DEPARTMENT OF LABOR

Federal Contract Compliance Program Office

41 CFR Parts 60–30 and 60–741

[Docket No. OFCCP–2025–0003]

RIN 1250–AA18

Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The U.S. Department of Labor proposes to revise its implementing regulations for Section 503 of the Rehabilitation Act of 1973, as amended. The proposed revisions will better align the regulations with recent case law and executive orders, including Executive Order 14173, ''Ending Illegal Discrimination and Restoring Merit-Based Opportunity'' and Executive Order 14219, ''Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative.''

DATES: Comments must be received by September 2, 2025.

ADDRESSES: Comments must be submitted in one of the following two ways (please choose only one of the ways listed):

- Electronically at *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions. If you are reading this document on *federalregister.gov,* you may use the green ''SUBMIT A PUBLIC COMMENT'' button beneath this rulemaking's title to submit a comment to the *regulations.gov* docket.
- You may mail written comments to the following address: Catherine L. Eschbach, Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Washington, DC 20210. Mailed comments must be received by the close of the comment period.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

Follow the search instructions on *http://www.regulations.gov* to view public comments. A brief summary of this document will be available on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine L. Eschbach, Director, OFCCP, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: 202–693–0101. Email: *ofccp_guidance@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The U.S. Department of Labor (DOL) enforces Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, and its implementing regulations at 41 CFR part 60–741, which together prohibit Federal contractors and subcontractors (''contractors'') from discriminating against employees and applicants because of their disability status. Section 503 also requires contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Its basic requirements apply to contractors with a government contract in excess of $15,000, as effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

Under the current regulations, contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more are also required to develop and maintain an affirmative action program, where they must implement and document their equal employment opportunity efforts on an annual basis, as provided in 41 CFR part 60–741, subpart C. As discussed below, DOL is proposing to revise these regulations to better align them with recent case law and executive orders.

II. Discussion

Prior to January 21, 2025, DOL's Office of Federal Contract Compliance Programs enforced three authorities: Executive Order (E.O.) 11246, as amended, Section 503, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended. On January 21, 2025, President Trump issued E.O. 14173, ''Ending Illegal Discrimination and Restoring Merit-Based Opportunity,'' 90 FR 8633 (Jan. 31, 2025). E.O. 14173 revoked E.O. 11246, which prohibited covered contractors from discriminating in employment based on race, color, religion, sex, sexual orientation, gender identity, and national origin and required them to take affirmative action. E.O. 11246 also prohibited covered contractors from taking adverse employment actions against applicants or employees because they inquired about, discussed, or disclosed information about their pay or the pay of their co-workers, subject to certain limitations.

While Section 503 remains in effect, the Section 503 regulations adopt and cross-reference the E.O. 11246 administrative enforcement proceeding procedures at 41 CFR part 60–30. Specifically, the Section 503 regulations provide, in part, that ''[a]ll hearings conducted under [Section 503 and part 60–741] shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 . . .'' 41 CFR 60–741.65(b)(1). With the revocation of E.O. 11246, DOL is proposing to remove this cross-reference and add the administrative enforcement proceeding provisions to part 60–741, except where duplicative of current part 60–741 provisions (*e.g.,* the severability clause). Specifically, DOL is proposing to add these regulatory provisions to 41 CFR 60–741.65. In a separate rulemaking, DOL is proposing similar changes to the VEVRAA regulations. If these proposed changes become final, the 41 CFR part 60–30 regulations will be duplicative and unnecessary as they will be incorporated into 41 CFR parts 60–300 and 60–741. As such, DOL is also proposing to rescind 41 CFR part 60–30 using a delayed effective date.

