changes to § 351.507 and confirm that an amended notice issued solely to state a later effective date is not a new specific reduction in force notice for purposes of § 351.507 and does not require the agency to redetermine or recalculate retention standing under subpart E. This amendment affirms the necessary consequence of the changes to § 351.507: once retention standing is fixed as of the date of the specific RIF notice, a ministerial amended notice delaying the effective date does not restart the retention-standing calculation.

E. Part 351, Subpart F: Furloughs, Abolishment of Competitive Area, USERRA Rights, and Exceptions

OPM is modifying § 351.601 for consistency with how retention standing is to be calculated under Subpart E of part 351. OPM is also modifying § 351.602 to remove the prohibition on retaining an employee serving a specifically limited temporary appointment in a competitive level while releasing a competing employee from that level. OPM did not receive significant adverse comments on these provisions and is finalizing them.

1. RIF Furloughs

In the proposed rule, OPM proposed to modify its regulations in § 351.604 regarding furloughs of more than 30 consecutive calendar days (or more than 22 workdays if done on a discontinuous basis over a period not exceeding 1 year) to remove the requirement that agencies furlough employees based on retention standing and recall employees to duty from furlough based on retention standing.

Commenter 0687 opposed these changes, contending that they had “no obvious use case and could create mechanisms for abuse.” Commenter 0687 noted that agencies typically do not engage in unpaid furloughs of any length, whether greater or less than 30 days, and that OPM's proposed revision would create risks that agencies could use long furloughs to circumvent normal RIF procedures. Commenter 0687 therefore contended that the risks of this new provision outweigh the benefits. Commenter 0117 similarly expressed concern that agencies could use long-term unpaid furloughs to avoid following retention order requirements. OPM agrees that its proposed changes to § 351.604 warrant further consideration and has chosen not to finalize them.

2. Abolishment of a Competitive Area

In this rule, OPM is renaming § 351.605 as *Abolishment of a competitive area* to more accurately describe its purpose. The revised section explains that the appropriate use of this provision is when an agency is abolishing all positions (including the positions of employees otherwise excluded from RIF competition under § 351.202(d)) in a competitive area

within 180 days. It further explains that, because all positions in the competitive area will be eliminated, an agency is not required to release competing employees in order of retention standing.

As the D.C. Circuit explained in upholding an earlier version of this provision, when all employees in a competitive area will be released within a relatively short time, “it is certainly reasonable to conclude that it would be a waste of resources for an agency to be forced to perform detailed seniority and performance calculations solely to construct a rank ordering of employees’ retention rights when those rights are of such little value.” *AFGE v. OPM*, 821 F.2d at 766 n. 4. Thus, OPM was “within its authority to conclude that under those limited circumstances, no effect is ‘due.’” *Id.* With performance now the main consideration governing RIF retention, the same considerations apply: it does not make sense to require agencies to perform detailed seniority and performance calculations to construct a rank ordering of employees that will have no substantive effect on their retention rights.

In this final rule, OPM is making minor wording and ordering changes to this provision. Section 351.605(c) provides that any competing employee released under this provision must be provided a specific written notice in accordance with § 351.801, *Notice period*. The notice must include the following: the action being taken and its effective date; the competitive area being abolished; a link to 5 CFR part 351 and access to the agency's records pertinent to the RIF being run to abolish the competitive area; information on reemployment rights; the employee's appeal rights; and a statement that, because all positions in the competitive area are being abolished pursuant to 5 CFR 351.605, the employee was not ranked relative to other competing employees in the reduction in force. The notice is not required to include the information described in § 351.802(a)(2) or (a)(4).

Section 351.605(d), *Retention register not required*, explains that an agency is not required to rank competing employees in the abolished competitive area, and must not apply the assignment right provisions in subpart G, because

no positions in the competitive area will remain.

Commenter 0683 suggested that OPM review and approve any competitive area abolishment due to the potential that agencies could use this provision alongside the new competitive area definition to evade the need to build a retention register and provide assignment rights. OPM believes that these concerns are adequately addressed by the requirement in § 351.402(c) that OPM approve new or substantially modified competitive areas that have been in effect less than 90 days prior to the issuance of RIF notices; the requirement in § 351.204 that agencies must administer and apply the regulations consistent with all applicable laws, including the Merit System Principles in 5 U.S.C. 2301(b); the requirement that the competitive area be disclosed to the employee in the RIF notice; and the availability of RIF appeal rights in Subpart I of 5 CFR part 351.

Commenter 0683 also asked that OPM clarify that the abolishment of a competitive area under Section 351.605 does not diminish or supersede the statutory placement rights of career SES members under 5 U.S.C. 3594–3595. OPM confirms that these revisions are not intended to diminish or supersede career SES placement rights in a RIF. However, OPM believes that 5 CFR 359.602(b) is clear enough on this point that no change to the regulatory text in 5 CFR part 351 is required.

3. USERRA Rights

In the proposed rule, OPM proposed to modify § 351.606(a), which addresses mandatory RIF exceptions for employees who have been restored or reemployed following uniformed service and who remain entitled to post-reemployment retention protection under § 353.209(b) for either 6 months or 1 year. These retention rights are provided under USERRA.

Commenter 0686, a Federal agency, requested that OPM clarify the proposed modifications to § 351.606, and particularly its interaction with § 351.605, which revises the procedures to be followed when a competitive area is abolished. Several other commenters (0076, 0121, 0455, 0550, 0597) argued that the proposed rule could be read as undermining USERRA rights, including where an employee performing uniformed service or recently reemployed after uniformed service lacks recent civilian performance ratings.

OPM agrees that clarification is appropriate. Accordingly, OPM in this final rule is making explicit how

USERRA restoration and retention protections operate when an employee is affected by a RIF.

First, OPM is adding a definition of “Restoration protected employee” in § 351.203. For purposes of part 351, a restoration protected employee is a competing employee who has been restored or reemployed following uniformed service and who, as of the date the employee receives a specific reduction in force notice, remains within the 6-month or 1-year post-reemployment protection period described in § 353.209(b). Those protection periods implement 38 U.S.C. 4316(c), which provides that a person reemployed under USERRA may not be discharged from employment, except for cause, for 1 year after reemployment if the period of uniformed service was more than 180 days, or for 180 days after reemployment if the period of service was more than 30 days but less than 181 days.

Second, OPM is revising § 351.606 to clarify that agencies must apply USERRA retention protections and restoration rights as a mandatory exception to the ordinary RIF order of release. The agency must first determine the employee’s ordinary retention standing under subpart E. The agency must then apply the mandatory exception in § 351.606(a). During the applicable 6-month or 1-year protection period, the agency may not release a restoration protected employee from the competitive level if another competing employee may be released instead.

Third, OPM is clarifying how the mandatory exception applies when an agency abolishes all positions in a competitive area under § 351.605. When an entire competitive area is abolished pursuant to § 351.605, the agency may not separate the restoration protected employee by RIF during the applicable 6-month or 1-year protection period. Instead, the employee must be assigned by the agency to a different position of like seniority, status, and pay for which the employee is qualified, consistent with 5 CFR part 353.

Fourth, OPM is revising § 353.209(a) to conform part 353 to these part 351 clarifications. Section 353.209(a) already provides that an employee performing duty with the uniformed services may not be demoted or separated, other than military separation, except for cause; that RIF is not “for cause” under that subpart; that the employee is not a competing employee under part 351; and that, if the employee’s position is abolished during the absence, the agency must reassign the employee to another position of like status and pay. OPM is

clarifying that this reassignment obligation applies when the employee’s position is abolished in a RIF, including when all positions in the employee’s competitive area are abolished under § 351.605.

Fifth, OPM is clarifying the relationship between part 351, part 353, and 38 U.S.C. 4314 when the employing agency can no longer place the employee. If the employee’s function has been transferred to another agency, the employee’s rights are governed by the transfer and restoration provisions in 5 CFR part 353. If the employing agency no longer exists and its functions have not been transferred, or if it is impossible or unreasonable for the agency to reassign the restoration protected employee, OPM will offer placement assistance elsewhere in the executive branch to the employee pursuant to 5 CFR 353.110.

These revisions also address concerns that employees performing uniformed service, or recently returned from uniformed service, may lack recent civilian ratings of record. This rule’s missing-rating provisions continue to address how ordinary performance credit is calculated for competing employees who do not have three ratings of record, including use of the modal rating for employees with no ratings during the relevant four-year period and proxy rules for employees with one or two ratings. But for a restoration-protected employee within the 6-month or 1-year post-reemployment protection period, the mandatory exception in § 351.606(a) operates independently of the employee’s ordinary retention standing. Thus, the employee is not penalized for lacking recent civilian ratings during the protected period; the agency must honor the USERRA retention protection before releasing the employee by RIF.

In addition, this rule preserves credit for uniformed service in calculating length of service for RIF purposes. Section 351.505(b)(1) provides that all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of part 351, except as otherwise provided in that section. The service computation date includes all actual creditable service under § 351.505(a) and (b).

4. Exceptions

OPM is modifying and clarifying current § 351.607, relabeling this section as *Discretionary continuing exceptions* to harmonize this section with other provisions in this chapter for which agency use is optional. OPM is also modifying and clarifying § 351.608, renaming this section *Discretionary*

temporary exceptions. OPM is also creating new flexibilities for an agency to retain an employee past the effective date of a RIF due to a government obligation. Section 351.608(c) now includes additional examples of situations in which the exception may be used, such as when an employee, or spouse of an employee, is pregnant on the effective date of a RIF or an employee has not used all available paid parental leave to care for a recently born child or a child recently placed with the employee for adoption purposes.

Paragraph (d) of § 351.608 expands the existing exception to allow employees with medical conditions or other circumstances that would qualify for use of sick leave to use other appropriate leave (paid or unpaid) or other paid time off in addition to sick leave, subject to a 90-day cap and provided that the leave is used continuously. Section 351.608(e) labels this provision “annual leave” to make clear the type of leave appropriate for an exception under this paragraph, which has been expanded to include not only employees covered by a Federal leave system under an authority other than 5 U.S.C. chapter 63 but also employees covered by a retirement law not referenced in § 351.606(b) or a health benefits law other than 5 U.S.C. chapter 89. A new § 351.608(f) establishes a temporary exception for military spouses as defined in § 351.203. An agency may retain an eligible military spouse for up to 90 days beyond the effective date of a RIF. OPM did not receive significant adverse comment regarding its proposed changes to sections 351.607 and 351.608 and is finalizing them.

F. Part 351, Subpart G: Assignment Rights

OPM is revising § 351.701(a) to replace tenure groups I and II with the competitive service tenure group in conformance with other changes in this rulemaking.

OPM is consolidating § 351.701(b) and (c), simplifying the method of applying assignment rights. Based on the new method of defining tenure groups and assigning retention standing based on performance credit as augmented by veterans’ preference, with tenure subgroup and length of service as tiebreakers, subgroups will no longer play a predominant role in determining retention standing, and thus there is no longer a need for the separate concepts of an employee “bumping” another employee in a lower subgroup, and “retreating” to the position of a lower-ranked employee in the same subgroup. Instead, a released employee will have

assignment rights to a position held by another employee with lower retention standing in the same tenure group, who is not more than three grades below the position from which the employee was released, and for which the released employee is qualified, pursuant to the criteria set forth in § 351.702 and § 351.703. This reform will significantly simplify the process of applying assignment rights in a RIF, eliminating the need for successive rounds of bumping and retreating between and within different subgroups.

OPM is eliminating § 351.701(d). With the new method of calculating retention standing implemented in this rulemaking, which emphasizes performance over tenure and length of service, OPM believes that this restriction on employees with a current annual performance rating of record of Level 2 from obtaining assignment to positions held by employees with a higher performance rating is no longer necessary. OPM did not receive significant adverse comment on the removal of this provision.

OPM is modifying § 351.702(a)(4), pertaining to qualifications for assignment to a new position, to include language clarifying that in determining qualifications for reassignment an agency must use an assessment that allows for demonstration of job-related skills, abilities, knowledge, and competencies; is based on a job analysis; and does not rely on a self-assessment from an automated examination. Commenter 0687 supported this change, expressing “appreciat[ion] that OPM has added a mechanism for agencies to utilize assessments to determine qualification for those assignments that is skills-based and consistent with merit principles in selection.”

On the other hand, Commenter 0685 expressed concern that the use of assessments would “inject subjectivity into what has traditionally been a more mechanical qualification determination.” OPM disagrees. The current rule provides that an employee is qualified for a position if the employee “[h]as the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption,” but provides no other guidance for making this determination, other than that an agency may consider “recency of experience, when appropriate.” OPM believes that the use of a validated assessment that allows for demonstration of job-related skills, abilities, knowledge, and competencies, such as a structured interview, structured resume review, or a work-related exercise, will reduce the

subjectivity of making a qualifications determination, requiring that an employee demonstrate their job-related skills in a measured, objective fashion. In so doing, OPM is aligning qualification determinations for assignment in a RIF with otherwise-applicable merit-based hiring practices required under E.O. 13932, E.O. 14171, the Chance to Compete Act of 2024 (Pub. L. 118–188), and the Merit Hiring Plan.¹⁷

However, OPM recognizes that, in some circumstances, requiring a new assessment may be unnecessary where official records already show that the employee recently and successfully performed the same or substantially equivalent work. Thus, in the Final Rule, OPM is providing that an agency is not required to administer an assessment if, during the 5-year period ending on the date the employee receives a specific RIF notice, the employee occupied the same position, or a position at the same grade or pay level with substantially the same duties, occupational series, qualification requirements, and conditions of employment, and received a rating of record of Level 3, Fully Successful, or higher, or the equivalent, for performance of those duties. This provision is intended to reduce unnecessary assessments while preserving the requirement that assignment rights be based on the employee’s ability to perform the work.

OPM is modifying current § 351.705 *Administrative assignment* to eliminate references to optional agency flexibilities to allow employees with lower retention standing to displace an employee with higher standing in the same subgroup under certain circumstances. With the more merit-based and straightforward order of retention implemented in this rulemaking, there is no longer a need for these exceptions.

OPM is retaining, and renumbering, current § 351.705(c), which provides that agencies may, at their discretion, provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701.

G. Part 351, Subpart H: Notice Provisions

OPM is modifying § 351.802(a) to include the introductory statement

¹⁷ Assistant to the President for Domestic Policy & OPM, *Merit Hiring Plan* (May 29, 2025), <https://www.opm.gov/chcoc/latest-memos/merit-hiring-plan.pdf>.

“Except as otherwise provided in this part, a specific written notice under § 351.801 must include.” During previous rulemakings, OPM appears to have inadvertently deleted the opening part of § 351.802(a), which previously read: “The notice shall state specifically.” Adding an introductory phrase to the beginning of § 351.802(a) does not change the substance of the required notice; it merely makes explicit what the heading and enumerated list already imply. It also tracks the notice requirement in § 351.802(a) with the relevant statutory text in 5 U.S.C. 3502(d)(2), which provides that a RIF notice “shall include” the personnel action, effective date, procedures used to identify employees for release, the employee’s relative ranking and how it was determined, and appeal or other rights. OPM is including the phrase “Except as otherwise provided in this part” to account for the modified notice provisions allowed under § 351.605(b) when an entire competitive area is being abolished; under such circumstances, an agency need not include the information described in § 351.802(a)(2) or (a)(4) because the agency is not required to build a retention register and must not apply assignment rights.

In the proposed rule, OPM proposed to modify § 351.802(a)(2) to substitute “veterans’ status” for “subgroup,” and to add references to notifying employees of their tenure group and subgroup. In this final rule, OPM is revising this to “veterans’ preference subgroup.” OPM is also updating language in § 351.802(a)(3) by requiring agencies to provide competing employees with a link to 5 CFR part 351 and access to the agency’s records pertinent to the RIF being run.

OPM is adopting a clarifying amendment to § 351.805(b) to conform that provision to proposed § 351.507. In the proposed rule, OPM proposed to determine retention standing as of the date the employee receives a specific reduction in force notice, rather than the date on which the RIF action is ultimately effected. OPM explained that this change is necessary because the actual effective date of a RIF action may be delayed by litigation or other unforeseen factors, and that requiring agencies to rerun retention registers whenever a RIF effective date is delayed would be costly and time-consuming.

Current § 351.805(b) already requires an agency to issue an amended written notice if a RIF is changed to a later effective date. The amendment to § 351.805(b) clarifies that an amended notice issued solely to state a later effective date is not a new specific reduction in force notice for purposes of

§ 351.507 and does not require the agency to redetermine or recalculate retention standing under subpart E. This amendment confirms the necessary consequence of § 351.507: once retention standing is fixed as of the date of the specific RIF notice, a ministerial amended notice delaying the effective date does not restart the retention-standing calculation. The amendment provides that it does not affect an agency’s obligation to correct an error under § 351.507(c).

H. Part 316, Subpart I: Post-Secondary Student Hiring Authority

OPM is revising § 316.911, which specifies how RIF procedures apply to employees hired under the post-secondary student hiring authority under 5 U.S.C. 3116 and 5 CFR part 316, subpart I, to comport with the changes to part 351 that OPM is making elsewhere in this rule. OPM did not receive significant adverse comment regarding this change and is finalizing it.

I. Part 330: RPL, ICTAP, and CTAP

OPM is making various changes to 5 CFR part 330 to conform the provisions of this part pertaining to RPL, ICTAP, and CTAP to the other changes made in this rulemaking, most notably the modifications to tenure groups I, II and III, and to update some of the terminology. RPL, ICTAP, and CTAP are designed to help employees who have been, or are about to be, displaced by a RIF find continued Federal employment, so part 330 needs to align with the revised RIF definitions and concepts in part 351. In the proposed rule, OPM stated expressly that it does not intend for the coverage definitions to apply retroactively in a way that would deprive employees who already received a RIF separation notice, declined a directed geographic reassignment, or received a notice of expected separation before the rule’s effective date of eligibility for coverage; the rule adds coverage for “another qualifying competitive service appointment, as determined by OPM” to ensure that there are no gaps.

OPM is also making several changes to strengthen the merit basis for RPL, ICTAP and CTAP placement. For example, OPM is changing the definition of “qualified” in § 330.202 to align with OPM’s definition of that same term in § 351.702 (in the context of assignment rights in a RIF). To be qualified for a position, an RPL registrant, just like an employee competing in a RIF, will be required to have the capacity, adaptability, and special skills necessary to satisfactorily

perform the duties of the position, as demonstrated through a valid, job-related assessment. This change strengthens RPL placement by ensuring candidates are matched to jobs through real, job-related assessment rather than paper or self-rated qualification screens.

OPM is also modifying § 330.213(c), which prescribes a method for selecting qualified RPL placement priority candidates based on numerical scoring. Instead of rating and ranking candidates based on job experience and education, an agency using this method must instead rate and rank candidates based on their job-related skills, knowledge, and competencies as measured by an assessment. Agencies using the numerical scoring method will be required to rate and rank qualified RPL placement priority candidates in a fair and consistent manner, and will be required to assign additional points to candidates based on veterans’ preference. This change maintains RPL priority but makes the selection process more skills-based and consistent with the revised RIF framework.

Commenter 0720, a Federal agency, supported these changes to 5 CFR part 330. It noted that the frameworks governing RPL, CTAP and ICTAP were developed decades ago, and the changes proposed by OPM would align these programs with the performance-forward retention model, improve clarity around eligibility and priority placement, and support more predictable reemployment outcomes for affected employees.

Some commenters (for example, 0037, 0125, 0317, and 0412) opposed these changes, believing that they would weaken RPL, CTAP, and ICTAP. OPM does not agree. The revisions in this rule preserve the core placement rights and selection priorities of RPL, CTAP, and ICTAP while aligning those programs with the revised part 351 RIF structure and improving the accuracy of qualification determinations. Under the revised RPL retention-standing method, the agency still must place qualified RPL candidates in retention-standing order and may not pass over a higher-standing candidate to select a lower-standing candidate. This rule does not eliminate the core CTAP rule that an agency may not place another candidate into a vacancy if an available CTAP selection-priority candidate exists, unless a regulatory exception applies. And this rule retains the requirement that an agency may not appoint a candidate from outside its permanent competitive-service workforce into a vacancy if an ICTAP selection-priority candidate is available, unless an exception applies. Further, requiring job-analysis-based assessments that

measure job-related skills, abilities, knowledge, and competencies reduces overreliance on automated self-assessments and helps ensure RPL candidates are genuinely qualified for the vacancies into which agencies place them.

OPM is adopting its proposed changes to 5 CFR part 330 in this final rule, with one exception. OPM is not proceeding with adding finalizing the appointment of an employee serving a trial period under Civil Service Rule 11 to the lists of permitted personnel actions that may be taken as an exception to CTAP selection priority in § 330.609, and ICTAP selection priority in § 330.707. It is not including these additions because CTAP and ICTAP only apply to filling vacancies in the competitive service, and trial periods under Civil Service Rule 11 apply only to excepted service employees. Thus, there is no need to identify finalizing an excepted service appointment as an exception to ICTAP and CTAP selection priority.

J. Part 353: Retention Protections During Uniformed Service

In this final rule, OPM is revising § 353.110(a) to remove an outdated reference to the address where employees seeking OPM placement assistance in the executive branch must provide notice, and add the current, up-to-date email address. This technical amendment reflects OPM's current organizational routing and does not alter any substantive right or obligation.

Additionally, in this final rule, OPM is revising § 353.301(b) to provide more information about how retention protections for individuals serving in the uniformed services operate during a RIF. OPM is making these changes in response to comments seeking more clarity on how USERRA protections operate during a RIF, and to ensure that restoration protections for employees absent because of uniformed service or compensable injury operate coherently with the final revisions to part 351.

Current § 353.209(a) already provides that an employee performing duty with the uniformed services may not be demoted or separated, other than military separation, except for cause; that RIF is not “for cause”; that such an employee is not a competing employee under part 351; and that, if the employee's position is abolished during the absence, the agency must reassign the employee to another position of like status and pay. This final rule clarifies that this reassignment obligation applies when the employee's position is abolished as part of the abolishment of an entire competitive area under § 351.605. These additional edits clarify

how restoration rights apply when an employee's position is abolished in connection with a RIF, including when an agency abolishes all positions in a competitive area under § 351.605.

OPM is removing a reference to tenure group III in § 353.301(a). Instead of “tenure group III,” OPM is substituting “temporary, term or indefinite appointment,” which encompasses the categories previously included in tenure group III.

K. Part 359: SES Furloughs

Consistent with the changes to the definition of “furlough” in § 351.203, OPM is revising the definition of “furlough” in § 359.802 (regulating furloughs in the SES) to align with OPM's longstanding guidance that SES competitive furlough requirements are not applicable to emergency shutdown furloughs due to a lapse in appropriations where the ultimate duration of the furlough is unknown at the outset. Commenter 0683 agreed that this change appropriately distinguishes between planned agency-initiated furloughs and emergency furloughs driven by congressional inaction. OPM did not receive significant adverse comment regarding this change and is finalizing it.

L. Part 362: Pathways Programs

OPM is modifying 5 CFR 362.205 regarding the Pathways Intern Program by removing references to how RIF procedures apply to Pathways interns, as those references would no longer be accurate or necessary given OPM's changes to Part 351. Pursuant to revised § 351.502(b), the termination of a Pathways intern will only be covered by RIF procedures if the intern had completed a trial period under 5 CFR 11.3. Otherwise, Pathways interns could be retained or separated by an agency without regard to RIF procedures.

OPM is also revising § 362.306(a) to conform the Recent Graduates Program regulation to the final revisions to part 351. Current § 362.306(a) provides that Recent Graduates are in excepted service Tenure Group II for purposes of § 351.502 and that expiration of a Recent Graduates appointment is not otherwise subject to part 351. Because this final rule replaces the prior excepted-service tenure-group structure with the “excepted service tenure group” and excludes employees serving a trial period from RIF competition, the current reference to excepted service Tenure Group II is no longer accurate.

This final rule therefore provides that Recent Graduates are in the excepted service tenure group for purposes of § 351.502 upon completion of a trial

period under § 11.3. This amendment harmonizes § 362.306 with the revised definition of “competing employee” and the revised coverage and tenure provisions in part 351. It also parallels the rule's treatment of Pathways interns, for whom OPM proposed to remove obsolete RIF language because Pathways participants serving trial periods are not competing employees under the revised part 351 framework. Revising § 362.306(a) applies the same principle to the Recent Graduates Program and prevents confusion caused by obsolete tenure-group terminology.

M. Part 430: Performance Appraisals

OPM is revising § 430.208(e)(4) to conform part 430 to the modified RIF performance-credit framework in part 351. Current § 430.208 refers to summary levels as a reference point for assigning additional retention service credit under part 351. Because this rule eliminates the current performance-adjusted service-credit model and replaces it with direct performance-credit values under § 351.503, that reference is no longer accurate.

The revised provision preserves the role of summary levels and summary-level patterns as the common reference point for describing ratings of record and applying related regulations. Thus, ratings of record assigned under part 430 continue to provide the baseline for calculating performance credit in a RIF. At the same time, the revised language clarifies that enhanced performance values authorized by § 351.503 are governed by part 351 and are not constrained by the ordinary summary-level reference in § 430.208.

Enhanced performance values under § 351.503 do not change the employee's rating of record or alter the part 430 appraisal system. They operate only for RIF retention-standing purposes, and only where part 351 permits such treatment. This clarification ensures that part 430 and part 351 operate together: part 430 supplies the rating-of-record and summary-level framework, while part 351 governs how those ratings, and any authorized RIF-specific enhancements, are converted into retention-standing credit.

IV. Implementation Considerations

OPM recognizes that agencies that may be conducting RIFs may be impacted by the changes resulting from this rule, particularly where an agency has recently issued RIF notices with RIF effective dates that may occur near the effective date of this rule. To provide clear implementation instructions, OPM is requiring compliance with this final

rule based on the date the agency issues the RIF notice.

An agency that issues a RIF notice before September 2, 2026 must process the RIF under the regulations in effect when the notice was issued. An agency that issues a RIF notice on or after September 2, 2026 must apply the RIF provisions as amended by this final rule. OPM believes that this implementation approach provides clear and consistent guidance to agencies. It also aligns with the revised regulations, under which the effective date of retention standing is calculated as of the date the employee receives the RIF notice, rather than the RIF effective date (typically 60 days after issuance of the RIF notice).

V. Expected Impact of This Rule

A. Statement of Need

OPM is finalizing these revisions because the existing RIF regulations no longer provide agencies, employees, or the public with a sufficiently clear, efficient, flexible, and merit-based framework for managing workforce reductions and organizational realignments. RIF rules determine not only which positions are abolished, but which employees remain to carry out the Government's continuing responsibilities after a reduction. The public interest is therefore not served by a system that treats RIFs as a mechanical exercise in tenure-based ordering, rather than as a workforce-shaping process that seeks to preserve agency capacity, operational continuity, and the ability to perform mission-critical work.

The statutory RIF framework directs OPM to prescribe regulations giving due effect to tenure of employment, military preference, length of service, and efficiency or performance ratings. The statute does not require OPM to preserve the current regulatory hierarchy or to subordinate performance to tenure and length of service. OPM has concluded that the current rules do not give sufficiently meaningful effect to performance and are not adequately suited to the needs of modern agencies. Under current regulations, employees are ranked first by tenure, then veterans' preference, then length of service, with performance used only to augment service credit; as OPM explained in the proposed rule, this structure may result in higher-performing employees being separated while lower-performing, more senior employees are retained.

Several commenters agreed that the existing RIF system has become too complex, too burdensome, and insufficiently aligned with agency mission needs. Commenter 0685

explained that RIF policy directly affects agency effectiveness by influencing which employees are retained, how quickly restructuring can occur, and how resources are allocated across mission-critical functions; it further observed that current rules have accumulated layers of procedural requirements and categorical distinctions that can impede timely workforce adjustments. Commenter 0720, a Federal agency, similarly described its current RIF process as requiring complex tenure groupings, broad competitive-area analyses, manual retention registers, bump-and-retreat determinations, transfer-of-function analyses, and coordination with CTAP, ICTAP, and RPL, all of which impose substantial operational burdens.

The Federal Government's missions have changed substantially since the current RIF framework was developed. Agencies now operate in environments shaped by evolving statutory responsibilities, constrained budgets, changing technology, new skill requirements, diverse hiring authorities, distributed worksites, and complex organizational structures. Commenter 0687 emphasized that agencies need tools to right-size and realign their workforces in response to labor-market disruption, advances in technology, and congressionally directed mission changes, and that personnel systems must be flexible enough to ensure agencies have the right people, with the right skills, for the missions assigned to them. Commenter 0719, a Federal agency, likewise explained that changing mission needs, budget environments, evolving skill requirements, varied hiring and funding structures, and administrative barriers under current rules can hinder operational agility and effective service to the public.

The current rules also impose real administrative costs. OPM explained in the proposed rule that a RIF can be a complex operational endeavor that may take as long as 14 months from planning through completion, with time-consuming tasks including review of position descriptions, validation of competitive levels, verification of veterans' preference and service computation dates, updating qualifications data, and creation of retention registers. For example, Commenter 0720, a Federal agency, reported a large and heterogeneous workforce across multiple appointment types, probationary categories, special hiring authorities, and retention right classifications, and explained that manual processes for retention registers

and transition programs can become unsustainable when affected populations exceed 200 employees.

OPM is also finalizing this rule because retaining high performers during a RIF is essential to effective government. A RIF leaves an agency with fewer employees to perform continuing work. The employees who remain must maintain operations, absorb mission-critical responsibilities, implement new priorities, and preserve public service delivery. Commenter 0673 opined that performance has been systematically underweighted in current RIF competition and that the proposed rule better links retention to efficiency, performance, and contribution to agency mission success. Commenter 0720 similarly stated that when RIFs are necessary, agency operations benefit from retaining the highest-performing and most effective employees, and that performance ratings are a more direct measure of contribution than pure seniority.

The final rule addresses this need by replacing the current performance-adjusted service computation date model with a more transparent performance-credit model. Performance will be measured directly through numerical credit for ratings of record, veterans' preference will be added as explicit additional credit, tenure subgroup will resolve ties, and actual service computation date will resolve remaining ties. This approach gives effect to each statutory factor while making the retention register easier to understand, administer, and audit. OPM's final rule provides that employees will be ranked by tenure group, then by performance credit as augmented by veterans' preference, and then—where scores are tied—by tenure subgroup and service computation date.

OPM also agrees with commenters that modernization must preserve structure and predictability. This rule is not intended to replace clear rules with unbounded discretion. Rather, it establishes a more coherent framework: ratings of record are used under defined lookback rules; agencies may establish cutoff dates; performance credit must be applied uniformly and consistently within the competitive area; veterans' preference remains a substantial component of retention standing; tenure and length of service remain part of the ranking process; and employees continue to receive notice and access to pertinent records. These guardrails respond to commenters who supported greater flexibility and performance-based retention while emphasizing the importance of clarity, documentation, and consistent application.

This rule also addresses the need to preserve workforce pipelines and future agency capacity. Current rules can require agencies to release the least-tenured employees first, even where those employees represent high-potential early-career talent in which the agency has invested substantial recruiting, training, and development resources. Commenter 0719, a Federal agency, explained that this dynamic contributes to a “bathtub” workforce structure, weakening the mid-career pipeline, reducing the agency’s capacity to train new employees, and increasing vulnerability as large workforce segments approach retirement eligibility. This rule’s treatment of probationary, trial-period, and temporary employees gives agencies greater flexibility to make appropriate workforce decisions for employees whose appointments have not yet become final or whose service is inherently time-limited.

OPM is further finalizing related changes to transfer-of-function, RPL, CTAP, ICTAP, and related provisions. Agencies must often restructure functions, realign work, manage temporary funding or workload disruptions, and provide transition assistance to displaced employees. Commenter 0719, a Federal agency, commented that existing transfer-of-function rules can discourage straightforward internal realignments that would reduce duplication, improve efficiency, or better align staff with mission priorities. Commenter 0720, a Federal agency, likewise stated that legacy transfer-of-function, erosion-of-duties, CTAP, ICTAP, and RPL rules can create ambiguity and burdens during restructuring. This rule updates these related programs to make the overall workforce transition framework more coherent and administrable while preserving appropriate employee notice, priority placement, and reemployment protections.

Accordingly, OPM has determined that this rule is necessary to modernize the Government-wide RIF framework for the contemporary Federal workforce. It will reduce avoidable administrative burden, improve transparency, better align retention outcomes with demonstrated performance, preserve meaningful veterans’ preference and service credit, support recruitment and retention of future talent, and help agencies carry out essential public missions after workforce reductions. This rule ensures that when agencies must restructure, the rules governing that process leave the Government smaller where necessary, but still

capable, high-performing, and accountable to the American people.

B. Impact

OPM expects this rule to produce a more efficient, transparent, and merit-based RIF process than the current regulatory framework. The rule modernizes a number of provisions that have become complex, resource-intensive, and insufficiently aligned with the needs of contemporary Federal agencies. The rule is intended to make RIF regulations more streamlined, efficient, and merit-based by prioritizing performance over tenure and length of service, revising which employees are included in RIF competition, and updating related rules governing RPL, CTAP, ICTAP, transfers of function, and furloughs.

The principal impact of this rule will be to increase the likelihood that agencies retain employees with the strongest demonstrated performance when a RIF is necessary. Under the current framework, retention standing is driven first by tenure group, veterans’ preference subgroup, and length of service as augmented by performance credit. As a result, performance often operates only after status- and service-based factors have already determined the relevant competitive grouping. This rule changes that balance by using performance credit, augmented by veterans’ preference, as the primary ordering factor within the relevant tenure group, while preserving tenure subgroup and service computation date as tie-breakers. This approach gives effect to each statutory factor while making performance a more direct and consequential measure of retention standing.

These changes are expected to improve agency mission performance after a RIF. A RIF leaves an agency with fewer employees to perform continuing work; therefore, the composition of the remaining workforce is critical. Agencies must continue to administer statutory programs, deliver services to the public, maintain operational continuity, and adapt to changing workloads, technologies, and funding levels. Commenters supporting the rule emphasized that RIF policy directly affects agency effectiveness by determining which employees remain, how quickly restructuring can occur, and how resources are allocated across mission-critical functions.

This rule also improves RPL, CTAP, and ICTAP administration. The changes to part 330 align those programs with the revised RIF framework while preserving the core purpose of transition assistance: helping employees affected

by restructuring find continued Federal employment. Under this rule, RPL selection by retention standing continues to prohibit an agency from passing over a higher-standing qualified RPL candidate to select a lower-standing candidate, and ICTAP selection priority continues to bar appointment from outside the permanent competitive-service workforce when an available ICTAP priority candidate exists, unless an exception applies.

The rule’s changes to RPL, CTAP, and ICTAP are expected to improve both efficiency and merit because they move placement decisions toward job-related assessment and away from overreliance on paper qualifications or automated self-assessments. The changes align with the Federal Government’s broader movement toward skills-based hiring, validated assessments, and reduced reliance on educational credentials where not necessary for job performance. These changes will help agencies identify affected employees who are genuinely qualified for available positions and improve the match between displaced employees and mission needs.

Overall, OPM expects the rule to produce substantial qualitative benefits. Agencies will have clearer and more administrable RIF procedures, greater ability to retain high-performing employees, improved flexibility to restructure functions and manage long furloughs, and more useful tools for matching displaced employees to available vacancies. Employees will benefit from a more transparent scoring model, clearer notice and records, and a RIF system that better reflects actual performance while still preserving veterans’ preference, tenure, and length of service. The public will benefit because agencies emerging from a RIF will be better positioned to continue performing essential missions with a smaller but stronger and more effectively aligned workforce.

C. Costs

This rule will affect RIFs conducted by most Federal agencies. OPM continues to expect that the rule will require agencies to review the final regulatory text, update internal RIF policies and procedures, revise templates and training materials, and train human resources practitioners, labor-relations staff, legal staff, workforce planners, and managers who may participate in future RIF planning or implementation. As in the proposed rule, OPM estimates first-year implementation costs associated with rule review, policy updates, and training, but does not expect this rule to

substantially increase ongoing administrative costs because the rule modernizes, simplifies, and clarifies existing RIF procedures rather than creating a new personnel program.

OPM continues to use the same general methodology set forth in the proposed rule. The proposed rule estimated that affected agencies would need an average of 300 hours in the first year after publication of this rule to review the rule and update policies, procedures, and training. Using the assumptions stated in the proposed rule, OPM estimated first-year implementation costs of approximately \$43,128 per agency for 80 agencies and approximately \$3,450,240 Government-wide. OPM continues to believe that estimate reasonably captures the principal first-year implementation burden. Some agencies may incur additional costs to ensure that staff have appropriate assessment-measurement expertise, particularly for job-related assessments used in RPL qualification and selection and in RIF assignment-right determinations, but OPM expects these costs to be limited and outweighed by the administrative efficiencies produced by this rule.

OPM also expects this rule to produce significant savings when agencies actually conduct RIFs. A RIF is a complex operational endeavor that may require months of planning, record validation, competitive-level review, retention-register creation, qualification determinations, notice preparation, and assignment-right analysis. In the proposed rule, OPM explained that preparation and execution can last as long as 14 months, and identified two especially time-consuming steps: employee data and record review, validation, and correction; and retention-register creation. OPM estimated illustrative costs of approximately \$20,000 for data/record review, validation, and correction in a 100-person competitive area, approximately \$2,000 for retention-register creation and \$2,000 for completing qualification assessments when applying assignment rights in such a competitive area.

Commenter 0688 agreed that the rule will produce cost savings by simplifying the administrative burdens of conducting a RIF, including by reducing the number of employees subject to RIF competition and narrowing the scope of complex displacement analysis. The commenter noted that RIF-related costs are incurred for each competitive area and are tied to the number of employees subject to RIF procedures, so even incremental reductions in the scope of RIF competition can produce

meaningful aggregate savings across agencies. The commenter also noted that studies by the U.S. Government Accountability Office show that RIFs are often more costly relative to attrition and buyouts due in part to the costs of implementing bump-and-retreat during a RIF.¹⁸

OPM concurs. This rule will reduce costs by decreasing the number of employees for whom agencies must calculate retention standing, validate performance and service data, place employees on retention registers, and conduct assignment-right analyses. This is particularly important because many of the employees not included in RIF competition are employees who, under the current framework, would typically have low retention standing due to short tenure, limited service, lack of finalized appointment status, or absence of ratings of record. Requiring agencies to process these employees through the full RIF competition machinery often produces little practical benefit while increasing the data-validation, ranking, notice, and placement burdens associated with a RIF.

This rule will also reduce costs by replacing the current “bump and retreat” framework with a more straightforward assignment-right standard tied to lower retention standing. Under the current system, agencies must conduct detailed displacement analyses based on tenure group, subgroup, grade intervals, representative rates, prior positions held, qualification determinations, and potential cascading displacement. This rule simplifies that framework by using the employee’s retention standing under the revised system and assignment to a qualifying position held by an employee with lower retention standing. This change will reduce the time and expertise required to determine assignment rights, reduce the risk of error, and reduce the need for repeated second-round displacement determinations.

This rule will also reduce costs associated with abolishment of an entire competitive area. Where an agency eliminates all positions in a competitive area, this rule does not require the agency to prepare a retention register or conduct ordinary assignment-right analysis because no positions remain in that competitive area to which employees could be assigned. Instead,

the rule provides a tailored notice requirement explaining that the employee was not ranked relative to other competing employees because all positions in the competitive area are being abolished. This will avoid unnecessary ranking and placement work in the very circumstances where such work would not change the outcome.

OPM further expects cost savings from the transfer-of-function revisions. Commenter 0719, a Federal agency, commented that existing transfer-of-function rules can require extensive procedures even for straightforward internal realignments, discouraging changes that could reduce duplication, improve efficiency, or better align staff with mission priorities. OPM agrees that this rule’s narrower and clearer treatment of transfers of function will reduce unnecessary process for internal organizational changes while preserving RIF protections where a RIF action is actually taken.

