

SWORN ADMINISTRATIVE PROCEDURE ACT COMMENT

(Arbitrary and Capricious Action + Failure to Consider Reasonable Alternatives)

Docket: CMS-2025-1891

Agency: Centers for Medicare & Medicaid Services (CMS)

Submitted by:

James H. Poole

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CAGE Code: 9S0L8

Thomasville, Georgia

SECTION 1 – DECLARATION UNDER PENALTY OF PERJURY

I, James H. Poole, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the statements contained herein are true and correct to the best of my knowledge, information, and professional experience.

This sworn submission is entered into the administrative record pursuant to:

- 5 U.S.C. §§553 and 555 (Notice-and-Comment & Petition Rights)
- 5 U.S.C. §706 (Judicial Review Standards)
- Executive Order 12866
- OMB Circular A-4

This filing preserves issues for administrative and judicial review.

SECTION 2 – APA LEGAL STANDARD (5 U.S.C. §706)

Under 5 U.S.C. §706(2)(A), a reviewing court shall:

“Hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

Under *Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. 29 (1983), CMS must:

1. Examine relevant data
2. Articulate a rational connection between facts found and the choice made
3. Consider important aspects of the problem
4. Address obvious and reasonable alternatives
5. Avoid reliance on unsupported assumptions

Failure to do so renders the action arbitrary and capricious.

SECTION 3 – FAILURE TO CONSIDER RELEVANT MODERNIZATION ALTERNATIVES

The administrative record does not clearly demonstrate that CMS evaluated the availability and feasibility of commercially available modernization architectures capable of materially reducing reporting and compliance burden.

Specifically, the record does not show documented evaluation of:

- Commercially available compliance automation platforms
- COTS reporting automation systems consistent with Title 41 procurement principles
- Secure cloud-based burden reduction architectures
- Zero Trust data intake and validation frameworks consistent with EO 14028
- AI-assisted validation and error detection tools consistent with EO 14110
- API-driven structured data exchange alternatives

If commercially available automation systems exist that reduce reporting burden by 40–70%, CMS must evaluate such systems before imposing or expanding manual administrative obligations.

Failure to consider commercially available alternatives constitutes failure to consider relevant factors under State Farm.

Silence in the record on modernization alternatives is itself a procedural deficiency.

SECTION 4 – TITLE 41 AND MARKET RESEARCH OBLIGATIONS

Under federal acquisition modernization principles and FAR Part 10 (Market Research), agencies are encouraged to identify commercially available solutions before adopting bespoke or high-friction compliance mechanisms.

The record does not clearly demonstrate:

- Documented market research under FAR 10.002
- Comparative evaluation of COTS compliance automation
- Cost modeling comparing modernization vs. status quo
- Consideration of small-business compliance technology providers

Failure to evaluate commercial availability before imposing regulatory burden undermines cost-efficiency principles embedded in federal procurement law.

SECTION 5 – EXECUTIVE ORDER 12866 & OIRA REVIEW DEFICIENCIES

Executive Order 12866 §1(b)(6) requires agencies to:

- Select regulatory approaches that maximize net benefits
- Choose the least costly, most cost-effective alternative
- Consider reasonable alternatives
- Submit significant regulatory actions to OMB OIRA review

The administrative record does not clearly demonstrate:

- Net Present Value modeling under OMB Circular A-4
- Sensitivity analysis of burden escalation
- Quantified comparison of automation alternatives
- Distributional impact modeling
- OIRA alternatives review documentation

Absent documented alternatives analysis, CMS cannot demonstrate rational selection of regulatory approach.

If automation-based compliance materially reduces cost, CMS must explain:

1. Whether it was evaluated
2. Why it was rejected
3. Why a higher-burden alternative was selected

Failure to articulate this reasoning creates vulnerability under §706(2)(A).

SECTION 6 – FAILURE TO ARTICULATE RATIONAL CONNECTION

CMS must demonstrate a rational connection between:

- The identified regulatory objective
- The chosen compliance structure
- The rejection of lower-burden alternatives
- The expected net benefit

Where cost-reducing, secure, commercially available compliance architectures exist and are not evaluated, CMS must explain why.

A record that lacks:

- Alternatives analysis
- Comparative modeling
- Reasoned rejection
- Transparent burden sensitivity analysis

Fails the State Farm standard.

SECTION 7 – REQUESTED AGENCY DETERMINATIONS (APA §555(e))

Pursuant to 5 U.S.C. §555(e), CMS shall provide written determinations on:

1. Were commercially available COTS compliance automation systems evaluated?
2. Was market research conducted under FAR Part 10?
3. Was modeling performed consistent with OMB Circular A-4?
4. Did OMB OIRA review alternatives analysis?
5. Were sensitivity scenarios for burden inflation modeled?
6. Why were lower-burden modernization alternatives rejected, if applicable?

7. Were small-business modernization providers considered?

Each response requires a separate, reasoned explanation.

SECTION 8 – PRESERVATION OF RIGHTS

All arguments and objections herein are preserved for purposes of:

- Administrative reconsideration
- Judicial review under 5 U.S.C. §§704 and 706
- Congressional Review Act evaluation (if applicable)

Nothing herein constitutes waiver of any statutory or constitutional right.

SECTION 9 – SIGNATURE AND OATH

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge and professional experience and is submitted for permanent inclusion in the administrative record.

Executed on: 02/20/2026, 2026

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