DOL is also proposing to rescind the regulations at 41 CFR 60–741.42, which require contractors to invite applicants and employees to self-identify their disability status, as well as the utilization goal requirements at 41 CFR 60–741.45. The regulations at 41 CFR 60–741.45(a) require contractors to apply a seven percent utilization goal for employment of qualified individuals with disabilities to each of their job groups, or to their entire workforce if the contractor has 100 or fewer employees. The regulations also require covered contractors to conduct a utilization analysis, where they evaluate the representation of individuals with disabilities in each job group within their workforce (or across the entire workforce if they have 100 or fewer employees) with the seven percent utilization goal. 41 CFR 60–741.45(d). When the percentage is less than the utilization goal established, the contractor must take steps to determine whether and where impediments to

equal employment opportunity exist. 41 CFR 60–741.45(e). When making this determination, the contractor must assess its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audit, and any other areas that might affect the success of its affirmative action program. *Id.*

While the Section 503 regulations state that the use of quotas is prohibited, contractors may, in practice, be induced to using quotas to meet the utilization goal. DOL has concerns that the self-identification and utilization goal regulations are inconsistent with the ADA. Section 60–741.45 sets out utilization goals for persons with disabilities, as well as requiring outreach and recruitment of individuals with disabilities. Inherent in any utilization goal, however, is the need for applicants with disabilities to identify their conditions to the employer. But the ADA is clear; an employer may not, prior to an offer of employment, make any disability-related inquiries, even if that inquiry is related to the job. 42 U.S.C. 12112(d)(2)(A). And even after an employee starts a job, an employer may make disability-related inquiries only if such inquiries are job-related and consistent with business necessity. 42 U.S.C. 12112(d)(4)(A).

OFCCP's previous reliance in the 2016 rulemaking on an August 8, 2013 letter provided by the U.S. Equal Employment Opportunity Commission (EEOC) Legal Counsel to the OFCCP Director does not reflect a binding view of the EEOC on the permissibility of inviting employment candidates to self-identify as individuals with disabilities under the ADA. That letter merely reflected the opinion of one legal officer at the EEOC over ten years ago. It was not issued by any EEOC Commissioner or voted on by the EEOC Commission. Moreover, in the ADA context, even a formal opinion letter issued by the EEOC is of limited authority. Unlike a Title VII EEOC opinion letter, EEOC ADA opinion letters cannot provide employers with a defense to liability. Thus, the 2013 letter reflects the opinion of one lawyer at the Commission and not the Commission itself as to whether this practice was permissible under the ADA.

Nothing in the statutory text of Section 503 requires use of a utilization goal. Given the coercive effect of the placement goals and the inducement on federal contractors to trespass the ADA's restrictions on pre-conditional job offer disability inquiries in order to avoid regulatory issues with DOL, DOL has determined that it is no longer appropriate to seek a regulatory exception to what the ADA otherwise prohibits. The ADA expressly states that: ''a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.'' 42 U.S.C. 12112(d)(2)(A). This text says ''shall not'' make inquiries as to whether an applicant has a disability and does not include any exception for pre-employment offer inquiries about disability status as part of affirmative action requirements, regardless of whether or not disclosure by the applicant is voluntary. Where Congress wanted to create an exception to this text it knew how to do so and in fact did so in 42 U.S.C. 12112(d)(3). Moreover, to the extent that DOL or EEOC regulations had previously created an exception to this clear statutory command prohibiting pre-employment inquiries about disabilities for affirmative action-related purposes, that regulatory interpretation of the text is now unlikely to survive scrutiny under *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2023).

Further, DOL is proposing to rescind 41 CFR 60–741.45 because the Section 503 utilization analysis required therein is dependent on the E.O. 11246 requirements, which no longer have the force of law. Specifically, the Section 503 regulations require contractors to conduct the utilization analysis using the same job groups established for their analyses under E.O. 11246. *See* 41 CFR 60–741.45(d)(2). However, with the revocation of E.O. 11246, contractors no longer conduct E.O. 11246 analyses. These changes have created confusion and uncertainty for covered contractors and have made the current regulatory framework for the Section 503 utilization analysis unworkable. DOL will not impose new requirements for conducting the Section 503 analyses, as doing so would be contrary to E.O. 14219, which directs Federal agencies to implement deregulatory measures and reduce undue burden on businesses. *See* E.O. 14219, ''Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative,'' 90 FR 10583 (Feb. 25, 2025).