OPM also expects efficiencies from the rule’s part 330 changes. RPL, CTAP, and ICTAP are preserved, but this rule aligns them with the revised RIF framework and requires more job-related assessment methods. Agencies should benefit from clearer standards for determining whether an RPL candidate is qualified and from selection procedures that focus on job-related skills, abilities, knowledge, and competencies rather than overreliance on automated self-assessments. These changes may require modest implementation effort, but they should reduce mismatches, improve placement quality, and avoid costs associated with unclear or poorly supported qualification determinations.

OPM recognizes that some commenters argued the rule could increase costs in other ways. Commenter 0684 argued that OPM failed to consider potential costs to retirement funds if more senior employees are released and become eligible for discontinued-service retirement. OPM has considered that concern but does not believe it provides a basis for materially revising the cost analysis. This rule does not require agencies to conduct RIFs, does not set agency staffing levels, and does not determine how many employees will be separated in any future RIF. Any effect on retirement funds would depend on future agency decisions to conduct RIFs, the number and location of abolished positions, the age and service profiles of affected employees, individual employee elections, the availability of reassignment or placement, and other

¹⁸ U.S. Gov’t Accountability Office, *Reduction in Force Can Sometimes Be More Costly to Agencies Than Attrition and Furlough*, GAO/PEMD-85-6 at 18 (July 24, 1985); U.S. General Accounting Office, *Federal Downsizing: The Costs and Savings of Buyouts Versus Reductions-in-Force*, GAO/GGD-96-63 at 6 (May 14, 1996).

facts not reasonably predictable in this Government-wide rulemaking.

OPM also recognizes that this final rule includes certain additional guardrails that may impose modest process costs. OPM expects any marginal cost associated with these clarifications to be small because they largely require documentation and explanation that prudent agencies would already prepare when conducting a RIF. The guardrails should also reduce downstream costs by preventing misunderstanding, reducing errors, improving defensibility, and decreasing disputes over how the rule operates.

After considering the comments, OPM concludes that this rule's benefits and cost savings outweigh its implementation costs. The rule will require agencies to update policies and train staff, and some agencies may incur additional assessment-related or documentation costs. But those costs are limited and front-loaded. By contrast, the rule's expected savings will accrue whenever agencies conduct RIFs or related restructuring actions: fewer employees unnecessarily processed through retention competition, simpler retention and assignment-right calculations, reduced reliance on complex bump-and-retreat analysis, more efficient treatment of competitive-area abolishment, clearer transfer-of-function rules, and more effective RPL, CTAP, and ICTAP administration. OPM therefore concludes that this rule will reduce overall administrative burden, improve the cost-effectiveness of RIF administration, and better align workforce-restructuring costs with agency mission needs.

D. Reliance Interests

In the proposed rule, OPM expressly sought comment on reliance interests and stated that it would address such comments in any final rule that it issued. OPM received several comments proposing various reliance interests regarding the current RIF regulations. However, after careful review, OPM does not believe that reliance interests justify retaining the RIF regulations in their current form.

Commenter 0680 contended that civil servants have "remained in the federal workforce with the understanding that their tenure and length of service would grant them some protection during government downsizing," while "many employees, particularly those in professional and specialized roles, could have earned higher compensation in the private sector but chose federal service in part because of the stability and retention protections embedded in statute and regulation." On the other

hand, Commenter 0673 argued that "[n]o federal employee accepts a federal employment position, declines a private-sector job offer, or makes any major life decision based on the weighting of tenure versus 'efficiency or performance' based on a hypothetical future RIF."

OPM recognizes that employees and unions may have relied on the current RIF framework in understanding how workforce reductions have historically been conducted, and that long-serving Federal employees deserve an orderly and transparent RIF system. OPM also recognizes that institutional knowledge is important in agencies with specialized missions.

The final rule addresses these reliance interests by ensuring that the new rules apply only prospectively, and by preserving tenure group, tenure subgroup, veterans' status, and length of service as retention factors, while recalibrating how those factors operate so that performance has a more meaningful role in retention.

However, OPM does not agree that employees have a vested right to any particular retention formula. OPM also believes that reliance interests do not require OPM to preserve the current regulatory hierarchy indefinitely. OPM has the responsibility to prescribe RIF regulations under 5 U.S.C. 3502, and OPM may adjust the relative operation of statutory factors so long as each receives due effect. This rule continues to give effect to tenure and length of service while increasing the role of performance in a manner OPM concludes is better aligned with merit-system principles and agency mission needs.

OPM believes that general expectations that the current regulatory formula will remain unchanged do not prevent OPM from prospectively revising regulations that it reasonably finds outdated or inefficient. Indeed, OPM notes that, in the past decade, the Department of Defense, by far the largest Federal agency, moved from the current tenure-based RIF framework to a performance-first system much like OPM's final rule, thus undermining any reasonable expectation that RIF rules would remain static. Further, OPM proposed, but did not finalize, changes to its RIF regulations in 2020 to make performance a greater factor in RIFs. As Commenter 0673 pointed out, "An expectation that tenure would dictate retention in a hypothetical future RIF is the very type of 'unilateral expectation' that does not reasonably give rise to a reliance interest."

OPM concludes that the public interest in a clearer, more efficient, and

more performance-based RIF system outweighs reliance on the existing regulatory ordering. Agencies must be able to restructure while retaining employees best able to carry out remaining mission-critical work. This rule is intended to ensure that RIFs leave agencies not merely smaller, but better able to perform their statutory responsibilities.

Further, this final rule does not retroactively invalidate past RIF actions or past service; it changes how future RIF retention standing will be calculated. The rule gives greater weight to performance, a statutory factor that OPM concludes should play a more central role in determining which employees are retained when agencies must restructure.

OPM also believes it is appropriate to consider agency and public reliance interests. Agencies rely on the ability to restructure effectively, maintain mission delivery, and retain employees best able to perform remaining work after a downsizing. A rule that more effectively retains high-performing employees serves those interests and better protects the public from mission degradation following a RIF.

Commenter 0677 argued that "[m]any federal agencies operate under negotiated collective bargaining agreements (CBAs) that include seniority protections in RIF procedures." OPM notes, however, that a provision that prescribes the order of retention in a Federal agency RIF is likely unlawful. Under the Federal Service Labor-Management Relations Statute (FSLMRS), each agency has the right to determine whether to conduct a RIF and exercise its discretion in determining which positions will be abolished or retained. Among the enumerated management rights of Federal agencies under the FSLMRS are the rights to "layoff, and retain employees in the agency." 5 U.S.C. 7106(a)(2)(A); *see also AFGE Local 1827*, 58 FLRA 344, 345 (2003); *Nat'l Fed'n of Fed. Emps., Loc. 108*, 16 FLRA 807, 809 (1984) (formulation of retention registers involves "managerial judgment," and a proposal that "would include the Union in the decision-making process" regarding a RIF "interferes with management's right to layoff employees under section 7106(a)(2)(A) of the Statute."). Further, parties cannot bargain for provisions that contravene existing government-wide regulations. The express reservation, in the FSLMRS, of the right to layoff and retain employees in the agency, and the prohibition on CBA provisions that violate government-wide regulations (such as OPM's RIF

regulations), undermines any reliance interests in RIF provisions that would prescribe RIF procedures.

However, OPM recognizes that there are aspects of a RIF that may be properly bargainable, such as issues pertaining to procedures and appropriate arrangements regarding RIFs.¹⁹ OPM acknowledges Commenter 0674's concern that employees and unions have bargained against the backdrop of existing RIF regulations for many years, including provisions addressing seniority, service credit, furloughs, pay retention, relocation, and the consequences of displacement.

With respect to lawful RIF provisions in existing CBAs, however, the FSLMRS itself accounts for any reliance interests. The FSLMRS (at 5 U.S.C. 7116(a)(7)) states that it is an unfair labor practice for an agency "to enforce any rule or regulation" that conflicts with an applicable CBA if the CBA was in effect before the rule or regulation was prescribed, except for rules or regulations implementing 5 U.S.C. 2302, which concerns prohibited personnel practices. Thus, under the FSLMRS, a newly issued government-wide rule or regulation that does not implement section 2302 does not automatically supersede an existing, conflicting collective-bargaining-agreement provision mid-term.

Thus, for ordinary fixed-term or renewed agreements, FLRA precedent has stated that the preexisting CBA provision is protected for the express term of the agreement during which the later regulation was first prescribed, "but no longer," *see U.S. Dep't of Def., Defense Contract Audit Agency, Central Region*, 37 FLRA 1218, 1227–28 (1990); once the agreement expires, the Government-wide regulation becomes enforceable by operation of law and its enforceability does not depend on completing negotiations.

In sum, OPM has closely considered reliance interests. Those interests are important, but they do not outweigh the public, agency, and workforce benefits of a modern RIF system that better retains high-performing employees, reduces unnecessary administrative complexity, supports mission continuity, and gives agencies practical tools to realign workforces in response to changing missions, budgets, technology, and skill needs. The statute (5 U.S.C. 3502) requires OPM to give "due effect" to tenure, military preference, length of service, and

performance ratings in a RIF; it does not freeze the current regulatory hierarchy or require performance to remain subordinated to tenure and length of service.

This rule advances the core merit-system objective that employees who contribute most to mission success should be more likely to remain when agencies must reduce positions, while still preserving veterans' preference, tenure, length of service, notice, records, and transition-assistance protections. This rule's central purpose is making RIF regulations more streamlined, efficient, and merit-based, including by prioritizing performance and updating RPL, CTAP, ICTAP, transfer-of-function, and furlough rules. OPM received many comments explaining that the existing RIF framework is overly complex and administratively burdensome; that performance has been underweighted; that agencies need tools to right-size and reskill their workforces; and that the rule will help agencies preserve mission-critical expertise, early-career talent, and operational continuity.

Accordingly, OPM concludes that any reliance interests in the prior regulatory formula are outweighed by the Government's compelling need for a clearer, faster, more performance-centered, and mission-focused RIF system. The rule is prospective, preserves the statutory RIF factors, and does not disturb past RIF actions or accrued service; it simply recalibrates how future RIF competition will be administered so that agencies emerging from a reduction are not merely smaller, but better able to serve the American people.

E. Benefits

This rule offers several positive improvements to the RIF process. Agencies will benefit by having an increased ability to retain their better-performing employees in a RIF. This outcome will help agencies more effectively and efficiently meet their mission-critical responsibilities in the aftermath of a RIF and thus provide a higher level of service to the public than would otherwise be the case. Agencies emerging from a RIF must continue delivering services, enforcing statutes, managing programs, protecting public resources, and adapting to changing workloads with fewer employees. Retaining stronger performers is therefore directly connected to mission continuity and public service quality.

This rule will also reduce administrative burden and cost. RIFs are among the most complex personnel actions agencies administer. In the proposed rule, OPM explained that

preparing for and running a RIF can last as long as 14 months from planning through completion, and that the notification and preparation phase alone often takes 4 to 6 months. OPM identified particularly time-consuming tasks, including reviewing position descriptions, validating competitive levels, verifying veterans' preference and SCD data, updating qualifications data, and creating retention registers.

This rule reduces those burdens in several ways. It simplifies the tenure framework, treats certain probationary, trial-period, temporary, time-limited, Schedule C, and Schedule G employees as not included in RIF competition, clarifies competitive-area rules, and reduces unnecessary retention-register work when all positions in a competitive area are abolished. Fewer employees in RIF competition means fewer employee records to validate, fewer performance and service-credit calculations, fewer register entries to create and review, and fewer assignment-right determinations to make. OPM estimated in the proposed rule that, under current rules, employee data and record review, validation, and correction for a 100-person competitive area costs about \$20,000, and retention-register creation costs about \$2,000, before accounting for higher costs that may result when agencies procure vendor or shared-service support.

These savings are especially important for agencies that lack deep in-house RIF expertise. Commenter 0720, a Federal agency, described the current process as requiring complex tenure groupings, competitive-area analyses, retention registers, bump-and-retreat determinations, transfer-of-function analyses, and coordination with CTAP, ICTAP, and RPL. This rule reduces these burdens by simplifying the order-of-retention framework and replacing the current bump-and-retreat terminology with a more straightforward assignment-right standard tied to lower retention standing. That change will reduce the time required to determine displacement rights, limit cascading displacement analyses, and lower the risk of errors that can delay implementation or lead to disputes.

This rule will also produce benefits when an agency abolishes every position in a competitive area. In that circumstance, no remaining position exists in the competitive area to which an employee could be assigned through ordinary assignment rights. Requiring the agency to prepare a full retention register and conduct ordinary assignment-right analysis would therefore impose cost without changing the result. This rule avoids that

¹⁹ See OPM, *Guidance on Collective Bargaining in Connection with RIFs* (March 12, 2025), <https://www.opm.gov/chcoc/transmittals/2025/Guidance%20on%20collective%20bargaining%20on%20ARRPs%20FINAL.pdf>.

unnecessary burden while adding a tailored notice requirement explaining that the employee was not ranked relative to other competing employees because all positions in the competitive area are being abolished. This approach preserves transparency while eliminating process that would not affect employee placement.

This rule also improves workforce planning and talent retention. Current RIF rules tend to place the newest employees at the bottom of the register, even where they are high-potential employees with skills the agency needs for future mission delivery. This rule gives agencies greater flexibility to preserve early-career talent and critical skill pipelines, while still requiring actions involving those employees to be consistent with the terms of their appointments and applicable law.

This rule will also improve agencies' ability to realign work internally. Current transfer-of-function rules can impose cumbersome procedures on internal reorganizations that do not implicate the statutory concerns associated with interagency transfers. Commenter 0719, a Federal agency, commented that the proposed revision to the transfer-of-function definition would significantly reduce administrative burden associated with internal restructuring, remove constraints that slow organizational adjustments, and better allow the agency to respond to evolving skill requirements and mission needs. This rule preserves RIF protections where a RIF action is actually taken but avoids forcing agencies to use transfer-of-function procedures for routine internal realignments that can be managed through ordinary staffing and management authorities.

This rule's changes to RPL, CTAP, and ICTAP will further enhance efficiency and merit. These programs remain important transition protections for employees affected by restructuring. This rule aligns them with the revised RIF framework and requires more job-related assessment of qualifications, including assessments based on job analysis and not principally reliant on automated self-assessments. That will help agencies identify affected employees who are genuinely qualified for available positions, improve the match between displaced employees and vacancies, and reduce errors or disputes caused by weak or paper-based qualification determinations.

The benefits of this rule also extend to employees. A clearer RIF system reduces uncertainty, makes the basis for retention standing easier to understand, and reduces the risk of avoidable error.

The current adjusted-SCD model obscures the effect of performance by converting ratings into artificial years of service. The final rule's point-based approach is easier for employees to review and easier for agencies to explain. Employees affected by a RIF will benefit from clearer notice, more transparent records, and more intelligible retention calculations.

Finally, this rule benefits the public. The public depends on agencies to continue performing essential functions even after budget reductions, reorganizations, or changes in workload. A RIF system that better retains high performers, reduces administrative burden, and allows agencies to realign work efficiently will help agencies preserve capacity and maintain service quality after downsizing.

OPM therefore concludes that this rule will produce substantial qualitative and quantitative benefits. It will make RIF administration less costly; improve agencies' ability to retain high-performing employees; reduce unnecessary processing of employees not included in RIF competition; simplify assignment-right determinations; avoid needless retention-register work when all positions in a competitive area are abolished; improve transition-placement administration; and support more effective internal restructuring. This rule will help ensure that when agencies must reduce positions, they remain able to perform their missions with a smaller workforce.

F. Regulatory Alternatives

OPM considered a range of alternatives before adopting this rule. In evaluating those alternatives, OPM considered the statutory direction in 5 U.S.C. 3502, the current structure of 5 CFR part 351, comments submitted by agencies, unions, employee organizations, and public-interest organizations, and the practical need for a RIF framework that agencies can administer efficiently while still giving due effect to tenure, military preference, length of service, and performance ratings.

No-action alternative. OPM first considered making no changes to the current RIF regulations. OPM rejected that alternative. As explained in the proposed rule, the current regulations have become difficult and inefficient to administer, require substantial agency resources, and do not adequately address the needs of modern agencies. The existing framework ranks employees first by tenure group, then veterans' preference subgroup, and only then by length of service as augmented

by performance credit; performance therefore often affects retention only after categorical status- and service-based factors have already determined the relevant ranking universe. The no-action alternative would leave in place a system that OPM has concluded insufficiently reflects demonstrated performance and that agencies report is burdensome to apply.

Several commenters supported this conclusion. Commenter 0720, a Federal agency, explained that the current RIF process requires complex tenure groupings, competitive-area analyses, retention registers, bump-and-retreat determinations, transfer-of-function analyses, and coordination with CTAP, ICTAP, and RPL, all of which impose substantial administrative burdens in a large and varied workforce. Commenter 0719, another Federal agency, similarly stated that current RIF rules limit its ability to retain high-performing employees during workforce shaping necessitated by changing mission needs and budget environments. Commenter 0685 stated that the existing RIF framework has accumulated layers of procedural requirements, categorical distinctions, and technical rules that make it complex, resource-intensive, and less aligned with modern workforce realities. OPM therefore concludes that retaining the current framework unchanged would not adequately address the problems identified in the proposed rule or the comment record.

Reissuing the 2020 proposed rule. OPM also considered reissuing the proposed rule published in the **Federal Register** on December 17, 2020 (85 FR 81839). OPM rejected that alternative as too narrow. The 2020 proposal would not sufficiently address agency feedback that current regulatory provisions are decades old, difficult to apply, and a source of needless costs and delays. The 2020 proposal would not have comprehensively addressed the core issues that this rule addresses: the weight given to performance in retention standing, the treatment of employees whose appointments have not become final or are inherently short term, the complexity of transfer-of-function rules and bump-and-retreat provisions, and the need to allow for skills-based assessments in administering RIF assignment rights, RPL, CTAP, and ICTAP.

OPM has concluded that incremental revision of isolated provisions would leave the principal defects of the existing framework intact. The current RIF rules function as an interlocking system: retention standing affects release from competitive level; release affects assignment rights; assignment

rights affect displacement; displacement affects placement programs; and transfer-of-function and furlough rules affect whether and how agencies must use RIF procedures. A narrow reissuance of the 2020 proposal would not provide the coherent modernization needed to make the RIF process more efficient, more transparent, and more focused on retaining employees best able to perform the agency's continuing work.

Increasing the amount of current performance-based service credit. Commenter 0680 urged OPM to consider increasing the amount of performance-based additional service credit under the current framework, such as increasing Level 5 credit from 20 years to 22 years. OPM considered that alternative and rejects it. Increasing the number of years credited for performance would not solve the structural problem with the current system: performance would still be converted into an artificial adjustment to service computation date and would still operate only after tenure group and veterans' preference subgroup have already been applied. The current adjusted-SCD model is one of the features that makes the RIF process difficult for employees to understand and burdensome for agencies to administer. Merely increasing the number of years added to service credit would preserve that complexity.

That alternative would also fail to give performance the more direct effect OPM has determined is appropriate. Under the current framework, a higher-performing employee in a lower tenure group may still be ranked below a lower-performing employee in a higher category. OPM believes that performance ratings of record are a more direct measure of demonstrated contribution than length of service alone, and the broader civil-service statutes support using appraisal results in retention decisions. Under 5 U.S.C. 4302, agencies must use performance appraisal results as a basis for actions including training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees; and the merit-system principles state that the Federal workforce should be used efficiently and effectively and that employees should be retained on the basis of the adequacy of their performance. OPM is not required to adopt a less effective alternative that would leave the principal defects of the current framework in place.

Maintaining the current multi-factor framework while "refining" performance metrics. Commenter 0678

suggested that OPM consider maintaining a balanced multi-factor framework while refining performance metrics; enhancing the quality and consistency of performance evaluations rather than elevating their weight; providing guardrails or validation mechanisms to ensure performance ratings are reliable before using them as a primary RIF determinant; and implementing targeted reforms to address specific inefficiencies without restructuring the system. Commenter 0683 made similar comments, agreeing that performance should matter in retention decisions and that the current RIF regulations could benefit from modernization, but expressing concern that performance ratings should not be given determinative weight without additional safeguards.

OPM agrees that performance ratings must be reliable, consistently applied, and supported by appropriate safeguards. OPM does not agree, however, that appraisal-system improvements are a substitute for reforming the RIF regulations. The alternatives suggested by Commenter 0678 would leave in place the core structure under which tenure group, veterans' preference subgroup, and length of service dominate the ranking process and performance is converted into service-credit years. Those alternatives would not simplify retention registers, would not eliminate the artificial adjusted-SCD calculation, would not address the complexity of bump-and-retreat determinations, and would not address inefficiencies in transfer-of-function procedures. In sum, they would leave in place an overly complicated set of regulations that agencies struggle to administer and which lead to errors and unnecessary costs.

OPM also notes that concerns about rating quality do not justify giving performance only a marginal role in RIF retention. Performance ratings already affect RIF retention standing under current regulations. This rule changes the weight and method of using performance; it does not introduce performance into RIFs for the first time. OPM has also separately finalized reforms to the performance-appraisal regulations to address the very issues with performance appraisal systems acknowledged by Commenter 0678, reforms that ensure more meaningful differentiation of relative performance and require biennial certification by OPM to ensure reliability, legal compliance, and lack of bias. Those appraisal reforms are complementary to, not substitutes for, this rule. The RIF rule also contains RIF-specific

guardrails, including use of ratings of record, defined performance-credit values, lookback rules, agency cutoff-date authority, uniform and consistent application within the competitive area, and documentation requirements for any enhanced performance-credit determinations.

Targeted reforms without restructuring the system. OPM also considered whether to adopt only targeted reforms to discrete parts of part 351. OPM rejected that alternative because it would not provide sufficient relief from the administrative and mission-related problems identified in the proposed rule and comments. For example, retaining the current order-of-retention system while making only targeted changes to transfer-of-function rules would still leave agencies with an overly complex retention-register process and an adjusted-SCD model that obscures performance. Retaining the current bump-and-retreat system while changing only performance-credit values would still require agencies to conduct difficult displacement analyses based on categorical tenure and subgroup distinctions that no longer align with this rule's performance-centered retention-standing framework.

The comment record supports OPM's conclusion that the needed changes are systemic rather than isolated. Commenter 0687 observed that the government needs tools to rightsize and realign its workforce in response to changing missions, skill needs, and labor-market disruption, and that workforce-reshaping tools often produce adverse-selection effects when they are poorly targeted. Commenter 0685 likewise supported modernizing the RIF framework while emphasizing that this rule should preserve clarity, structure, and transparency. OPM has responded to that concern by retaining a structured rule, not open-ended discretion: agencies must calculate performance credit under specified rules, add veterans' preference points, use tenure subgroup and service computation date as tie-breakers, and maintain records supporting the action.

Relying on VERA, VSIP, attrition, or hiring controls instead of RIF reform. Some commenters (for example, 0532, 0320, and 0616) argued that agencies already have workforce-shaping tools, such as attrition, VERA, VSIP, hiring freezes, and other non-RIF measures, and therefore do not need revised RIF regulations. OPM disagrees that these tools are adequate substitutes for RIF reform. Voluntary tools can be useful, and agencies should continue to consider them where appropriate, but they are not always available,

sufficiently targeted, timely, or aligned with mission needs. They also can produce adverse-selection effects by encouraging the departure of employees whose skills agencies need to retain. Commenter 0687 specifically identified adverse-selection concerns in existing workforce-shaping tools, including early retirement and voluntary separation incentives.

A RIF is sometimes the legally and operationally necessary tool when positions must be abolished, functions reorganized, budgets reduced, or work restructured. When a RIF is necessary, the governing rules should enable agencies to retain employees best able to perform the work that remains. Reliance on voluntary tools instead of RIF reform would leave agencies without a modernized framework for the circumstances in which a RIF cannot be avoided.

Retaining the current treatment of probationary, trial-period, temporary, and time-limited employees. OPM considered leaving these employees in RIF competition. OPM rejected that alternative. Employees serving initial probationary or trial periods have not completed the final stage of appointment, frequently lack ratings of record, and are already subject to a separate appointment-specific framework under Civil Service Rule 11. Temporary and time-limited appointments of one year or less are inherently short term and do not carry the same expectation of continuing employment as permanent or continuing appointments. Requiring agencies to calculate retention standing, place such employees on retention registers, and provide full assignment-right analyses would impose administrative burden without corresponding benefit.

OPM also considered the workforce-pipeline consequences of the current approach. Commenter 0719, a Federal agency, explained that current rules often require release of junior early-career employees first, even when those employees are high-potential talent important to succession planning and mission continuity, contributing to a “bathtub” workforce structure with a diminished mid-career cohort. Commenter 0720, another Federal agency, likewise explained that modern agency workforces include substantial numbers of conditional, excepted-service, time-limited, and special-authority employees that do not fit neatly within the current RIF framework. OPM concludes that excluding these employees from RIF competition, while preserving independently applicable appointment

terms and legal protections, better aligns RIF procedures with the distinct legal status of these appointments.

Retaining the current veterans’ preference subgroup hierarchy. OPM also considered retaining the current categorical veterans’ preference subgroup structure while otherwise modifying performance credit. OPM rejected that alternative because it would preserve the current hierarchy under which veterans’ preference and tenure categories can prevent performance from meaningfully affecting many comparisons. OPM recognizes the importance of veterans’ preference and agrees with commenters such as Commenter 0676 that veterans’ preference must remain meaningful and enforceable. This rule therefore retains veterans’ preference as a meaningful retention factor, operationalizing preference through direct point augmentation: veterans’ preference is added to performance credit before tenure subgroup and SCD tie-breakers are applied.

OPM concludes that this approach better harmonizes the statutory factors than retaining the current categorical hierarchy. Sections 3502(b) and (c) require a meaningful retention preference for covered preference eligibles; they do not prescribe the existing subgroup method as the exclusive means of providing that preference. This rule ensures that veterans’ preference remains a substantial component of retention standing while ensuring that performance remains the primary factor.

Retaining current transfer-of-function procedures for intra-agency movements. OPM considered preserving the current transfer-of-function framework for intra-agency movements. OPM rejected that alternative. The current rule can require agencies to apply complex transfer-of-function procedures even for internal realignments that do not implicate the statutory concerns addressed by 5 U.S.C. 3503. Commenter 0719, a Federal agency, stated that the proposed change would reduce administrative burden associated with internal restructurings and remove constraints that impede timely organizational adjustments, reduce duplication, and better align staff with mission priorities. Commenter 0720, another Federal agency, similarly identified transfer-of-function procedures as legacy rules that can produce ambiguity and burden during restructuring.

OPM recognizes concerns that eliminating intra-agency transfer-of-function procedures could allow agencies to move work on paper to avoid employee protections. OPM

considered that concern and concludes that retaining the current intra-agency transfer-of-function structure is not necessary to prevent pretextual personnel actions. If an agency releases competing employees from a competitive level for a RIF reason, part 351 applies. Other applicable staffing, classification, labor-relations, anti-discrimination, and prohibited-personnel-practice rules also continue to apply. Further, 5 U.S.C. 2301 requires agencies to adhere to Merit System Principles in personnel management, including transfers and reassignments of employees, and OPM is expressly amending § 351.204 in this final rule to state that the 5 CFR part 351 regulations must be administered and applied consistent with all applicable laws, including the merit system principles set forth in 5 U.S.C. 2301(b). This rule’s approach reduces unnecessary process for legitimate internal realignments while preserving protections against unlawful or pretextual personnel actions.

Adopting additional guardrails instead of changing the framework. OPM considered whether to respond to concerns about agency discretion only by adding guardrails to the current system. OPM rejects that as a substitute for this rule, but it has adopted additional guardrails in response to comments. It is expressly requiring in § 351.204 that agencies are responsible for administering and applying the RIF regulations consistent with all applicable laws, including the merit system principles set forth in 5 U.S.C. 2301(b). OPM is clarifying that the employees excluded from RIF competition may only be retained, furloughed, separated, demoted or reassigned consistent with the terms of the employee’s appointment and applicable law, and must be provided a modified RIF notice if they are furloughed for more than 30 days, separated, demoted, or reassigned for reasons of lack of work, shortage of funds, insufficient personnel ceiling, reorganization; or the exercise of reemployment rights or restoration rights. OPM is revising § 351.402(c) to require agencies to submit a written explanation of the bona fide organizational basis for a proposed competitive area that will be in effect less than 90 days before issuance of RIF notices, and that such explanations must be made readily available for review consistent with national security considerations and applicable laws including FOIA and the Privacy Act. And OPM is not finalizing the proposed revision to § 351.604 that would have

given agencies broader discretion to furlough and recall employees based on agency-selected criteria.

Conclusion. After considering these alternatives, OPM concludes that this rule best satisfies the statutory mandate and policy objectives of this rulemaking. The no-action alternative would leave in place a framework that is too complex and insufficiently performance-centered. Reissuing the 2020 proposal would not go far enough. Increasing performance-service-credit years would retain the artificial adjusted-SCD model and leave performance subordinated in many comparisons. Appraisal-only reforms would not modernize RIF procedures. Targeted changes would fail to address the interlocking nature of the current RIF framework. Voluntary workforce-shaping tools are useful but not substitutes for a modern RIF system.

This rule provides the most effective approach because it modernizes the RIF framework as a whole: it makes performance credit more transparent and consequential; preserves veterans' preference, tenure, and length of service; clarifies which employees participate in RIF competition; simplifies assignment-right concepts; updates transfer-of-function procedures; and aligns RPL, CTAP, and ICTAP with the revised framework. OPM therefore concludes that the alternatives identified by commenters would not adequately address the problems identified in the proposed rule and the administrative record.

G. Severability

OPM confirms that, if any of the provisions of this rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

VI. Regulatory Compliance

1. Regulatory Review

OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and

equity). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of E.O. 12866, as supplemented by E.O. 13563. This rule is not considered an Executive Order 14192 regulatory action because it imposes no more than de minimis costs.

2. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities because it only affects Federal agencies and employees.

3. Federalism

We have examined this rule in accordance with E.O. 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

4. Civil Justice Reform

This regulation meets the applicable standard set forth in E.O. 12988.

5. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

6. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires most final rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

7. Paperwork Reduction Act

OPM has determined that this rule does not contain a new or revised collection of information subject to OMB approval under the PRA because the documentation and reporting requirements apply to Federal agencies in their capacity as Federal employers.

List of Subjects

5 CFR Part 316

Employment, Government employees.

5 CFR Part 330

Administrative practice and procedure, Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 359

Government employees.

5 CFR Part 362

Administrative practice and procedure, Colleges and universities, Government employees.

5 CFR Part 430

Decorations, Government employees.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR parts 316, 330, 351, 353, 359, 362 and 430 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

- 1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3316. E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218; E.O. 14284, 90 FR 17729. 5 CFR 2.2(c).

Subpart I—Hiring Authority for Post-Secondary Students

- 2. Revise § 316.911 to read as follows:

§ 316.911 Reduction in force.

Post-secondary students are covered by part 351 of this chapter for purposes of a reduction in force (RIF) as follows:

(a) Students whose initial appointment was for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF.

(b) Students whose initial appointment was for a period expected to last more than 1 year are placed in the competitive service tenure group for purposes of part 351 of this chapter upon completion of an initial probationary period.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 3. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330. E.O. 10577, 19 FR 7521, 3 CFR, 1954–58 Comp., p. 218.

Section 330.103 also issued under 5 U.S.C. 3327.

Section 330.104 also issued under sec. 2(d), Pub. L. 114–137, 130 Stat. 312 (5 U.S.C. 3318 note).

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995.

Section 330.609 also issued under 5 U.S.C. 3115.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Section 330.707 also issued under 5 U.S.C. 3115 and 3116.

Section 330.1301 also issued under 5 U.S.C. 9201–9206; Sec. 1122(b)(1), Pub. L. 116–92, 133 Stat. 1607 (5 U.S.C. 9201 note).

Subpart A—Filling Vacancies in the Competitive Service.

■ 4. Amend § 330.101(a) by:

■ a. Revising the definition of “agency”;

■ b. Adding in alphabetical order the definition of “competitive service tenure group”;

■ c. Revising the definitions “permanent competitive service

workforce”, and “permanent competitive service employee”; and

■ d. Removing the definition of “tenure groups”.

The addition and revisions read as follows:

§ 330.101 Definitions.

(a) * * *

Agency means an Executive agency as defined in 5 U.S.C. 105, along with the Government Publishing Office, but does not include the Government Accountability Office.

Competitive service tenure group has the meaning given that term in § 351.203 of this chapter.

Permanent competitive service workforce and *permanent competitive service employees* mean agency employees serving under career or career-conditional appointments in the competitive service tenure group.

* * * * *

Subpart B—Reemployment Priority List (RPL)

■ 5. Amend § 330.202 by revising paragraph (5) of and adding paragraph (6) to the definition of “Qualified”. The revision and addition read as follows:

§ 330.202 Definitions.

* * * * *

Qualified * * *

(5) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position. In determining these qualifications an agency must use an assessment that:

(i) Allows for demonstration of job-related skills, abilities, knowledge, and competencies;

(ii) Is based on a job analysis; and

(iii) Does not consist solely of, or principally rely on, an automated self-assessment.

(iv) Acceptable examples of the types of assessments include: structured interviews; a work-related exercise; a custom or generic procedure for measuring an employee’s employment or career-related qualifications and interests; a structured resume review; or another assessment provided:

(A) it demonstrates job-related technical skills, abilities and knowledge;

(B) is relevant for the position for which the assessment is developed; and

(6) Meets any other applicable requirements for competitive service appointment (including employment suitability requirements under part 731 of this chapter).

* * * * *

■ 6. Amend § 330.203 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 330.203 RPL Eligibility.

* * * * *

(a) * * *

(1) Must be serving in an appointment in the competitive service in the

competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM);

* * * * *

(b) * * *

(1) Must be serving in, or separated from, an appointment in the competitive service in the competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM);

* * * * *

■ 7. Amend § 330.206 by revising paragraph (b)(1) to read as follows:

§ 330.206 RPL registration timeframe and positions.

* * * * *

(b) * * *

(1) Have a representative rate no higher than the position from which they were, or will be, separated unless the eligible was demoted in a previous RIF. If the eligible was so demoted as a competitive service tenure group employee in a previous RIF, the eligible can register for positions with a representative rate up to the representative rate of the position held on a permanent appointment immediately before the RIF demotion was effective;

* * * * *

■ 8. Amend § 330.212 by revising paragraph (c)(1) to read as follows:

§ 330.212 Agency flexibilities.

* * * * *

(c) * * *

(1) Modify the OPM or OPM-approved qualification standard used to determine if an RPL eligible is qualified for a position, provided the exception is applied consistently and equitably in filling a position;

* * * * *

■ 9. Amend § 330.213 by revising paragraphs (b) and (c)(1) to read as follows:

§ 330.213 Selection from an RPL.

* * * * *

(b) *Retention standing order.* For each vacancy to be filled, the agency places qualified RPL placement priority candidates in order of retention standing in accordance with part 351 of this chapter. In making a selection, an agency may not pass over a candidate with a higher retention standing to select a candidate with lower retention standing.

(c) * * *

(1) For each vacancy to be filled, the agency rates RPL placement priority candidates according to their job-related skills, abilities, knowledge, and competencies, as measured by an

assessment that does not principally rely on a self-assessment from an automated examination. The assessment must be based on a job analysis, and the agency must rate and rank RPL placement priority candidates in a fair and consistent manner. The agency assigns the candidates a numerical score of at least 70 on a scale of 100, based on the evaluation criteria developed under this paragraph. The agency must grant 5 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(C) through (G).

* * * * *

Subpart D—Positions Restricted to Preference Eligibles

■ 10. Revise § 330.404 to read as follows:

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position (other than in the Government Publishing Office) that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In the competitive service tenure group, as defined in § 351.203 of this chapter.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

■ 11. Amend § 330.602 by revising paragraph (1) of the definition of “displaced” and paragraph (1) of the definition of “surplus”. The revisions read as follows:

§ 330.602 Definitions.

* * * * *

Displaced * * *

(1) A current competitive service employee in the competitive service tenure group at grade GS–15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) who:

* * * * *

Surplus * * *

(1) A current competitive service employee in the competitive service

tenure group at grade GS–15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) who received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

* * * * *

■ 12. Revise paragraphs (e), (dd), (ee), and (gg) of § 330.609 and add paragraph (hh) to read as follows:

§ 330.609 Exceptions to CTAP selection priority.

* * * * *

(e) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more;

(3) An excepted service appointment under part 213 of this chapter; and

(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(dd) Effect a transfer or a position change of an employee under part 412 of this chapter;

(ee) Convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible;

* * * * *

(gg) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter; or

(hh) Retain, or finalize the appointment of, an employee serving a probationary period pursuant to § 11.2 of this part.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

■ 13. Amend the definition of “displaced” in § 330.702 by revising paragraph (1) introductory text, paragraph (2) introductory text, and paragraph (4) to read as follows:

§ 330.702 Definitions.

* * * * *

Displaced * * *

(1) A current competitive service employee of any agency in the competitive service tenure group at grade GS–15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) whose current performance rating of record is at least fully successful (Level 3) or equivalent and who:

* * * * *

(2) A former competitive service employee of any agency who was in the competitive service tenure group at grade GS–15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM), and whose last performance rating of record was at least fully successful (Level 3) or equivalent who was either:

* * * * *

(4) A former competitive service employee of any agency who was in the competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM) who retired with a disability annuity under 5 U.S.C. 8337 or 8451 and who has received notification from OPM that the disability annuity has been or will be terminated.

* * * * *

■ 14. Revise paragraph (a) of § 330.705 to read as follows:

§ 330.705 Applying ICTAP selection priority.

(a) An agency must not appoint any candidate from outside its permanent competitive service workforce into a vacancy if there is an ICTAP selection priority candidate available for the vacancy, unless the personnel action to be effected is an exception under § 330.707.

* * * * *

■ 15. Amend § 330.707 by revising paragraphs (v), adding paragraph (w), and revising paragraphs (x) and (y) to read as follows:

§ 330.707 Exceptions to ICTAP selection priority.

* * * * *

(v) Transfer or effect a position change of an employee under part 412 of this chapter;

(w) Retain, or finalize the appointment of, an employee serving a probationary period pursuant to § 11.2 of this part;

(x) Make an appointment using the college graduate hiring authority under 5 U.S.C. 3115 and part 315 of this chapter; or

(y) Make an appointment using the post-secondary student hiring authority

under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.

PART 351—REDUCTION IN FORCE

- 16. Revise the authority citation for part 351 to read as follows:

Authority: 5 U.S.C. 1302, 2301, 3502, 3503, 38 U.S.C. 4331; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c). Sec. 351.801 also issued under E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart B—General Provisions

- 17. Amend § 351.201 by revising paragraph (a)(2) to read as follows:

§ 351.201 Use of regulations.

(a) * * *

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights.

* * * * *

- 18. Amend § 351.202 by:

- a. Revising paragraph (b) introductory text, paragraph (c) introductory text, and paragraph (c)(3); and
- b. Adding paragraph (d).

The addition and revisions read as follows:

§ 351.202 Coverage.

* * * * *

(b) *Employees exempted.* This part does not apply to an employee:

* * * * *

(c) *Actions exempted.* This part does not apply to:

* * * * *

(3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that an agency shall not undertake such a reclassification action between the time an agency has formally announced a reduction in force in the employee's competitive area and the completion of the reduction in force where the reclassification action would adversely affect an employee's retention standing in the announced reduction in force.

* * * * *

(d) *Employees excluded from reduction in force competition.* An employee holding one of the following appointments is not a "competing employee" for purposes of a reduction in force:

(1) In the excepted service:

(i) An employee serving under a temporary or time-limited appointment limited to one (1) year or less;

(ii) An employee serving a trial period;

(iii) An employee serving under a Schedule C appointment; and

(iv) An employee serving under a Schedule G appointment.

(2) In the competitive service:

(i) An employee serving under an indefinite appointment who is serving an initial probationary period;

(ii) A career-conditional employee serving an initial probationary period; and

(iii) An employee serving under a temporary appointment of one (1) year or less under subpart D of part 316 of this chapter.

(3) An employee holding one of these appointments is not a "competing employee" for purposes of a reduction in force. An agency may retain such an employee while releasing a competing employee, and may furlough, separate, demote, or reassign such an employee for a reason described in § 351.201(a)(2) without determining the employee's retention standing under subparts D and E of this part, applying the order-of-release provisions in subpart F of this part, or providing assignment rights under subpart G of this part, provided the action is otherwise consistent with the terms of the employee's appointment and applicable law.

(4) If an agency furloughs for more than 30 days, separates, demotes, or reassigns an employee described in paragraph (d)(1) or (2) of this section for a reason described in § 351.201(a)(2), and the action is not merely the expiration of a temporary or time-limited appointment according to its terms, the agency must provide written notice under § 351.801. The notice must include notification content in accordance with § 351.802(a)(1), (a)(3), (a)(5), (a)(6) and (b), and must state that the employee is not a competing employee under this paragraph and therefore was not ranked relative to competing employees on a retention register. The notice is not required to include the information described in § 351.802(a)(2) or (a)(4).

- 19. Amend § 351.203 by:

- a. Adding a definition in alphabetical order for "Agency";

- b. Revising the definition of "Competing employee";

- c. Adding a definition in alphabetical order for "Competitive service tenure group";

- d. Revising the definition of "Current rating of record",

- e. Adding a definition in alphabetical order for "Excepted service tenure group";

- f. Revising the definition of "Furlough";

- g. Adding definitions in alphabetical order for "Government obligation", "Initial probationary period", and "Military spouse";

- h. Revising the definition of "Rating of record"

- i. Adding definitions in alphabetical order for "Reduction in force", and "Restoration protected employee";

- j. Revising the definition of "Transfer of function"; and

- k. Adding a definition in alphabetical order for "Trial period".

The additions and revisions read as follows:

§ 351.203 Definitions.

* * * * *

Agency means an Executive agency as defined in 5 U.S.C. 105, along with the Government Publishing Office, but does not include the Government Accountability Office.

Competing employee means an employee in the competitive service tenure group or the excepted service tenure group.

Competitive service tenure group means all employees in competitive service tenure subgroups I or II (as defined in § 351.502).

Current rating of record is the rating of record for the most recently completed appraisal period as provided in § 351.503(c)(3).

* * * * *

Excepted service tenure group means all employees in excepted service tenure subgroups I or II (as defined in § 351.502).

Furlough means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis over a period not exceeding one (1) year; but it does not refer to an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough.

Government obligation means a legal or moral duty or action an agency takes or may take towards a competing employee, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality. A Government obligation may include, for example, retaining an employee to enable the employee to maintain and utilize his or her health insurance during the pregnancy of the

employee or employee's spouse until the birth of a child or allowing an employee to use available paid parental leave to care for a newly born child or a child newly placed with the employee for adoption purposes.

Initial probationary period means the probationary period described in § 11.2 of this part and does not include the probationary period applicable on initial appointment to a supervisory or managerial position described in subpart I of part 315 of this chapter.

* * * * *

Military spouse has the meaning of a spouse of a member of the armed forces or service member as defined in § 315.612(b)(4)(i).

* * * * *

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in § 430.208(e)). For an employee not subject to 5 U.S.C. Chapter 43 or part 430 of this chapter, it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of § 430.201(c) of this chapter.

Reduction in force means the release of a competing employee from his or her competitive level by furlough, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights.

* * * * *

Restoration protected employee means a competing employee restored or reemployed following uniformed service who, as of the date of a specific reduction in force notice, remains entitled under § 353.209(b) of this chapter to retention for six (6) months or one (1) year after restoration.

Transfer of function means the transfer of the performance of a continuing function from one agency to another agency, except when the function involved is virtually identical to functions already being performed in the other agency affected.

Trial period means the trial period described in § 11.3 of this part.

* * * * *

■ 20. Revise § 351.204 to read as follows:

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary and for ensuring that such regulations are administered and applied consistent with all applicable laws, including the merit system principles set forth in 5 U.S.C. 2301(b).

Subpart C—Transfer of Function

§ 351.301 [Amended]

■ 21. Amend § 351.301 by:

- a. Removing the words “competitive area” and adding, in their place, the word “agency”; and
- b. In paragraph (b), removing the parenthetical phrase.

■ 22. Revise § 351.302 to read as follows:

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of one agency to another agency, each competing employee in a position identified with the transferring function or functions must be transferred to the agency gaining the function without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart and who is identified with a function or functions that will be terminated in the gaining agency within 60 days is not a competing employee for other positions in the agency gaining the function or functions and does not have a right to any continuing positions in the agency gaining the function or functions.

(c) Regardless of an employee's personal preference, a competing employee only has the right to transfer with his or her function when the alternative in the agency losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing agency must use the adverse action procedures found in 5 CFR part 752, if applicable, or other procedures required by law, regulation, or the terms of the employee's appointment, if it chooses to separate a competing employee who declines to transfer with his or her function.

(e) The losing agency may, at its discretion, include competing employees who decline to transfer with their function in a concurrent reduction in force.

(f) An agency may not separate a competing employee who declines to transfer with the function any sooner than it transfers competing employees

who chose to transfer with the function to the gaining agency.

(g) Agencies may ask employees whose positions are identified with the transferring function pursuant to § 351.303, via a canvass letter, whether each employee prefers to transfer with the function when the function transfers to a different agency. The canvass letter must give each employee information regarding the consequences of accepting the offer to transfer, and the consequences of declining the offer to transfer. The agency may require an employee to respond to the canvass letter within a set period of time but must give the employee at least 30 calendar days to consider the offer. The agency may treat a failure to respond to the canvass letter as a declination of the offer to transfer with the function, unless the employee establishes that the failure to respond within the specified timeframe was due to circumstances beyond the employee's control such as the employee not receiving the letter or employee or family member illness.

■ 23. Revise § 351.303 to read as follows:

§ 351.303 Identification of positions with a transferring function.

(a) The agency losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position.

(b) A competing employee is identified with a transferring function if the agency determines that employee performs the function during at least half of his or her work time.

(c) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.) and information obtained from supervisors.

Subpart D—Scope of Competition

■ 24. Amend § 351.402 by revising paragraphs (b) and (c) to read as follows:

§ 351.402 Competitive area.

* * * * *

(b)(1) Except as authorized in paragraph (b)(2), a competitive area must be defined in terms of the agency's organizational unit(s) and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of any

organizational unit or combination of units established on the agency's official organizational chart. Organizational charts must be available on the agency's public facing web page or otherwise appropriately documented by the agency. An organizational unit for these purposes must be designated/approved by the head of the agency, or designee, and the designation or approval cannot be delegated to an official below the agency's headquarters level. In addition, an organizational unit for these purposes must be clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight.

(2) An agency may define a geographic location (*e.g.*, a national park or county) as a separate competitive area.

(3) Notwithstanding paragraph (b)(2) of this section, for the purposes of defining a competitive area, an agency must assign employees working at an approved alternate location to the organizational unit to which they are officially assigned.

(c) If an agency establishes or materially modifies a competitive area within 90 days before issuing specific reduction in force notices for that competitive area, the agency shall submit a description of the competitive area, along with a written statement explaining the bona fide organizational basis for the competitive area, to OPM for approval in advance of the reduction in force. Descriptions of all competitive areas, and accompanying explanations submitted to OPM, must be made readily available for review consistent with national security considerations and applicable laws including the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

* * * * *

■ 25. Revise subpart E to read as follows:

Subpart E—Retention Standing

Sec.	
351.501	Order of retention.
351.502	Tenure of employment.
351.503	Performance.
351.504	Veterans' preference.
351.505	Length of service.
351.506	Records.
351.507	Effective date of retention standing.

§ 351.501 Order of retention.

When determining the order of retention in a reduction in force under this part, an agency must classify competing employees on the appropriate retention register on the basis of four factors (tenure of employment, performance, veterans' preference, and length of service) as follows:

(a) By tenure group, with the competitive service tenure group and the excepted service tenure group listed on separate retention registers;

(b) Within each tenure group, by performance credit in descending order as determined in § 351.503, as augmented by veterans' preference as described in § 351.504;

(c) When two or more competing employees have the same performance credit, as augmented by veterans' preference as described in § 351.504, the competing employees are further ranked in descending order by tenure subgroups (as described in § 351.502), with tenure subgroup I listed ahead of tenure subgroup II, and then by years of service beginning with the earliest service computation date, as computed under § 351.505.

§ 351.502 Tenure of employment.

(a) *Competitive service.* Tenure groups and subgroups in the competitive service are defined as follows:

(1) The competitive service tenure group includes all employees in competitive service tenure subgroups I or II.

(2) Competitive service tenure subgroup I includes each career employee (as that term is used in part 315 of this chapter) in the competitive service who, as of the date the employee receives a specific reduction in force notice, is not serving an initial probationary period. The following employees are in competitive service tenure subgroup I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to acquire status and career tenure immediately, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge appointed prior to establishment of excepted service schedule E and who remains in the competitive service;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially-qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquired status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative

or judicial branches of the Federal Government.

(3) Competitive service tenure subgroup II includes each employee in the competitive service who, as of the date the employee receives a specific reduction in force notice, is not in competitive service tenure subgroup I and is not serving an initial probationary period or a temporary appointment of 1 year or less under subpart D of part 316 of this chapter.

(b) *Excepted service.* Tenure groups and subgroups in the excepted service are defined as follows:

(1) The excepted service tenure group includes all employees in excepted service tenure subgroups I or II.

(2) Excepted service tenure subgroup I includes all employees occupying a career position (as defined in part 213 of this chapter) in the excepted service who, as of the date the employee receives a specific reduction in force notice, are not serving a trial period and whose appointment carries no restriction or condition such as conditional, indefinite, or specific time limit.

(3) Excepted service tenure subgroup II includes all other employees occupying a career position (as defined in part 213 of this chapter) in the excepted service who, as of the date the employee receives a specific reduction in force notice, are not serving a trial period and who are not serving in a temporary or time-limited appointment of 1 year or less.

§ 351.503 Performance.

(a) *Calculation of performance credit.* Determine each competing employee's performance credit as follows:

(1) For each rating used, assign a numerical value as follows in conjunction with the patterns of summary level in 5 CFR 430.208(e): 7 for a Level 5 (Outstanding or equivalent) summary level, 5 for a Level 4 (Exceeds Fully Successful or equivalent) summary level, 3 for a Level 3 (Fully Successful or equivalent) summary level, 0 for a Level 2 (Minimally Satisfactory or equivalent) summary level, 0 for a Level 1 (Unacceptable) summary level.

(2) Sum the values assigned for each rating.

(b) *Ratings used.* (1) Subject to paragraph (c)(3) of this section, only ratings of record may be used as the basis for classifying an employee's performance in a reduction in force.

(2) For competing employees who received ratings of record while covered by part 430, subpart B, of this chapter, the summary levels assigned for those ratings of record must be used to

establish the employee's performance credit in a reduction in force in accordance with § 351.501 (as augmented by veterans' preference in accordance with § 351.504).

(3) For competing employees who received performance ratings while not covered by the provisions of 5 U.S.C. chapter 43 and subpart B of part 430 of this chapter, those performance ratings must be considered ratings of record with summary levels for designating an employee's performance credit in a reduction in force only when the agency conducting the reduction in force determines, in its sole discretion, that those performance ratings are equivalent to ratings of record under the provisions of § 430.201(c).

(c) *Consideration of performance.* (1) A competing employee's entitlement to performance consideration under this subpart must be based on the employee's three most recent summary level ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in this section.

(2) To provide adequate time to determine employee performance credit, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee's performance credit will be based on the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be considered for purposes of this subpart, a rating of record and its assigned summary level (including any adjustments to performance consistent with this subpart) must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (*i.e.*, the rating of record is available for use by the office responsible for establishing retention registers).

(4) The use of performance ratings of record and assigned summary levels (including any adjustments to performance) for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with an agency's appropriate issuance(s) that implement this part. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the

agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(d) *Single rating pattern.* If all competing employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in § 430.208(e), an agency must calculate performance credit as described in paragraph (a) of this section, except that an agency may, in its sole and exclusive discretion, assign additional points for performance for employees covered under a summary level appraisal system in which the highest summary level is a level "3" rating (*i.e.*, a pattern A 'pass/fail', or pattern D system authorized under 430.208(d) prior to the final rule prescribed at 91 FR 41521), subject to the following limitations:

(1) An agency may, in its sole and exclusive discretion, assign additional points to level "3" employees with demonstrated exceptional performance if, within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, the agency has applied performance-related criteria and taken an action that recognizes the employee's exceptional performance. Such actions may include awarding an employee: the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a special act or service award, a quality step increase, or other performance awards or bonuses (*e.g.*, a 'time-off' for demonstrated performance above expectations).

(2) An agency may determine, in its sole and exclusive discretion, whether to give more weight to the performance-related action(s) described in paragraph (d)(1) of this section for purposes of differentiating performance on a retention register. Points may be added to the value assigned for the rating of record on an annual basis or as a single addition to the calculated performance credit.

(3) An agency that chooses to assign additional credit for performance must specify and document, in advance of the reduction in force, how it will prioritize performance awards for these purposes and make these criteria readily available for review.

(e) *Multiple rating patterns.* (1) If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary

levels, as set forth in § 430.208(e), it may, in its sole and exclusive discretion, elect to provide additional retention credit for performance in accordance with the following:

(i) An agency may transmute or assign an employee a higher summary level rating than what he or she received under their previous appraisal system only when there is documented evidence of exceptional or higher level performance as evidenced by an employee who received the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a quality step increase, or appraisal performance awards or bonuses (*e.g.*, a "time-off" for demonstrated performance above expectations in lieu of a cash bonus); and

(ii) If an agency chooses to provide additional retention credit for performance in accordance with paragraph (e)(1)(i) of this section, it must specify and document, in advance of the reduction in force, the basis on which it will transmute an employee's rating; *i.e.*, the agency must describe how it will translate evidence of documented exceptional performance to a higher performance rating under the appraisal system (*i.e.*, pattern of summary level) being applied to the reduction in force, make these criteria readily available for review, and apply them consistently to all competing employees.

(2) An agency that elects to provide additional retention credit to competing employees in accordance with paragraph (e)(1)(i) of this section must transmute the rating of the employee who meets the criteria set forth in that paragraph to the highest summary level of the pattern summary level being applied to the reduction in force (*i.e.*, a level "4" rating if the agency conducting the reduction in force uses a pattern C or G summary level appraisal system, or a level "5" rating if the agency uses a pattern B, E, F, or H summary level appraisal system, as authorized under 430.208(d) prior to the final rule prescribed at 91 FR 41521). An agency cannot transmute a rating to a summary level which is not among those in the pattern being applied to the reduction in force.

(3) In situations in which the agency conducting the reduction in force is using a pattern summary level rating appraisal system with a summary level no higher than a level "3" (*i.e.*, a pass/fail system) but has employees rated previously under a pattern with higher summary levels, the agency may, in its sole and exclusive discretion, elect to give more performance credit to the employees with the higher summary

ratings than it gives to summary level “3” employees with no documented evidence of exceptional performance (before augmenting for veterans’ preference in accordance with § 351.504).

(f) *Missing ratings.* Use of performance ratings for competing employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in paragraph (c)(2) of this section must be determined under paragraph (c) of this section, as appropriate, and as follows:

(1) The performance credit of an employee who has not received any rating of record for any year during the 4-year period must be based on the modal rating as defined in § 351.203 for the summary level pattern that applies to the employee’s official position of record at the time of the reduction in force.

(2) For an employee who has received two previous ratings of record during the 4-year period calculate the performance credit by using a proxy value for the missing rating. Calculate the proxy value by adding the assigned values for the two actual ratings of record and dividing by 2, with the result being either (1) a whole number or (2) a number with .5 decimal value. The performance credit is the sum of the value for the missing rating (*i.e.*, the proxy value) and the values for the two actual ratings.

(3) For an employee with only one actual rating of record during the period, calculate the performance credit by multiplying the points assigned for that rating of record times three.

§ 351.504 Veterans’ preference.

(a) Veterans’ preference for both competitive and excepted service employees is applied as follows:

(1) Each preference eligible employee who has a compensable service-connected disability of 30 percent or more receives an additional 5 points added to their performance credit. These employees must be identified as being in veterans’ preference Subgroup AD on the retention register.

(2) Every other preference eligible employee receives an additional 3 points added to their performance credit. These employees must be identified as being in veterans’ preference Subgroup A on the retention register.

(3) Non-preference eligible employees receive 0 additional points added to their performance credit. These

employees must be identified as being in veterans’ preference Subgroup B on the retention register.

(b) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (b)(1), (2), or (3) of this section, except as limited by paragraph (b)(4) or (b)(5):

(1) The employee’s military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by 38 U.S.C. 101 and 301.

(2) The employee’s retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in 5 U.S.C. 2108(2) and meets one of the conditions covered in paragraphs (b)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under 10 U.S.C. chapter 67 and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in 5 U.S.C. 2108(2).

§ 351.505 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by

§ 351.504(b) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.504(b).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing the service computation date applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date to withhold retention service credit for non-creditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee’s total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

§ 351.506 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee’s representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under the authority of subpart H of this part has the right to review any completed records used by the agency

in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register, if applicable, with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, the employee's performance credit calculated under § 351.503 as augmented by veterans' preference under § 351.504, and the employee's service computation date under § 351.505), so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers, if applicable, for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right under this section to review the agency's retention registers and related records. This paragraph does not limit any right of access available under another statute or regulation.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 2 years after the date it issues a specific reduction in force notice.

§ 351.507 Effective date of retention standing.

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee receives a specific reduction in force notice.

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.606(b), § 351.607, or § 351.608 is determined as of the date the employee receives a specific reduction in force notice, irrespective of when the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these provisions remains fixed until completion of the

reduction in force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it must correct the error and adjust any erroneous reduction in force action to accord with the employee's proper retention standing as of the effective date established by this section.

■ 26. Revise the header for subpart F to read as follows:

Subpart F—Release From Competitive Level

■ 27. Revise § 351.601(c) to read as follows:

§ 351.601 Order of release from competitive level.

* * * * *

(c) When competing employees in the same tenure group have identical performance credits as calculated pursuant to § 351.503 (as augmented by veterans' preference as described in § 351.504), are in the same tenure subgroup, and have identical service dates (as calculated pursuant to § 351.505) and are therefore tied for release from a competitive level, the agency may select any tied employee for release.

■ 28. Revise § 351.602 to read as follows:

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary or term promotion; or

(b) A written decision under part 432 or 752 of this chapter of removal or demotion from the competitive level.

■ 29. Revise § 351.605 to read as follows:

§ 351.605 Abolishment of a competitive area.

(a) *Appropriate use.* An agency may use this provision to reduce the administrative burden of conducting a reduction in force when it will eliminate all positions (including the positions of employees otherwise excluded from reduction in force competition under § 351.202(d)) within a competitive area within 180 days.

(b) *Abolishment of competitive area.* When an agency is abolishing all positions in a competitive area within 180 days it may release a competing employee without regard to retention standing. When invoking this provision, an agency is not required to follow §§ 351.403, 351.404, and 351.501

through § 351.505. The agency must provide for the exceptions under § 351.606. The agency may provide for the exceptions under § 351.608(c)–(f) without providing notice under § 351.608(a)(4).

(c) *Notice.* An agency must provide any competing employee released under this provision with written notice in accordance with § 351.801. The notice must include notification content in accordance with § 351.802(a)(1), (a)(3), (a)(5), (a)(6) and (b); must identify the competitive area being abolished; and must state that, because all positions in the employee's competitive area are being abolished pursuant to this section, the employee was not ranked relative to other competing employees in the reduction in force. The notice is not required to include the information described in § 351.802(a)(2) or (a)(4).

(d) *Retention register not required.* When using this provision, an agency is not required to rank competing employees in the abolished competitive area, and must not apply assignment rights pursuant to subpart G of this part, because no positions in the competitive area will remain.

■ 30. Revise § 351.606 paragraphs (a) and (c) to read as follows:

§ 351.606 Mandatory exceptions.

(a) *Armed Forces restoration rights.* (1) When an agency applies § 351.601 or § 351.605, it must provide a mandatory exception for each competing employee entitled under § 353.209(b) to retention for, as applicable, 6 months or 1 year after restoration.

(2) The agency shall first determine the employee's ordinary retention standing under subpart E of this part. The agency shall then apply this paragraph as a mandatory exception to the order of release. The agency may not release a restoration protected employee from his or her competitive level before the expiration of the applicable retention protection period if another competing employee may be released instead.

(3) If no other competing employee may be released (such as when an entire competitive area is abolished pursuant to § 351.605), the agency may not separate the restoration protected employee by reduction in force during the applicable retention protection period. The agency must instead reassign the employee, as necessary, to another position of like seniority, status, and pay for which the employee is qualified, consistent with part 353 of this chapter.

(4) If the entire agency is abolished and the employee's function has not

been transferred to another agency, or if it is otherwise impossible or unreasonable for the agency to reassign the employee, OPM will offer placement assistance to the employee in accordance with 38 U.S.C. 4314 and § 353.110 of this chapter.

(5) This paragraph does not:

(i) Alter the restoration protected employee's retention standing under subpart E;

(ii) Affect the agency's authority to take an action against a restoration protected employee under parts 432 or 752 of this chapter; or

(iii) Affect an agency's authority to make a mandatory, permissive continuing, or permissive temporary exception to the order of release under sections 351.606(b), 351.607, or 351.608 of this chapter so long as required documentation is maintained and appropriate notice provided, and provided that such exception may not result in the discharge of a restoration protected employee during the period described in § 353.209(b).

(6) For each restoration protected employee, the agency must document the employee's ordinary retention standing, the basis for the restoration protection, the date the protection expires, and any employee released because the restoration protected employee was passed over. The agency must maintain this documentation on the retention register or, if no retention register is prepared under § 351.605, in the agency's reduction in force records.

* * * * *

(c) *Documentation.* Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601.

■ 31. Revise § 351.607 to read as follows:

§ 351.607 Discretionary continuing exceptions.

An agency may make an exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee (*i.e.*, extend an employee's separation date) on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency must notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

■ 32. Revise § 351.608 to read as follows:

§ 351.608 Discretionary temporary exceptions.

(a) *General.* (1) An agency may use one of the exceptions authorized under this section to retain an employee (*i.e.*, extend an employee's separation date) after the effective date of a reduction in force, notwithstanding the order of release under § 351.601 or the action provisions under § 351.603. Temporary exceptions are time-limited, but the duration may vary depending on a variety of factors as provided in paragraphs (b) through (g) of this section.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart F, of this chapter, or equivalent programs.

(3) Each exception under a paragraph in this section stands alone and may not be sequenced or stacked in combination with another exception. If an agency determines that it can approve more than one exception for an employee, the agency may apply the exception that provides for the longest period of retention.

(4) When an agency makes an exception under this section for more than 30 days, it must:

(i) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the latest date the lower standing employee's retention is projected to end; and

(ii) List opposite the employee's name on the retention register the reasons for the exception and the latest date the employee's retention is projected to end.

(b) *Undue interruption.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to an employee. Any application of this exception is subject to the conditions and limitations established by the agency and this section. The employee must use leave (paid or unpaid) or paid time off continuously to cover all tour of duty hours during the period the exception is in effect. The use of each

type of leave or paid time off must be consistent with the established rules governing its use. Administrative leave under 5 CFR part 630, subpart N (or similar authority) may not be used. The exception may not take effect unless the employee signs a written agreement in which the employee attests that he or she understands and agrees with the conditions and limitations established by the agency and this section. Authorized agency applications of this exception include the following:

(1) An exception may be approved under this paragraph (c) for an employee who is eligible for, and has not exhausted, paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the birth of a child of the employee before the effective date of the reduction in force. The exception may be approved through the date by which the employee would be able to use all remaining available paid parental leave to the employee's credit in connection with the birth, if the leave is used continuously starting on the effective date of the reduction in force.

(2) An exception may be approved under this paragraph (c) for an employee who is eligible for, and has not exhausted, paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the placement of a child with the employee for adoption purposes before the effective date of the reduction in force. The exception may be approved through the date by which the employee would be able to use all remaining available paid parental leave to the employee's credit in connection with the placement, if the leave is used continuously starting on the effective date of the reduction in force.

(3) An exception may be approved under this paragraph (c) for an employee who is pregnant, or whose spouse is pregnant, as of the effective date of reduction in force and who would be eligible for paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the expected birth. The exception may be approved through the date that is 12 weeks after the birth.

(d) *Leave for a sick leave purpose.* An agency may make a temporary exception to retain an employee covered by 5 U.S.C. chapter 63 (or other applicable leave system for Federal employees), who has a condition or circumstance that would warrant continuous use of sick leave during all tour-of-duty hours of the period of retention if the employee had available sick leave, provided—

(1) Such condition or circumstance continues throughout the period of retention;

(2) The employee first uses any available sick leave in accordance with the requirements 5 CFR part 630, subpart D (or other applicable sick leave system), before using any other appropriate leave (paid or unpaid) or paid time off, consistent with any applicable requirements governing use of the leave or paid time off;

(3) The use of leave or paid time off is continuous through all tour-of-duty hours of the period of retention; and

(4) The period of retention does not exceed 90 days.

(e) *Annual leave.* (1) An agency may make a temporary exception to retain on accrued annual leave an employee who:

(i) Is being involuntarily separated under this part;

(ii) Is not covered by § 351.606(b) (because the employee is covered by a Federal leave system under an authority other than 5 U.S.C. chapter 63, a retirement law not referenced in § 351.606(b), or a health benefits law other than 5 U.S.C. chapter 89); and

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) *Military spouse.* An agency may extend the separation date beyond the effective date of a reduction in force of a military spouse as defined in § 351.203. The agency may establish a maximum number of days, up to a maximum of 90 days, for which an exception may be approved.

(g) *Other exceptions.* An agency may make a temporary exception to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of the lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

Subpart G—Assignment Rights

■ 33. Revise § 351.701 to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a competitive service tenure group employee with a current annual performance rating of record of minimally satisfactory (Level 2) or equivalent, or higher, is released from a competitive level, an agency must offer assignment, rather than furlough or separation, in accordance with paragraph (b) of this section to another competitive position that requires no reduction, or the least possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position must be in the same competitive area and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

(b) *Assignment rights.* In accordance with paragraph (a) of this section, a released employee shall be assigned to a position:

(1) That is held by another employee with lower retention standing in the same tenure group; and

(2) That is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent). (The agency uses the grade progression of only the released employee's position of record to determine the applicable grades (or appropriate grade intervals or equivalent) of the employee's

assignment right. The agency does not consider the grade progression of the position to which the employee has an assignment right); and

(3) For which the released employee is qualified, pursuant to the criteria set forth in § 351.702 and § 351.703.

(c) *Pay rates.*

(1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction in force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

(d)(1) In determining applicable grades (or grade intervals) under paragraph (b)(2) of this section, the agency uses the grade progression of the released employee's position of record to determine the grade (or interval) limits of the employee's assignment rights.

(2) For positions covered by the General Schedule, the agency must determine whether a one-grade, two-grade, or mixed grade interval progression is applicable to the position of the released employee.

(3) For positions not covered by the General Schedule, the agency must determine the normal line of progression for each occupational series and grade level to determine the grade (or interval) limits of the released employee's assignment rights. If the agency determines that there is no normal line of progression for an occupational series and grade level, the agency provides the released employee with assignment rights to positions within three actual grades lower on a one-grade basis. The normal line of progression may include positions in different pay systems.

(4) For positions where no grade structure exists, the agency determines a line of progression for each occupation and pay rate and provides assignment rights to positions within three grades (or intervals) lower on that basis.

(5) If the released employee holds a position that is less than three grades above the lowest grade in the applicable classification system (e.g., the employee holds a GS-2 position), the agency provides the released employee with assignment rights up to three actual grades lower on a one-grade basis in other pay systems.

(e) If a competitive area includes more than one local commuting area, the

agency determines assignment rights under this part on the basis of the representative rates for one local commuting area within the competitive area (*i.e.*, the same local commuting area used to establish competitive levels under § 351.403(c)(4), (5), and (6)).

(f) If a competitive area includes positions under one or more pay bands, a released employee shall be assigned in accordance with paragraphs (a) and (b) of this section to a position in an equivalent pay band or one pay band lower, as determined by the agency, than the pay band from which released. A preference eligible with a service-connected disability of 30 percent or more must be assigned in accordance with paragraphs (a) and (b) of this section to a position in an equivalent pay band or up to two pay bands lower, as determined by the agency, than the pay band from which released.

(g) If a competitive area includes positions under one or more pay bands, and other positions not covered by a pay band (*e.g.*, GS and/or FWS positions), the agency provides assignment rights under this part by:

(1) Determining the representative rate of positions not covered by a pay band, consistent with § 351.203;

(2) Determining the representative rate of each pay band, or competitive level within the pay band(s), consistent with § 351.203;

(3) As determined by the agency, providing assignment rights under paragraph (b) of this section, consistent with the grade intervals covered in paragraph (b)(2) of this section, and the pay band intervals in paragraph (f) of this section.

■ 34. Amend § 351.702 by revising paragraph (a)(4) to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. In determining these qualifications an agency must use an assessment that:

(i) Allows for demonstration of job-related skills, abilities, knowledge, and competencies;

(ii) Is based on a job analysis; and

(iii) Does not consist solely of, or principally rely on, an automated self-assessment.

(iv) Acceptable examples of the types of assessments include: structured interviews; a work-related exercise; a custom or generic procedure for measuring an employee's employment or career-related qualifications and interests; a structured resume review; or another assessment provided (1) it

demonstrates job-related technical skills, abilities and knowledge, and (2) is relevant for the position for which the assessment is developed.

(v) An agency is not required to administer an assessment under this paragraph if, during the 5-year period ending on the date the employee receives a specific reduction in force notice, the employee occupied the same position, or a position at the same grade or pay level with substantially the same duties, occupational series, qualification requirements, and conditions of employment, and received a rating of record of Level 3, Fully Successful, or higher, or the equivalent, for performance of those duties.

* * * * *

■ 35. Amend § 351.705 by revising paragraph (a) to read as follows:

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions that provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701.

* * * * *

Subpart H—Notice to Employee

■ 36. Amend § 351.802 by revising the introductory text of paragraph (a) and paragraphs (a)(2) and (a)(3) to read as follows:

§ 351.802 Content of notice.

(a) Except as otherwise provided in this part, a specific written notice under § 351.801 must include:

* * * * *

(2) The employee's competitive area, competitive level, veterans' preference subgroup, tenure group and subgroup, service date, and three most recent ratings of record received during the last 4 years;

(3) A link to 5 CFR part 351 and information on how to access the agency's records pertinent to the reduction in force being taken.

* * * * *

■ 37. Amend § 351.805 by revising paragraph (b) to read as follows:

§ 351.805 New notice required.

* * * * *

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later effective date. An amended notice issued under this paragraph solely to state a later effective date is not a new

specific reduction in force notice for purposes of § 351.507 and does not require the agency to redetermine or recalculate retention standing under subpart E of this part. Nothing in this paragraph affects the agency's obligation to correct an error under § 351.507(c).

* * * * *

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

■ 38. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 8151; 38 U.S.C. 4301 *et seq.*

Subpart A—General Provisions

■ 39. Amend § 353.110 by removing in paragraph (a)(1) the words “Associate Director for Employment, OPM, 1900 E Street NW, Washington, DC 20415” and adding in their place the words “Workforce Policy & Innovation by email at wpintake@opm.gov”.

Subpart B—Uniformed Service

■ 40. Revise § 353.209(a) to read:

§ 353.209 Retention protections.

(a) *During uniformed service.* An employee may not be demoted or separated (other than military separation) while performing duty with the uniformed services except for cause. (Reduction in force is not considered “for cause” under this subpart.) He or she is not a “competing employee” under § 351.203 of this chapter. If the employee's position is abolished during such absence (as when an entire competitive area is abolished pursuant to § 351.605 of this chapter), the agency must reassign the employee to another position of like status and pay. If the entire agency is abolished and the employee's function has not been transferred to another agency, or if it is otherwise impossible or unreasonable for the agency to reassign the employee, OPM will offer placement assistance elsewhere in the executive branch to the employee pursuant to § 353.110.

* * * * *

Subpart C—Compensable Injury

■ 41. Revise § 353.301(a) to read:

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-

time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under a temporary, term, or indefinite appointment. If there is no such position in the local commuting area, the agency must offer the employee a position (as described above) in another location. This paragraph also applies when an injured employee accepts a lower-grade position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

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PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

Subpart H—Furloughs in the Senior Executive Service

- 42. The authority citation for part 359, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 3133, 3136, 3595a, and 3596.

- 43. Revise § 359.802 to read as follows:

§ 359.802 Definitions.

For the purpose of this subpart, *furlough* means the placing of an appointee in a temporary status without

duties and pay because of lack of work or funds or other nondisciplinary reasons; except it does not refer to an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough.

PART 362—PATHWAYS PROGRAMS

- 44. The authority citation for part 362 continues to read as follows:

Authority: E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291, as amended by E.O. 14217, 90 FR 10577.

Subpart B—Internship Program

- 45. Revise § 362.205 to read as follows:

§ 362.205 Termination.

(a) *Intern*. As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study or career and technical education program, unless the Participant is selected for noncompetitive conversion under § 362.204.

(b) *Intern NTE*. As a condition of employment an Intern NTE appointment expires upon expiration of the temporary internship appointment, unless the Participant is selected for noncompetitive conversion under § 362.204.

Subpart C—Recent Graduates Program

- 46. Amend § 362.306 by revising paragraph (a) to read:

§ 362.306 Reduction in force and termination.

(a) *Reduction in force*. Recent Graduates are in the excepted service tenure group for purposes of § 351.502 of this chapter upon completion of a trial period pursuant to § 11.3 of this chapter. Expiration of a Recent Graduates appointment is not otherwise subject to part 351 of this chapter.

* * * * *

PART 430—PERFORMANCE MANAGEMENT

- 47. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43 and 5307(d).

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

- 48. Amend § 430.208 by revising paragraph (e)(4) and removing paragraph (e)(5). The revisions read as follows:

§ 430.208 Rating performance.

* * * * *

(e) * * *

(4) The designation of a summary level and its pattern must be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, excluding enhanced performance values under § 351.503(d) and (e).

* * * * *

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Part VII

Office of Personnel Management

5 CFR Part 351

Reduction in Force Appeals; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

[Docket ID: OPM–2025–0239]

RIN 3206–AO99

Reduction in Force Appeals

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to revise how an employee may appeal a furlough of more than 30 days, separation, or demotion by a reduction-in-force (RIF) action. OPM will replace the Merit Systems Protection Board (MSPB) as the adjudicative agency for such appeals. The rule establishes a uniform, record-based OPM appeal process; clarifies the appellant's burden; requires production of the complete agency record; preserves collateral statutory remedies; and applies prospectively to improve timeliness, consistency, and cost-effectiveness while maintaining administrative review.

DATES: Effective September 2, 2026. This final rule applies only to a RIF action for which an agency issues the employee a specific RIF notice under 5 CFR 351.802 on or after September 2, 2026.

FOR FURTHER INFORMATION CONTACT: Aaron Gottesman, Senior Advisor to the Director, by email at employeeaccountability@opm.gov or by phone at (202) 606–7400.

SUPPLEMENTARY INFORMATION: OPM is issuing this final rule to modernize the administrative process for appeals by employees who are furloughed for more than 30 days, separated, or demoted by a reduction-in-force action under 5 CFR part 351. Congress charged OPM with prescribing regulations governing the release of competing employees in a RIF, and OPM has historically implemented RIF appeal procedures through regulation. This final rule revises that regulatory framework by replacing the prior MSPB forum for future non-SES RIF appeals with a uniform OPM-administered process. The rule does not alter agencies' responsibility to determine their workforce needs or whether a RIF is necessary. By requiring a complete RIF-specific agency record, permitting an appellant reply, authorizing additional information, audits, investigations, and hearings when necessary and efficient, and preserving collateral statutory

remedies, the final rule provides meaningful administrative review while reducing delay, fragmentation, and unnecessary litigation burden.

I. Digest of Public Comments and Summary of Changes From the Proposed Rule

In response to the proposed rule, OPM received 1,252 comments during the 30-day public comment period from a variety of individuals, including current and former civil servants, members of Congress, as well as organizations, including local and national unions and Federal agencies. Of the 1,252 comments, 1,251 were posted on www.regulations.gov, and one was not posted because it contained vulgar language unrelated to the rulemaking in question. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments ranged from ardent support of the proposed regulation to categorical rejection of it. Less than 1 percent of the overall comments were supportive, neutral, or mixed, and 99 percent opposed the proposed regulation.

OPM found many of the comments helpful. OPM has revised the final rule to clarify, narrow, or supplement the proposed RIF appeal procedures in response to comments, including comments concerning burden of proof, access to the agency record, information asymmetry, due process, neutrality, hearings, protective orders, collective bargaining, and public disclosure. In response to those comments, the final rule adds more precise appeal standards, a detailed RIF-specific agency-record requirement, disclosure and privilege protections, stronger adjudicator-separation and *ex parte* safeguards, narrower e-filing sanctions, more flexible reply rules, and more carefully tailored protective order and public posting provisions. The revisions are summarized below.

Clarifying appealable actions. The final text clarifies the appealable actions set forth in § 351.901(a). The proposal allowed an employee “who has been the subject of a reduction-in-force action” to appeal an action taken under part 351. The final text specifies that only an employee furloughed for more than 30 days, separated, or demoted by a RIF action taken under part 351 may appeal that action to OPM.

Revising the merits standard. The final text replaces the proposed “would not have suffered the same or another RIF action” standard in § 351.901(b) with a more precise two-part merits showing: the appellant must prove that the agency failed to comply with an

applicable statute or OPM regulation governing RIF actions under part 351, and the failure prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome. This is clearer and better focused on prejudicial RIF-compliance error.

Revising exclusivity language. The final text continues to provide that part 351 procedures are the sole and exclusive means of appealing a RIF action, and adds that RIFs and matters related to the appeals of RIFs cannot be raised in grievance procedures or challenged through grievance arbitration, while expressly preserving collateral matters within the independent jurisdiction of Equal Employment Opportunity Commission (EEOC), Inspectors General, MSPB, Department of Labor Veterans' Employment and Training Service (DOL VETS), and the Office of Special Counsel (OSC). The final text also retains the no-judicial-review provision.

Updating filing-system language. The final text replaces the proposed placeholder for the electronic filing system with a reference to the system identified on OPM's website. It also replaces “statements, evidence, or documents” with “pleadings, evidence, or documents,” better aligning the filing provision with adjudicatory terminology.

Clarifying filing deadlines. The final text changes the filing deadline from 11:59 p.m. Eastern Standard Time to 11:59 p.m. Eastern Time, avoiding confusion during daylight saving time. It also consolidates the untimely-filing rule in § 351.902(b)(2) and provides that good-cause determinations are within OPM's sole and exclusive discretion.

Adding a limited tolling rule for collateral matters. The final text adds § 351.902(b)(3), which permits an employee who timely filed a collateral matter within the independent jurisdiction of an entity identified in § 351.901(c) to file a RIF appeal within 30 calendar days after the final decision on that matter, where that decision materially affects the employee's retention standing, order of release, assignment rights, or other rights under part 351. The final text provides that a decision is final for this purpose when it is no longer subject to further administrative review and that OPM determines, in its sole and exclusive discretion, whether the decision materially affects the employee's rights.