DOL also notes that the self-identification and utilization analysis requirements are not required by the Section 503 statute. *See* 29 U.S.C. 793. By rescinding these burdensome requirements, DOL would be fulfilling E.O. 14219's mandate to rescind or modify regulations that are not authorized by clear statutory authority. *See* E.O. 14219, ''Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative,'' 90 FR 10583 (Feb. 25, 2025).

In addition to these changes, DOL also proposes to remove cross-references and language related to the self-identification requirement that are included in 41 CFR 60–741.23(c), 41 CFR 741.41, 41 CFR 741.44(f)(3), 41 CFR 60–741.44(k), 41 CFR 60–741.46(a)(2), 41 CFR 741.80(b), and Appendix A to Part 60–741, paragraph 2. With the rescission of 41 CFR 60–741.42, these provisions will no longer be applicable. DOL welcomes comments on these proposed changes, particularly comments on whether any form of data collection on an applicant or employee's disability status could be maintained consistent with the ADA requirements at 42 U.S.C. 12112(d)(2)(A) and 42 U.S.C. 12112(d)(4)(A).

DOL is also proposing to remove a reference to 41 CFR part 60–3 that is included in 41 CFR 60–741.21(a)(7)(iii) and a reference to E.O. 11246 that is included in 41 CFR 741.46(d). DOL is proposing to remove these references because they are related to the revoked E.O. 11246 authority. DOL is also proposing to correct a typographical error in 41 CFR 741.46(d) (correcting the spelling of ''Veterans' '').

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

E.O. 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the Office of Information and Regulatory Affairs (OIRA) for review. OIRA has determined that this proposed rule does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this proposed rule was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DOL reviewed this proposed rule under the provisions of the Regulatory Flexibility Act. To the extent that the proposed changes may result in cost savings for covered contractors, those cost savings would largely apply large contractors who meet the affirmative action program thresholds and are scheduled for compliance reviews (which impose additional reporting requirements). Therefore, DOL has concluded that the impacts of the proposed rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an FRFA is not warranted. DOL will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act (PRA)

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, DOL conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands DOL's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and DOL can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

This rulemaking potentially affects specific information collections, such as OMB Control Number 1250–0005, which includes the form contractors currently use to invite applicants and employees to self-identify their disability. Any changes to DOL's collections will be communicated through an upcoming 60-day **Federal Register** Notice.

D. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

DOL has examined this proposed rule and has determined that it would not have a substantial direct 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.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOL has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a) and (b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing

any requirements that might significantly or uniquely affect them.

DOL examined this proposed rule according to UMRA and its statement of policy and determined that the proposed rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOL has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOL has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). DOL has reviewed this proposed rule under the OMB guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13175

DOL has examined this proposed rule and determined that it does not have tribal implications under E.O. 13175 that would require a tribal summary impact statement. 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.''

K. Review Under Additional Executive Orders and Presidential Memoranda

As detailed above, DOL has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14173, ''Ending Illegal Discrimination and Restoring Merit-Based Opportunity'' and E.O. 14219, ''Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative.'' This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.

List of Subjects in 41 CFR Parts 60–30 and 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Labor.

For the reasons set forth in the preamble, and under the authority of E.O. 14173 and 29 U.S.C. 793, as amended, DOL proposes to amend chapter 60 in title 41 of the Code of Federal Regulations by removing and reserving 41 CFR part 60–30 and by revising 41 CFR part 60–741, as set forth below:

PART 60–30 [REMOVED AND RESERVED]

■ 1. Effective March 31, 2026, remove and reserve 41 CFR part 60–30.

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

■ 2. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 3. Revise § 60–741.21(a)(7)(iii) to read as follows:

§ 60–741.21 Prohibitions.