Requiring filing-information detail in the RIF notice. The final text amends § 351.802(a)(6) to require the specific RIF notice to state, in addition to the employee's right to appeal to OPM, the

time limit for filing an appeal under § 351.902(b) and the electronic filing system through which an appeal must be filed.

Narrowing e-filing enforcement. The final text narrows the proposed e-filing enforcement provisions. Rather than authorizing broader orders regulating filing methods, sanctions, misuse, or termination of e-filer participation, the final text provides that OPM may strike a document when an e-filer repeatedly fails to follow filing instructions after a show-cause order. The final text also removes the proposed statement that withdrawal from e-filing may preclude future re-registration and clarifies that withdrawal of e-filing registration is not good cause for staying a case.

Simplifying initial-appeal information. The final text simplifies the contact-information requirements in § 351.903(a) by replacing “legal name, best address” with “name, address.” The core requirement remains unchanged: the appeal must be written, state the basis for the appeal, identify the appellant and any representative, and include supporting documentation.

Defining the agency record. The final text adds a RIF-specific minimum agency-record requirement to § 351.903(b). The proposal required the agency response to include the agency record but did not define its contents. The final text specifies that the agency record includes, at a minimum, the RIF notice and effective-date documents, documents supporting the RIF reason, coverage and appointment records, competitive-area and competitive-level records, retention-register and retention-standing records, order-of-release records, assignment-rights records, special RIF-circumstance records, and a certification that the complete agency record has been produced.

Distinguishing production to OPM from service on the appellant. The final text requires the agency to produce the complete agency record to OPM while serving the appellant with the agency record subject to legally required limits. The agency may redact or withhold information from the appellant’s copy only to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified-information or national-security requirements, OPM protective orders, or other disclosure limits required by law.

Allowing limited new matters in reply. The final text revises § 351.903(c) to permit an appellant’s reply to raise a new allegation of error if the basis for that allegation rests on information first disclosed in the agency response or if OPM grants leave for good cause.

Adding disclosure limits for inspection and service. The final text makes inspection of OPM’s appellate record and service of documents subject to the Privacy Act, applicable legal privileges, classified-information or national-security requirements, OPM protective orders, and other applicable disclosure limits required by law. The proposal allowed inspection and required service but did not include the same express disclosure limitations.

Reorganizing representative provisions. The final text reorganizes § 351.904 into separate paragraphs addressing designation of a representative, Federal employee representatives and restrictions on official time and reimbursement, and disallowance of representatives. The final text also narrows the grounds for disallowing a representative. Because a Federal employee representative may not perform representational functions while in a duty status, the final text does not adopt the proposed additional grounds for disallowance based on the priority needs of the Government or unreasonable costs to the Government; OPM or the responsible agency may disallow an employee’s choice of representative only where the representative is an employee of the responsible agency or OPM and the representative’s activities would cause a conflict of interest or position. The remaining changes are primarily organizational and clarifying.

Adding adjudicator-separation and ex parte safeguards. The final text adds safeguards in § 351.905(a) requiring OPM adjudicators to be insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice. It also prohibits adjudicators from considering material *ex parte* communications on the merits and requires any such communication to be summarized in the record with an opportunity for party response, unless disclosure is prohibited by law.

Clarifying OPM employee appeals. The final text clarifies that an administrative law judge (ALJ) assigned to adjudicate an OPM employee’s appeal will issue an initial decision. It also adds material factual error affecting the outcome as a ground on which OPM may disturb the ALJ’s decision and clarifies that assigning an ALJ does not make 5 U.S.C. 554, 556, or 557 applicable unless independently required by law or expressly incorporated.

Tightening audits and investigations. The final text narrows the standard for OPM audits or investigations. The proposal allowed OPM to conduct an

audit or investigation when the “interest of justice” would be served. The final text requires OPM to determine that the existing record is insufficient to resolve a material issue within OPM’s jurisdiction and that the audit or investigation is reasonably likely to produce material information. The final text also provides that representatives may not participate in an audit or investigation unless OPM specifically requests it.

Removing a separate ascertainment sanction. The final text removes the proposed separate paragraph authorizing sanctions for failure to participate in ascertainment of facts and renumbers the initial-decision and remedies provisions.

Refining protective-order authority. The final text revises § 351.906(a). The proposal focused on harassing communications and use of appeal information for unrelated purposes. The final text authorizes protective orders or cease-and-desist directives to protect the integrity of the adjudicatory process and to prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. It also requires protective orders to be no broader than reasonably necessary and not to restrict lawful communications protected by law.

Clarifying OPM-initiated reconsideration. The final text clarifies in § 351.907(a) that OPM may reopen and reconsider an initial decision either upon request of a party or on its own initiative. The proposal allowed party-requested reconsideration, while Director sua sponte review was addressed separately.

Clarifying Director review. The final text revises § 351.908 to preserve the Director’s sua sponte authority to reopen and reconsider a nonfinal initial decision or reopened and reconsidered decision, while identifying nonexclusive considerations that may guide that review. The proposal gave the Director broad discretion to reopen and reconsider any nonfinal decision. The final text clarifies that the Director may consider whether the decision contains clear legal error, rests on an erroneous material factual finding, involves an issue of exceptional importance, affects governmentwide civil service administration, conflicts with another OPM decision, or otherwise warrants review. It also clarifies that § 351.908 does not create a party right to request Director review and that, upon reopening, the Director may take any action available under § 351.907(c).

Revising finality of initial decisions. The final text revises § 351.909 so that an initial decision becomes final 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 351.907 or the Director reopens the decision under § 351.908. A timely request suspends finality: if OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes final 30 calendar days after issuance of the denial or dismissal unless the Director reopens it before that time, and if OPM grants the request, the reopened and reconsidered decision becomes final 30 calendar days after issuance unless the Director reopens that decision before that time. An untimely request does not suspend or otherwise affect finality. The final text also clarifies that a decision by the Director that disposes of the appeal is final and effective upon issuance and that, if the Director remands the appeal or directs further proceedings, any resulting decision becomes final under § 351.909. These changes conform finality to the reconsideration and Director-review provisions of the final rule.

Adding public-posting disclosure limits. The final text adds express legal limits on public posting of final merits decisions, including requirements protecting privacy, privileged information, protected personnel information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed. It also clarifies that final merits decisions not publicly posted because of such legal limits must be made available upon request to the Federal employee or former Federal employee involved in a proceeding under this subpart, his or her representative selected pursuant to § 351.904, or a representative of the Federal agency or office involved in the proceeding who has a need to know.

OPM is finalizing the RIF appeals rule as amended. After considering the comments, OPM concludes that the final rule, as amended, better balances timely adjudication, governmentwide consistency, employee access to meaningful administrative review, and agencies' need for finality in workforce restructuring than the current MSPB appeal process for non-SES RIFs.

II. Background

When agencies face workforce restructuring, RIF procedures provide a mechanism for realigning staff through objective criteria. These procedures are governed by 5 U.S.C. 3501–3504 and are implemented through OPM regulations at 5 CFR 351. These regulations

provided employees subject to a RIF action with an avenue to appeal to the MSPB. Under the previous 5 CFR 351.901, replaced by this rule, employees furloughed for more than 30 days, separated, or demoted by a RIF action were able to appeal to the MSPB.

Federal RIF procedures govern the release of competing employees when a release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights. Congress has directed OPM to prescribe regulations governing the release of competing employees in a RIF, giving due effect to the statutory retention factors specified in 5 U.S.C. 3502. OPM implements those requirements in 5 CFR part 351.

Part 351 does not determine whether an agency should conduct a RIF in the first instance. Each agency remains responsible for determining the categories of positions required, where positions are to be located, and when positions are to be filled, abolished, or vacated. The RIF regulations govern how an agency must apply retention, notice, assignment, and related requirements once the agency determines that a RIF action is required.

RIF appeal procedures have historically been established through civil service regulation. Early RIF procedures were administered by the Civil Service Commission and its predecessors. The first uniform RIF regulations were issued in 1925 by the Personnel Classification Board, which was subsumed by the Commission.¹ Those regulations were bolstered again in 1929, when President Calvin Coolidge issued E.O. 5068, prescribing how veterans were to be treated “when reductions are being made in the force.”² President Roosevelt similarly invoked presidential authority to institute the regulatory procedures by which RIFs may be executed.³

Following enactment of the Veterans' Preference Act of 1944,⁴ Commission regulations provided administrative appeal procedures for employees who

believed RIF regulations had not been correctly applied.⁵ Those procedures were revised over time, including in 1963, when the Commission provided that an employee who received a notice of specific RIF action and believed the regulations had not been correctly applied could appeal to the Commission.⁶

Central to this regulatory framework was the understanding that there was no right of judicial review of Commission decisions. “Employees sought to appeal the decisions of [the Commission] through the various forms of action traditionally used for so-called nonstatutory review of agency action, including suits for mandamus . . . injunction . . . and declaratory judgment.” *United States v. Fausto*, 484 U.S. 439, 444 (1988). But “so long as there was substantial compliance with applicable procedures and statutes, the administrative determination was not reviewable.” *Hargett v. Summerfield*, 243 F.2d 29, 32 (D.C. Cir. 1957). It was long understood that RIFs “are matters peculiarly within the province of those who are in charge of and superintending the departments, and, until Congress by some special and direct legislation makes provision to the contrary, we are clear that they must be settled by those administrative officers.” *Keim v. United States*, 177 U.S. 290, 296 (1900).

In 1978, Congress enacted the CSRA, which reorganized the civil service system and established a comprehensive remedial structure for Federal personnel matters.⁷ Congress excluded RIF actions under 5 U.S.C. 3502 from the adverse action provisions in chapter 75. Congress also did not create an express statutory right for non-Senior Executive Service (SES) employees to appeal RIF actions to MSPB. OPM therefore continued to implement RIF appeal procedures through regulation.

In 1983, OPM revised part 351 to provide for MSPB adjudication of non-SES RIF appeals. 48 FR 49462 (Oct. 25, 1983). That provision reflected OPM's regulatory choice to use MSPB as the adjudicative forum. OPM now revises that regulatory framework and establishes OPM as the forum for appeals under subpart I of part 351.

Under the final rule, an employee who is furloughed for more than 30

¹ U.S. Merit Sys. Prot. Bd., *Reduction-in-Force in the Federal Government, 1981: What Happened and Opportunities for Improvement* (June 1983), available at <https://babel.hathitrust.org/cgi/pt?id=uc1.31210024942615&seq=31>.

² E.O. 5068, *Amendment of Civil Service Rule VI* (Mar. 2, 1929), available at <https://www.presidency.ucsb.edu/documents/executive-order-5068-amendment-civil-service-rule-vi>.

³ E.O. 6175, *Separation Ratings of Departmental Employees* (June 16, 1933), available at <https://www.presidency.ucsb.edu/documents/executive-order-6175-separation-ratings-departmental-employees>.

⁴ Act of June 27, 1944, ch. 287, sec. 12, 58 Stat. 390 (codified as amended at 5 U.S.C. 861).

⁵ S. Comm. on Post Office & Civ. Serv., *Reduction-in-Force System in the Federal Government* 89 (July 4, 1952), available at <https://babel.hathitrust.org/cgi/pt?id=uc1.aa0005567177&seq=67&q1=rule>.

⁶ 28 FR 10021 (Sept. 14, 1963).

⁷ See *Grosdidier v. Broad. Bd. of Govs.*, 560 F.3d 495, 497 (D.C. Cir. 2009); *Filebark v. Dep't of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009); *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004); *Lindahl v. Office of Personnel Management*, 470 U.S. 768, 773 (1985).

days, separated, or demoted by a RIF action for which the agency issued a specific RIF notice under 5 CFR 351.802 on or after the effective date of the final rule under RIN 3206–AO86 may appeal that action to OPM. A RIF action for which the agency issued that notice before the effective date of the RIN 3206–AO86 final rule remains subject to adjudication by the MSPB under the procedures applicable to that action. The final rule also establishes filing procedures, agency-record requirements, adjudication procedures, reconsideration, Director review, and finality provisions for OPM RIF appeals. The appellant bears the burden to prove timely and proper filing, OPM jurisdiction, a failure to comply with an applicable statute or OPM regulation governing RIF actions under part 351, and prejudice caused by that failure.

The rule also preserves collateral statutory avenues administered by other entities. Employees may continue to file matters within the jurisdiction of EEOC, an Inspector General, MSPB where it has independent statutory jurisdiction, DOL VETS, or OSC. Finally, the rule applies to a RIF action for which the agency issued a specific RIF notice under 5 CFR 351.802 on or after September 2, 2026, the effective date of the final rule under RIN 3206–AO86; an appeal of a RIF action for which the agency issued that notice before that date, including an appeal pending before the MSPB, remains subject to adjudication by the MSPB under the procedures applicable when the action was taken.

III. Responses to Major Issues Raised by Commenters

A. OPM's Authority To Transfer RIF Appeals From MSPB to OPM

Commenters 0370, 0928, 1025, 1092, 1099, 1165, 1217, and 1252 argued that OPM lacks authority to transfer RIF appeals from MSPB to OPM. These commenters asserted that Congress created MSPB as the independent adjudicatory body for Federal personnel appeals, that RIF appeals are part of MSPB's statutory role, and that any removal of MSPB jurisdiction must be accomplished by Congress rather than by regulation. Commenters 1252, 1223, 1219, 1206, and 1119 argued that returning RIF appeal authority to OPM from MSPB violates a requirement, whether express or implied, that the CSRA mandates that personnel policymaking and personnel claims adjudication functions maintain structural separation. In support, commenters cite the legislative history of the CSRA to support the proposition

that the CSRA was designed to decouple the adjudication function from the policymaking function under the Civil Service Commission. Commenter 1099 further argued that the proposed rule rested on an overbroad conception of Presidential and agency RIF authority.

OPM disagrees that congressional action is required to revise the forum for non-SES RIF appeals. Pursuant to 5 U.S.C. 1301, “[t]he Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.” Under 5 U.S.C. 1104(a)(1), “the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management.” Further, OPM “shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.” 5 U.S.C. 1104(b)(1). And the OPM Director has the responsibility “to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations,” and “execut[e], administer[], and enforc[e] . . . the civil service rules and regulations of the President and the Office and the laws governing the civil service.” 5 U.S.C. 1104(b)(3), 1103(a)(5).

With respect to RIFs, Congress gave broad authority to OPM to “prescribe regulations for the release of competing employees in a reduction in force.” 5 U.S.C. 3502. That authority, together with OPM's related regulatory authority under 5 U.S.C. 1302(b) and (c) to administer veterans' preference in retention, reasonably encompasses regulations governing how an employee may challenge whether an agency complied with those RIF requirements.

In passing the CSRA, Congress carefully created the MSPB review scheme and determined that there should be no RIF appeal right to MSPB. In 5 U.S.C. 7512(B), Congress expressly excluded “a reduction-in-force action under § 3502 of this title” from the list of adverse actions covered under Chapter 75. 5 U.S.C. 7512(B). The MSPB appeal right in chapter 75 applies to actions covered by that subchapter, see 5 U.S.C. 7513(d), and chapter 77 provides procedures only for actions otherwise “appealable to the Board under any law, rule, or regulation.” 5 U.S.C. 7701(a). Thus, chapter 77 does not itself create an independent statutory MSPB appeal right for non-SES RIF actions;

The MSPB has long acknowledged that it derives its authority to review

agency RIF actions from OPM regulations at 5 CFR 351.901, not from the CSRA itself. See *Kohfield v. Dep't of the Navy*, 75 M.S.P.R. 1, 4 (1997) (citing *Grubb v. Dep't of the Interior*, 73 M.S.P.R. 296, 299 (1997)); *Gaxiola v. U.S. Dep't of the Air Force*, 6 M.S.P.R. 515, 519 (1981).

By carving out RIFs conducted under 5 U.S.C. 3502 from the MSPB's jurisdiction, Congress distinguished this type of reorganization activity from the individually targeted personnel actions for which employees have traditionally been accorded formal procedural protections. In the CSRA, Congress did not direct that the MSPB have jurisdiction over RIF appeals. Instead of altering the existing statutory scheme, the CSRA affirmed 5 U.S.C. 3502 as the governing statute on the issue of RIF appeal procedure for non-SES employees. In the nearly 50 years since its original enactment, Congress has not amended the statute to provide for such a right, nor has it provided for an appeal process for RIFs that includes judicial review.

At the time the CSRA was passed, RIF appeals were housed within the Civil Service Commission. Nothing in the CSRA altered that arrangement. Indeed, the D.C. Circuit has stated that “if OPM chooses to use the MSPB for dispute resolutions, it must take that statutory device as it finds it.” *American Federation of Government Employees v. Office of Personnel Management (AFGE v. OPM)*, 821 F.2d 761, 769 (D.C. Cir. 1987) (emphasis added). This declaration assumes that OPM may, in fact, choose not to use the MSPB for dispute resolution and can create its own RIF appeal process.

OPM is not persuaded that the general CSRA structure or legislative history cited by commenters displaces the specific statutory text governing RIFs. Under general principles of statutory construction, the CSRA's plain and unambiguous language controls. Courts “assum[e] that the ordinary meaning of that language accurately expresses the legislative purpose.”⁸

Commenters identified no provision that grants non-SES employees a statutory right to appeal RIF actions to

⁸ See *CSX Transp., Inc. v. Ala. Dep't of Revenue*, 562 U.S. 277, 296 (2011); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175–76 (2009) (quoting *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004)) (internal quotation marks omitted); *Christiana Tr. v. Riddle*, 911 F.3d 799, 806 (5th Cir. 2018) (“If a statute's text is ‘plain and unambiguous, it must be given effect.’” (quoting *BMC Software, Inc. v. Comm'r*, 780 F.3d 669, 674 (5th Cir. 2015))); see also *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (“[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous”).

MSPB or prohibits OPM from revising the regulatory forum for such appeals. General statements in the CSRA's legislative history about MSPB's independent role cannot transform OPM's prior regulatory delegation into an irrevocable statutory jurisdictional grant. Congress expressly excluded RIF actions under section 3502 from the chapter 75 adverse action scheme, which is the statutory path that provides MSPB appeal rights and judicial review for covered removals, suspensions, reductions in grade or pay, and furloughs of 30 days or less. 5 U.S.C. 7512(B). Where Congress wanted to provide an MSPB appeal right for a RIF-related action, it did so expressly, as it did for certain SES RIF actions. *See* 5 U.S.C. 3595(c). The absence of comparable language for non-SES RIF actions is therefore significant.

Commenters 0928, 1099, and 1165 argued that OPM's statutory authority under 5 U.S.C. 3502 is limited to prescribing retention-order rules and does not authorize OPM to create an internal adjudicatory process for RIF appeals. OPM disagrees that its authority under 5 U.S.C. 3502 is limited to the mechanics of retention standing and does not include appeal procedures. Section 3502 directs OPM to prescribe regulations for the release of competing employees in a RIF. Regulations governing how an employee may challenge whether the agency complied with those RIF requirements fall comfortably within the regulatory framework OPM is authorized to establish. Under this authority, OPM may regulate matters such as whether to establish RIF appeal rights, the entity responsible for accepting RIF appeals, and the procedures under which an employee may appeal a RIF action. Thus, OPM has long used part 351 not only to prescribe retention rules but also to prescribe notice, assignment, record, certification, and appeal provisions. The final rule revises one component of that regulatory framework: the forum and procedure for administrative appeals.

Commenters 0343, 0928, 1092, 1099, and 1165 argued that Congress acquiesced in or ratified MSPB adjudication of RIF appeals by leaving OPM's regulatory delegation in place for decades. Some commenters also argued that because MSPB's jurisdiction includes matters appealable to the Board under any law, rule, or regulation, OPM's prior regulatory delegation effectively became part of MSPB's "organic jurisdiction." Commenters further cited the statutory MSPB appeal right for SES RIF actions as evidence that Congress expected RIF appeals generally to be heard by MSPB.

OPM disagrees. Congressional acquiescence is not lightly inferred, particularly where the statutory text does not require the asserted result.⁹ Congress has not enacted a provision making non-SES RIF actions under 5 U.S.C. 3502 statutorily appealable to MSPB. The fact that Congress has amended title 5 at various times without displacing OPM's prior regulatory delegation does not transform that delegation into a statutory mandate.

Nor does MSPB's jurisdiction over actions appealable to it by "law, rule, or regulation" prevent OPM from amending its own regulation. That formulation recognizes that MSPB may hear matters made appealable to it by regulation. It does not freeze every such regulation in place. Where MSPB jurisdiction exists only because an OPM regulation makes an action appealable to MSPB, OPM may revise that regulation through notice-and-comment rulemaking.

OPM's prior decision to use MSPB as the adjudicative forum for RIF appeals was a regulatory policy choice, not a statutory requirement. In adopting related RIF revisions, OPM explained that its objectives included giving "greater recognition to performance as a retention factor, strengthen[ing] the objectivity of the RIF process, and improv[ing] the efficiency of the system." 51 FR 318 (Jan. 3, 1986). OPM continues to agree that performance should be meaningfully reflected in RIF retention standing and that employees should receive objective and efficient review of alleged RIF errors. But those objectives do not require MSPB adjudication.

Congress assigned OPM a central role in administering and safeguarding the merit-based civil service: the OPM Director is charged with executing, administering, and enforcing the civil-service laws and regulations, 5 U.S.C. 1103(a)(5); advising the President on actions to promote an efficient civil service and the systematic application of merit system principles, including policies concerning performance, tenure, and separation, 5 U.S.C. 1103(a)(7); and designing systems to assess agency human-capital management, including standards for

holding managers and human-resources officials accountable for efficient and effective human-resources management in accordance with merit system principles, 5 U.S.C. 1103(c)(1), (2)(F).

Congress also directed OPM to establish and maintain an oversight program to ensure that delegated personnel activities comply with merit system principles and applicable standards, 5 U.S.C. 1104(b)(2); preserved the Director's responsibility to prescribe regulations and ensure compliance with civil-service laws, rules, and regulations, 5 U.S.C. 1104(b)(3); and authorized OPM to require corrective action when agency actions under delegated authority are contrary to law, rule, regulation, or applicable standards, 5 U.S.C. 1104(c). In the RIF context specifically, Congress directed OPM to prescribe regulations governing the release of competing employees and to give due effect to tenure, military preference, length of service, and efficiency or performance ratings, 5 U.S.C. 3502(a), while also assigning OPM responsibility for administering veterans' preference in retention, 5 U.S.C. 1302(b), (c).

These authorities operate within the merit system framework of 5 U.S.C. 2301, including the principles that the Federal workforce should be used efficiently and effectively and that employees should be retained on the basis of the adequacy of their performance, 5 U.S.C. 2301(b)(5), (6), as well as the prohibited-personnel-practice provisions barring unauthorized preferences, violations of veterans' preference, and actions contrary to laws, rules, or regulations implementing or directly concerning merit system principles, 5 U.S.C. 2302(b)(6), (11), (12).

Accordingly, OPM concludes that transferring RIF appeals to OPM is consistent with, rather than contrary to, Congress's merit system design. The final rule preserves objective review of RIF actions while allowing OPM, through its merit system compliance and adjudicatory functions, to ensure that agencies correctly apply the RIF regulations OPM is charged with prescribing and enforcing. OPM therefore declines to retain MSPB adjudication merely to preserve a forum-based connection to merit principles, where OPM has determined that a more focused OPM process will better promote performance-based retention, uniform interpretation of part 351, efficient adjudication, and timely corrective relief where an appellant proves prejudicial RIF error.

⁹ *See Brown v. Gardner*, 513 U.S. 115, 121–22 (1994) ("congressional silence lacks persuasive significance") (internal quotation marks and citations omitted); *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001) ("And when, as here, Congress has not comprehensively revised a statutory scheme but has only made isolated amendments, we have spoken more bluntly: it is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of the statutory interpretation.") (internal citations omitted).

B. Separation of Policymaking and Adjudication Functions and Adequacy of OPM as a RIF Appeals Forum

Commenters 0370, 0928, 0962, 1025, 1092, 1099, 1165, 1217, and 1252 argued that the final rule improperly combines personnel policymaking and adjudication within OPM. These commenters cited the CSRA's division of the Civil Service Commission's functions between OPM and MSPB and argued that Congress intended MSPB to provide independent adjudication separate from OPM's personnel-management role. Commenters also argued that OPM's responsibility for issuing RIF regulations, advising agencies, and in some circumstances reviewing competitive-area matters, creates an institutional conflict if OPM also adjudicates RIF appeals and denies employees a meaningful opportunity for review.

OPM recognizes that Congress created MSPB as an independent adjudicator for matters Congress made appealable to MSPB. But the CSRA does not require that every regulatory personnel appeal be adjudicated by MSPB. Administrative agencies routinely perform adjudicative functions concerning matters within their regulatory responsibilities, and OPM itself adjudicates a variety of Federal personnel matters. The question here is not whether MSPB is an independent adjudicatory body, but whether Congress required non-SES RIF appeals to remain with MSPB. OPM concludes that Congress did not impose such a requirement.

The fact that OPM administers civil service laws and regulations does not make OPM incapable of adjudicating disputes under those laws. Federal agencies routinely issue regulations, provide governmentwide guidance, and adjudicate matters within their statutory responsibilities. OPM itself is a clear example. Congress has vested the OPM Director with responsibility for executing, administering, and enforcing civil service rules and regulations and the laws governing the civil service, including retirement and classification activities. See 5 U.S.C. 1103. OPM also has express regulatory authority in several civil-service areas, including competitive-service examinations and veterans' preference administration. See 5 U.S.C. 1302. The fact that OPM issues governmentwide personnel policy therefore does not make it unusual for OPM also to resolve particular disputes arising under that same statutory framework.

Further, the CSRA currently provides for a broad range of venues to hear

various claims arising out of the CSRA and the employment relationship with the government, including OPM which itself has long performed adjudicative or quasi-adjudicative processes in personnel matters.¹⁰ For example, OPM's Office of Merit Systems Accountability and Compliance (MSAC) adjudicates classification appeals under 5 CFR part 511, subpart F. Employees may request an OPM decision on the proper occupational series, grade, or chapter 51 coverage of their official positions, and agencies may appeal certain OPM classification certificates. In those appeals, OPM may request written facts, investigate, or audit the position; OPM's appellate decision is final unless OPM reconsiders it; and the decision is binding on administrative, certifying, payroll, disbursing, and accounting officials.

OPM's MSAC office also adjudicates Fair Labor Standards Act claims under 5 CFR part 551, subpart G. Those procedures cover FLSA exemption-status determinations, minimum-wage and overtime-pay claims, and child-labor complaints. Covered claimants may file with either the employing agency or OPM, but not both at the same time, and an OPM FLSA claim decision is final and not subject to further administrative review. Similarly, OPM settles certain compensation and leave claims under 5 CFR part 178; those claims are resolved on the written record, with the burden on the claimant, and OPM's settlement is final within OPM. OPM regulations also provide for appeals to OPM from certain examination ratings or application rejections.

Other agencies operate in the same manner. The EEOC issues Federal-sector EEO regulations and adjudicates appeals from agency final actions, dismissals, class-complaint decisions, and certain grievance decisions raising discrimination issues. See 29 CFR 1614.401(a)–(e). EEOC's Office of Federal Operations issues written appellate decisions on behalf of the Commission, applying specified standards of review and providing for finality unless reconsideration is granted. 29 CFR 1614.405(a)–(c). The Federal Labor Relations Authority (FLRA) likewise provides governmentwide leadership and guidance on Federal labor-management relations while resolving representation, negotiability, unfair-labor-practice, and arbitration matters. See 5 U.S.C. 7105.

¹⁰ See 5 U.S.C. 1104(b)(2), 1216(a)(1)–(2), 2302, 3330a, 3702, ch. 4, ch. 51, 5366, 7116; 42 U.S.C. 2000e–16; 29 U.S.C. 633a, 204; 38 U.S.C. ch. 43; 5 CFR parts 178, 536, and 771.

These examples show that combining policy, guidance, and adjudication within the same agency is a familiar feature of Federal administration in general, and Federal workforce management in particular, not evidence of structural bias.

Nor does the fact that OPM is headed by a presidentially appointed Director establish bias. Like MSPB, OPM is an independent agency. 5 U.S.C. 1101. Both the OPM Director and MSPB Members are appointed by the President with the advice and consent of the Senate and serve at the President's pleasure.¹¹ The principal structural difference between MSPB and OPM is that the MSPB is led by three members while OPM is headed by a single director. But a tripartite versus single-head leadership structure has little bearing on an agency's capacity to issue impartial decisions. Consequently, OPM rejects the argument that greater MSPB independence makes it a more appropriate venue for RIF appeals; the premise is inaccurate. Because MSPB members now serve at will, the MSPB possesses no greater structural independence from the President than does OPM.

The relevant question is whether the adjudicatory structure creates a constitutionally intolerable risk of actual bias or prejudgment—not whether the agency head is politically accountable. Administrative adjudicators are presumed to act with honesty and integrity, and the combination of investigative, policymaking, and adjudicative functions in an agency does not, without more, violate due process. *Withrow v. Larkin*, 421 U.S. 35, 47, 58 (1975). The Supreme Court has also rejected the proposition that agency decisionmakers are disqualified merely because they previously investigated, reported on, or expressed policy views concerning related issues. *FTC v. Cement Inst.*, 333 U.S. 683, 700–03 (1948). Due process concerns arise from more concrete circumstances, such as a direct pecuniary interest, personal involvement, personal animus, or an objectively intolerable probability of actual bias. See *Tumey v. Ohio*, 273 U.S. 510, 523, 532 (1927); *Withrow*, 421 U.S. at 47; *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884–87 (2009).

The APA itself reflects the same principle. It permits agency review of initial decisions by presiding employees and provides that, on review, the agency has the powers it would have had in

¹¹ See *Harris v. Bessent*, 160 F. 4th 1235 (D.C. Cir. 2025); see also *Trump v. Slaughter*, No. 25–332 (June 29, 2026).

making the initial decision, subject to any limits imposed by rule or notice. 5 U.S.C. 557(b). The APA's separation-of-functions provision also expressly does not apply to "the agency or a member or members of the body comprising the agency." 5 U.S.C. 554(d)(2)(C). Federal administrative law therefore does not treat agency-head accountability as equivalent to bias; it looks instead to whether the process includes appropriate safeguards against prejudgment, improper influence, or conflicts of interest.

Ultimately, OPM must determine whether the rule provides a fair and reasoned adjudicatory process for RIF appeals. OPM concludes that it does. Here, the final rule provides a defined administrative process, requires decisions to be based on the record, preserves administrative review of whether the agency complied with applicable RIF statutes and OPM regulations and whether any failure prejudiced the appellant, and includes safeguards against arbitrary or predetermined decision-making.

Those safeguards are substantial. The final rule includes separation-of-functions safeguards tailored to the RIF appeal context. Under § 351.905(a), OPM personnel assigned to adjudicate appeals by non-OPM employees must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators may not consider material *ex parte* communications concerning the merits of an appeal. If such a communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law.

The final rule also restricts adjudicator assignments. No OPM employee may be assigned to adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, was an employee of the agency that is a party to the action or was subject to an action covered by part 351. When necessary, OPM may assign an administrative law judge to preside over an appeal. Appeals by OPM employees receive additional protection: under § 351.905(b), OPM will assign an administrative law judge to adjudicate the appeal and issue an initial decision, and OPM will not disturb that decision except on specified grounds.

OPM further disagrees that its review of certain competitive-area matters prejudices later appeals. OPM's

regulatory review of a competitive area, where required, is not approval of an individual RIF action, not approval of an agency's decision to conduct a RIF, and not a determination that any later action against any employee is lawful. If a competitive area issue is raised in an appeal, the agency must produce the relevant record, including competitive area and competitive level documentation, and OPM will adjudicate the appeal based on the record and applicable legal standards.

Commenter 1252 asserted that "OPM has not demonstrated that it possesses the adjudicatory capacity necessary to replace MSPB's established system," and that effectuating this transfer "without evidence of readiness would risk inconsistent determinations, procedural delays, and diminished confidence in outcomes."

OPM respectfully disagrees. OPM currently serves as the appellate venue for classification, Fair Labor Standards Act, compensation and leave, and declination of reasonable offers, which are conducted by its MSAC office under the supervision of the Director of OPM. MSAC is an external-facing organization within OPM with longstanding responsibility for oversight of agency compliance with civil service laws, merit-system principles, and related regulations.¹² MSAC also has substantial experience adjudicating Federal personnel matters, including classification appeals, Fair Labor Standards Act claims, compensation and leave claims, and declination-of-reasonable-offer claims.¹³ In those matters, MSAC provides employees with administrative review of agency personnel determinations and issues OPM's final administrative decision.

RIF appeals are well suited to MSAC's existing institutional role. A RIF appeal generally turns on whether the agency properly applied OPM's governmentwide RIF regulations to the appellant, including requirements concerning coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related part 351 requirements. MSAC's mission and experience place it in a strong position to evaluate whether agencies complied with OPM regulations and whether any

failure prejudiced the appellant. Locating RIF appeals in MSAC also allows OPM to bring its subject-matter expertise in part 351 directly to bear while maintaining an adjudicatory process separate from the employing agency that took the RIF action. Housing RIF appeals within MSAC would additionally separate the RIF adjudicative function within OPM from OPM's RIF policymaking function, which is housed in its Workforce Policy & Innovation (WPI) office.¹⁴

Commenters 0442, 0714, 0975, and 1147 asserted that assigning RIF appeals to MSAC would overwhelm that office, particularly if RIF appeal volume increases. OPM considered those comments but does not agree that they warrant retaining MSPB as the forum for RIF appeals. OPM expects MSAC to administer the appeal process through the streamlined, record-based procedures established in this final rule. Those procedures are designed to avoid unnecessary litigation burden while preserving the tools needed to resolve material issues. MSAC may require additional information, conduct an audit or investigation where the existing record is insufficient to resolve a material issue within OPM's jurisdiction, and hold a hearing when necessary and efficient. This structure permits MSAC to focus resources on appeals that require additional development, rather than applying the same litigation model to every case.

OPM also does not agree that a temporary or anomalous increase in RIF activity provides a reason to retain a fragmented appeal structure indefinitely.¹⁵ This rule applies only to appeals of RIF actions for which the agency issued a specific RIF notice under 5 CFR 351.802 on or after September 2, 2026, the effective date of the final rule under RIN 3206-AO86, and OPM will administer the process prospectively. OPM will monitor appeal volume, staffing needs, processing times, and operational requirements as implementation proceeds. Because MSAC already performs external adjudicatory and compliance functions, OPM expects that MSAC can incorporate RIF appeals into its existing adjudicatory framework more efficiently than creating a new office or continuing

¹² U.S. Off. of Pers. Mgmt., Off. of Inspector Gen., *Final Evaluation Report: Evaluation of the Merit System Accountability and Compliance Office*, Rep. No. 2021-OEI-001 (Dec. 12, 2022), available at <https://www.oversight.gov/sites/default/files/documents/reports/2022-12/Final-Report-2021-OEI-001.pdf>.

¹³ U.S. Off. of Pers. Mgmt., *Adjudications*, available at <https://www.opm.gov/compliance/adjudications/>.

¹⁴ U.S. Off. of Pers. Mgmt., *FY 2026 Congressional Budget Justification and Annual Performance Plan 26*, available at <https://www.opm.gov/about-us/fy-2026-congressional-budget-justification/fy-2026-congressional-budget-justification.pdf>.

¹⁵ There have only been 141 separations resulting from a RIF from January to April 2026, a far slower pace than 2025. (Source: OPM FWD (June 3, 2026)).

to rely on an external forum whose procedures OPM cannot control.

Commenters 0483, 0303, 0308, 0332, and others argued that transferring the appeal forum to OPM will deny appellants meaningful review because, in their view, it would consolidate the conception, execution, and adjudication of RIFs within a single agency. OPM disagrees. The final rule does not give OPM authority to decide whether another agency should conduct a RIF, what positions that agency should abolish, or which organizational components should be restructured. Those workforce management decisions remain with the employing agency. Consistent with § 351.201, each agency remains responsible for determining the categories of positions required, where positions are located, and when positions are filled, abolished, or vacated. OPM's role is different: OPM prescribes governmentwide RIF regulations, provides general regulatory guidance and technical assistance, and, where the regulations require it, reviews discrete matters such as certain competitive-area determinations or shortened notice requests. Those functions do not make OPM the proponent or executing agency for an individual RIF action, nor do they prejudice whether the employing agency complied with part 351 as applied to a particular appellant.

The final rule also reinforces this distinction procedurally. OPM's adjudicatory role is limited to determining whether the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351 and whether that failure prejudiced the appellant. The agency must produce the complete agency record to OPM, including RIF-specific documentation such as the RIF notice, effective-date materials, records supporting the reason for the RIF, competitive-area and competitive-level documentation, retention-register materials, order-of-release records, assignment-rights records, and documentation concerning any special RIF circumstance. In addition, OPM adjudicators must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action, and they may not consider material *ex parte* communications concerning the merits of an appeal. Thus, commenters' characterization of the rule as placing "conception, execution, and appeal" of RIFs entirely within OPM conflates OPM's governmentwide regulatory and advisory responsibilities with the employing agency's independent

decision to conduct and implement a RIF, and it overlooks the final rule's record-production, separation-of-functions, and *ex parte* safeguards.

C. Due Process, Neutrality, and Impartiality

Commenters 0343 and 1219 argued that the relocation of the RIF appellate venue as provided for in this rule violates the constitutional due process principles articulated in *Cleveland Board of Education v. Loudermill* (Loudermill), 470 U.S. 532 (1985). As a matter of constitutional due process, public sector employees can have a property interest in their continued employment which may not be terminated without certain pretermination procedures. Pursuant to *Loudermill*, public sector employees are entitled to written or oral notice of charges or rationale underlying their dismissal, an explanation of the evidence supporting that rationale or charges, and an opportunity to present their side of the issues. *Id.* The right to "some kind of hearing," consistent with the three *Loudermill* protections, attaches only when the employee faces a deprivation of a protected property interest. Since *Loudermill*, several courts have recognized that RIFs present different due-process considerations than disciplinary removals, and some have held that post-deprivation procedures may satisfy due process in bona fide RIF or reorganization contexts.¹⁶

Further, as opposed to adverse actions taken for disciplinary or performance reasons, RIFs target positions, not individuals, and do not stigmatize affected employees in light of the considerable differences in the treatment of employees subject to a RIF and those subject to an adverse action.¹⁷ Also weighing in favor of the "reorganization exception" to *Loudermill* is the significant practical challenge of conducting pretermination hearings when a RIF involves a large number of employees. Consistent with these principles, both the Fifth and Federal Circuits have concluded that employees do not have a right to due process under the Constitution where a

RIF initiated under 5 U.S.C. 3502 is concerned.¹⁸

OPM also notes that some courts have found an employee can be entitled to *Loudermill* protections when they assert a RIF was pretextual rather than "bona fide."¹⁹ In recognition of that possibility, the revised 5 CFR 351.901 does not restrict employees from pursuing claims that an agency's RIF was pretext for improper retaliation, discrimination, or other unlawful rationales. However, those claims must be pursued in alternative forums where employees and agencies will most benefit from the specialized knowledge housed within such venues. As these claims are collateral to whether an agency's RIF action was executed in compliance with the statutory and regulatory requirements governing RIFs, they are outside the scope of an appeal under the regulations promulgated pursuant to this rule.

Commenter 0370 argued that transferring RIF appeals from MSPB to OPM would violate due process by eliminating independent adjudication and judicial review and create a constitutionally unacceptable risk of structural bias under cases such as *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), and *Gibson v. Berryhill*, 411 U.S. 564 (1973). The commenter also asserted that OPM's involvement in reviewing competitive areas would make subsequent OPM adjudication improper, and that agencies may exercise less care if RIF actions are reviewed by OPM adjudicators rather than MSPB administrative judges. OPM disagrees.