(a) * * *

(7) * * *

(i) * * *

(ii) * * *

(iii) The Uniform Guidelines on Employee Selection Procedures do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

* * * * *

■ 4. Revise § 60–741.23 to read as follows:

§ 60–741.23 Medical Examinations and Inquiries.

* * * * *

(c) [Reserved]

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, as amended, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

■ 5. Revise § 60–741.41 to read as follows:

§ 60–741.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–741.42 [REMOVED AND RESERVED]

■ 6. Remove and reserve § 60–741.42.

■ 7. Amend § 60–741.44 by revising paragraph (f)(3) and paragraph (k) to read as follows:

§ 60–741.44 Required contents of affirmative action programs.

* * * * *

(f) * * *

(1) * * *

(2) * * *

(3) *Assessment of external outreach and recruitment efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the

contractor's conclusion as to whether each effort was effective. The contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) * * *
(g) * * *
(h) * * *
(i) * * *
(j) * * *
(k) [Reserved]

§ 60–741.45 [REMOVED AND RESERVED]

■ 8. Remove and reserve § 60–741.45.

■ 9. Amend § 60–741.46 by revising paragraph (a)(2) and paragraph (d) to read as follows:

§ 60–741.46 Voluntary affirmative action programs for employees with disabilities.

(a) * * *
(1) * * *
(2) [Reserved]
(b) * * *
(c) * * *

(d) These voluntary training and development programs should not result in discrimination against other groups and do not relieve a contractor from liability for discrimination under this act or the Vietnam Era Veterans' Readjustment Assistance Act.

■ 10. Revise § 60–741.65 to read as follows:

§ 60–741.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation, or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any combination of these outcomes. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance review. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service (IRS) for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–741.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the act and this part shall be governed by the regulations at 41 CFR 60–741.65(c) to (mm) and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions, and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any) whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors and Associate Regional Solicitors.

(3) [Reserved]

(c) *Applicability of rules of practice for administrative proceedings.*

The regulations at 41 CFR 60–741.65(c) to (mm) provide the rules of practice for all administrative proceedings that relate to the enforcement of Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, including but not limited to proceedings instituted against contractors or subcontractors covered by 41 CFR part 60–741. In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.

(d) *Waiver, modification.*

Upon notice to all parties, the Administrative Law Judge may, with respect to matters pending before him modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

(e) *Computation of time.*

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government in which event it includes the next business day.

(f) *Form, filing, service of pleadings and papers.*

(1) *Form.* The original of all pleadings and papers in a proceeding conducted under the 41 CFR 60–741.65 regulations shall be filed with the Administrative Law Judge assigned to the case or with the Chief Administrative Law Judge if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the name of the agency instituting the proceeding, the title of the action, the case file number assigned by the Administrative Law Judge, and a designation of the pleading or paper (*e.g.,* complaint, motion to dismiss, etc.). The pleading or papers shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the pleading or paper was filed. Unless otherwise ordered for good cause by the Administrative Law Judge regarding specific papers and pleadings in a specific case, all such papers and pleadings are public documents.

(2) *Service.* Service upon any party shall be made by the party filing the pleading or document in accordance with 29 CFR part 26. When a party is represented by an attorney, the service shall be upon the attorney.

(3) *Proof of service.* A certificate of the person serving the pleading or other document, setting forth the manner of service, shall be proof of the service.

(g) *Prehearing procedures: Administrative complaint.*

(1) Filing. The Solicitor of Labor, Associate Solicitor for Labor Relations and Civil Rights Regional Solicitors and Regional Attorney upon referral from the Office of Federal Contract Compliance Programs, are authorized to institute enforcement proceedings by filing a complaint and serving the complaint upon the contractor which shall be designated as the defendant. The Department of Labor, OFCCP, as shall be designated on plaintiff.

(2) *Contents.* The complaint shall contain a concise jurisdictional statement, and a clear and concise statement sufficient to put the defendant on notice of the acts or practices it is alleged to have committed in violation of the order, the regulations, or its contractual obligations. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the Government will seek to impose and the name and address of the attorney who will represent the Government.