First, OPM disagrees that the final rule violates due process by locating RIF appeal adjudication within OPM. The Supreme Court has recognized a presumption of honesty and integrity in administrative adjudicators, and the mere combination of policymaking, investigative, supervisory, or adjudicative functions within an agency does not, without more, establish unconstitutional bias. *Withrow*, 421 U.S. at 47, 58. The cases cited by the commenter involved materially different circumstances, such as a judge's extraordinary personal campaign-related relationship to a litigant in *Caperton* or an adjudicatory body composed of market participants with a direct pecuniary interest in the outcome in *Gibson*. OPM adjudicators will not have a personal financial interest in RIF

¹⁶ See, e.g., *Wash. Tchrs.' Union Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO v. Bd. of Educ. of DC*, 109 F.3d 774, 789–91 (D.C. Cir. 1997); *Duffy v. Sarault*, 892 F.2d 139, 147 (1st Cir. 1989); *Dwyer v. Regan*, 793 F.2d 457 (2d Cir. 1986), modifying 777 F.2d 825 (2d Cir. 1985); *Misek v. City of Chi.*, 783 F.2d 98, 100–01 (7th Cir. 1986).

¹⁷ See *West v. Grand Cnty.*, 967 F.2d 362, 367 (10th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL-CIO v. Off. of Pers. Mgmt.*, 821 F.2d 761, 767–68 (D.C. Cir. 1987).

¹⁸ See, e.g., *Grier v. Dep't of Health & Hum. Servs.*, 750 F.2d 944, 947 (Fed. Cir. 1984); *Am. Fed'n of Gov't Emps., AFL-CIO v. Stetson*, 640 F.2d 642, 645 (5th Cir. 1981).

¹⁹ See, e.g., *West*, 967 F.2d at 367–68; *Misek*, 783 F.2d at 101.

appeal outcomes, and a generalized governmentwide interest in efficient personnel administration is not the type of personal, direct, or pecuniary interest that due process treats as disqualifying.

The final rule also includes safeguards to ensure record-based and impartial adjudication. OPM personnel assigned to adjudicate RIF appeals must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators may not consider material *ex parte* communications concerning the merits of an appeal. If such a communication occurs, OPM must place a summary in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. The rule also provides assignment restrictions, written decisions, reconsideration procedures, Director review before finality, and public availability of final merits decisions subject to privacy and other legal limits. For appeals by OPM employees, the rule provides for adjudication by an administrative law judge.

Second, OPM disagrees that its role in reviewing certain competitive-area matters makes OPM an improper adjudicator of later RIF appeals. Agencies, not OPM, remain responsible for determining their workforce needs, including what positions are required, where positions are located, and when positions are to be filled, abolished, or vacated. OPM's review of a competitive area, where required by regulation, is a regulatory safeguard concerning the competitive area used in the RIF; it is not approval of the agency's decision to conduct a RIF, approval of any individual RIF action, or prejudgment of any future appeal. If a competitive-area determination is relevant to an appeal, the agency must produce the pertinent agency record, and OPM will adjudicate the appellant's claim on the appeal record under the standards in part 351.

Commenter 0370 asserted that OPM approved certain competitive areas in less than an hour. OPM does not adjudicate in this rulemaking the validity of any particular competitive-area approval or any particular agency RIF. Nor does an alleged processing time, standing alone, establish that OPM's review was inadequate or that OPM cannot fairly adjudicate future appeals. Some requests may present straightforward issues or be supported by complete organizational documentation. In an appeal, an appellant may challenge whether the agency failed to comply with applicable

statutes or OPM regulations governing RIF actions, including requirements concerning competitive areas, and the agency must produce the complete agency record to OPM.

Third, OPM disagrees that RIF appeals necessarily require MSPB administrative judges or MSPB-style procedures to provide meaningful review consistent with due process. Due process is flexible and calls for procedures appropriate to the nature of the governmental action and the interests at stake. RIF appeals generally concern whether the agency complied with statutory and regulatory requirements governing the conduct of a RIF, including coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related requirements. Those issues are ordinarily well suited to review on the written agency record, supplemented where necessary by party submissions, requests for additional information, audits, investigations, or hearings when OPM determines that such procedures are necessary and efficient. Requiring discovery and hearings in all RIF appeals would impose significant cost and delay on employees, agencies, witnesses, and OPM, even in cases resolvable on the record.

The D.C. Circuit has instructed OPM that "if OPM chooses to use the MSPB for dispute resolutions, it must take that statutory device as it finds it."²⁰ OPM cannot tailor MSPB procedures to the nature of the action at issue. In light of that legal requirement, OPM has chosen to provide RIF appeals in an alternative forum better suited to efficiently adjudicate the relevant matters. The final rule provides targeted fact-development tools where needed without importing the full MSPB litigation model into every RIF appeal.

D. Claims of Politicization, Merit-System Harm, and Retaliatory RIFs

Commenters 0370, 0962, 0976, 1025, 1092, 1099, 1165, 1217, and 1252 asserted that the rule would politicize the civil service, weaken merit-system protections, enable politically motivated mass firings, or allow agencies to use sham RIFs to evade MSPB review of adverse actions. Commenter 0370 specifically raised concern that agencies could conduct one-person RIFs or rescind pending RIF actions and reissue them after the effective date to avoid MSPB review.

OPM rejects the assertion that the final rule authorizes politicized or

retaliatory RIFs. The final rule does not change the basic requirement that a RIF be a position-based action taken for reasons recognized under part 351, such as lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights. The final rule also does not authorize agencies to use RIF procedures to accomplish a disciplinary, retaliatory, discriminatory, or otherwise unlawful personnel action.

The final rule's revised merits standard directly addresses these concerns. An appellant may obtain relief by proving that the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351 and that the failure prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome. If an agency labels an action a RIF but fails to satisfy the requirements of part 351, that issue falls within OPM's RIF-compliance review.

The final rule's agency-record requirements also reduce the risk of rubber-stamp review. The agency must produce documents supporting the reason for the RIF; documents establishing the appellant's coverage, position, appointment, tenure subgroup, veterans' preference status, service computation date, competitive area, and competitive level; retention registers; order-of-release records; assignment-rights records; and records concerning special circumstances such as abolishment of an entire competitive area, transfer of function, exclusion from RIF competition, or restoration protection. These requirements give OPM and the appellant a concrete record against which to test the agency's compliance with part 351.

OPM also notes that collateral protections remain available. Allegations of discrimination, whistleblower reprisal, prohibited personnel practices, veterans' rights violations, or other unlawful conduct may be pursued in the forums Congress or applicable law has designated, including EEOC, OSC, DOL VETS, Inspectors General, or MSPB where it has independent jurisdiction. The final rule channels direct RIF-compliance appeals to OPM; it does not immunize unlawful conduct.

Commenter 0370 expressed concern that an agency could rescind RIF actions pending before MSPB and later reissue them after the final rule's effective date to avoid MSPB review. OPM declines to adopt a special rule prohibiting agencies from rescinding pending RIF actions and later taking new RIF actions.

²⁰ *AFGE v. OPM*, 821 F.2d 761, 769 (D.C. Cir. 1987).

Agencies must be able to rescind, correct, and reissue personnel actions where appropriate. Any new RIF action taken after the effective date must comply with the statutes and regulations then in effect. If an employee believes the new action is unlawful, pretextual, discriminatory, retaliatory, or otherwise improper, the employee may pursue the OPM RIF appeal and any collateral statutory remedies preserved by the final rule.

Commenter 0370 also contended that the rule permits agencies to use sham RIFs to evade MSPB review of removals. OPM disagrees. The rule does not alter the basic distinction between a bona fide RIF and an adverse action. A RIF remains a position-based action taken for reasons recognized under part 351, such as lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights. An agency may not convert a disciplinary or performance-based removal into a RIF merely by labeling it as such. If an appellant contends that the agency failed to comply with applicable RIF statutes or OPM regulations, including by using RIF procedures where the action did not satisfy the requirements of part 351, OPM may consider that claim within the scope of the RIF appeal and order corrective action. If the employee alleges that the agency acted for discriminatory, retaliatory, or otherwise prohibited reasons, the employee may also pursue any collateral statutory claims that are within the jurisdiction of the EEOC, OSC, MSPB, an Inspector General, or another authorized forum.

E. Procedural Protections in OPM Appeals

Several commenters urged OPM to provide RIF appellants with procedures similar to those available to employees appealing adverse actions before MSPB, including broader discovery and a hearing as of right. OPM declines to adopt that approach. RIF appeals and chapter 75 adverse-action appeals involve materially different actions and different issues. An adverse-action appeal generally concerns an agency action directed at an individual employee for conduct or performance reasons. A RIF action, by contrast, is a position-based workforce action governed by part 351 and focused on whether the agency properly applied the statutory and regulatory RIF requirements governing matters such as coverage, competitive area, competitive level, retention standing, order of release, assignment rights, and notice. Those issues ordinarily can be resolved

through the agency record, party submissions, and targeted supplementation where necessary.

OPM has therefore determined that the final rule should not replicate MSPB's adverse-action procedures. The final rule provides a RIF-specific appeal process tailored to the issues presented in part 351 appeals. It requires the agency to produce the complete agency record to OPM, requires service of the agency record on the appellant subject only to legally required disclosure limitations, permits the appellant to file a reply, authorizes OPM to require additional information, and permits audits, investigations, or hearings when the record requires further development. This structure balances the employee's interest in meaningful review with the interests of employees, agencies, and the Government in timely, efficient, and accurate resolution of RIF appeals. The commenters' preference for MSPB-style procedures does not establish that OPM is legally required to apply MSPB's chapter 75 or part 1201 procedures to RIF appeals adjudicated by OPM under part 351.

Commenters 0408, 0483, 0709, and 1119, among others, argued that employees are entitled to a hearing in a RIF appeal as a matter of law. OPM disagrees. The final rule does not bar hearings; it provides for hearings when they are necessary and efficient to resolve the appeal. Revised § 351.905(c) expressly authorizes OPM to conduct a hearing where the written record is insufficiently developed to determine one or more facts material to the outcome of the appeal, or where a disputed issue of witness credibility is material to the outcome. Thus, the final rule addresses the concern that some appeals may present material factual disputes requiring more than written submissions, while avoiding the delay and expense of requiring a hearing in every appeal regardless of whether one would assist the decisionmaker.

OPM also disagrees with commenters' suggestion that a hearing should be required whenever a party characterizes a fact as disputed. Not every factual disagreement is material, and not every material issue requires live testimony. In many RIF appeals, the dispositive questions will be resolved by applying part 351 to records the agency is required to create and produce, including the RIF notice, competitive-area and competitive-level documentation, retention register, records supporting retention standing, order-of-release materials, assignment-rights documentation, and records concerning any special RIF circumstance. Requiring a hearing

absent a particularized need would impose unnecessary costs on appellants, agencies, witnesses, representatives, and OPM, while delaying final resolution for employees who need prompt certainty regarding their employment status and any available remedy.

In the unusual case in which the written record is insufficient, the final rule provides multiple tools for further development. OPM may require either party to provide additional information, audit or investigate an agency action when the existing record is insufficient to resolve a material issue within OPM's jurisdiction and the audit or investigation is reasonably likely to produce material information, and conduct a hearing when necessary and efficient. Where OPM conducts an audit or investigation, the final rule requires OPM to inform the employee, the employee's representative, and the agency; provide them with the results; and give them a reasonable opportunity to submit arguments or additional information. These procedures provide meaningful fact development without importing a full MSPB litigation model into every RIF appeal.

Commenter 0113 supported placing the burden of proof on the initiating party, noting that this approach is consistent with administrative and civil litigation standards. OPM agrees. The appellant is the party invoking OPM's appellate jurisdiction and challenging the agency's RIF action, and it is appropriate for the appellant to bear the burden of proving timely and proper filing, OPM jurisdiction, a violation of an applicable statute or OPM regulation governing RIF actions under part 351, and prejudice. At the same time, the final rule does not leave the appellant without access to the information needed to pursue the appeal. The agency must produce the complete agency record to OPM and serve the appellant with the agency record, subject only to applicable disclosure limitations. That requirement ensures that the appellant's burden of proof operates within a record-based process in which the relevant RIF documentation is before OPM and available to the appellant to the extent permitted by law.

Commenters 0370, 0386, 0928, 0962, 1089, 1092, 1099, 1165, 1217, and 1252 raised numerous procedural concerns, including burden of proof, access to records, discovery, hearings, written-record adjudication, e-filing, reconsideration, Director review, protective orders, and remedies. For example, Commenter 1089 asserted that the documents necessary to challenge a RIF—including retention registers,

competitive-area definitions, scoring and ranking decisions, internal planning documents, communications leading to the RIF, and records showing how the agency applied OPM's rules—are generally in the agency's possession. The commenter argued that it would be unfair to require employees to prove RIF error while limiting access to the records needed to test the agency's action. OPM has revised the final regulatory text in several respects that address many of the procedural concerns raised by commenters.

First, OPM revised the merits standard in § 351.901(b). The proposal required an appellant to prove that the employee would not have suffered the same or another RIF action if the RIF had been properly conducted. Commenters 1089, 1099, and 1165 argued that this standard was too demanding and required employees to disprove hypothetical RIF actions. OPM revised the final rule to require the appellant to prove that the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351 and that the failure prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome. This revised formulation focuses on prejudicial RIF-compliance error and avoids the concern that the proposed standard could be read to require proof about every possible alternative RIF.

Second, OPM revised § 351.903(b) to specify the minimum contents of the agency record in a RIF appeal. Commenters 1089, 1099, and 1165 argued that appellants would bear the burden of proof while the agency controlled most relevant evidence. The final rule requires the agency response to include the agency record of the action, and the regulation now identifies RIF-specific categories of documents that must be included, as applicable. These include the appellant's specific written RIF notice, any amended notice, proof of service or receipt, and documents showing the effective date of the action; documents supporting the reason for the RIF; documents establishing the appellant's coverage, position, appointment, tenure group and subgroup, veterans' preference status, service computation date, work schedule, competitive area, competitive level, and status as a competing employee; documents establishing the competitive area and competitive level used for the RIF; the retention register applicable to the appellant and related retention records affecting retention standing, order of release, or assignment rights; documents showing application of the order of release; documents

concerning assignment rights; documents concerning special RIF circumstances such as abolishment of an entire competitive area, transfer of function, exclusion from RIF competition, or restoration protection; and a certification that the agency has produced the complete agency record.

This revision directly addresses Commenter 1089's concern that employees may lack access to the information needed to evaluate a RIF action. The final rule requires the agency to produce the complete agency record to OPM and to serve the appellant with the agency record, subject only to redaction or withholding necessary to comply with the Privacy Act, applicable legal privileges, classified-information or national-security requirements, OPM protective orders, or other legally required disclosure limits. OPM also revised § 351.903(d) and (e) to make inspection of OPM's appellate record and service of documents subject to those same legal limitations. These provisions are intended to ensure that OPM adjudicates the appeal on the complete record while protecting information that may not lawfully be disclosed in full to the appellant or the public.

Third, OPM revised the appellant's reply right. Under final § 351.903(c), an employee may file a reply within 15 calendar days of the agency response. Although the reply generally may address only factual and legal issues raised by the agency response, the final rule permits the appellant to raise a new allegation of error when the basis rests on information first disclosed in the agency response or when OPM grants leave for good cause. This revision addresses the concern that an appellant may not know the basis for a RIF-compliance challenge until after receiving the agency's record and explanation.

Fourth, the final rule preserves fact development where needed. Section 351.905(c) authorizes OPM to require either party to provide additional information. OPM may audit or investigate an agency action where the existing record is insufficient to resolve a material issue within OPM's jurisdiction and the audit or investigation is reasonably likely to produce material information. If OPM conducts an audit or investigation, OPM must inform the employee, the employee's representative, and the agency; provide them the results; and give them a reasonable opportunity to submit arguments or additional information.

Fifth, the final rule permits hearings when necessary and efficient.

Commenters 0408, 0483, 0709, 1119, 0928, 1092, 1089, and 1217 argued that hearings should be available as of right or whenever material facts are disputed. OPM disagrees that a hearing is required in every case, but the final rule authorizes hearings where the written record is insufficiently developed to determine material facts or where witness credibility is material to the outcome. Commenter 0386 requested further definition of "necessary and efficient"; OPM has addressed that concern by defining the standard in the regulatory text and declines to adopt an exhaustive list that could either require unnecessary hearings or preclude useful ones.

Sixth, the final rule adds adjudicator-separation and *ex parte* protections. Section 351.905(a) requires OPM adjudicators to be insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice. It also prohibits material *ex parte* communications concerning the merits and requires any such communication to be summarized in the record with an opportunity for party response, unless disclosure is prohibited by law. The final rule also restricts assignment of adjudicators with specified relationships to the appellant or the agency and permits OPM to assign an administrative law judge when necessary. For appeals by OPM employees, § 351.905(b) requires ALJ adjudication and limits OPM's ability to disturb the ALJ's initial decision.

Seventh, OPM narrowed and clarified the protective order provision. Commenters 0928 and 1165 argued that the proposed protective-order language was vague and could restrict protected speech. Final § 351.906 now authorizes protective orders or cease-and-desist directives to protect the integrity of the adjudicatory process and prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. The final rule further provides that any protective order must be no broader than reasonably necessary and must not restrict lawful communications protected by law.

Eighth, OPM retained reconsideration. Section 351.907 permits either party to request reconsideration within 30 calendar days and permits OPM to reopen and reconsider an initial decision on its own initiative. Reconsideration may be granted for material factual error, legal error affecting the outcome, new and material evidence or legal argument unavailable

despite due diligence, or other good cause. OPM may require additional argument or evidence and may take any action necessary for final disposition.

OPM disagrees with Commenter 1089's assertion that reconsideration is not meaningful under the final rule. Section 351.907 permits either party to request reconsideration within 30 calendar days from issuance of the initial decision and authorizes OPM to reopen and reconsider an initial decision on its own initiative. The final rule identifies several grounds for reconsideration, including erroneous findings of material fact sufficient to warrant a different outcome, legal error affecting the outcome, new and material evidence or legal argument that was unavailable despite due diligence when the record closed, or other good cause. OPM may require the parties to submit argument and evidence and may take any other action necessary for final disposition of the case.

F. Recruitment, Retention, and Workforce Concerns

Commenters 0962, 0976, 1089, 1092, 1099, and 1252 asserted that the rule would harm recruitment and retention, reduce confidence in Federal service, damage institutional knowledge, chill public servants, and undermine agency missions or public services.

Commenters argued that Federal employees accept the obligations of public service in reliance on a merit-based system with independent review, and that reducing procedural protections could deter qualified individuals from joining or remaining in Federal employment.

OPM considered these concerns but concludes that the final rule will not undermine the merit system or Federal recruitment and retention. The final rule preserves a meaningful administrative appeal process for employees who are furloughed for more than 30 days, separated, or demoted by a RIF action. It does not eliminate appeal rights. It revises the forum and procedures for future RIF appeals and establishes safeguards to ensure that OPM adjudicates those appeals on a complete record.

OPM also concludes that timely resolution of RIF appeals benefits employees as well as agencies. When an agency commits a prejudicial error, faster adjudication allows corrective relief to be ordered sooner, reducing uncertainty and potential back-pay exposure. When the agency action is sustained, employees and agencies receive finality sooner, allowing employees to make informed decisions

about future employment and allowing agencies to plan staffing and operations.

OPM further concludes that a consistent, record-based process administered by the agency responsible for governmentwide RIF regulations will support agency missions and reduce uncertainty. RIFs may arise in response to budgetary, technological, mission, or organizational changes. When they do, agencies and employees benefit from clear rules, a complete record, prompt adjudication, and consistent interpretation of part 351. All core merit-system protections—including safeguards against retaliation and politicized personnel decisions—remain intact under the final rule. OPM expects the improved clarity and efficiency of the appeals process to reinforce, not erode, employee trust.

OPM does not rely solely on agency efficiency. The final rule balances efficiency with procedural protections, including detailed agency-record requirements, employee replies, inspection of the appellate record, additional information requests, audits, investigations, hearings when necessary and efficient, written decisions, reconsideration, and corrective relief. OPM therefore concludes that the final rule supports, rather than undermines, the effective and merit-based operation of the civil service.

Indeed, the final rule preserves protections against unlawful or arbitrary layoffs that substantially exceed the baseline protections generally available to private-sector workers. Federal employees affected by a RIF remain protected by governmentwide retention rules, notice requirements, assignment-right provisions where applicable, an administrative appeal to OPM, production of the complete agency record, an opportunity to reply, corrective relief where warranted, and collateral statutory remedies in the appropriate forums.

In addition, employees separated or facing separation by RIF receive priority consideration for continued Federal employment through OPM's reemployment and career-transition regulations. The Reemployment Priority List is a required agency placement program for competitive service employees who will be or were separated by RIF, and agencies must give RPL registrants placement priority for most competitive service vacancies before hiring from outside their permanent competitive service workforce. 5 CFR part 330, subpart B; 5 CFR 330.201. Eligible surplus or displaced employees may also receive CTAP and ICTAP selection priority under 5 CFR part 330, subparts F and G.

These protections—objective retention criteria, notice, assignment consideration, administrative review, record production, corrective relief, and priority reemployment consideration—go well beyond the ordinary Federal law baseline in the private sector, where WARN generally provides advance notice only for covered plant closings and mass layoffs and does not create a comparable Federal right to retention standing, assignment rights, administrative appeal, or priority reemployment. The streamlined OPM appeal process therefore does not place Federal employees in a private-sector layoff regime; it preserves a more protective civil-service framework while providing faster finality. Faster adjudication benefits employees as well as agencies: if the RIF action is unlawful, corrective relief can be ordered sooner; if the action is sustained, the employee receives prompt certainty for financial planning.

Commenters 0447, 0424, 0455, and others asserted that the rule would contribute to disruptions in government services, including emergency response, veterans' healthcare, national security, scientific integrity, long-term projects, and foreign affairs. Commenters 0858, 0829, 1201, 1200, and others similarly argued that RIFs may reduce workforce continuity, slow operations, diminish institutional expertise, and impair agencies' ability to fulfill statutory missions.

OPM has considered these comments but concludes that they do not warrant changes to the final rule. To the extent commenters challenge whether agencies should conduct RIFs, how many employees agencies should retain, or how agencies should balance mission needs, expertise, staffing levels, and service delivery when restructuring, those issues are outside the scope of this rulemaking. This rule governs the forum and procedures for appeals after an agency has taken a covered RIF action. It does not direct any agency to conduct a RIF, determine which agency functions should be reduced or preserved, or substitute OPM's judgment for the employing agency's determination of the positions, skills, locations, or organizational structures needed to carry out its mission.

Agencies remain responsible for managing their own workforces consistent with applicable law. That responsibility includes determining whether conditions exist that warrant a RIF, evaluating mission needs, maintaining continuity of operations, and deciding how to structure the workforce before and after a reduction. The final rule does not alter those

responsibilities. Nor does it diminish the substantive requirements that apply when an agency conducts a RIF, including requirements governing coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and other protections under part 351.

To the extent commenters argue that a more efficient appeal process may make agencies more willing to use RIF procedures where lawful and appropriate, OPM does not view that as a defect in the rule. Congress and OPM's regulations contemplate that agencies may need to conduct RIFs in response to lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights. When those circumstances arise, agencies and employees alike benefit from an appeal process that resolves RIF-compliance disputes accurately and promptly. Prolonged uncertainty can itself disrupt agency operations, delay corrective relief where an error occurred, and leave affected employees without timely clarity as to reinstatement, reemployment, or future career planning.

G. Judicial Review and CSRA Exclusivity

Many commenters, including but not limited to 0033, 0046, 0114, 0308, 0386, and others, criticized the proposed rule's foreclosure of judicial review for RIF appeals adjudicated under the amended 5 CFR part 351. Commenters 0033, 0908, and 1114 asserted that the APA requires OPM to maintain judicial review of RIF appeals, while Commenter 0343 argued that OPM barring judicial review would be an *ultra vires* action. Commenters 0370, 0928, 1025, 1089, 1092, 1099, and 1165 argued that OPM cannot eliminate judicial review by regulation, that judicial review is constitutionally required, that APA review should remain available, and that Federal Circuit review of MSPB decisions has long served as an important external check on RIF adjudication.

OPM disagrees that the final rule eliminates judicial review that Congress provided. The prior Federal Circuit review path for non-SES RIF appeals depended on two things: OPM's regulation making RIF actions appealable to MSPB and the statutory provisions governing judicial review of MSPB decisions. Once OPM revises its regulation and no longer provides MSPB as the forum for non-SES RIF appeals, the MSPB-to-Federal-Circuit review path no longer applies.

Congress did not provide a separate statutory judicial-review route for non-SES RIF appeals under 5 U.S.C. 3502. The CSRA and related title 5 provisions establish a comprehensive remedial scheme for Federal personnel matters, "prescrib[ing] in great detail the protections and remedies applicable to such action[s], including the availability of judicial review." *Fausto*, 484 U.S. at 443; see also *Margolin v. Nat'l Ass'n of Immigr. Judges*, No. 25–767, slip op. at 1–3 (U.S. May 26, 2026) (Thomas, J., concurring). Where Congress provides review, it does so expressly. Where Congress does not provide a judicial-review route for a particular personnel matter, employees may not use the APA to create an alternative route for challenging that personnel action. See *Filebark v. U.S. Dep't of Transp.*, 555 F.3d 1009 (D.C. Cir. 2009), cert. denied, 558 U.S. 1007 (2009); *Fornaro v. James*, 416 F.3d 63, 66–67 (D.C. Cir. 2005); *Graham v. Ashcroft*, 358 F.3d 931, 933–35 (D.C. Cir. 2004); *Carducci v. Regan*, 714 F.2d 171, 172 (D.C. Cir. 1983).

The CSRA prescribes in precise detail the types of actions that result in eventual judicial review, and it does not provide for such review of non-SES RIFs. 5 U.S.C. 3595(c). Under the CSRA, "[t]he reviewable agency actions are removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less." *Elgin v. Dep't of the Treasury*, 567 U.S. 1, 5–6 (2012). Courts have repeatedly dismissed actions brought outside the proper CSRA channels (such as under the APA) by individuals regarding their employment under the comprehensive statutory scheme provided for in the CSRA. See, e.g., *Bush v. Lucas*, 462 U.S. 367, 368 (1983); *Zummer v. Sallet*, 37 F.4th 996 (5th Cir. 2022); *Dotson v. Griesa*, 398 F.3d 156, 163 (2d Cir. 2005).

What is given by the comprehensive statutory scheme in the way of RIF procedures are codified at 5 U.S.C. 3501–3504. While those statutes technically predate the CSRA's enactment in 1978, it has long been recognized that the statutes and regulations regarding reductions-in-force in the Federal Government are part of the "comprehensive employment scheme" created by the CSRA.²¹ While RIF separations can result in job loss or reassignment, they are specifically

excluded as adverse actions under Chapter 75 of Title 5, U.S. Code, which governs removals and discipline for misconduct and, in some cases, performance deficiencies. See 5 U.S.C. 7512(B) ("This subchapter . . . does not apply to . . . a reduction in force action under [§] 3502 of this title.").

"A RIF is an administrative procedure by which agencies eliminate jobs and account for employees who occupied abolished positions. It is not an adverse action against a particular employee, but it is directed solely at a position within an agency." *Huber v. Merit Systems Protection Bd.*, 793 F.2d 284, 286 (Fed. Cir. 1986). "Unlike adverse actions, RIFs are not aimed at removing particular individuals; rather they are directed solely at positions." *Grier v. Dep't of Health & Human Servs.*, 750 F.2d 944, 945 (Fed. Cir. 1984). MSPB concurs, noting the Board's authority "is not plenary," but rather "the scope of the Board's jurisdiction to review an agency's RIF actions [are] under OPM's regulations at 5 CFR part 351," which do not implement Chapter 75. *Adams v. Dep't of Defense*, 96 M.S.P.R. 325, 329 (2004).

The final rule therefore provides that a party cannot obtain judicial review of a decision under part 351. That provision governs decisions issued under the regulatory RIF appeal process established by this rule. It does not displace collateral statutory claims that Congress has assigned to other forums or that carry their own review provisions. Final § 351.901(c) expressly preserves matters within the jurisdiction of the EEOC, Inspectors General, MSPB where it has independent jurisdiction, DOL VETS, and OSC.

OPM also disagrees that due process requires Article III review of every RIF appeal. A RIF is a position-based workforce action governed by part 351, not a disciplinary or performance-based adverse action under chapter 75. The final rule preserves notice, a written appeal, production of the agency record, service on the appellant subject only to legally required disclosure limits, a reply, inspection of OPM's appellate record, additional fact development where warranted, hearings when necessary and efficient, written decisions, reconsideration, and corrective relief. OPM concludes that these procedures provide meaningful administrative review for the regulatory RIF appeal right established under part 351.

Commenters 0033 and 0846 argue that Congress has not spoken clearly on judicial review of RIF appeals. OPM disagrees. The statutory scheme speaks through both text and structure.

²¹ *Filebark v. U.S. Dep't of Transp.*, 555 F.3d 1009, 1010 (Fed. Cir. 2009); see also *Nat'l Treasury Emps. Union v. Vought*, 149 F.4th 762, 774–75 (D.C. Cir. 2025) (applying CSRA claims-channeling in a lawsuit challenging, inter alia, reductions in force); *Nat'l Treasury Emps. Union v. Trump*, 770 F. Supp. 3d 1, 11 (D.D.C. 2025) (same); *Gober v. Collins*, No. 25-cv-714 (RC), 2025 WL 1360434, at *6 (D.D.C. May 8, 2025) (same).

Congress expressly excluded “a reduction-in-force action under section 3502” from the chapter 75 adverse-action provisions, 5 U.S.C. 7512(B), and the chapter 75 MSPB appeal right applies only to actions covered by that subchapter. See 5 U.S.C. 7513(d). Chapter 77 likewise does not independently create a statutory RIF appeal right; it provides procedures for matters otherwise “appealable to the Board under any law, rule, or regulation.” 5 U.S.C. 7701(a). Judicial review under 5 U.S.C. 7703(a)(1), in turn, attaches to a “final order or decision” of MSPB. Once OPM withdraws the regulatory delegation that made non-SES RIF actions appealable to MSPB, there is no MSPB decision for judicial review under section 7703. Commenters identify no provision in 5 U.S.C. 3501 through 3504, chapter 75, chapter 77, or any other Federal employment statute that creates judicial review for non-SES RIF appeals under section 3502. The omission is significant. As the Supreme Court explained in *Fausto*, Congress’s failure to provide review in the CSRA is not a statutory accident but reflects “a considered congressional judgment.” 484 U.S. at 448. Congress also demonstrated that it knows how to provide MSPB review of RIF-related actions when it chooses to do so, as it did for certain SES RIF actions. See 5 U.S.C. 3595(c). It did not enact comparable language for non-SES RIF actions under section 3502. This omission is significant. It is a basic canon of statutory construction that if “Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”²²

Commenter 0343 argued that OPM cannot preclude judicial review by regulation. The final rule does not withdraw judicial review that Congress provided; it reflects the review scheme Congress enacted. The prior route to Federal Circuit review existed only because OPM’s regulation made non-SES RIF actions appealable to MSPB, and section 7703 then provided review of final MSPB decisions. OPM may revise that regulatory delegation through notice-and-comment rulemaking. Nor does the APA supply an independent route around the CSRA. The APA does not apply where “statutes preclude judicial review,” 5 U.S.C. 701(a)(1), and courts have repeatedly held that the CSRA is the exclusive remedial scheme

for Federal personnel disputes, even where the CSRA provides limited or no relief.²³ Accordingly, there is no statutory basis for extending judicial review to OPM decisions in non-SES RIF appeals under part 351. OPM’s regulations stating that judicial review of RIF actions is unavailable informs the public of the operative legal parameters. Judicial review would be equally unavailable if the final rule said nothing on the subject.

H. Scope of RIF Appeals and Collateral Claims

Commenters 0370, 0928, 0962, 1025, 1089, 1092, 1099, 1165, and 1217 raised concerns about the scope of OPM review and the preservation of collateral claims. Commenters argued that the proposal could weaken civil-rights enforcement, eliminate mixed-case processing, prevent employees from raising pretext or retaliation, or force employees into multiple forums. Commenters 0046, 0074, 0540, and 1252 contended that the rule would eliminate the ability to appeal discrimination claims in connection with RIFs entirely and allow agencies to RIF employees in protected classes with impunity.

The final rule clarifies the scope of OPM’s review. OPM will adjudicate whether the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351 and whether that failure prejudiced the appellant. This includes RIF-compliance issues such as coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, special RIF circumstances, and related requirements.

At the same time, the final rule preserves collateral statutory avenues. Final § 351.901(c) states that the procedures in part 351 are the sole and exclusive means of appealing a RIF action, but do not otherwise preclude an employee from filing a complaint, appeal, or other matter within the jurisdiction of EEOC, an Inspector General, MSPB, DOL VETS, or OSC. This provision reflects OPM’s intent to channel direct challenges to RIF compliance through OPM while preserving matters Congress or applicable law has assigned to other forums.

OPM acknowledges that some claims previously could have been combined

with a RIF appeal before MSPB because OPM’s regulation made RIF actions appealable to MSPB. That prior combined forum was a consequence of OPM’s regulatory delegation to MSPB, not an independent statutory requirement that OPM retain MSPB jurisdiction. The final rule preserves the substantive availability of discrimination, whistleblower, veterans’ rights, prohibited-personnel-practice, and Inspector General matters in the proper forums.

Commenter 0463 asserted that the exclusive RIF appeal procedure could abrogate or supersede appeal rights available to preference eligible veterans under 5 U.S.C. 3330a and 3330b. OPM disagrees. The final rule’s exclusivity provision governs direct appeals of RIF actions under part 351; it does not displace independent statutory causes of action that Congress assigned to other forums. Final § 351.901(c) expressly preserves an employee’s ability to file a complaint, appeal, or other matter within the jurisdiction of, among others, MSPB and the Department of Labor Veterans’ Employment and Training Service. That preservation language includes claims under the Veterans Employment Opportunities Act. Under 5 U.S.C. 3330a, a preference eligible who alleges that an agency violated the individual’s rights under a statute or regulation relating to veterans’ preference may file a complaint with the Secretary of Labor, and, if the matter is not resolved, may appeal to MSPB under the procedures Congress specified. 5 U.S.C. 3330a. Section 3330b separately provides for judicial redress in district court in lieu of continuing the administrative redress procedure after the statutory prerequisites are met. 5 U.S.C. 3330b. Nothing in this final rule alters those statutory rights, filing deadlines, forum assignments, or judicial-redress provisions.

The final rule also reinforces, rather than weakens, the ability to identify and address veterans’ preference issues in a RIF appeal. Section 351.903(b) requires the agency record to include documents establishing the appellant’s veterans’ preference status and related retention information, including records supporting veterans’ preference credit, tenure subgroup, service computation date, the retention register, order of release, assignment rights, and any special RIF circumstance relevant to the appellant. Thus, where the issue is whether the agency complied with part 351’s RIF requirements as applied to a preference eligible, OPM will have the relevant RIF record before it. Where the issue is an independent veterans’ preference claim under 5 U.S.C. 3330a

²² *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).

²³ See *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 11–12 (2012); *Grosdidier v. Chair. of Broad. Bd. of Governors*, 560 F.3d 495, 497 (D.C. Cir. 2009); *Filebark v. Dep’t of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009); *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004); *Fornaro v. James*, 416 F.3d 63, 67 (D.C. Cir. 2005).

or 3330b, the final rule leaves that statutory route undisturbed.

Commenter 0074 similarly asserted that the revised RIF appeal procedure would allow agencies to engage in pretextual terminations of employees with disabilities in violation of the Rehabilitation Act of 1973. OPM disagrees. The final rule does not authorize agencies to use RIF procedures as a pretext for disability discrimination or any other unlawful personnel practice. Federal employees and applicants remain protected by section 501 of the Rehabilitation Act, 29 U.S.C. 791, and the remedies, procedures, and rights available under 29 U.S.C. 794a, including the Federal-sector procedures incorporated from Title VII. In addition, disability discrimination remains a prohibited personnel practice under 5 U.S.C. 2302(b)(1)(D). The final rule expressly preserves matters within the jurisdiction of the EEOC and OSC and therefore does not redirect Rehabilitation Act claims into OPM's RIF appeal process or limit the remedies available under those statutes.

I. Collective Bargaining, Grievance Arbitration, and CBAs

Commenters 0962, 1025, 1092, 0928, and 1217 objected to the proposal's treatment of negotiated grievance procedures, arbitration, and collective bargaining agreements. These commenters argued that the Federal Service Labor-Management Relations Statute protects negotiated grievance and arbitration procedures; that RIF matters are not among the matters excluded from negotiated grievance procedures under 5 U.S.C. 7121(c); that questions of arbitrability should be resolved through negotiated grievance procedures; and that OPM may not use a governmentwide regulation to eliminate existing collective-bargaining rights or union representation. Other commenters, including 0221, 0584, 0587, 0591, and 0621, asserted that the proposal would unlawfully supersede existing CBAs, while commenters 0386 and 1004 requested a clearer legal basis for OPM's position. Commenters 0049, 0092, 0483, and others objected as a policy matter to any prospective limitation on negotiated RIF appeal procedures.

OPM has considered these comments and has decided to finalize the regulatory text as initially proposed, with some modifications. The final § 351.901(c) provides that the procedures in part 351 are the "sole and exclusive means" of appealing a RIF action, and matters relating to such actions may not be raised under a

negotiated grievance procedure or contested through grievance arbitration, but employees are not otherwise impeded from filing a complaint, appeal, or other matter within the jurisdiction of the EEOC, an Inspector General, MSPB, DOL VETS, or OSC.

OPM continues to conclude that a single governmentwide process for direct RIF-compliance appeals is necessary to ensure uniform interpretation and application of part 351. RIF appeals under part 351 involve governmentwide rules governing competitive areas, competitive levels, retention standing, order of release, assignment rights, notice, and related requirements. Allowing agencies to create or bargain for parallel direct appeal mechanisms for the same RIF-compliance claim would undermine the consistency, finality, and efficiency the final rule is designed to achieve.

This conclusion is consistent with 5 U.S.C. 7117(a)(1). That provision states that the duty to bargain extends only "to the extent not inconsistent with any Federal law or any governmentwide rule or regulation," and, for matters that are the subject of a rule or regulation, applies only where the rule or regulation is not governmentwide. 5 U.S.C. 7117(a)(1). This final rule is a governmentwide regulation: it applies across agencies to appeals of covered RIF actions under part 351. To that end, it firmly and completely limits the flexibility of agencies to provide processes not contemplated by this rule, including grievance arbitration. *See U.S. Dep't of Treasury, I.R.S. v. FLRA*, 996 F.2d 1246, 1250 (D.C. Cir. 1993) (*IRS*) (5 U.S.C. 7117(a)(1) "permits the government to pull a subject out of the bargaining process by issuing a governmentwide rule that creates a regime inconsistent with bargaining," including where a regulation "sets out an exclusive method of resolving any claims"). Accordingly, agencies may not bargain for a claims-channeling process that conflicts with the final rule's designation of part 351 as the sole and exclusive means of directly appealing a RIF action.

OPM is not persuaded by commenters' argument that 5 U.S.C. 7121(a)(1) overrides this conclusion. Section 7121(a)(1) requires CBAs to provide procedures for settlement of grievances, including questions of arbitrability, and makes those procedures the exclusive administrative procedures for grievances that fall within their coverage. But that provision must be read together with section 7117(a)(1), which limits the duty to bargain where the matter is inconsistent with Federal law or a governmentwide

rule or regulation. The broad definition of "grievance" in 5 U.S.C. 7103(a)(9) likewise does not displace section 7117(a)(1). The fact that RIFs are not listed in section 7121(c) does not mean parties may bargain for an alternative direct RIF appeal procedure that conflicts with a governmentwide regulation establishing a single appeal process.

The D.C. Circuit Court of Appeal's decision in *IRS* addressed exactly this issue. The court held that a union proposal that would permit grievances over contracting out was non-negotiable as it conflicted with OMB Circular A-76, a government-wide rule that prescribed the exclusive method for resolving disputes over contracting decisions. The court thus held that Circular A-76 prohibited bargaining over conflicting appeals processes. The final § 351.901(c) similarly prohibits creating an alternative RIF appeals process through collective bargaining.

OPM also disagrees with Commenter 0962's assertion that section 7121(a)(1) has primacy over section 7117(a)(1). Sections 7103, 7117, and 7121 are part of the same statutory scheme and must be read together. Section 7121 establishes negotiated grievance procedures for matters properly within a CBA's coverage; section 7117(a)(1) defines the outer boundary of the bargaining obligation where Federal law or a governmentwide regulation has occupied the field. Reading section 7121 to require negotiated grievance arbitration of direct RIF appeals notwithstanding section 7117 would effectively nullify section 7117(a)(1) for any matter that could be characterized as a grievance. In *IRS* the D.C. Circuit expressly rejected that statutory construction. OPM accordingly declines to adopt that reading.

Nor is this final rule merely a restatement of management rights under 5 U.S.C. 7106. Section 7106 preserves agency authority, subject to subsection (b), to determine mission, budget, organization, number of employees, internal security practices, and to lay off and retain employees, while also preserving bargaining over procedures and appropriate arrangements in appropriate circumstances. 5 U.S.C. 7106(a), (b). The final rule does not simply repeat those management rights. It establishes a detailed governmentwide appellate process governing who may appeal, the burden of proof, filing deadlines, agency-record production, service, replies, inspection of the appellate record, representation, adjudication, protective orders, reconsideration, Director review, and finality.

For that reason, commenters' reliance on *Office of Personnel Management v. FLRA*, 864 F.2d 165 (D.C. Cir. 1988), is misplaced. In that case, the court addressed whether a governmentwide regulation that merely restated management rights could displace bargaining obligations. This rule does not merely restate a management right; it creates a specific, comprehensive appeal procedure for covered RIF actions. The final rule is therefore more closely aligned with the principle that a governmentwide rule may establish an exclusive method for resolving a particular category of claims, rather than simply invoking management rights at a high level of generality.

OPM also considered comments invoking the general purposes of the FSLMRS, including 5 U.S.C. 7101(a)(1), which recognizes that collective bargaining safeguards the public interest, contributes to the effective conduct of public business, and facilitates amicable dispute resolution. OPM does not dispute those principles. But section 7101 must be read with the rest of chapter 71, including section 7117(a)(1), and with section 7101(b)'s direction that chapter 71 be interpreted consistently with the requirements of an effective and efficient Government. Those provisions support, rather than preclude, a governmentwide rule establishing one uniform process for direct RIF-compliance appeals and prohibiting grievances over matters pertaining to RIF appeals.

In addition to the benefits of maintaining a uniform process for direct RIF-compliance appeals, OPM believes it is beneficial to foreclose grievance arbitration in particular as a forum for adjudicating RIF appeals. As OPM explained in the proposed rule, the arbitrators who adjudicate Federal-sector grievances are private contractors who typically do not have a background in agency operations or Federal employment law. This makes them ill-suited to evaluate potentially complex issues involved in arbitration appeals. OPM is aware of multiple studies showing that, across multiple administrations, the FLRA overturns arbitral awards at a high rate.²⁴ The

author of one of these studies, himself an arbitrator, concluded that "Federal sector arbitration is more complex than private sector arbitration. The federal field is full of land mines in the form of laws with which federal sector arbitrators may be less familiar."²⁵ Foreclosing grievance arbitration ensures adjudication will be handled by MSAC employees with specialized legal and subject matter expertise who are less likely to make reversible errors.

Additionally, under 5 U.S.C. 7122(a) arbitral awards concerning RIF appeals are subject to FLRA review. This review can be protracted, especially if the FLRA loses a quorum or the FLRA has a vacancy and the remaining members deadlock.²⁶ Authorizing grievance arbitration over RIF actions would thus create a protracted second level of appeals that would undermine the expeditious resolution of cases. OPM declines to adopt this approach.

OPM also clarifies that the final rule does not retroactively invalidate existing CBAs or purport to adjudicate particular CBA disputes in this rulemaking. To the extent commenters argued that the proposal would automatically vitiate existing agreements mid-term, OPM does not adopt that position in the final rule. Rather, when agreements are renegotiated, this governmentwide rule will limit agencies' duty and ability to bargain for provisions that create a direct RIF appeal process inconsistent with part 351. Questions concerning the effect of particular existing agreement provisions, negotiability disputes, or unfair-labor-practice allegations remain matters for resolution under chapter 71 by the appropriate forum.

OPM also disagrees that the final rule eliminates union representation. Final § 351.904(a) provides that an appellant may select a representative of the appellant's choice to assist in preparing and presenting an appeal, provided the appellant submits a written designation of representative for the specific appeal. That representative may be a union representative where otherwise appropriate. Separate limitations on official time, duty status, and reimbursement for Federal employee representatives are addressed in the

representation and official-time discussion.

OPM therefore declines to revise the final rule to permit negotiated grievance arbitration to serve as an alternative direct appeal mechanism for covered RIF actions under part 351. The final rule establishes a uniform OPM process for direct RIF appeals while preserving collateral statutory matters in the forums Congress or applicable law has designated. This approach gives effect to both the RIF appeal framework in part 351 and the limits on bargaining imposed by 5 U.S.C. 7117(a)(1), while avoiding retroactive invalidation of existing CBAs in this rulemaking.

J. Representation and Official Time

Commenters 0147, 0155, 0674, 1105, 0928, 1092, 1217, and others objected to the rule's treatment of Federal employee representatives, official time, and reimbursement. These commenters argued that unions should be able to use official time to assist employees in preparing and presenting RIF appeals; that 5 U.S.C. 7131(d) authorizes official time for representational activity; and that limiting official time would reduce employees' practical ability to obtain assistance. Commenters 0161, 0166, 0199, 0204, 0270, 0346, and 0653 made similar policy arguments that labor organizations should be able to use official time in RIF appeals. Commenters 0166 and 0553 also objected to OPM's authority to disallow a representative in specified circumstances. Commenters 0199, 0200, 0243, 0466, and 0278 asserted that restricting official time would impair meaningful exercise of appeal rights, particularly for employees without independent resources. Commenter 0928 argued that OPM had not adequately justified the official-time restriction under the APA.

OPM disagrees that the final rule unlawfully eliminates representation or prevents employees from obtaining assistance. Final § 351.904(a) expressly preserves an appellant's ability to select a representative of the appellant's choice to assist in preparing and presenting the appeal, provided the appellant submits a written designation of representative for the specific appeal. That representative may be a union representative, attorney, non-Federal representative, or other representative where otherwise appropriate. The final rule therefore does not deny employees representation; it addresses when a Federal employee representative may perform representational functions in a duty status and whether the employing agency must subsidize that activity through official time or reimbursement.

²⁴ See James Sherck, "Federal Union Arbitrators Frequently Misapply the Law," (Aug. 2, 2023), <https://www.americafirstpolicy.com/issues/expert-insight-federal-union-arbitrators-frequently-misapply-the-law> (finding that between 2019 and 2023 over 40 percent of arbitration awards were overturned or remanded upon appeal); see also Helburn, B. (2019). *The Trump FLRA: Fair or foul* (Helburn), at 6. https://cdn.govexec.com/media/gbc/docs/pdfs_edit/060619ew1.pdf (finding the FLRA set aside or remanded arbitration awards 80, 50, and 43 percent of the time in a sampling of

cases arising under the Trump 45, Obama, and George W. Bush Administrations, respectively).

²⁵ Helburn at 10.

²⁶ The FLRA has reported that in FY 2024 the average age of pending (not decided) arbitration cases undergoing review was 307 days. See U.S. Federal Labor Relations Authority, Congressional Budget Justification 2026, at 19. <https://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/Public%20Affairs/CBJ/FLRA%20FY26%20CBJ%20-%20Final.pdf>.

OPM also disagrees that 5 U.S.C. 7131(d) requires official time for representation in an OPM RIF appeal under part 351. Section 7131(d) authorizes official time in amounts the agency and exclusive representative agree are reasonable, necessary, and in the public interest for certain representational matters under chapter 71. The direct RIF appeal established by this final rule is not a negotiated grievance proceeding or other chapter 71 process; it is a governmentwide appellate procedure under part 351 for determining whether an agency failed to comply with an applicable RIF statute or OPM regulation and whether that failure prejudiced the appellant. To the extent commenters contend that official time for RIF appeals must be bargainable, OPM concludes that this governmentwide rule establishes the controlling procedure for such appeals and limits inconsistent future bargaining obligations under 5 U.S.C. 7117(a)(1).²⁷

OPM adopted § 351.904(b) to prevent the RIF appeal process from imposing additional duty-time and reimbursement burdens on agencies during workforce restructuring. If a selected representative is a Federal employee, the representative may not perform representational functions while in a duty status, including while on official time under 5 U.S.C. 7131, and may not claim agency reimbursement for expenses incurred while performing that representational function. OPM has determined that agencies should not be required to divert duty time or agency funds to subsidize litigation against their own RIF actions, except where otherwise required by law. This limitation is particularly appropriate in a RIF context, where agencies may already be operating under staffing, budgetary, or organizational constraints.

OPM is not persuaded that limiting official time makes the appeal right illusory or meaningfully impairs representation. The final rule preserves the right to a representative of choice; it does not require an appellant to proceed alone. A Federal employee may serve as a representative outside duty status, and appellants may also select non-Federal representatives, attorneys, union representatives, or others where

otherwise appropriate. Moreover, the final rule is designed to reduce the need for resource-intensive representation by requiring the agency to produce the complete agency record to OPM, requiring service of the agency record on the appellant subject only to legally required disclosure limitations, permitting an appellant reply, allowing OPM to require additional information, and authorizing audits, investigations, or hearings when necessary and efficient. Those procedures provide meaningful access to the information needed to challenge a RIF action without requiring agencies to subsidize representational activity through official time.

OPM also declines commenters' request to remove the representative-disallowance provision. Final § 351.904(c) does not authorize arbitrary disallowance of representatives. It permits OPM or the responsible agency to disallow a representative only when the representative is an employee of the responsible agency or OPM and the representational activity would cause a conflict of interest or position. This limit is tailored to conflicts of interest or position. It preserves orderly administration of the appeal process while maintaining the appellant's general right to representation.

OPM further disagrees with Commenter 0928 that the official-time provision is arbitrary and capricious. OPM has provided a reasoned basis for the rule: reducing unnecessary costs, avoiding diversion of duty time during workforce restructuring, maintaining agency operations, and preventing agencies from being required to fund representational activity in direct appeals challenging their own RIF actions. OPM also balanced those interests against the employee's interest in representation by preserving the right to designate a representative and by strengthening the final rule's procedural protections, including agency-record production, service, reply rights, inspection of OPM's appellate record, and targeted fact-development authority. OPM therefore concludes that § 351.904 reasonably balances employee representation interests with the Government's interests in efficient adjudication, mission continuity, and responsible use of agency resources.

K. Adequacy of the Comment Period

Commenters such as 0372, 1045, 0501, 1043, and others asserted the comment period for this rule, which ran from February 10, 2026, to March 12, 2026, was unlawfully short under the Administrative Procedure Act (APA). Many commenters requested an

extension of this period. In support of this argument, commenters cited the APA's mandate that an "opportunity to participate" on proposed rules be provided following a notice of proposed rulemaking; and E.O.s 12866 and 13563, which specify that comment periods should "generally" be at least 60 days.

Respectfully, OPM rejects the argument that the comment period was inadequate. The APA requires a meaningful opportunity to comment, and OPM provided such an opportunity. Numerous courts have upheld a 30-day comment period as sufficient to comply with the APA.²⁸ With respect to this rule, OPM received substantial comments from current and former Federal employees, unions, organizations, Members of Congress, and agencies, including detailed legal, procedural, economic, and policy objections. The breadth and specificity of the comments demonstrate that interested parties were able to engage meaningfully with the proposal.

Commenters' reliance on E.O. 12866 and E.O. 13563 is similarly unpersuasive in this context. These orders only mandate that comment periods should "generally" be at least 60 days. The policy rationale for that mandate is to provide stakeholders with adequate opportunity to meaningfully participate in the notice-and-comment process. That rationale was fully satisfied here. OPM received 1,251 substantive comments, offering perspectives on many aspects of the proposed rule, as discussed herein. The volume and breadth of that participation is itself evidence that the comment period was adequate to allow for informed and meaningful engagement with the proposed rule.

Further, in the years since those orders were issued, comment periods have not infrequently been shorter, often 30 or 45 days. This is, in part, because agencies, working with the White House, have a great deal of discretion in shortening the comment period based on the facts of the situation. As courts have repeatedly held, "executive orders are not

²⁸ See *Chamber of Com. of the U.S. v. SEC*, 85 F.4th 760, 779 (5th Cir. 2023) ("the APA generally requires only a minimum thirty-day comment period."); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992) ("Although the APA mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment."); *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) ("When substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.").

²⁷ See, e.g., *Patent Office Professional Association and United States Patent and Trademark Office, Alexandria, Virginia*, 71 FLRA 1223, 1225 (2020) (there is a duty to bargain over official time . . . [but] that duty to bargain is limited by § 7117, which provides that the duty to bargain in good faith only applies to the extent a proposal is not inconsistent with any Federal law or any Government-wide rule or regulation) (cleaned up).

judicially enforceable.”²⁹ That is, as a general matter, an Executive Order (E.O.) or other White House guidance on the regulatory process binds executive agencies only as a matter of the internal management of the executive branch. Thus, several Federal courts have specifically held that there is no legally enforceable requirement that agencies comply with the requirements specified in E.O. 12866 and E.O. 13563.³⁰

Accordingly, the 30-day comment period provided by OPM was fully consistent with the APA’s requirements and well within the bounds of established agency practice and legal precedent. OPM does not agree with the assertion that the comment period was procedurally deficient.

Commenters 1099 and others argued that the 30-day comment period was inadequate because OPM issued related rulemakings around the same time. OPM disagrees that related rulemakings required a single consolidated proceeding. The RIF appeals rule concerns the forum and procedures for administrative review of RIF actions. Separate rulemakings concerning substantive RIF procedures, performance management, suitability, or probationary matters address distinct regulatory provisions and distinct issues. Interested parties were free to address interactions among the rules, and many did so.

L. Comments From Federal Agencies

Federal agency commenters (0351, 0352, 0418, 0434, and 0537) supported the transfer of RIF appeals from MSPB to OPM. These commenters stated that OPM, as the agency responsible for issuing and interpreting the governing RIF regulations, is better positioned to adjudicate RIF appeals efficiently, consistently, and in alignment with the underlying regulatory framework. The agency commenters asserted that centralizing adjudication within OPM would improve timeliness, predictability, accountability, and consistency, while preserving employee procedural protections and corrective remedies.

These commenters also stated that the current MSPB process can be litigation-heavy, costly, and time intensive for agencies. Commenter 0352 stated that, although it had not recently handled suitability or RIF appeals before MSPB, it had substantial experience defending other MSPB appeals and that such proceedings require significant time from legal representatives, supervisors, managers, and executives. Commenter 0352 further stated that MSPB proceedings may require an agency file, discovery, depositions, evidentiary hearings, petitions for review, and Federal Circuit litigation, and that the absence of summary judgment and the application of technical standards can make the process inefficient. Commenters 0418 and 0434 similarly stated that MSPB’s adversarial and multilayered process, including discovery, hearings, and periods of delay associated with quorum lapses, can discourage timely use of appropriate workforce-management tools and complicate workforce planning, reorganization, and mission execution.

Commenters further stated that a streamlined OPM process would reduce administrative burden and litigation aversion, allow agencies to address lawful RIF and suitability actions more predictably, and reduce the risk that appeals linger for years. Commenter 0351 asserted that OPM’s economic analysis may understate recurring cost savings because it does not fully account for recent RIF activity, internal resources devoted to MSPB litigation preparation, or potential future use of RIF, transfer-of-function, and transfer-of-work procedures. Commenter 0351 also stated that prolonged adjudication can create uncertainty for staffing, budget planning, and workforce reshaping, and may result in significant remedial and back-pay consequences when final resolution is delayed.

OPM agrees with these commenters that the final rule will improve the efficiency, consistency, and timeliness of RIF appeal adjudication. OPM also agrees that the current MSPB process can impose substantial burdens on agencies and employees, including burdens associated with discovery, hearing preparation, extended litigation timelines, petitions for review, and uncertainty pending final resolution. Although the experience of individual agencies varies, the supportive comments provide practical confirmation that the existing process can affect workforce planning, consume legal and management resources, and complicate implementation of lawful RIF actions.

IV. Section-by-Section Analysis

In this section, OPM discusses the regulatory amendments to 5 CFR chapter I, subchapter B, part 351, subpart I, governing appeals of and corrective action with respect to RIFs.

A. Section 351.802—Content of Notice

OPM is revising § 351.802(a)(6), which governs the information an agency must include in a written notice to an employee affected by a reduction in force. Current § 351.802(a)(6) refers to the employee’s right to appeal to the Merit Systems Protection Board. Because this final rule transfers adjudication of covered RIF appeals from MSPB to OPM, revised § 351.802(a)(6) replaces the MSPB reference with a reference to OPM.

The revised provision requires an agency’s RIF notice to inform the employee, as applicable, of the employee’s right to appeal to OPM. As revised in this final rule, the notice must also state the time limit for filing an appeal under § 351.902(b) and identify the electronic filing system, available on OPM’s website, through which an appeal must be filed. This requirement preserves the practical filing information previously conveyed through the cross-reference to § 1201.21 of this title and forecloses any contention that a RIF notice failed to apprise an employee of how and when to appeal. The provision is conforming in nature and is intended to ensure that employees receive accurate notice of the administrative appeal forum established by revised subpart I. The revision does not eliminate any independently applicable statutory notice requirement or any separately available remedial process administered by another entity.

The proposed rule retained legacy language in § 351.802(a)(6) requiring agencies to comply with § 1201.21 of this title, as applicable. OPM is removing that cross-reference in the final rule. Section 1201.21 is an MSPB notice provision that applies when an agency issues a decision notice in a matter appealable to the Board. It requires MSPB-specific information, including notice of the time limits for appealing to the Board, the address of the appropriate Board office, access to the Board’s regulations, and access to the MSPB appeal form. Because this final rule replaces MSPB with OPM as the adjudicative forum for RIF appeals under part 351, retaining an unqualified cross-reference to § 1201.21 in the RIF notice provision could create confusion about where an affected employee must file a RIF appeal.

²⁹ *Sierra Club v. U.S. Dep’t of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing *Marin Audubon Soc’y v. FAA*, 121 F.4th 902, 913 (D.C. Cir. 2024)); see also *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1338–39 (4th Cir. 1995) (holding that there is no private right of action to enforce an executive order unless it was issued pursuant to a statutory mandate or congressional delegation).

³⁰ *Nat’l Mining Ass’n v. United Steel Workers*, 985 F.3d 1309, 1326–27 (11th Cir. 2021) (holding that E.O. 12,866 and E.O. 13,563 are not judicially enforceable); *Miller v. Garland*, 674 F. Supp. 3d 296, 307 (E.D. Va. 2023), appeal dismissed, No. 23–1604, 2024 WL 4973474 (4th Cir. July 30, 2024) (holding that E.O. 12,866 is not judicially enforceable).

This deletion is conforming, clarifying, and nonsubstantive. It does not eliminate any appeal right, shorten any filing period, alter the information an agency must provide about the OPM RIF appeal right, or affect any matter that remains independently appealable to MSPB. Rather, it removes an obsolete MSPB-specific notice cross-reference from a provision that now concerns OPM RIF appeals. To the extent an employee has an independent statutory or regulatory right to proceed before MSPB on a collateral matter, that right remains governed by the statutes and regulations applicable to that matter consistent with § 351.901(c).

B. Section 351.807—Certification of Expected Separation

OPM is revising § 351.807(e), which concerns agency determinations of eligibility for certification of expected separation. The prior provision referred to appeal to MSPB. Revised § 351.807(e) removes that MSPB reference and states that an agency determination of eligibility for certification may not be appealed.

This change is also conforming in nature. It aligns § 351.807(e) with revised subpart I and clarifies that certification determinations under § 351.807 are not independently appealable under part 351. Employees who are actually furloughed for more than 30 days, separated, or demoted by RIF action may pursue any appeal available under revised § 351.901.

C. Subpart I—Appeals

OPM is revising subpart I of part 351 in full. Revised subpart I establishes the procedures governing appeals to OPM by employees who are subject to covered RIF actions. The revised subpart identifies who may appeal, the burden of proof, filing requirements, party submissions, representation rules, adjudication procedures, remedies, sanctions, reconsideration, Director review, and finality.

1. Section 351.901—Right To Appeal

Revised § 351.901 establishes the right to appeal a covered reduction-in-force action to OPM, identifies the appellant's burden of proof, and defines the relationship between the OPM RIF appeal process and other remedial forums.

Paragraph (a) provides that an employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action taken under part 351 may appeal that action to OPM. This paragraph identifies the covered actions that may be appealed under subpart I and

implements the rule's central procedural change: OPM, rather than MSPB, will adjudicate appeals of covered RIF actions, subject to the applicability provision described below.

Paragraph (b) establishes the employee's burden of proof. The appellant must prove, by a preponderance of the evidence, that the written appeal was timely and in the required form; that OPM has jurisdiction over the appeal; that the agency failed to comply with an applicable statute or OPM regulation governing reduction-in-force actions under part 351; and that the failure prejudiced the appellant.

Paragraph (b)(4) defines the prejudice requirement. The appellant must show that the agency's failure to comply with an applicable RIF statute or OPM regulation caused the appellant to be subjected to the appealed action or to lose a materially more favorable outcome under part 351. This standard is intended to distinguish prejudicial errors from technical or immaterial errors. OPM will not grant relief solely because an agency committed a procedural or technical error if the appellant would have been subject to the same action, or would not have received a materially more favorable outcome, had the agency complied with the applicable requirement. Conversely, prejudice may exist where the violation affected the appellant's retention standing, order of release, assignment rights, notice rights, or other RIF determination in a way that materially affected the outcome of the RIF action as applied to the appellant.

Paragraph (c)(1) provides that the procedures in part 351 are the sole and exclusive means of appealing a RIF action covered by this subpart. This provision is intended to avoid duplicative or overlapping RIF appeal processes and to channel covered RIF appeals through the OPM procedure established by this final rule. It also promotes consistent application of OPM's governmentwide RIF regulations and avoids parallel adjudication of the same RIF-compliance issues in multiple forums.

Paragraph (c)(2) provides that a reduction-in-force action taken under part 351, and any matter relating to an appeal of such an action, may not be raised under a negotiated grievance procedure or contested through grievance arbitration. This provision forecloses negotiated grievance procedures and grievance arbitration as alternative forums for direct RIF-compliance challenges, for the reasons discussed in Section III.I of this preamble.

At the same time, paragraph (c)(3) makes clear that the OPM RIF appeal process does not displace matters within the independent jurisdiction of other entities. Employees may continue to file complaints, appeals, or other matters that fall within the independent jurisdiction of the Equal Employment Opportunity Commission, an Inspector General, MSPB, the Department of Labor Veterans' Employment and Training Service, or the Office of Special Counsel. Thus, OPM will adjudicate whether the RIF action complied with applicable RIF statutes and OPM regulations, while collateral statutory claims remain available in the forums Congress or applicable law has designated for those claims.

Paragraph (c)(4) also provides that a party cannot obtain judicial review of a decision under this subpart. OPM addresses comments concerning judicial review and the CSRA remedial scheme in Section III.G.

Consistent with the **DATES** section of this preamble, the appeal process established by revised § 351.901 and subpart I is available for a reduction-in-force action for which the agency issued the employee a specific RIF notice under § 351.802 on or after the effective date of the final rule under RIN 3206–AO86. An appeal of a reduction-in-force action for which the agency issued that notice before that date—including an appeal pending before the MSPB—continues to be adjudicated by the MSPB under the procedures applicable when the action was taken. This applicability provision is stated in the preamble, and the final regulatory text accordingly does not include a separate applicability note in § 351.901.

2. Section 351.902—Procedures for Submitting Appeals

Revised § 351.902 describes the procedures and timeline an employee must adhere to when submitting an appeal.

Paragraph (a) requires a party, or the party's authorized representative, to file an initial appeal or request for reconsideration through the electronic filing system identified on OPM's website. Unless a party demonstrates good cause and obtains approval from OPM, OPM will not accept pleadings, evidence, or documents submitted by electronic mail or postal mail. This requirement is intended to promote consistent intake, reliable service, accurate case tracking, and efficient adjudication.

Commenters 0066, 0272, 0296, 0299, 0304, and others, criticized the requirement that employees use e-filing exclusively, absent a showing of good

cause. OPM disagrees with these criticisms. The good cause requirement permits nonelectronic filing methods for filers with a bona fide need while furthering OPM's legitimate interest in maintaining a streamlined case intake system that minimizes errors and delays. OPM notes that the e-filing requirement for RIF appeals for which this rule provides is consistent with the National Labor Relations Board's policy for requiring parties to e-file documents absent justification to file in paper format.³¹ Other agencies, including the FLRA and OSC, also have adopted restrictions on electronic filing.³² OPM acknowledges Commenter 0553's concern that the e-filing system described in the proposed rule was not operational and available for public inspection at the time the proposed rule was submitted for public comment. However, OPM is confident that it will have an e-filing system in place by this final rule's effective date.

Paragraph (b) establishes a 30-calendar-day deadline for filing an appeal. An employee may submit an appeal within 30 calendar days from the effective date of the RIF action. The appeal is timely if electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action.

Paragraph (b)(1) explains how to compute the filing period. The first day counted is the day after the effective date of the agency action. If the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period extends to the first workday after that date.

Paragraph (b)(2) provides that an untimely appeal will be dismissed unless the employee demonstrates good cause for the untimely filing. OPM will determine good cause in its sole discretion.

Paragraph (b)(3) adds a limited tolling rule for employees who timely pursue collateral matters. The resolution of a matter within the independent jurisdiction of another entity identified in § 351.901(c)—for example, a prohibited-personnel-practice complaint

that results in correction of a performance rating—may materially alter an employee's retention standing or other rights under part 351. Paragraph (b)(3) therefore permits an employee who timely filed such a collateral matter to file a RIF appeal within 30 calendar days after the final decision on that matter, where that decision materially affects the employee's retention standing, order of release, assignment rights, or other rights under this part. This provision ensures that an employee is not foreclosed from pursuing a meritorious RIF appeal solely because the predicate for the appeal did not arise until the collateral matter was resolved. For purposes of paragraph (b)(3), a decision on a collateral matter is final when it is no longer subject to further administrative review. OPM will determine, in its sole and exclusive discretion, whether such a decision materially affects the employee's rights under part 351.

Paragraph (c) establishes e-filing procedures. All parties and representatives must register as instructed by OPM using a unique email address. Registration as an e-filer constitutes consent to electronic service of pleadings, evidence, notices, orders, decisions, and other documents. Parties and representatives may not electronically file documents or access case materials unless registered as e-filers.

The e-filing system will make OPM-issued documents and party-filed documents available for viewing and downloading, with access limited to the parties and their representatives in the relevant case. Parties and representatives must follow OPM's filing instructions. OPM may strike a document if an e-filer repeatedly fails to follow those instructions after issuance of a show-cause order.

Paragraph (c) also requires e-filers to keep their contact information current, notify OPM and other parties of changes in address, telephone number, or email address by filing a pleading in each pending case, and regularly monitor case activity in the e-filing system. A party or representative may withdraw e-filing registration in accordance with OPM's posted requirements. After OPM processes a proper withdrawal, the person will no longer receive electronic service or have electronic access to case records through the e-filing system. OPM may continue processing the appeal or reconsideration request after withdrawal, and withdrawal will not be considered good cause for staying a case.

OPM may, in its sole and exclusive discretion, exempt a party or representative from registering as an e-filer for good cause. A party or representative seeking an exemption must promptly contact OPM as instructed on OPM's website. OPM will not find good cause for failing to timely file an appeal or seek reconsideration if the party or representative failed to contact OPM to request an exemption before the applicable deadline. Documents filed through OPM's e-filing system are deemed received on the date of electronic submission.

3. Section 351.903—Form and Content of RIF Appeal and Agency Response

Revised § 351.903 identifies the required contents of the employee's appeal, the agency's response, the agency record, any employee reply, inspection of OPM's appellate record, service requirements, and treatment of untimely filings.

Paragraph (a) requires the employee's appeal to be in writing and to state the basis for the appeal. The appeal must include the name, address, and email address or telephone number of the appellant and, if applicable, the appellant's representative. The employee must also include any documentation supporting the appeal.

Paragraph (b) requires the agency to file its response within 30 calendar days after service of the initial appeal. The agency response must identify the appellant and the agency whose action is being appealed; identify the reduction-in-force action taken against the appellant and state the reasons for the action; include all documents contained in the agency record of the action; designate and be signed by the authorized agency representative; and include any other documents or responses requested by OPM.

Paragraph (b) also identifies the minimum contents of the agency record for a RIF appeal. The agency record must include, at a minimum and as applicable, the appellant's specific written RIF notice, any amended notice, proof of service or receipt, and documents showing the effective date of the action. The record must also include documents supporting the agency's stated reason for the RIF, including whether the action was based on lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights.

The agency record must include documents establishing the appellant's coverage, position, appointment, tenure group and subgroup, veterans' preference status, service computation

³¹ 29 CFR 102.5(c) (providing that "[u]nless otherwise permitted under this section, all documents filed in cases before the [National Labor Relations Board] must be filed electronically," and requiring paper filers to include "a statement explaining why the party does not have access to the means for filing electronically or why filing electronically would impose an undue burden").

³² See, e.g., 5 CFR 2429.24 ("To file documents by personal delivery, you must schedule an appointment at least one business day in advance."); Office of Special Counsel, *File a Complaint*, available at <https://www.osc.gov/file-complaint/> (last visited June 2, 2026) (requesting that parties submit documents electronically because "OSC is unable to process paper filings").

date, work schedule, competitive area, competitive level, and status as a competing employee. It must also include documents establishing the competitive area and competitive level used for the RIF, including any required agency or OPM approval, written competitive-area justification, organizational chart, position descriptions, classification records, representative-rate determinations, and related records.

In addition, the agency record must include the retention register applicable to the appellant, if one was prepared, and related retention records that affected the appellant's retention standing, order of release, or assignment rights. These records include, as applicable, records supporting performance credit, veterans' preference credit, tenure subgroup, and service computation date. The record must also include documents showing how the agency applied the order of release, including any tie determination, correction of retention standing, and mandatory or discretionary exception to the order of release.

Where assignment rights are at issue, the agency record must include documents concerning the appellant's assignment rights, including positions considered for assignment, qualification determinations, job analysis or assessment materials, offers of assignment, and any declination. Where a special RIF circumstance is relevant to the appellant, the record must include documents concerning that circumstance, including abolishment of an entire competitive area, transfer of function, exclusion from RIF competition under § 351.202(d), restoration protection, or another basis for modified notice or treatment under part 351.

Finally, paragraph (b) requires a certification that the agency has produced the complete agency record of the RIF action. The final rule distinguishes between production to OPM and service on the appellant. The agency must produce the complete agency record to OPM so that OPM may adjudicate the appeal on the full record relevant to the action under review. The agency must serve the appellant with the agency record, except that the agency may redact or withhold information from the copy served on the appellant to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified-information or national-security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law. This distinction ensures that OPM receives

the full record necessary to decide the appeal while protecting information that may not lawfully be disclosed in full to the appellant or the appellant's representative.

Paragraph (c) permits the employee to file a reply within 15 calendar days of the agency response. The reply may address only the factual and legal issues raised by the agency response. The employee may not raise new allegations of error in the reply unless the basis for the new allegation rests on information first disclosed in the agency response or unless OPM grants leave for good cause.

Paragraph (d) provides that the employee, the employee's representative, and the agency may inspect OPM's appellate record on request. Inspection is subject to the Privacy Act, classified-information or national-security requirements, protective orders issued by OPM, and any other applicable limitation required by law. This limitation reflects that OPM's appellate record may include personnel records, RIF records, performance information, veterans' preference documentation, records concerning other employees, privileged material, or other protected information.

Paragraph (e) establishes service requirements. The employee, the employee's representative, and the agency must serve one another with copies of information submitted to OPM in connection with the appeal, subject to the disclosure limitations in paragraph (b). Service must occur at the same time the information is submitted to OPM, and each submission must be accompanied by a certificate of service stating how and when service was made.

Paragraph (f) permits OPM to accept untimely filings upon a party's showing of good cause. OPM will determine whether good cause exists in its sole and exclusive discretion.

4. Section 351.904—Employee Representatives

Revised § 351.904 governs representation in OPM RIF appeals.

Paragraph (a) provides that an appellant may select a representative of the appellant's choice to assist in preparing and presenting the appeal, provided the employee submits a written designation of representative for the specific appeal. This provision preserves an employee's ability to obtain representation while requiring a clear written designation for the proceeding.

Paragraph (b) addresses representatives who are Federal employees. If the selected representative is a Federal employee, the

representative may not perform representational functions while in a duty status, including while on official time under 5 U.S.C. 7131. The representative also may not claim agency reimbursement for expenses incurred while performing the representational function. This provision limits the use of agency time and resources in connection with RIF appeals under this subpart.

Paragraph (c) authorizes OPM or the responsible agency to disallow a representative in specified circumstances. OPM or the agency may disallow the employee's choice of representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position. Because paragraph (b) prohibits a Federal employee representative from performing representational functions while in a duty status, the final rule does not adopt the proposed additional grounds for disallowance based on the priority needs of the Government or unreasonable costs to the Government.

5. Section 351.905—Adjudication of Appeals

Revised § 351.905 establishes the procedures for adjudicating RIF appeals.

Paragraph (a) governs appeals by employees of agencies other than OPM. OPM will assign personnel to adjudicate those appeals. Assigned OPM personnel must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators may not consider material *ex parte* communications concerning the merits of an appeal. If such a communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law.

Paragraph (a) also establishes assignment restrictions. No OPM employee may be assigned to adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, was an employee of the agency that is a party to the appeal or was subject to an action covered under part 351. When necessary, OPM may assign an administrative law judge to preside over the adjudication of an appeal by a non-OPM employee.

Paragraph (b) establishes a separate procedure for appeals by OPM employees. OPM will assign an administrative law judge to adjudicate

an appeal by an OPM employee. The administrative law judge will issue an initial decision. To insulate adjudication of OPM employees' appeals from agency involvement, OPM will not disturb the initial decision in those cases unless a party shows a harmful procedural irregularity before the administrative law judge, a clear error of law, or a material factual error that affected the outcome of the appeal.

Under this construction, the OPM Director would be proactively exercising restraint in permitting decisions pertaining to OPM employees to lie undisturbed, not delegating his authority to the ALJ. In essence, the OPM Director is regulatorily tying his own hands but can nevertheless choose to regulatorily untie them. This leaves the ALJ as a properly supervised inferior officer, not a principal officer. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 6 (2021) (holding that the Appointments Clause provides that inferior officers may exercise executive power provided they are directed and supervised by a principal officer.).

Paragraph (b) defines "harmful procedural irregularity" as an irregularity in the application of procedures likely to have caused the administrative law judge to reach a conclusion different from the one the judge would have reached in the absence or cure of the irregularity. The assignment of an administrative law judge under paragraphs (a) or (b) does not make 5 U.S.C. 554, 556, or 557 applicable to an appeal under part 351, except to the extent those provisions are independently required by law or expressly incorporated in the rule.

Paragraph (c) addresses ascertainment of facts. OPM may require either party to provide additional information. OPM may also audit or investigate an agency's action if OPM determines, in its sole discretion, that the existing record is insufficient to resolve a material issue within OPM's jurisdiction and that an audit or investigation is reasonably likely to produce information material to resolving that issue. A representative of either party may not participate in an audit or investigation unless OPM specifically requests that participation.

The review of an agency action will be based on the developed written record unless OPM determines that a hearing is necessary and efficient. Paragraph (c) defines "necessary and efficient" to mean circumstances in which the written record is insufficiently developed to determine one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility

that is material to the outcome. If OPM conducts an investigation or audit, OPM will inform the employee, the employee's representative, and the agency, provide them the results, and give them a reasonable opportunity to submit arguments or additional information supporting their positions.

Paragraph (d) requires OPM to notify the employee, the employee's representative, and the agency in writing of its decision.

Paragraph (e) addresses remedies. If the employee is the prevailing party, OPM will order relief, including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The employee is not entitled to compensatory damages or other relief not authorized under 5 U.S.C. 5596(b).

Paragraph (e) also provides that if the agency timely requests reconsideration of an initial decision or OPM reopens and reconsiders an initial decision, the agency must continue to provide the relief ordered unless OPM issues an order staying that relief. OPM may not order a stay that would deprive the employee of pay and benefits while the initial decision is pending reconsideration.

6. Section 351.906—Sanctions and Protective Orders

Revised § 351.906 authorizes OPM to issue protective orders and cease-and-desist directives, and identifies available consequences for noncompliance. OPM stated in the proposed rule that it believes that MSPB procedures, while providing for protective orders, are inadequate to protect Federal employees from threats and harassment.

Paragraph (a) permits OPM to issue a protective order or cease-and-desist directive to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. OPM may act *sua sponte* or at the request of a party, either preemptively or at any point in the appeal process.

A party requesting a protective order or cease-and-desist directive must file the request through the prescribed e-filing procedures and include a statement of reasons supporting the request, along with relevant documentary evidence. Any protective order issued by OPM must be no broader than reasonably necessary and must not restrict lawful communications protected by law.

Commenters 0442, 0443, 0513, and 1119 objected to section 351.906(a) of the proposed rule, asserting the standards under which it permitted OPM to issue cease-and-desist directives were overly broad and vague such that it would chill employees from exercising their First Amendment right to speak publicly about RIF adjudications.

OPM has considered these comments and is narrowing § 351.906 in the final rule. The final rule does not adopt the broad "reasonably be foreseen to lead to harassment" formulation and does not authorize OPM to bar use of any information related to an appeal for any purpose whatsoever. Instead, OPM may issue a protective order or cease-and-desist directive only to protect the integrity of the adjudicatory process; prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information; or prevent misuse of nonpublic information obtained through the appeal. The final rule also adds two limiting principles. Any protective order must be no broader than reasonably necessary, and any such order must not restrict lawful communications protected by law.

OPM declines to remove protective-order authority entirely. Because OPM will adjudicate appeals under subpart I of part 351, it must have reasonable procedural tools to protect witnesses, parties, protected personal information, nonpublic appeal materials, and the integrity of the adjudicatory record. OPM also retains authority to act *sua sponte* or preemptively where necessary, because threats to the process, improper witness contact, or disclosure of protected information may arise before a party files a motion or before harm has fully occurred. That authority is limited to matters connected to an appeal under subpart I of part 351 and to the specific purposes identified in § 351.906(a).

Paragraph (b) identifies consequences for failure to comply with an OPM directive issued under paragraph (a). Except where prohibited by law, OPM may draw inferences against the noncompliant party, prohibit the noncompliant party from introducing evidence or additional evidence or otherwise relying on the record, or eliminate from consideration an appropriate part of the noncompliant party's filings or submissions.