(3) *Amendment.* The complaint may be amended once as a matter of course

before an answer is filed, and the defendant may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the complaint or of the answer to the complaint shall be made only by leave of the Administrative Law Judge or by written consent of the adverse party; and leave shall be freely given where justice so requires. An amended complaint shall be answered within 14 days of its service, or within the time for filing an answer to the original complaint, whichever period is longer. An amended answer shall be responded to within 14 days of its service.

(h) *Prehearing procedures: Answer.*

(1) *Filing and service.* Within 20 days after the service of the complaint, the defendant shall file an answer with the Chief Administrative Law Judge if the case has not been assigned to an Administrative Law Judge. The answer shall be signed by the defendant or its attorney and served on the Government in accordance with § 60–741.65(f)(2).

(2) *Contents; failure to file.* The answer shall (i) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the defendant is without knowledge, in which case the answer shall so state; or (ii) state that the defendant admits all the allegations of the complaint. The answer may contain a waiver of hearing; and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or to plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(3) *Procedure, upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge, without further hearing, may prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision and to file briefs in support of the exceptions.

(i) *Prehearing procedures: Notice of prehearing conference.*

The Administrative Law Judge shall respond to defendant's request for a hearing within 15 days and shall serve a notice of prehearing conference on the parties. The notice shall contain the time and place of the conference.

(j) *Prehearing procedures: Motions; disposition of motions.*

(1) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the Administrative Law Judge. If made before or after the hearing itself, the motions shall be in writing. If made at the hearing, motions may be stated orally; but the Administrative Law Judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Unless otherwise ordered by the Administrative Law Judge, written motions shall be accompanied by a supporting memorandum. Within 10 days after a written motion is served, or such other time period as may be fixed, any party may file a response to a motion.

(2) *Disposition of motions.* The Administrative Law Judge may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting response: *Provided,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions.

(k) *Prehearing procedures: Interrogatories and admissions as to facts and documents.*

(1) *Interrogatories.* Not later than 25 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them and objections by the attorney or by whoever is representing the party. Answers and objections shall be filed and served within 25 days of service of the interrogatory.

(2) *Admissions.* Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within 25 days after service, the party to whom the request is directed serves upon the requesting party a sworn statement either (i) denying specifically the matter as to which an admission is requested, or (ii) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(3) *Objections or failures to respond.* The party submitting the interrogatory or request may move for an order with respect to any objection or other failure to respond.

(l) *Prehearing procedures: Production of documents and things and entry upon land for inspection and other purposes.*

(1) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations, including computer tapes and printouts which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(2) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and, which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(3) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(4) The party upon whom the request is served shall respond within 25 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

(m) *Prehearing procedures: Depositions upon oral examination.*

(1) *Depositions; notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination. A party desiring to take a deposition shall

give reasonable notice in writing to every other party to the proceeding, and may use an administrative subpoena. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(2) *Production of witnesses; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Unless the parties agree otherwise, depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the Administrative Law Judge an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(3) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, each party shall be permitted to examine and cross-examine the witness under oath upon any matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Administrative Law Judge rules that there was valid justification for the witness' failure or refusal to answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(4) *Subscription; certification; filing.* The testimony shall be reduced to typewriting, either by the officer taking the deposition or under his direction, and shall be submitted to the witness for examination and signing. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver the original copy of the transcript, together with his certificate, in person or by mail to the Administrative Law Judge. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges, unless distribution is restricted by order of the Administrative Law Judge for good cause shown.