OPM is additionally specifying in paragraph (c) that any sanction issued under paragraph (b) must be proportionate, causally related to the violation, and no broader than necessary to protect the adjudicatory process.

7. Section 351.907—Reconsideration of an Initial Decision

Revised § 351.907 establishes the process for reconsideration of an initial decision.

Paragraph (a) authorizes OPM, in its sole discretion, to reopen and reconsider an initial decision upon request of either party or on OPM's own initiative. An employee, the employee's representative, or the agency may request reconsideration within 30 calendar days from issuance of the initial decision. The request must be filed in the same manner as an initial appeal.

Paragraph (b) identifies the grounds on which OPM may grant reconsideration. OPM may grant reconsideration if the initial decision contains erroneous findings of material fact sufficient to warrant a different outcome; if the initial decision is based on an erroneous interpretation of statute or regulation or an erroneous application of law to the facts; if new and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed; or if OPM finds good cause to reconsider the appeal.

When a party alleges legal error, the party must explain how the error affected the outcome of the case. For new evidence, the relevant question is whether the information contained in the documents, not merely the documents themselves, was unavailable despite due diligence when the record closed.

Paragraph (c) describes OPM's authority in a reopened or reviewed case. OPM may issue a reopened and reconsidered decision that affirms, reverses, modifies, vacates, or otherwise decides the case in whole or in part. OPM may require the parties to submit argument and evidence, take any other action necessary for final disposition of the case, and issue an order with a date for compliance.

Paragraph (d) provides that there is no further right of administrative appeal from the reopened and reconsidered decision.

8. Section 351.908—Review by the OPM Director

Section 351.908 reserves to the OPM Director the authority, in the Director's discretion and *sua sponte*, to reopen and reconsider any appeal in which OPM has issued a decision that has not yet become final. Once a decision becomes final under § 351.909, § 351.908 does not provide a separate mechanism for reopening that decision.

Many commenters (including 0177, 0395, 0411, 0555, 1020, and others)

objected to providing the OPM Director with the authority to reopen and reconsider decisions at his or her direction, *sua sponte*, contending that it violated due process.

In response to comments expressing concern that Director review could be too open-ended or could undermine the perceived neutrality of OPM adjudication, OPM has revised § 351.908 to identify nonexclusive considerations that may inform the Director's decision to reopen and reconsider a nonfinal RIF appeal decision. Under the final rule, the Director may act on the Director's own initiative and only before a decision becomes final under § 351.909. In determining whether to exercise that authority, the Director may consider, among other things, whether the decision contains clear legal error, rests on an erroneous finding of material fact, involves an issue of exceptional importance, affects the governmentwide administration of civil service laws, rules, regulations, or OPM policy, conflicts with another OPM decision, or otherwise warrants Director review.

This revision responds to commenters who objected to Director review as insufficiently cabined, while preserving final agency supervision over important legal, factual, policy, consistency, and governmentwide civil service issues. OPM has retained *sua sponte* Director review because final agency oversight promotes decisional consistency and accountability within OPM's adjudicatory process. The revision does not create a separate right for parties to request Director review; parties may seek reconsideration under § 351.907. If the Director reopens and reconsiders a decision under § 351.908, the Director may take any action available under § 351.907(c). This structure preserves meaningful principal-officer oversight while clarifying that Director review will occur within the rule's record-based adjudicatory framework, including the final rule's agency-record, separation-of-functions, *ex parte*, reconsideration, and finality provisions.

OPM declines to eliminate Director review entirely. Director review serves both administrative and constitutional functions. As an administrative matter, it ensures that OPM can correct material legal, factual, or procedural errors before a decision becomes final; resolve recurring or important questions of interpretation; and promote uniform application of part 351 across agencies. That review function is especially important in a governmentwide personnel system, where inconsistent interpretations by subordinate adjudicators could produce uneven

appeal rights for similarly situated employees in different agencies. Cf. 5 U.S.C. 1103(a)(1), (3), (5) (vesting the OPM Director with responsibility for securing "accuracy, uniformity, and justice" in OPM's functions, directing and supervising OPM employees, and executing, administering, and enforcing civil-service laws and regulations).

Director review also reinforces the rule's consistency with the Appointments Clause. The Constitution requires principal officers to be appointed by the President with the advice and consent of the Senate, while Congress may vest appointment of inferior officers in the President alone, courts of law, or heads of departments. U.S. Const. art. II, § 2, cl. 2. The OPM Director is a presidentially appointed, Senate-confirmed officer. 5 U.S.C. 1102(a). Under the Supreme Court's Appointments Clause precedents, inferior officers must remain subject to direction and supervision by a properly appointed superior officer. *Edmond v. United States*, 520 U.S. 651, 663–65 (1997). In the adjudicatory context, the Court has treated the availability of review by a superior executive officer as a significant feature distinguishing inferior officers from principal officers. *Id.* at 665.

That principle is particularly relevant where subordinate adjudicators exercise significant authority under Federal law. The Supreme Court has held that officials who occupy continuing offices and exercise significant discretion in conducting adjudications may be "Officers of the United States" rather than mere employees. See *Freytag v. Comm'r*, 501 U.S. 868, 881–82 (1991); *Lucia v. SEC*, 585 U.S. 237, 245–51 (2018). The rule preserves supervision by the Director, a principal officer, before OPM's decision becomes final. Consistent with *Freytag*, *Lucia*, and related precedents, the Director will appoint, or ratify the appointments of, the OPM personnel assigned to adjudicate appeals under this subpart, ensuring that any adjudicator who exercises significant authority as an inferior officer has been properly appointed.

The Supreme Court's decision in *United States v. Arthrex*, 594 U.S. 1, 22–23 (2021), confirms the importance of that structure. There, the Court held that administrative patent judges could not constitutionally issue unreviewable final decisions on behalf of the Executive Branch while being appointed only as inferior officers. The constitutional problem was not that subordinate adjudicators participated in deciding cases; it was that their decisions were insulated from review by

a principal officer. *Id.* at 25–26. The Court’s remedy was to permit discretionary review by the Director of the Patent and Trademark Office, explaining that the Director need not review every decision, but must have authority to review decisions if he chooses. *Id.* at 27–28.

The appeals process established in this rule follows that model. OPM adjudicators may issue initial decisions, and OPM may reopen and reconsider those decisions on party request or on its own initiative. In addition, the Director may, in his or her discretion, reopen and reconsider any appeal in which OPM has issued a decision that has not yet become final, and a decision issued by the Director is the final decision of OPM. This structure ensures that no subordinate adjudicator has unreviewable authority to bind OPM or the Executive Branch in an appeal under subpart I of part 351.

OPM does not agree that the possibility of Director review establishes bias or a due-process violation. Agency heads commonly retain final decisional authority within administrative adjudication systems, and the mere availability of final agency review does not show prejudice, bad faith, or inability to decide a matter fairly.³³ The Director’s review authority applies only before a decision becomes final. It does not permit adjudication outside the regulatory framework, and it does not eliminate the requirement that decisions be based on the record and the governing standards in part 351. In addition, OPM has revised § 351.908 to identify nonexclusive considerations that may inform the Director’s decision to reopen and reconsider a nonfinal RIF appeal decision, including whether the decision contains clear legal error, rests on an erroneous finding of material fact, involves an issue of exceptional importance, affects the governmentwide administration of civil service laws, rules, regulations, or OPM policy, conflicts with another OPM decision, or otherwise warrants Director review.

The final rule thus ensures that Director review occurs within a structured adjudicatory process that includes record-based decision-making, separation-of-functions protections, *ex parte* safeguards, reconsideration, and

public availability of final merits decisions. Commenters did not identify specific evidence that the OPM Director would prejudice individual RIF appeals or direct outcomes contrary to the record. OPM therefore declines to eliminate Director review.

9. Section 351.909—Final Decision

Revised § 351.909 explains when decisions issued under subpart I become final and the effect of finality.

Paragraph (a) provides that an initial decision becomes OPM’s final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 351.907 or the Director reopens the decision under § 351.908.

Paragraph (b) provides that a timely request for reconsideration under § 351.907 suspends finality. If OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes OPM’s final decision 30 calendar days after issuance of the denial or dismissal, unless the Director reopens the initial decision under § 351.908 before that time. If OPM grants the request, the reopened and reconsidered decision becomes OPM’s final decision 30 calendar days after issuance unless the Director reopens that decision under § 351.908 before that time.

Paragraph (c) provides that an untimely request under § 351.907 does not suspend or otherwise affect finality. If OPM accepts and grants an untimely request for good cause, any resulting reopened and reconsidered decision becomes final as provided in paragraph (b).

Paragraph (d) provides that a decision by the Director under § 351.908 that disposes of the appeal is OPM’s final decision and is effective upon issuance. If the Director remands the appeal or directs further proceedings, any resulting decision becomes final under § 351.909.

Paragraph (e) states that there is no further right of appeal of a final decision of OPM. This provision works together with § 351.901(c), which establishes the OPM process as the sole and exclusive means of appealing covered RIF actions under part 351 and provides that a party cannot obtain judicial review of a decision under this subpart.

As stated above, OPM is limiting judicial review of decisions issued under this subpart to adhere to the CSRA’s specific and well-defined statutory scheme for judicial review and prevent unnecessarily protracted litigation regarding RIFs. OPM recognizes the status quo that RIF appeals are appealable to the MSPB and

then, in turn, to the Federal Circuit. 5 U.S.C. 7701, 7703(b). However, this pathway currently exists because of an OPM regulation, not because the CSRA itself specifically requires it. The detailed discussion above regarding the structure of the CSRA supports both the legal and prudential bases for limiting judicial review in accordance with the comprehensive statutory scheme. OPM believes that there is little added value from the review that an Article III court could provide relative to OPM’s adjudicatory venue.

Paragraph (f) requires OPM to maintain, subject to legal limits, a publicly accessible website containing final decisions issued under this subpart that address a party’s claim on the merits. Those legal limits include requirements protecting privacy, privileged information, protected personnel information, law-enforcement-sensitive information, and other information that may not lawfully be disclosed.

Final merits decisions that are not posted publicly because of such legal limits must be made available upon request to the Federal employee or former Federal employee involved in the proceeding, the representative selected under § 351.904, or a representative of the Federal agency or office involved in the proceeding who has a need to know.

V. Regulatory Analysis and Related Comments

A. Statement of Need

OPM is issuing this final rule to modernize the administrative process for appealing a furlough of more than 30 days, separation, or demotion by reduction-in-force action under part 351. OPM has determined that the current RIF appeal process is more formal, costly, and time-consuming than necessary to resolve the RIF-compliance issues ordinarily presented in such appeals. This final rule streamlines the appeal process, promotes more consistent application of OPM’s governmentwide RIF regulations, reduces unnecessary litigation burden, and provides employees and agencies with more timely finality. The final rule rests on several grounds: OPM’s statutory responsibility for part 351; the regulatory nature of MSPB’s prior RIF jurisdiction; the record-based nature of many RIF disputes; the cost and delay associated with MSPB-style litigation, discovery, and hearing procedures; the benefit of uniform interpretation of OPM’s RIF regulations; and the importance of timely finality for employees and agencies.

³³ See *Fogo de Chao (Holdings) Inc. v. U.S. Dep’t of Homeland Sec.*, 769 F.3d 1127, 1148–49 (D.C. Cir. 2014) (declining to find a due process violation where plaintiff did not establish that the individual agency decisionmaker “ha[d] a closed mind” and was “impervious to evidence or argument”); *Riggins v. Goodman*, 572 F.3d 1101, 1115 (10th Cir. 2009) (denying claim of due process violation absent evidence that administrative adjudicators had a pecuniary interest in the case or personal animosity against a party).

Many commenters, such as Commenters 0045, 0372, 0546, 0561, 0598, and 1084, contended that the current and longstanding RIF appeal procedures work properly and do not require revision. OPM disagrees. The fact that a regulatory framework has existed for many years does not preclude OPM from revising that framework when it concludes that a different approach better serves the statutory objectives and the needs of the civil service.

MSPB RIF appeals may involve discovery, hearing preparation, evidentiary hearings, petitions for review, and subsequent judicial review where MSPB jurisdiction exists. That process can impose substantial costs on agencies and employees and can delay final resolution. Delay is not merely an agency concern. If an agency committed a prejudicial RIF error, an employee benefits from prompt corrective relief. If the agency action is sustained, the employee benefits from prompt certainty in pursuing reemployment opportunities within the Federal Government, other Federal placement programs, or non-Federal employment.

Under the prior regulatory framework, a RIF appeal filed with MSPB could proceed through multiple adjudicative stages. First, the appeal was assigned to an MSPB administrative judge, who possessed broad authority to conduct the proceeding, including authority to rule on discovery motions, issue subpoenas, receive evidence, order production of evidence and witness appearances, hold prehearing conferences, grant hearing requests, regulate hearings, and issue an initial decision. 5 CFR part 1201 also provides for discovery, including interrogatories, depositions, requests for production, and requests for admission, as well as motions to compel and subpoena procedures.

If a hearing is held, MSPB procedures contemplate hearing scheduling, presentation of testimony and evidence, a hearing record or transcript, and closure of the record after the hearing or after written submissions if the hearing is waived. The administrative judge then issues an initial decision containing findings of fact, conclusions of law, reasons or bases for those findings, an order disposing of the case, and notice of further review rights.

Second, after the administrative judge's initial decision, either party may seek review by the full Board. The initial decision becomes final after 35 days only if no petition for review is filed and no other action prevents finality. If a party files a petition for review, the Board may deny review,

grant review, reopen the case, hear oral argument, require briefs, remand for further testimony or evidence, or take other action necessary for final disposition.

Third, after a final MSPB decision, a party may seek judicial review. Under 5 U.S.C. 7703, an employee or applicant adversely affected or aggrieved by a final MSPB order or decision may obtain judicial review, generally by filing a petition in the U.S. Court of Appeals for the Federal Circuit within 60 days, subject to specific statutory rules for certain cases.

This multi-stage process may be appropriate for matters Congress made appealable to MSPB under chapter 75 or other statutes. But OPM has determined that it is not necessary or well-tailored for the regulatory RIF appeal right under part 351. RIF appeals generally concern whether the agency correctly applied governmentwide RIF requirements governing coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related part 351 requirements. Those issues ordinarily can be resolved by reviewing the agency's RIF record, supplemented when necessary by targeted requests for information, audits, investigations, or hearings.

OPM also notes that RIF separations differ materially from chapter 75 removals and chapter 43 performance-based actions. A RIF is a position-based workforce action, not an adverse action taken against an employee for misconduct or unacceptable performance. See *Huber v. MSPB*, 793 F.2d 284, 286 (Fed. Cir. 1986); *Grier v. Department of Health & Human Services*, 750 F.2d 944, 945 (Fed. Cir. 1984); *Schall v. U.S. Postal Service*, 73 F.3d 341, 344 (Fed. Cir. 1996). Employees affected by a RIF also receive protections not available to employees removed for misconduct or unacceptable performance, including RIF notice rights, assignment rights where applicable, priority reemployment rights, and career-transition assistance. See 5 CFR 351.803(a); 5 CFR part 351, subpart G; 5 CFR part 330, subparts B, F, and G.

Those differences support an appeal process tailored to RIF-compliance issues rather than one modeled on adverse-action litigation. A RIF appeal generally concerns whether the agency properly applied governmentwide RIF requirements governing coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related matters. Those issues are ordinarily capable of resolution through the agency

record, supplemented where necessary by targeted requests for information, audits, investigations, or hearings.

The final rule therefore replaces the MSPB's multi-stage litigation model with a streamlined OPM process tailored to RIF-compliance issues. Under the final rule, an employee who is furloughed for more than 30 days, separated, or demoted by a RIF action may file an appeal with OPM. The appellant must show timely and proper filing, OPM jurisdiction, a failure to comply with an applicable statute or OPM regulation governing RIF actions under part 351, and that the failure must have prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome.

The OPM process is designed to put the relevant RIF record before the adjudicator promptly. This final rule also responds to the concern that a streamlined process could deprive employees of meaningful review. The agency must file a response within 30 calendar days after service of the appeal and must produce the complete agency record to OPM. The final rule specifies RIF-specific record categories, including the RIF notice, effective-date materials, documents supporting the reason for the RIF, coverage and appointment records, competitive-area and competitive-level documentation, retention-register materials, order-of-release records, assignment-rights records, special RIF-circumstance records, and a certification that the complete agency record has been produced. The agency must serve the appellant with the agency record, subject only to legally required disclosure limitations.

The final rule also preserves meaningful fact development without making discovery and hearings automatic in every case. The appellant may file a reply after the agency response and may raise new allegations based on information first disclosed in the agency response or with OPM's leave for good cause. OPM may require additional information, conduct an audit or investigation where the existing record is insufficient to resolve a material issue within OPM's jurisdiction, and hold a hearing when necessary and efficient, including where the written record is insufficiently developed or a material credibility dispute must be resolved.

Finally, the final rule replaces MSPB Board-level review and Federal Circuit review with OPM reconsideration, limited Director review before finality, and final OPM action. Either party may seek reconsideration of an initial decision, and OPM may reopen and reconsider an initial decision. The

Director may review a nonfinal decision on the Director's own initiative before finality. Once the decision becomes final under § 351.909, there is no further appeal of the OPM RIF decision under part 351. The rule separately preserves collateral matters within the jurisdiction of EEOC, Inspectors General, MSPB where it has independent jurisdiction, DOL VETS, and OSC.

OPM concludes that this structure better fits the nature of RIF appeals. The MSPB process can involve administrative-judge proceedings, discovery, hearings, petitions for review to the full Board, possible remands or reopening, and subsequent judicial review. By contrast, the final rule provides a single, record-focused OPM process that requires the agency to produce the complete RIF record, gives the appellant an opportunity to respond, permits targeted fact development where needed, and provides corrective relief for prejudicial RIF error. This approach reduces delay, cost, and uncertainty while preserving administrative review of whether the agency complied with applicable RIF statutes and OPM regulations.

OPM also considered historical and contemporary evidence concerning the burden of the prior appeal process. For many years, agencies and oversight bodies have expressed concern that Federal personnel appeal procedures can become complex, costly, and time-consuming.³⁴ Those concerns remain relevant because RIF appeals often involve application of detailed regulatory criteria to an established agency record. OPM has determined that a record-focused OPM process, with additional procedures available when necessary and efficient, better aligns the appeal process with the issues presented in RIF cases.

Since OPM first delegated non-SES RIF appeals to MSPB by regulation, the practical consequences of that delegation have changed substantially. The delegation was not a statutory command; it was a regulatory choice made under OPM's authority to prescribe regulations governing the release of competing employees in a RIF. See 5 U.S.C. 3502. Congress did not make non-SES RIF actions appealable to MSPB by statute, and Congress expressly excluded RIF actions under section 3502 from the chapter 75 adverse-action scheme. See 5 U.S.C. 7512(B). Thus, the prior MSPB forum for non-SES RIF appeals existed because

OPM's regulations made those actions appealable to MSPB, not because Congress required MSPB adjudication.

When OPM revised the RIF regulations in the 1980s, it attempted to retain a record-focused model of review. OPM's rule provided that, unless MSPB determined there were material factual disputes, "the review of the matter in the RIF appeal will be confined to the written record." 51 FR 318, 319 (Jan. 3, 1986). The D.C. Circuit invalidated that restriction in *AFGE v. OPM*, 821 F.2d 761, 768–69 (D.C. Cir. 1987), holding that if OPM elected to use MSPB as the adjudicatory forum, OPM could not control MSPB's adjudicatory procedures in the manner OPM had attempted. The practical effect of *AFGE v. OPM* was that OPM could continue delegating RIF appeals to MSPB, but could not require MSPB to use the streamlined, written-record process OPM considered appropriate for RIF appeals.

Commenters 0308 and 0386 recommended that OPM instead streamline MSPB's procedures. OPM appreciates those recommendations and agrees with the general premise that RIF appeals should be adjudicated through more focused procedures. Indeed, several of the commenters' suggested efficiencies are reflected in this final rule, including record-based review, targeted fact development, hearings only when necessary and efficient, and clearer filing and reconsideration procedures. But OPM declines to adopt recommendations that would require OPM to dictate MSPB procedure in contravention of *AFGE v. OPM*. The final rule instead addresses the problem at its source by revising OPM's regulatory delegation and establishing OPM procedures for the regulatory RIF appeal right preserved in part 351.

The MSPB's processing time has been considerably delayed due to exceedingly long backlogs. MSPB has recognized the problem its recurring backlog of cases presents, as well as the cause: lack of quorum because the Senate has not confirmed a sufficient number of Board members. Between January 7, 2017, and March 3, 2022, and between April 10 and October 27, 2025, MSPB lacked a quorum, which prevented it from reviewing cases.³⁵ In light of the Senate's failure to confirm nominees to the MSPB in a timely way, a process over which OPM lacks any meaningful control, prudent governance requires the executive to minimize

disruption in personnel operations caused by loss of a quorum at MSPB. It is notable that MSPB too has mitigated, as far as practicable, the effects of a future lack of quorum on delays. 89 FR 72957 (Sept. 9, 2024).

The risk of an additional backlog is also significant in light of the significantly increased number of cases received in calendar year 2025.³⁶ Not only is this frustrating for agencies that must be able to efficiently and effectively manage their workforces, but so too for employees. If an employee is subject to a RIF, the Federal Government owes it to that individual to efficiently adjudicate his or her appeal so that he or she may receive any remedies, if proper, or seek alternative employment or reemployment elsewhere in the Federal Government. Recent agency restructuring activity thus underscores the importance of a clear and efficient RIF appeal process.

OPM does not rely solely on MSPB quorum history or case backlogs. Those circumstances reinforce OPM's conclusion that the regulatory RIF appeal process should not depend on an external adjudicative forum whose procedures and institutional availability OPM cannot control. But the final rule rests on broader grounds: OPM's statutory and regulatory responsibility for part 351; OPM's subject-matter expertise in RIF administration; the record-based nature of many RIF disputes; the cost and delay associated with default discovery, hearing, and multi-stage review procedures; and the benefits of a single governmentwide process tailored to RIF appeals.

Several commenters supported the proposed rule on these grounds. Commenters 0351, 0352, 0418, 0434, and 0657 stated that MSPB adjudication can be time-consuming, costly, and resource-intensive, and that transferring RIF appeals to OPM would improve efficiency, consistency, predictability, and finality. These commenters also stated that lengthy appeals can consume legal, human-resources, management, and operational resources; complicate workforce planning; and delay corrective relief or final resolution. OPM agrees. A more streamlined OPM process will benefit both employees and agencies by reducing uncertainty, focusing adjudication on the RIF record and applicable legal standards, and allowing RIF-compliance disputes to be resolved more promptly.

³⁴ *Streamlining Federal Appeals Procedures: Hearings Before the Subcomm. on Civ. Serv. of the H. Comm. on Gov't Reform & Oversight*, 104th Cong. (1995) (statement held Nov. 29, 1995).

³⁵ U.S. Merit Sys. Prot. Bd., *Frequently Asked Questions About the Lack of Quorum Period and Restoration of the Full Board* (Nov. 14, 2025), available at <https://www.mspb.gov/FAQs%20Absence%20of%20Board%20Quorum%2011-14-25.pdf>.

³⁶ U.S. Merit Sys. Prot. Bd., *Weekly Number of Cases Received in the Regional and Field Offices Fiscal Year 2025* (Sept. 29, 2025), available at <https://www.mspb.gov/Recent%20ROFO%20Case%20Receipts.pdf>.

Accordingly, OPM concludes that retaining the prior MSPB forum is no longer the best regulatory approach. The final rule preserves an administrative appeal for employees furloughed for more than 30 days, separated, or demoted by a RIF action; requires a complete RIF-specific agency record; provides reply and inspection rights; authorizes additional fact development where warranted; permits hearings when necessary and efficient; and provides corrective relief for prejudicial violations of applicable RIF law or regulation. At the same time, the rule avoids importing MSPB procedures that OPM cannot control and that OPM has determined are not necessary in every RIF appeal.

In addition, OPM has long been responsible for prescribing, interpreting, and overseeing governmentwide RIF regulations. The prior framework divided responsibility between OPM, which issued and interpreted the RIF rules, and MSPB, which adjudicated RIF appeals under procedures outside OPM's control. OPM has determined that this divided structure creates unnecessary fragmentation, and that consolidating RIF appeal adjudication within OPM will reduce fragmentation and improve accountability in the administration of part 351. As the Administrative Conference of the United States has recognized, when agencies share closely related responsibilities for different aspects of the same regulatory or management enterprise, that arrangement can produce redundancy, inefficiency, gaps, and other coordination problems.³⁷ GAO has similarly recognized that reducing fragmentation can improve the efficiency and effectiveness of government operations.³⁸ Those concerns are present here. Under the prior framework, OPM prescribed and interpreted the governmentwide RIF regulations, while MSPB adjudicated RIF appeals under procedures OPM could not control. That divided structure created unnecessary separation between the agency responsible for the substantive RIF rules and the forum responsible for applying those rules in individual appeals. OPM believes that centralizing RIF appeal adjudication within OPM will allow the

agency responsible for part 351 to apply its specialized expertise directly, improve consistency in the interpretation of OPM's RIF regulations, and reduce the procedural complexity associated with the prior forum.

OPM is the agency Congress charged with prescribing regulations governing the release of competing employees in a RIF. 5 U.S.C. 3502. OPM also has governmentwide responsibility for administering civil-service laws and regulations, promoting merit-system principles, overseeing delegated personnel authorities, and ensuring agency compliance with applicable personnel standards. See 5 U.S.C. 1103(a)(5), 1103(a)(7), 1103(c), 1104(b)(2), 1104(c). OPM implements the RIF statutory framework through part 351, provides governmentwide guidance to agencies on workforce reshaping and RIF administration, and oversees compliance with merit-system requirements. Locating RIF appeal adjudication within OPM therefore aligns interpretation, oversight, and adjudication of the RIF regulations in the agency with the most direct statutory and regulatory responsibility for those rules.

Accordingly, OPM concludes that this final rule is needed to provide a more efficient, consistent, and cost-effective RIF appeal process while preserving meaningful review for employees who allege that a covered RIF action was conducted in violation of an applicable statute or OPM regulation and that the violation prejudiced them. Consolidating RIF appeals in OPM reduces fragmentation, leverages OPM's statutory responsibility and subject-matter expertise, improves uniform interpretation of part 351, and provides employees and agencies with a clearer and more timely path to final resolution.

B. Regulatory Alternatives

OPM considered several alternatives before adopting the final rule.

First, OPM considered taking no action and retaining the existing regulatory delegation of RIF appeals to MSPB. OPM rejected that alternative. The current framework separates responsibility for the RIF regulations from responsibility for adjudicating disputes under those regulations. OPM prescribes and interprets the governmentwide RIF rules, while MSPB adjudicates RIF appeals under procedures OPM cannot control. OPM has determined that this divided structure produces unnecessary fragmentation, delay, and cost, and does not best serve employees, agencies, or the public. Retaining the status quo also would not address the concerns that

prompted this rulemaking, including the burden of MSPB-style litigation, the need for more consistent interpretation of part 351, and the need for a process better tailored to the record-based issues ordinarily presented in RIF appeals.

Second, OPM considered eliminating administrative RIF appeals entirely. Congress directed that a RIF notice include a description of any appeal or other rights that "may be available," 5 U.S.C. 3502(d)(2)(E), and OPM has discretion to determine the contours of any regulatory RIF appeal procedure for non-SES employees. OPM declined to eliminate administrative RIF appeals. Employees have long had an administrative mechanism to challenge whether a RIF action was conducted consistently with applicable statute and regulation. Eliminating that mechanism would reduce adjudication costs, but it would also remove an orderly process for correcting prejudicial errors in the application of RIF requirements. OPM concluded that employees should continue to have a direct administrative avenue to challenge covered RIF actions, provided the process is structured to resolve RIF-compliance issues efficiently and consistently.

Third, OPM considered delegating RIF appeal adjudication to employing agencies. OPM rejected that alternative because it would create greater risk of inconsistent results and diminished confidence in the neutrality of the process. A decentralized agency-level appeal system would require each agency conducting a RIF to adjudicate direct challenges to its own RIF actions, which would heighten the very impartiality concerns commenters raised. It would also undermine governmentwide consistency in applying part 351 and reduce the efficiency gains expected from a single OPM-administered process.

Fourth, OPM considered retaining MSPB as the forum while attempting to impose OPM-designed streamlined procedures, including more limited discovery, record-based review, and hearings only where necessary. OPM rejected this alternative because it would not accomplish OPM's objective. In *AFGE v. OPM*, 821 F.2d 761, 768–69 (D.C. Cir. 1987), the D.C. Circuit explained that where OPM elects to use MSPB as the adjudicative forum, OPM may not dictate MSPB's adjudicatory procedures in the manner OPM had attempted. Thus, recommendations to streamline MSPB procedures, including those advanced by Commenters 0308 and 0386, cannot be implemented by OPM while leaving RIF appeals at MSPB. Several of those procedural concepts are instead reflected in the

³⁷ Admin. Conf. of the U.S., *Improving Coordination of Related Agency Responsibilities* (June 15, 2012), available at <https://www.acus.gov/document/improving-coordination-related-agency-responsibilities>.

³⁸ U.S. Gov't Accountability Off., *Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve an Additional One Hundred Billion Dollars or More in Future Financial Benefits*, GAO–25–107604 (May 13, 2025), available at <https://www.gao.gov/assets/gao-25-107604.pdf>.

final OPM process, including written-record review, targeted fact development, and hearings when necessary and efficient.

Fifth, OPM considered moving RIF appeals to OPM while retaining MSPB-style procedures, including broader discovery and a hearing as of right. OPM rejected that alternative because it would preserve many of the features that make the current process costly, lengthy, and poorly suited to many RIF appeals. The final rule is not merely a forum change. Its purpose is to establish a RIF-specific process tailored to the issues ordinarily presented in part 351 appeals: coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related RIF-compliance requirements. OPM concluded that written-record adjudication, supported by a complete agency record and supplemented by additional procedures when necessary and efficient, better balances fairness, accuracy, speed, and administrative cost.

Sixth, OPM considered relying on negotiated grievance arbitration or agency-specific appeal procedures as an alternative to a governmentwide OPM appeal process. OPM rejected that approach for direct RIF-compliance appeals. RIF appeals require uniform application of governmentwide regulations, and allowing parallel direct appeal mechanisms across agencies or bargaining units would undermine consistency and finality. Arbitrators also lack the expertise necessary to adjudicate RIF appeals effectively. At the same time, OPM revised the final regulatory text to address comments concerning collateral forums outside of collective bargaining and grievance arbitration. Final § 351.901(c) provides that the procedures in part 351 are the sole and exclusive means of appealing a covered RIF action, bars raising such actions and matters relating to their appeal under negotiated grievance procedures or through grievance arbitration, and preserves matters within the jurisdiction of the EEOC, Inspectors General, MSPB where it has independent jurisdiction, DOL VETS, and OSC.

Seventh, OPM considered retaining MSPB review while seeking increased MSPB staffing, specialized MSPB RIF tracks, expedited MSPB procedures, or other MSPB case-management reforms. OPM rejected these alternatives because they depend on institutional, budgetary, or procedural choices outside OPM's control and would not resolve the fundamental fragmentation created by locating adjudication outside the agency responsible for part 351. Additional

MSPB resources also would not give OPM authority to require the RIF-specific process OPM has determined is appropriate.

Commenters 0928, 1092, and 1099 argued that OPM failed to consider less disruptive alternatives, including retaining MSPB review, improving MSPB procedures, creating expedited MSPB tracks, preserving grievance arbitration, or otherwise modifying the existing system. OPM has considered those alternatives and disagrees that they would better accomplish the goals of this rulemaking. Retaining MSPB would preserve the divided structure OPM seeks to correct. Attempting to dictate MSPB procedures would conflict with *AFGE v. OPM*. Mirroring MSPB procedures at OPM would preserve unnecessary procedural burden. Agency-level adjudication would reduce consistency and raise neutrality concerns. Eliminating appeals entirely would go too far by removing a useful mechanism for correcting prejudicial RIF errors.

OPM selected the final approach because it best balances fairness, efficiency, consistency, and cost. The final rule preserves an administrative appeal right for employees furloughed for more than 30 days, separated, or demoted by a RIF action; clarifies the appellant's burden and prejudice standard; requires the agency to produce the complete RIF-specific agency record to OPM; requires service of the agency record on the appellant subject only to legally required disclosure limits; permits an appellant reply; authorizes additional information, audits, investigations, and hearings when necessary and efficient; provides reconsideration and limited Director review before finality; preserves collateral statutory forums; and authorizes corrective relief where the appellant proves prejudicial RIF error.

Accordingly, OPM concludes that the selected alternative is preferable to the status quo and to the other alternatives considered. It preserves meaningful administrative review while reducing fragmentation, aligning adjudication with OPM's governmentwide RIF expertise, and establishing procedures better tailored to the nature of RIF appeals.

C. Expected Impact

OPM expects the final rule to produce a more streamlined, consistent, and administrable RIF appeal process. The rule does not alter the substantive requirements agencies must follow when conducting a RIF, nor does it authorize OPM to substitute its judgment for an agency's workforce-

management determinations. Rather, it changes the forum and procedures for adjudicating whether an agency complied with applicable statutes and OPM regulations governing RIF actions under part 351 and whether any failure prejudiced the appellant.

The revised process is designed to match the issues ordinarily presented in RIF appeals. RIF appeals typically turn on the application of established statutory and regulatory criteria to an agency record, including coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related part 351 requirements. These issues generally are well suited to record-based adjudication, supplemented where necessary by targeted requests for information, audits, investigations, or hearings when OPM determines that such procedures are necessary and efficient.

OPM will administer this process through MSAC, an external-facing OPM component with longstanding oversight and adjudicatory responsibilities. MSAC already adjudicates Federal personnel matters, including classification appeals, Fair Labor Standards Act claims, compensation and leave claims, and declination-of-reasonable-offer claims. RIF appeals are well suited to MSAC's institutional role because they require application of OPM's governmentwide personnel regulations to agency records and because MSAC is responsible for evaluating agency compliance with civil service laws, merit system principles, and related regulations.

The final rule also strengthens the record on which appeals will be decided. The agency must produce the complete agency record to OPM and must serve the appellant with the agency record, subject only to legally required disclosure limitations. The required record includes, as applicable, the RIF notice, effective-date documentation, records supporting the reason for the RIF, coverage and appointment records, competitive-area and competitive-level documentation, retention-register materials, order-of-release records, assignment-rights materials, special RIF-circumstance records, and a certification that the complete agency record has been produced. These requirements will allow OPM to adjudicate RIF appeals on a complete and reviewable record while giving appellants meaningful access to the materials needed to test whether the agency complied with part 351.

For employees, the final rule is expected to provide faster and clearer resolution of RIF appeals while

preserving meaningful administrative review. An employee who is furloughed for more than 30 days, separated, or demoted by a RIF action may appeal to OPM. The employee may submit supporting documentation, review the agency response, file a reply, inspect OPM's appellate record subject to legal limits, and obtain corrective relief if the employee proves a prejudicial violation of an applicable RIF statute or OPM regulation. Faster resolution benefits employees whether the action is corrected or sustained: if the agency committed a prejudicial error, relief can be ordered sooner; if the action is upheld, the employee receives earlier certainty for purposes of Federal reemployment, non-Federal employment, financial planning, and career decisions.

For agencies, the final rule is expected to reduce litigation burden, improve predictability, and promote finality. Under the prior framework, RIF appeals could proceed through MSPB's multi-stage process, including discovery, hearing preparation, evidentiary hearings, petitions for review, and judicial review where available. That process can require substantial participation by agency counsel, human-resources staff, supervisors, managers, and witnesses. The OPM process preserves the ability to develop the record where necessary but avoids applying the same litigation model to every appeal regardless of whether the issues can be resolved on the written record.

For OPM, the final rule consolidates interpretation, oversight, and adjudication of part 351 within the agency charged with prescribing and administering governmentwide RIF regulations. This alignment will promote more consistent interpretation of OPM's RIF rules and reduce the fragmentation created when one agency writes and interprets the regulations while another adjudicates appeals under procedures outside OPM's control. OPM expects that MSAC's existing adjudicatory infrastructure and compliance experience will allow OPM to administer RIF appeals efficiently while maintaining record-based decision making and appropriate separation between policy and adjudicatory functions.

The final rule also includes safeguards designed to support fair and consistent adjudication. OPM adjudicators must be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators may not consider

material *ex parte* communications concerning the merits of an appeal, and any such communication must be summarized in the record with an opportunity for the parties to respond unless disclosure is prohibited by law. OPM may require additional information, conduct an audit or investigation when the existing record is insufficient to resolve a material issue within OPM's jurisdiction, and hold a hearing when necessary and efficient. These safeguards allow OPM to achieve the efficiency benefits of record-based review without eliminating tools needed to resolve material factual or legal issues.

For MSPB, the rule will remove future part 351 RIF appeals from its docket, except where MSPB has independent statutory jurisdiction over a matter not displaced by this rule. That change will allow MSPB to focus resources on matters Congress made appealable to MSPB by statute, while OPM adjudicates the regulatory RIF appeal right established under part 351.

Overall, OPM expects the final rule to reduce delay, decrease unnecessary litigation costs, improve consistency in the application of part 351, and provide employees and agencies with more timely finality. The rule preserves an administrative appeal mechanism, strengthens the agency-record requirement, allows targeted fact development where needed, and provides corrective relief for prejudicial RIF error. OPM concludes that this structure better serves employees, agencies, and the public than the prior fragmented process.

D. Costs

This final rule affects how a Federal employee may pursue an administrative appeal of a furlough of more than 30 days, separation, or demotion by reduction-in-force action under part 351. The final rule transfers adjudication of covered RIF appeals from MSPB to OPM and establishes a streamlined OPM process focused on the written agency record, with targeted supplementation through additional information requests, audits, investigations, or hearings when OPM determines that such procedures are necessary and efficient.

OPM expects the final rule to result in net cost savings to the Federal Government. Under the prior process, RIF appeals before MSPB could involve party-conducted discovery, hearing preparation, evidentiary hearings, petitions for review to the full Board, and, where available, judicial review. The final rule replaces that litigation model with an OPM process that

requires the agency to produce the complete agency record to OPM, requires service of that record on the appellant subject only to legally required disclosure limitations, permits an appellant reply, and allows OPM-directed fact development where necessary. The detailed agency-record requirement added in the final rule is not expected to impose substantial new record-creation costs because the required materials are documents agencies must generate, maintain, or rely upon in conducting a RIF, including RIF notices, competitive-area and competitive-level records, retention registers, order-of-release materials, assignment-rights records, and related documentation. Rather than adding a separate litigation burden, the requirement is intended to substitute a complete, reviewable agency record for routine discovery.

1. Changes From the Proposed Analysis

The final analysis uses the same general methodology as the proposed rule, but OPM has made several updates and corrections. First, OPM updated labor rates from 2025 rates to 2026 rates because the final rule will take effect after the proposed rule's publication. The proposed rule used 2025 Washington, DC locality rates and estimated first-year implementation costs using a loaded GS-14, step 5 hourly rate of \$154.76; the final analysis uses the 2026 GS-14, step 5 hourly rate of \$78.15 and a loaded hourly rate of \$156.30.

Second, OPM retains the proposed rule's estimate of approximately 292 RIF appeals annually but clarifies that the estimate is based on historical RIF appeal data from 1995 through the most recent available data, excluding the anomalously high volume of RIF activity in 2025. The proposed rule used the same 292-appeal annual estimate and acknowledged recent elevated RIF activity as anomalous; the final analysis makes that exclusion explicit and explains that including 2025 would likely overstate recurring annual appeal volume, while retaining earlier periods of higher RIF activity avoids understating long-run costs.