(5) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the Administrative Law Judge, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, in accordance with the following provisions:

(i) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(ii) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(iii) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds: (A) That the witness is dead; or (B) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (C) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (D) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(iv) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(6) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

(n) *Prehearing procedures: Prehearing conferences.*

(1) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

(i) Simplification of the issues;

(ii) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(iii) Stipulations, admissions of fact and of contents and authenticity of documents;

(iv) Limitation of number of witnesses;

(v) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

(o) *Prehearing procedures: Consent findings and order.*

(1) *General.* At any time after the issuance of a complaint and prior to or during the reception of evidence in any proceeding, the parties may jointly move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will

result in a just disposition of the issues involved.

(2) *Content.* Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(i) That the order shall have the same force and effect as an order made after full hearing;

(ii) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(iii) That any further procedural steps are waived; and

(iv) That any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement is waived.

(3) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(i) Submit the proposed agreement to the Administrative Law Judge for his consideration;

(ii) Inform the Administrative Law Judge that agreement cannot be reached.

(4) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge, within 30 days, shall accept such agreement by issuing his decision based upon the agreed findings, and his decision shall constitute the final Administrative order.

(p) *Hearings and Related Matters: Designation of Administrative Law Judges.*

Hearings shall be held before an Administrative Law Judge of the Department of Labor who shall be designated by the Chief Administrative Law Judge of the Department of Labor. After commencement of the proceeding but prior to the designation of an Administrative Law Judge, pleadings and papers shall be filed with the Chief Administrative Law Judge.

(q) *Hearings and Related Matters: Authority and responsibilities of Administrative Law Judges.*

The Administrative Law Judge shall propose findings and conclusions to the Secretary on the basis of the record. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(1) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;

(2) Require parties to state their position with respect to the various issues in the proceeding;

(3) Require parties to produce for examination those relevant witnesses and documents under their control; and require parties to answer interrogatories and requests for admissions in full;

(4) Administer oaths;

(5) Rule on motions, and other procedural items or matters pending before him;

(6) Regulate the course of the hearing and conduct of participants therein;

(7) Examine and cross-examine witnesses, and introduce into the record documentary or other evidence;

(8) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(9) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(10) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(i) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(ii) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him; and

(iii) Expelling any party or person from further participation in the hearing;

(11) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(12) Recommend whether the respondent is in current violation of the order, regulations, or its contractual obligations, as well as the nature of the relief necessary to insure the full enjoyment of the rights secured by the order;

(13) Issue subpoenas; and

(14) Take any action authorized by these rules.

(r) *Hearings and Related Matters: Appearances.*

(1) Representation. The parties or other persons or organizations participating pursuant to 41 CFR 60–741.65 have the right to be represented by counsel.

(2) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's recommended decision and to file exceptions to it.

(s) *Hearings and Related Matters: Appearance of witnesses.*

(1) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice, which may be accomplished by an administrative subpoena, setting forth the time, date, and place at which he is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the Administrative Law Judge and additional copies shall be served upon the opposing parties.

(2) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(3) The party or prospective witness may file an objection within 5 days after notice of production of such witness is served stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

(t) *Hearings and Related Matters: Rules of evidence.*

In any hearing, decision, or administrative review conducted pursuant to this part, all evidentiary matters shall be governed by Office of Administrative Law Judges' Rules of evidence at 29 CFR part 18, subpart B.

(u) *Hearings and Related Matters: Objections; exceptions; offer of proof.*

(1) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in

the record. Only objections made on the record may be relied upon subsequently in the proceedings.

(2) *Exceptions.* Formal exception to an adverse ruling is not required. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Secretary, but shall be considered by the Secretary upon filing exceptions to the Administrative Law Judge's recommendations and conclusions.

(3) *Offer of proof.* An offer of proof made in connection with an objection taken to any ruling excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

(v) *Hearings and Related Matters: Ex parte communications.*

The Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision in the case, except as witness or counsel in the proceeding.

(w) *Hearings and Related Matters: Oral argument.*

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral arguments shall be included in the official transcript of the hearing.

(x) *Hearings and Related Matters: Official transcript.*

The official transcripts of testimony taken, together with any exhibits, briefs, or memorandums of law, shall be filed with the Administrative Law Judge. Transcripts of testimony may be obtained from the official reporter by the parties and the public as provided in section 11(a) of the Federal Advisory Committee Act (86 Stat. 770). Upon notice to all parties, the Administrative Law Judge may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

(y) *Hearings and Related Matters: Summary judgment.*

(1) *For the Government.* At any time after the expiration of 20 days from the commencement of the action, or after service of a motion for summary judgment by the respondent, the Government may move with or without supporting affidavits for a summary judgment upon all claims or any part.

(2) *For defendant.* The defendant may, at any time after commencement of the action, move with or without supporting affidavits for summary judgment in its favor as to all claims or any part.

(3) *Other parties.* Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Government or respondent, in accordance with this section, but may not move for a summary judgment in his own behalf.

(4) *Statement of uncontested facts.* All motions for summary judgment shall be accompanied by a ''Statement of Uncontested Facts'' in which the moving party sets forth all alleged uncontested material facts which shall provide the basis for its motion. At least 5 days prior to the time fixed for hearing on the motion, any party contending that any material fact regarding the matter covered by the motion is in dispute, shall file a ''Statement of Disputed Facts.'' Failure to file a ''Statement of Disputed Facts'' shall be deemed as an admission to the ''Statement of Uncontested Facts.''

(5) *Motion and proceedings.* The motion shall be served upon all parties at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the complaint and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Summary judgment rendered for or against the Government or the respondent shall constitute the findings and recommendations on the issues involved. Hearings on motions made under this section shall be scheduled by the Administrative Law Judge.

(6) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a final hearing is necessary, the Administrative Law Judge at the hearing of the motion, by examining the notice and answer and the evidence before him and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

(z) *Hearings and Related Matters: Participation by interested persons.*

(1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final Administrative order could adversely affect them or the class they represent, and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this section shall file with the Administrative Law Judge and serve on all parties a petition within 25 days after the commencement of the action or at such other time as ordered by the Administrative Law Judge, so long as it does not disrupt the proceeding. Such petition shall concisely state: (i) Petitioner's interest in the proceedings; (ii) who will appear for petitioner; (iii) the issues on which petitioner wishes to participate; and (iv) whether petitioner intends to present witnesses.

(4) The Administrative Law Judge shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the Administrative Law Judge may request all such petitioners to designate a single representative to represent all such petitioners: Provided, That the representative of a labor organization qualifying to participate under paragraph (1) of the section must be permitted to participate in the proceedings. The Administrative Law Judge shall give each petitioner written notice of the decision on his petition; and if the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The Administrative Law Judge shall give written notice to each party of each petition granted.

(5) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the Administrative Law Judge.

Such petition shall concisely state: (i) The petitioner's interest in the hearing; (ii) who will represent the petitioner; and (iii) the issues on which petitioner intends to present argument. The Administrative Law Judge may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this section.

(6) An amicus curiae may present a brief oral statement at the hearing at the point in the proceeding specified by the Administrative Law Judge. He may submit a written statement of position to the Administrative Law Judge prior to the beginning of a hearing and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and he shall serve a copy on each party.

(aa) *Post-Hearing Procedures: Proposed findings of fact and conclusions of law.*

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the Administrative Law Judge. Requests for additional time in which to file a brief shall be made in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

(bb) *Post-Hearing Procedures: Record for recommended decision.*

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but excepting the correspondence section of the docket, shall constitute the record for decision.

(cc) *Post-Hearing Procedures: Recommended decision.*

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

(dd) *Post-Hearing Procedures: Exceptions to recommended decisions.*

Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Service of such briefs or exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the Administrative Review Board, United States Department of Labor, for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

(ee) *Post-Hearing Procedures: Record.*

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

(ff) *Post-Hearing Procedures: Administrative Order.*

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated Section 503, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

(gg) *Expedited Hearing Procedures: Expedited hearings—when appropriate.*

Expedited Hearings may be used, *inter alia,* when a contractor or subcontractor has violated a conciliation agreement; has not adopted and implemented an acceptable affirmative action program; has refused to give access to or to supply records or other information as required by the equal opportunity clause; or has refused to allow an on-site compliance review to be conducted.