Third, OPM corrected several arithmetic issues in the proposed estimates. Most significantly, the proposed rule stated that procedural OPM appeals would cost about \$2,085 per appeal but also stated that 219 such appeals would cost approximately \$135,025 annually. Based on the proposed rule's own stated staffing and hour assumptions, that annual total should have been substantially higher.

The final analysis corrects that calculation using 2026 rates.

As a result of these updates and corrections, OPM no longer estimates annual recurring savings of over \$6.1 million, as stated in the proposed rule. OPM now estimates annual recurring savings of approximately \$5.65 million. OPM concludes that this revised estimate is more conservative and more accurate, while still demonstrating substantial recurring savings from the final rule. The proposed rule estimated annual status quo costs of more than \$7.3 million and annual OPM-process costs of just over \$1.1 million; the final analysis estimates annual status quo costs of approximately \$7.51 million and annual OPM-process costs of approximately \$1.87 million.

2. One-Time Implementation Costs

OPM estimates that more than 80 Federal agencies, including MSPB and EEOC, will incur one-time implementation costs to review the final rule, update regulations, policies, and procedures, and train human resources practitioners, managers, attorneys, adjudicators, and other relevant personnel.

For purposes of this estimate, OPM assumes that the employees performing this work will have an average salary equivalent to GS-14, step 5, on the 2026 Washington, DC locality pay table, with an hourly locality rate of \$78.15. OPM assumes that the total dollar value of labor, including wages, benefits, and overhead, equals 200 percent of the wage rate, resulting in a loaded hourly labor cost of \$156.30.

OPM estimates that implementation will require an average of 100 hours per affected agency. This results in a one-time cost of approximately \$15,630 per agency and approximately \$1.25 million governmentwide, assuming 80 affected agencies.

3. Recurring Costs and Savings

OPM estimates that approximately 292 employees will file RIF appeals annually. This estimate is based on historical RIF appeal data from 1995 through the most recent available data, excluding 2025. OPM acknowledges comments asserting that recent RIF activity may indicate higher future appeal volume. OPM declines to use 2025 as the recurring baseline because RIFs are episodic and OPM does not have reason to conclude that the 2025 volume will recur annually. OPM's estimate retains earlier periods of higher RIF activity, which guards against underestimating annual appeal volume, while excluding 2025, which guards against overstating recurring costs.

4. Costs Under the Prior MSPB Process

OPM estimates that, under the prior process, each initial RIF appeal before MSPB required 40 hours of administrative judge time at the GS-14, step 5 level and 4 hours of paralegal time at the GS-11, step 5 level. Using loaded hourly rates of \$156.30 for the administrative judge and \$92.81 for the paralegal, OPM estimates an MSPB initial-adjudication cost of approximately \$6,623 per appeal. For 292 appeals annually, this results in approximately \$1.93 million in annual MSPB initial-adjudication costs.

OPM estimates that MSPB would receive petitions for review in approximately 53 percent of RIF appeals, or approximately 155 petitions annually. This estimate is based on MSPB annual report data for recent years, excluding the anomalously high volume of RIF activity in 2025. OPM estimates that each petition for review requires 4 hours each from the MSPB Chairman and two Board Members, at the loaded Executive Schedule Level IV hourly rate of \$188.98, and 16 hours from one GS-15, step 5 attorney, at a loaded hourly rate of \$183.85. On that basis, OPM estimates annual MSPB Board-review costs of approximately \$807,000.

OPM also estimates agency litigation costs under the prior MSPB process. For each initial appeal, OPM estimates 80 hours of GS-14, step 5 agency attorney time, 4 hours of GS-11, step 5 paralegal time, and 8 hours of GS-15, step 5 supervisory attorney time. Using loaded hourly rates of \$156.30, \$92.81, and \$183.85, respectively, OPM estimates agency litigation costs of approximately \$14,346 per initial appeal, or approximately \$4.19 million annually for 292 appeals.

For petitions for review, OPM estimates 24 hours of GS-14, step 5 agency attorney time per petition. At a loaded hourly rate of \$156.30, this equals approximately \$3,751 per petition, or approximately \$581,000 annually for 155 petitions.

Accordingly, OPM estimates annual costs under the prior MSPB process of approximately \$7.51 million, consisting of MSPB initial-adjudication costs, MSPB Board-review costs, agency initial-appeal litigation costs, and agency petition-for-review litigation costs.

5. Costs Under the Final OPM Process

OPM estimates that approximately 219 of the 292 annual appeals will be resolved on procedural grounds, including untimeliness or lack of jurisdiction. OPM estimates that each

such appeal will require 20 hours of GS-11, step 5 paralegal time and 4 hours of GS-7, step 5 staff assistant time. Using loaded hourly rates of \$92.81 and \$62.71, respectively, OPM estimates a procedural-appeal cost of approximately \$2,107 per appeal, or approximately \$461,000 annually for 219 appeals.

OPM estimates that approximately 73 appeals annually will be timely and within OPM's jurisdiction and will require merits adjudication. OPM estimates that each such appeal will require 20 hours of GS-13, step 5 adjudicator time and 1 hour of GS-11, step 5 paralegal time. Using loaded hourly rates of approximately \$132.28 and \$92.81, respectively, OPM estimates a merits-adjudication cost of approximately \$2,738 per appeal, or approximately \$200,000 annually for 73 appeals.

OPM estimates that approximately 15 requests for reconsideration will be filed annually. OPM estimates that each request will require 16 hours of GS-14, step 5 adjudicator time and 1 hour of GS-11, step 5 paralegal time. Using loaded hourly rates of \$156.30 and \$92.81, respectively, OPM estimates a reconsideration cost of approximately \$2,594 per request, or approximately \$39,000 annually.

OPM also estimates agency litigation costs under the OPM process. OPM expects that approximately 128 appeals annually will require more than negligible agency litigation resources. For those appeals, OPM estimates 40 hours of GS-14, step 5 agency attorney time, 4 hours of GS-11, step 5 paralegal time, and 8 hours of GS-15, step 5 supervisory attorney time. Using loaded hourly rates of \$156.30, \$92.81, and \$183.85, respectively, OPM estimates agency initial-appeal litigation costs of approximately \$1.04 million annually.

For reconsideration requests, OPM estimates 24 hours of GS-14, step 5 agency attorney time for each of 15 requests. At a loaded hourly rate of \$156.30, this equals approximately \$56,000 annually. OPM therefore estimates total agency litigation costs under the OPM process of approximately \$1.09 million annually.

OPM also considered potential EEO-related costs. The final rule does not limit an employee's ability to pursue discrimination claims through the appropriate statutory process. OPM estimates that approximately 1 percent of employees who otherwise would file a RIF appeal may instead file an EEO complaint related to a RIF action, resulting in approximately 3 complaints annually. OPM estimates that each such complaint will require 125 hours of GS-

14, step 5 attorney time, at a loaded hourly rate of \$156.30, plus \$5,000 in miscellaneous litigation costs. This results in approximately \$73,600 in

annual EEO-related costs. This estimate uses the same 1 percent assumption as the proposal, updates the labor rate to

2026, and corrects the arithmetic in the proposed estimate.

6. Summary of Recurring Annual Costs

Cost category	Prior MSPB process	Final OPM process
MSPB/OPM initial procedural or merits adjudication	\$1,934,000	\$661,000
MSPB Board review/OPM reconsideration	807,000	39,000
Agency initial-appeal litigation	4,189,000	1,036,000
Agency petition/reconsideration litigation	581,000	56,000
EEO-related incremental costs .....	.....	74,000
Total recurring annual cost	7,511,000	1,866,000

OPM therefore estimates recurring annual savings of approximately \$5.65 million. In the first year after publication, those savings will be offset by approximately \$1.25 million in one-time implementation costs, resulting in estimated first-year net savings of approximately \$4.40 million. In subsequent years, OPM expects the recurring savings to continue without those one-time implementation costs.

7. Response to Cost-Related Comments

Commenter 0351 stated that OPM may have underestimated recurring cost savings by relying on a historical average rather than recent RIF activity. OPM appreciates the comment and agrees that higher appeal volumes would increase the absolute value of savings from a streamlined process. OPM nevertheless declines to use 2025 as the baseline for recurring annual costs because OPM does not direct agencies to conduct RIFs and does not have reason to conclude that the unusually high 2025 volume will recur annually. OPM’s approach is conservative in that it excludes the anomalous 2025 volume while retaining earlier periods of comparatively higher RIF activity.

Several commenters, including Commenters 0235, 0332, 0336, 0548, 0877, 0908, and 1237, argued that OPM should include additional costs, including possible litigation challenging the rule, costs of replacing employees separated by RIF, workforce-disruption costs, or other collateral consequences. OPM declines to include those costs in the quantified estimate. Litigation challenging the final rule depends on future decisions by third parties and courts and cannot be reliably estimated. Replacement costs, workforce-planning costs, and other operational costs generally arise from the underlying RIF action or agency restructuring decision, not from the appeal forum established by this rule. This rule governs the process for adjudicating RIF appeals

after an agency has taken a covered action; it does not direct agencies to conduct RIFs or determine which positions agencies must abolish or retain.

OPM also has not quantified several benefits that may result from the final rule, including reduced back-pay exposure from faster correction of prejudicial errors, reduced management and witness time, reduced uncertainty for employees, faster finality for agencies, and improved consistency in applying part 351. These benefits are real but difficult to quantify with precision. Accordingly, OPM’s quantified estimate likely understates the full benefits of the final rule.

OPM concludes that the final rule will produce substantial recurring savings while preserving meaningful administrative review. The final rule requires a complete RIF-specific agency record, permits an appellant reply, authorizes additional information, audits, investigations, and hearings when necessary and efficient, and provides corrective relief where the appellant proves a prejudicial violation of an applicable RIF statute or OPM regulation. OPM therefore concludes that the final rule’s benefits justify its costs.

E. Benefits

In addition to the quantified cost savings discussed above, OPM expects the final rule to produce substantial non-quantified benefits for employees, agencies, and the Federal Government. These benefits include faster resolution of RIF appeals, reduced uncertainty, more consistent application of OPM’s governmentwide RIF regulations, reduced litigation burden, and more timely corrective relief where an agency commits a prejudicial RIF error.

First, the final rule is expected to provide employees with faster and clearer resolution of RIF appeals. A RIF action can significantly affect an employee’s employment, finances, career planning, benefits, and ability to

seek other employment. A prolonged appeal process can leave an employee uncertain as to whether the action will be sustained, corrected, or followed by reinstatement, back pay, priority reemployment consideration, or other relief. A streamlined OPM process benefits employees by providing a more prompt determination. If the agency committed a prejudicial RIF error, the employee will receive corrective relief sooner. If the agency action is sustained, the employee receives earlier certainty for purposes of Federal reemployment programs, non-Federal employment, financial planning, and career decisions.

Second, the final rule is expected to benefit agencies by reducing unnecessary litigation burden. Under the prior MSPB process, RIF appeals could involve party-conducted discovery, motions practice, hearing preparation, evidentiary hearings, petitions for review, and additional review where available. Those procedures require substantial time from agency counsel, human-resources staff, managers, supervisors, and witnesses. The final rule replaces that default litigation model with a record-focused process in which the agency must produce the complete RIF-specific agency record, the appellant may reply, and OPM may require additional information, conduct an audit or investigation, or hold a hearing when necessary and efficient. This approach preserves tools needed to resolve material disputes while avoiding routine use of costly procedures in cases that can be resolved on the written record.

Third, faster adjudication can reduce remedial costs where an employee prevails. Delayed resolution may increase potential back pay, interest, and attorney-fee exposure if a RIF action is later found to have violated applicable statute or OPM regulation in a way that prejudiced the appellant. A more prompt administrative decision can limit the period of uncertainty and

reduce the accumulation of remedial costs. This benefit serves both employees and agencies: employees receive relief sooner where relief is warranted, and agencies receive earlier notice of any corrective action required.

Fourth, OPM expects the final rule to promote greater consistency in RIF appeal outcomes. OPM is the agency responsible for prescribing and administering governmentwide RIF regulations under part 351. RIF appeals generally require application of those regulations to an agency record concerning coverage, competitive area, competitive level, retention standing, order of release, assignment rights, notice, and related requirements. Assigning appeals to OPM will better align interpretation, oversight, and adjudication of part 351 and reduce fragmentation between the agency that issues the RIF regulations and the forum that applies them in individual appeals. MSAC's existing adjudicatory and civil-service compliance functions further support consistent adjudication of these record-based personnel matters.

Fifth, the final rule strengthens the record available for decision. In response to comments expressing concern about information asymmetry and the appellant's ability to prove RIF error, the final rule requires the agency to produce the complete agency record to OPM and to serve the appellant with the agency record, subject only to legally required disclosure limitations. The final rule also identifies RIF-specific categories of required record materials, including the RIF notice, documents supporting the reason for the RIF, competitive-area and competitive-level documentation, retention-register materials, order-of-release records, assignment-rights records, and records concerning special RIF circumstances. These requirements promote accurate adjudication and meaningful employee participation without requiring routine discovery in every case.

Sixth, the final rule is expected to maintain transparency and accountability. OPM decisions will be issued in writing, reconsideration will be available under specified standards, and final merits decisions will be made publicly available subject to privacy, privilege, protected personnel information, law-enforcement-sensitive information, national-security, and other legal limits. OPM acknowledges that final MSPB decisions likewise are issued in writing and made publicly available; the final rule carries those transparency and accountability features forward to the new OPM forum rather than diminishing them. The rule also includes adjudicator-separation and *ex*

parte safeguards to ensure that appeals are decided on the record and not through case-specific policy direction. These features help preserve confidence in the administrative process while allowing OPM to adjudicate appeals more efficiently than the prior multi-stage MSPB process.

OPM considered comments from 0928, 1089, and 1092 asserting that the cost-benefit analysis undervalued procedural protections, did not adequately account for confidence in the civil service, and improperly treated recent RIF activity as anomalous. OPM disagrees that the final rule undervalues procedural protections. The final rule does not eliminate administrative review; it preserves an appeal right for employees furloughed for more than 30 days, separated, or demoted by RIF action. It also adds protections not included in the proposal, including a more precise prejudice standard, a detailed agency-record requirement, appellant access to the record subject only to legal limits, a reply right that permits new allegations based on information first disclosed in the agency response, targeted fact-development authority, hearings when necessary and efficient, adjudicator-separation requirements, *ex parte* protections, reconsideration, Director review before finality, and public posting of final merits decisions subject to legal limits.

OPM also considered supportive comments from 0351, 0352, 0418, 0434, and 0657 stating that MSPB adjudication can be costly, time-intensive, and resource-intensive, and that transferring RIF appeals to OPM would improve efficiency, predictability, consistency, and finality. OPM agrees that the final rule will reduce unnecessary process costs and will provide benefits beyond those quantified in the cost analysis, including reduced management and witness time, reduced litigation-driven uncertainty, improved workforce planning, and more timely resolution for employees. Some of these benefits are difficult to quantify with precision, but OPM concludes they are substantial and reinforce the quantified savings discussed above.

OPM continues to treat unusually high recent RIF activity as anomalous for purposes of estimating recurring annual costs, but that assumption does not diminish the benefits of the final rule. If future RIF appeal volumes are higher than the historical average used in the cost analysis, the benefits of a streamlined process would likely increase because more employees and agencies would avoid the delay and expense of the prior process. If future

RIF appeal volumes are lower, the rule still provides a clearer, more consistent, and more administrable process for the appeals that are filed.

Accordingly, OPM concludes that the final rule will produce benefits beyond direct cost savings. It will provide employees with faster resolution and earlier access to any warranted relief; reduce unnecessary litigation burden on agencies; limit avoidable back-pay and attorney-fee exposure; promote uniform interpretation of part 351; improve the completeness of the record before the adjudicator; and provide a more predictable, transparent, and efficient process for resolving RIF-compliance disputes. These benefits support OPM's conclusion that the final rule better serves employees, agencies, and the public than the prior fragmented process.

F. Reliance Interests

In the proposed rule, OPM invited comments on any reliance interests that OPM should consider before finalizing revisions to the RIF appeal process. OPM received comments on this issue and has considered them consistent with the APA's requirement that an agency changing policy consider serious reliance interests engendered by the prior policy. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 30–33 (2020).

Commenters 0310, 0846, 1089, 1092, and 1219 argued that employees, unions, and agencies have relied for decades on the availability of MSPB adjudication for RIF appeals. Commenters asserted that employees entered or remained in Federal service with the expectation that any future RIF appeal would be heard by an adjudicative body outside OPM, and that limiting the final rule to prospective application does not fully address those broader expectations. Commenter 1089, for example, stated that employees accepted the obligations and constraints of Federal service in reliance on a rules-based civil service system that included meaningful procedural protections and independent review. Commenters 1092, 1165, and others similarly argued that MSPB review has been part of the civil service system for decades and that employees and unions have structured expectations around that forum.

OPM has considered these asserted reliance interests. OPM recognizes that the prior regulatory framework has existed for many years and that employees, unions, and agencies may have expected future RIF appeals to

proceed before MSPB under the prior version of § 351.901. OPM also recognizes the general importance of stability in civil service procedures. OPM concludes, however, that the reliance interests identified by commenters do not warrant retaining MSPB as the forum for future non-SES RIF appeals.

First, the asserted reliance interest is principally an interest in the continuation of a particular regulatory forum and procedural model, not an interest in the continued existence of administrative review. The final rule does not eliminate administrative review of covered RIF actions. Employees who are furloughed for more than 30 days, separated, or demoted by a RIF action may appeal to OPM. The final rule preserves the ability to obtain corrective relief where the appellant proves that the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351 and that the failure prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome.

Second, the final rule strengthens the OPM process in ways that address many of the procedural reliance concerns commenters raised. The rule requires the agency to produce the complete agency record to OPM; requires service of the agency record on the appellant, subject only to legally required disclosure limitations; identifies RIF-specific categories of required record materials; permits an appellant reply; allows OPM to require additional information; authorizes audits, investigations, and hearings when necessary and efficient; provides written decisions; permits reconsideration; and authorizes corrective relief where warranted. These features preserve meaningful administrative review while replacing the prior MSPB forum with a process tailored to RIF-compliance issues.

Third, the final rule preserves collateral statutory avenues that are independent of the part 351 RIF appeal process. Employees may continue to file complaints, appeals, or other matters within the jurisdiction of EEOC, an Inspector General, MSPB where it has independent jurisdiction, DOL VETS, or OSC. Thus, the final rule does not alter the availability of independently authorized statutory remedies for discrimination, prohibited personnel practices, veterans' rights claims, whistleblower reprisal, or other collateral claims.

Fourth, OPM has addressed concrete transition concerns by applying the rule prospectively. The final rule does not

apply to appeals of RIF actions for which the agency issued a specific RIF notice under 5 CFR 351.802 before September 2, 2026, the effective date of the final rule under RIN 3206–AO86. Those appeals remain subject to adjudication by the MSPB under the procedures applicable to those actions. Thus, any appeals currently pending before the MSPB and any potential appeals of RIF actions that have been effectuated will proceed before the MSPB. This transition rule avoids disrupting pending appeals, prevents confusion for parties already litigating before MSPB, and provides a clear line for future cases.

OPM does not find that commenters identified concrete, individualized reliance interests requiring broader grandfathering or retention of MSPB review for all future RIF appeals. Federal employees may have relied generally on the existence of a merit-based civil service system and procedural protections, but the final rule preserves both. Employees remain protected by the substantive RIF requirements in part 351, the merit system principles, prohibited-personnel-practice protections, veterans' preference requirements, applicable anti-discrimination laws, and the administrative appeal process established by this final rule. What changes is the regulatory forum and procedure for future direct RIF-compliance appeals.

OPM also concludes that additional transition relief would substantially undermine the purpose of the rule. Extending MSPB adjudication to future RIF appeals based on generalized expectations would perpetuate the divided structure OPM has determined is inefficient and unnecessary: OPM would continue to prescribe and interpret the RIF regulations while MSPB adjudicated appeals under procedures OPM cannot control. OPM has determined that a single, record-focused OPM process will better promote timely resolution, consistent interpretation of part 351, reduced litigation burden, and prompt corrective relief where an agency commits prejudicial RIF error.

Accordingly, OPM concludes that the final rule reasonably accounts for reliance interests. The rule preserves administrative review, strengthens record-production and fact-development procedures, preserves collateral statutory remedies, and applies only prospectively. Any reliance interest in maintaining MSPB as the forum for future regulatory RIF appeals is outweighed by OPM's reasoned determination that the final rule will

provide a more efficient, consistent, and cost-effective process for resolving RIF appeals.

VI. Procedural Issues and Regulatory Review

A. Regulatory Review

The Office of Information and Regulatory Affairs in the Office of Management and Budget has designated this as a significant regulatory action under E.O. 12866 section 3(f). Accordingly, OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rulemaking does not reach that threshold. This rule is an E.O. 14192 deregulatory action. OPM estimates this rule generates \$4.6 million in annualized savings in 2024 dollars at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon.

B. Severability

If any of the provisions of this rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

C. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule involves the authority of Federal agencies to adjudicate appeals filed by current and former Federal employees. While small entities representing current or former Federal employees will be affected by the change in venue for appeals and

complaints of discrimination, the procedures employed by the OPM and EEOC will not cause a significant economic impact on these small entities.

D. Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Aug. 10, 1999), it is determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

This regulation meets the applicable standards set forth in subsections 3(a) and (b)(2) of E.O. 12988 (Feb. 5, 1996).

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or Tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires most final rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

H. Paperwork Reduction Act

This final rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). The final rule establishes procedures for filing and adjudicating

RIF appeals before OPM, including electronic filing, appellant submissions, representative information, requests for e-filing exemptions, agency responses, appellant replies, requests for reconsideration, and related case-processing submissions. The final rule also requires use of the electronic filing system identified on OPM's website, except where OPM grants an exemption for good cause.

OPM has requested approval from the Office of Management and Budget for this information collection. See 91 FR 46802. OPM will not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

To the extent the final rule requires Federal agencies to submit agency responses, agency records, certifications, or other documents in their official capacity, those submissions are not collections from "persons" for purposes of the Paperwork Reduction Act. However, submissions from appellants, representatives, or other non-agency parties may constitute information collections subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Signing Statement

Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR part 351 as follows:

PART 351—REDUCTION IN FORCE

■ 1. The authority citation for part 351 is revised to read as follows:

Authority: 5 U.S.C. 1103, 1104, 1302, 2301, 3502, 3503, 38 U.S.C. 4331; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c). Sec. 351.801 also issued under E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart H—Notice to Employee

■ 2. Amend § 351.802 by revising paragraph (a)(6) to read as follows:

§ 351.802 Content of notice.

(a) * * *

(6) The employee's right, as applicable, to appeal to OPM, including the time limit for filing an appeal under § 351.902(b) of this part and the electronic filing system, identified on OPM's website, through which an appeal must be filed.

* * * * *

■ 3. Amend § 351.807 by revising paragraph (e) to read as follows:

§ 351.807 Certification of expected separation.

* * * * *

(e) An agency determination of eligibility for certification may not be appealed.

* * * * *

■ 4. Revise subpart I to read as follows:

Subpart I—Appeals

Sec.

- 351.901 Right to appeal.
- 351.902 Procedures for submitting appeals.
- 351.903 Form and content of RIF appeal and agency response.
- 351.904 Employee representatives.
- 351.905 Adjudication of appeals.
- 351.906 Sanctions and protective orders.
- 351.907 Reconsideration of an initial decision.
- 351.908 Review by the OPM Director.
- 351.909 Final decision.

§ 351.901 Right to appeal.

(a) *Right of appeal.* An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action taken under this part may appeal that action to OPM.

(b) *Burden of proof.* The employee (*i.e.*, appellant) bears the burden of proof to demonstrate, by a preponderance of the evidence:

- (1) The timeliness of the written appeal;
- (2) That OPM possesses jurisdiction over the appeal;
- (3) That the agency failed to comply with an applicable statute or OPM regulation governing reduction-in-force actions under this part; and

(4) That the failure prejudiced the appellant by causing the appellant to be subjected to the appealed action or to lose a materially more favorable outcome under this part.

(c) *Exclusive appeal procedure.* (1) The procedures in this part are the sole and exclusive means of appealing a reduction-in-force action taken under this part.

(2) A reduction-in-force action taken under this part, and any matter relating to an appeal of such an action, may not be raised under a negotiated grievance procedure or contested through grievance arbitration.

(3) Paragraphs (c)(1) and (2) of this section do not preclude an employee

from filing a complaint, appeal, or other matter within the independent jurisdiction of the Equal Employment Opportunity Commission, an Inspector General, the Merit Systems Protection Board, the Department of Labor Veterans' Employment and Training Service, or the Office of Special Counsel.

(4) A party cannot obtain judicial review of a decision under this subpart.

§ 351.902 Procedures for submitting appeals.

(a) *Filing an appeal.* A party, or his or her authorized representative, seeking to file an initial appeal or reconsideration of an initial decision under this subpart must utilize the electronic filing system identified on OPM's website. Unless a party demonstrates good cause and seeks approval from OPM, OPM will not accept any pleadings, evidence, or documents via electronic mail or postal mail.

(b) *Time limits.* An employee may submit an appeal of a reduction-in-force action within 30 calendar days from the effective date of the action. An appeal is deemed timely when it is electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action.

(1) In computing the number of days allowed for filing an appeal, the first day counted is the day after the effective date of an agency action. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

(2) If an employee does not submit an appeal within the time set by this section, the appeal will be dismissed as untimely filed unless the employee demonstrates good cause for an untimely appeal. The determination of good cause will be in the sole and exclusive discretion of OPM.

(3) If, before the expiration of the filing period in this paragraph (b), the employee timely filed a complaint, appeal, or other matter within the independent jurisdiction of an entity identified in § 351.901(c), and the final decision on that matter materially affects the employee's retention standing, order of release, assignment rights, or other rights under this part, the employee may file an appeal under this subpart within 30 calendar days after the date on which the decision on that matter becomes final and is no longer subject to further administrative review. OPM will determine, in its sole and exclusive discretion, whether the decision on the collateral matter materially affects the employee's rights under this part.

(c) *E-filing procedures.* (1) All parties and their representatives to an appeal or reconsideration must register as instructed by OPM on its e-filing website using a unique email address.

(2) Registration as an e-filer constitutes consent to accept electronic service of pleadings, evidence, notices, orders, and other documents filed by other e-filers or issued by OPM. No party may electronically file any document with OPM or access an appeal or reconsideration of an appeal unless registered as an e-filer or exempted under paragraph (c)(7) of this section for good cause.

(3) All notices, orders, decisions, and other documents issued by OPM, as well as all documents filed by parties, will be made available for viewing and downloading at OPM's electronic filing system. Access to documents is limited to the parties and their representatives who are registered e-filers in the cases in which they were filed.

(4) All parties and their representatives must follow the instructions on OPM's website for properly filing all pleadings, evidence, and other documents. OPM may strike a document where an e-filer repeatedly fails to follow these instructions following receipt of a show cause order.

(5) Each e-filer must promptly update their profile in OPM's electronic filing system and notify OPM and other parties of any change in their address, telephone number, or email address by filing a pleading in each pending case with which they are associated. E-filers are responsible for monitoring case activity regularly in OPM's electronic filing system to ensure that they have received all case-related documents.

(6) A party or representative may withdraw their registration as an e-filer pursuant to the requirements posted on OPM's website. Withdrawing registration in OPM's e-filing system means that, effective upon OPM's processing of a proper withdrawal, pleadings, evidence, orders, and other documents filed by a party or party's representative and OPM will no longer be served on that person electronically and that person will no longer have electronic access to their case records through OPM's e-filing system. OPM may still process an appeal or request for reconsideration after a party withdraws as an e-filer. Withdrawal of e-filing registration by a party or representative will not be considered good cause for staying a case.

(7) OPM, in its sole and exclusive discretion, may exempt a party or representative from registering as an e-filer for good cause. A party or representative must promptly contact

OPM as instructed on OPM's website to request an exemption from the e-filing requirements in this part. OPM will not find good cause for failing to timely file an appeal or seek reconsideration if the party or representative fails to contact OPM to request an exemption before any deadline to appeal or seek reconsideration.

(8) Documents filed in OPM's e-filing system are deemed received on the date of the electronic submission.

§ 351.903 Form and content of RIF appeal and agency response.

(a) *Initial appeal.* An employee's appeal shall be in writing and shall state the basis of the employee's appeal; the name, address, and email address or phone number of the appellant and appellant's representative, if any; and any documentation supporting the appellant's appeal.

(b) *Agency response.* (1) The agency response to an appeal must be filed within 30 calendar days after service of the initial appeal and contain:

(i) The name of the appellant and of the agency whose action the appellant is appealing;

(ii) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(iii) All documents contained in the agency record of the action;

(iv) Designation of and signature by the authorized agency representative; and

(v) Any other documents or responses requested by OPM.

(2) The agency's 30 days to respond begins upon service of the appeal.

(3) The agency record of the action shall include, at a minimum:

(i) The appellant's specific written reduction-in-force notice, any amended notice, proof of service or receipt, and documents showing the effective date of the action;

(ii) Documents supporting the reason for the reduction in force, including whether the action was based on lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment or restoration rights;

(iii) Documents establishing the appellant's coverage, position, appointment, tenure group and subgroup, veterans' preference status, service computation date, work schedule, competitive area, competitive level, and status as a competing employee;

(iv) Documents establishing the competitive area and competitive level used for the reduction in force, including any required agency or OPM approval, written competitive area

justification, organizational chart, position descriptions, classification records, representative rate determinations, and related records;

(v) The retention register applicable to the appellant, if one was prepared, and any related retention records that affected the appellant's retention standing, order of release, or assignment rights, including records supporting performance credit, veterans' preference credit, tenure subgroup, and service computation date;

(vi) Documents showing how the agency applied the order of release, including any tie determination, any correction of retention standing, and any mandatory or discretionary exception to the order of release;

(vii) Documents concerning the appellant's assignment rights, if any, including positions considered for assignment, qualification determinations, job analysis or assessment materials, offers of assignment, and any declination;

(viii) Documents concerning any special reduction-in-force circumstance relevant to the appellant, including abolishment of an entire competitive area, transfer of function, exclusion from RIF competition under § 351.202(d), restoration protection, or other basis for modified notice or treatment under this part; and

(ix) A certification that the agency has produced the complete agency record of the reduction-in-force action.

(4) The agency must produce the complete agency record to OPM. The agency must serve the appellant with the agency record, except that the agency may redact or withhold information from the copy served on the appellant to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law.

(c) *Reply*. An employee may file a reply to an agency response to an initial appeal within 15 calendar days of the agency response. The reply may only address the factual and legal issues raised by the agency in response to the initial appeal. The reply may not raise new allegations of error unless the basis rests on information first disclosed in the agency response or unless OPM grants leave for good cause.

(d) *Inspection of OPM's appellate record*. The employee, an employee's representative, and the agency will be permitted to inspect OPM's appellate record on request, subject to the Privacy Act, applicable legal privileges, classified information or national

security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law.

(e) *Service of documents*. The employee, employee's representative, and agency will serve on each other copies of any and all information submitted to OPM with respect to an appeal, subject to the Privacy Act, applicable legal privileges, classified information or national security requirements, protective orders issued by OPM, and any other applicable limitation on disclosure required by law. Such information must be served on all other parties at the same time the information is submitted to OPM and must be accompanied by a certificate of service stating how and when service was made.

(f) *Untimely filings*. Untimely filings may be accepted upon a party's showing of good cause at the sole and exclusive discretion of OPM.

§ 351.904 Employee representatives.

(a) *Designation of representative*. An appellant may select a representative of his or her choice to assist in the preparation and presentation of an appeal, provided that the employee submits his or her designation of representative in writing related to the specific appeal.

(b) *Federal employee representatives; official time and reimbursement*. If the selected representative is a Federal employee, the representative may not perform such representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), nor may the representative claim agency reimbursement for any expenses incurred while performing such representational function.

(c) *Disallowance of representative*. OPM or the responsible agency may, in its sole and exclusive discretion, disallow an employee's choice of representative when the representative is an employee of the responsible agency or OPM and the representative's activities would cause a conflict of interest or position.

§ 351.905 Adjudication of appeals.

(a) *Appeals by non-OPM employees*. OPM will assign personnel to adjudicate an appeal under this subpart by an employee of an agency other than OPM. OPM personnel assigned to adjudicate an appeal under this subpart shall be insulated from officials who participated personally and substantially in the challenged personnel action or provided case-specific advice concerning that action. OPM adjudicators shall not consider

material *ex parte* communications concerning the merits of an appeal. If such a communication occurs, OPM will place a summary of the communication in the record and provide the parties a reasonable opportunity to respond, unless disclosure is prohibited by law. In addition, no OPM employee may be assigned to adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, that person was an employee of the agency that is a party to the action to be assigned, or the employee was subject to an action covered under this part. When necessary, OPM may assign an administrative law judge to preside over the adjudication of an appeal.

(b) *Appeals by OPM employees*. OPM will assign an administrative law judge to adjudicate an appeal under this subpart by an OPM employee and to issue an initial decision. To insulate the adjudication of its own employees' appeals from agency involvement, OPM will not disturb initial decisions in those cases unless a party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge, a clear error of law, or a material factual error that affected the outcome of the appeal. For the purposes of paragraph (b) of this section, the term *harmful procedural irregularity* means an irregularity in the application of procedures that was likely to have caused the administrative law judge to reach a conclusion different from the one he or she would have reached in the absence or cure of the irregularity. The assignment of an administrative law judge under paragraph (b) or under paragraph (a) of this section does not make 5 U.S.C. 554, 556, or 557 applicable to an appeal under this subpart except to the extent those provisions are independently required by law or expressly incorporated in this part.

(c) *Ascertainment of facts*. OPM may require either party to provide additional information, and it may audit or investigate an agency's action in the course of adjudicating an appeal if it determines, in its sole discretion, that the existing record is insufficient to resolve a material issue within OPM's jurisdiction, and that the audit or investigation is reasonably likely to produce information material to resolving that issue. An individual serving as a representative of either party may not participate in an audit or investigation unless OPM specifically requests them to do so. The review of an agency action must be based solely on the developed written record unless OPM determines that a hearing is

necessary and efficient in resolving an appeal. For purposes of this section, the phrase *necessary and efficient* means circumstances in which the written record is insufficiently developed to make a determination regarding one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility that is material to the outcome of the appeal. Where an investigation or audit is conducted, OPM will:

(1) Inform the employee, the employee's representative, and the agency of an investigation or audit; and

(2) Provide the employee, the employee's representative, and the agency with the results of an investigation or audit, and a reasonable opportunity to submit arguments or additional information to support their positions.

(d) *Initial decision.* OPM will notify the employee, employee's representative, and agency in writing of its decision.

(e) *Remedies.* (1) If the employee is the prevailing party, OPM will order relief including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The employee as a prevailing party is not entitled to compensatory damages or other relief not authorized under 5 U.S.C. 5596(b).

(2) If the agency timely requests reconsideration of an initial decision or OPM reopens and reconsiders an initial decision, the agency must continue to provide the relief ordered unless OPM issues an order staying any such relief. No such stay may be ordered that would deprive the employee of pay and benefits while the initial decision is pending reconsideration.

§ 351.906 Sanctions and protective orders.

(a) *Cease-and-desist directive.* OPM may issue a protective order or cease-and-desist directive to protect the integrity of the adjudicatory process, prevent threats, intimidation, targeted harassment, improper witness contact, disclosure of protected personal information, or misuse of nonpublic information obtained through the appeal. OPM may do this *sua sponte*, or at the request of a party, preemptively or at any juncture in the appeal process. A party requesting OPM to issue a protective order or cease-and-desist directive should file such request using the e-filing procedures prescribed at § 351.902(c), and must include a statement of reasons justifying the request, together with any relevant documentary evidence. Any protective order issued by OPM must be no

broader than reasonably necessary and must not restrict lawful communications protected by law.

(b) *Failure to comply with an OPM directive.* When a party to an appeal fails to comply with a directive issued under paragraph (a) of this section, OPM may, except when prohibited by law:

(1) Draw all inferences in opposition to the noncompliant party with regard to the appeal in question;

(2) Prohibit the noncompliant party from introducing evidence, or additional evidence, concerning the appeal, or otherwise relying on the record; or

(3) Eliminate from consideration any appropriate part of the filings or other submissions of the noncompliant party.

(c) *Scope of sanctions.* Any sanction issued under paragraph (b) of this section must be proportionate, causally related to the violation, and no broader than necessary to protect the adjudicatory process.

§ 351.907 Reconsideration of an initial decision.

(a) Upon a request from either party to the dispute or upon its own initiative, OPM may, in its sole and exclusive discretion, reopen and reconsider an initial decision issued under this subpart. An employee, the employee's representative, or the agency may request reconsideration of an initial decision within 30 calendar days from issuance of the initial decision. The request for reconsideration must be filed in the same manner as an initial appeal.

(b) Grounds for which OPM may grant a request for reconsideration are:

(1) The initial decision contains erroneous findings of material fact sufficient to warrant an outcome different from that of the initial decision;

(2) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The party must explain how the error affected the outcome of the case;

(3) New and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed; or

(4) OPM finds good cause to reconsider an appeal.

(c) In any case that is reopened or reviewed, OPM may:

(1) Issue a reopened and reconsidered decision ("R&R decision") that affirms,

reverses, modifies, vacates, or otherwise decides the case, in whole or in part;

(2) Require the parties to submit argument and evidence;

(3) Take any other action necessary for final disposition of the case; and

(4) Issue an order with a date for compliance with the R&R decision.

(d) There is no further right of administrative appeal from the R&R decision.

§ 351.908 Review by the OPM Director.

The Director may, on the Director's own initiative and before a decision becomes final under § 351.909, reopen and reconsider any initial decision or reopened and reconsidered decision. In determining whether to exercise this authority, the Director may consider, among other things, whether the decision contains clear legal error; rests on an erroneous finding of material fact; involves an issue of exceptional importance, an issue affecting the governmentwide administration of the civil service laws, rules, regulations, or OPM policy, or a conflict among OPM decisions; or otherwise warrants Director review. This section does not create a right to request Director review. Upon reopening and reconsideration, the Director may take any action described in § 351.907(c).

§ 351.909 Final decision.

(a) The initial decision becomes OPM's final decision 30 calendar days after issuance unless, before that time, a party timely requests reopening and reconsideration under § 351.907 or the Director reopens the decision under § 351.908.

(b) A timely request under § 351.907 suspends finality. If OPM denies or dismisses the request without reopening the initial decision, the initial decision becomes OPM's final decision 30 calendar days after issuance of the denial or dismissal, unless the Director reopens the initial decision under § 351.908 before that time. If OPM grants the request, a reopened and reconsidered decision becomes OPM's final decision 30 calendar days after issuance unless the Director reopens that decision under § 351.908 before that time.

(c) An untimely request under § 351.907 does not suspend or otherwise affect finality. If OPM accepts and grants an untimely request for good cause, any resulting reopened and reconsidered decision becomes final as provided in paragraph (b) of this section.

(d) A decision by the Director pursuant to § 351.908 that disposes of the appeal is OPM's final decision and is effective upon issuance. If the

Director remands the appeal or directs further proceedings, any resulting decision becomes final under this section.

(e) There is no further right of appeal of a final decision of OPM.

(f) Subject to applicable legal limits, including requirements protecting privacy, privileged information, protected personnel information, law-

enforcement-sensitive information, and other information that may not lawfully be disclosed, OPM shall maintain a publicly accessible website containing final decisions issued under this subpart that address a party's claim on the merits. Any final merits decision not made publicly available because of such legal limits shall be made available

upon request to the Federal employee or former Federal employee involved in a proceeding under this subpart, his or her representative selected pursuant to § 351.904, or a representative of the Federal agency or office involved in the proceeding who has a need to know.

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