(hh) *Expedited Hearing Procedures: Administrative complaint and answer.*

(1) Expedited hearings shall be commenced by filing an administrative complaint in accordance with 41 CFR 60–741.65(g). The complaint shall state that the hearing is subject to these expedited hearing procedures.

(2) The answer shall be filed in accordance with 41 CFR 741.65(h)(1) and (2).

(3) Failure to request a hearing within the 20 days provided by 41 CFR 60–741.65(h)(1) shall constitute a waiver of hearing, and all the material allegations of fact contained in the complaint shall be deemed to be admitted. If a hearing is not requested or is waived, within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint, and shall order the appropriate sanctions and/or penalties sought in the complaint. The Administrative Law Judge's findings and order shall constitute a final Administrative order, unless the Office of the Solicitor, U.S. Department of Labor, files exceptions to the findings and order within 10 days of receipt thereof. If the Office of the Solicitor, U.S. Department of Labor, files exceptions, the matter shall proceed in accordance with 41 CFR 60–741.65(ll).

(4) If a request for a hearing is received within 20 days as provided by 41 CFR 60–741.65(h)(1), the hearing shall be convened within 45 days of receipt of the request and shall be completed within 15 days thereafter, unless more hearing time is required.

(ii) Discovery.

(1) Any party may serve requests for admissions in accordance with 41 CFR 60–741.65(k)(2) and (3).

(2) Witness lists and hearing exhibits will be exchanged at least 10 days in advance of the hearing.

(3) For good cause shown, and upon motion made in accordance with 41 CFR 60–741.65(j), the Administrative Law Judge may allow the taking of depositions. Other discovery will not be permitted.

(jj) *Conduct of hearing.*

(1) At the hearing, the Government shall be given an opportunity to demonstrate the basis for the request for sanctions and/or remedies, and the contractor shall be given an opportunity to show that the violation complained of did not occur and/or that good cause or good faith efforts excuse the alleged violations. Both parties shall be allowed to present evidence and argument and to cross-examine witnesses.

(2) The hearing shall be informal in nature, and the Administrative Law Judge shall not be bound by formal rules of evidence.

(kk) *Recommended decision after hearing.*

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended decision shall be served on all parties and amici to the proceeding.

(ll) *Exceptions to recommendations.*

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

(mm) *Final Administrative Order.*

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative Order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–741.65(ff) shall be applicable to this section.

■ 11. Revise § 60–741.80 to read as follows:

§ 60–741.80 Recordkeeping.

(a) *General requirements.* Except as set forth in paragraph (b) of this section, any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later, except as set forth in paragraph (b) of this section. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation, or action until final disposition of the complaint, compliance evaluation or action. The term ''personnel records relevant to the complaint, compliance evaluation, or action'' will include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Records with three-year retention requirement.* Records required by § 60–741.44(f)(4) shall be maintained by all contractors for a period of three years from the date of the making of the record.

(c) *Failure to preserve records.* Failure to preserve complete and accurate records as required by this part constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

■ 12. Amend Appendix A to Part 60–741 by revising paragraph 2 to read as follows:

Appendix A to Part 60–741—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

* * * * *

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide reasonable accommodation for applicants and employees of whose disabilities the contractor has actual knowledge. Section 60–741.44(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

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Dated: June 26, 2025.

Catherine Eschbach,

Director, Office of Federal Contract Compliance Programs.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 327

[Docket Number MARAD–2025–0089]

RIN 2133–AC02

Deregulatory—Seamen's Claims; Administrative Action and Litigation

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: MARAD is proposing to revise its regulations pertaining to the filing of claims and the administrative allowance or disallowance of claims filed by officers or members of crew employed on vessels owned, operated, or chartered by MARAD. The rule is intended (1) to correct numerous citations in accordance with the