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SERVICE DATE – FEBRUARY 29, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36744<sup>1</sup>

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION  
—CONTROL—  
IOWA NORTHERN RAILWAY COMPANY

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36744; Notice of Acceptance of Application; Notice of Acceptance of Related Filings for Consideration; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration an application (Application) filed on January 30, 2024, by Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), together with the Iowa Northern Railway Company (Iowa Northern or IANR) (collectively, Applicants). The Application seeks Board approval for CNR and GTC to acquire control of Iowa Northern, a Class III rail carrier that operates a total of approximately 218 route miles in the state of Iowa. This proposal is referred to as the “Proposed Transaction.” The Board is also accepting for consideration two related filings. Those filings are verified notices of exemption seeking Board approval of transactions involving mutual trackage rights between Iowa Northern and the Chicago, Central & Pacific Railroad Company (CCP), an indirect rail carrier subsidiary of GTC (Related Transactions).

DATES: The effective date of this decision is February 29, 2024. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than March 15, 2024, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by April 1, 2024. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the Application or related filings must be filed by May 1, 2024. See Appendix (Procedural Schedule). A final decision in this matter will be served no later than July 26, 2024. Further procedural orders, if any, would be issued by the Board.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board’s website. In addition, one copy of each filing must be sent (and may be sent

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<sup>1</sup> This decision embraces the following dockets: Chicago, Central & Pacific Railroad—Trackage Rights Exemption—Iowa Northern Railway, Docket No. FD 36744 (Sub-No. 1), and Iowa Northern Railway—Trackage Rights Exemption—Chicago, Central & Pacific Railroad, Docket No. FD 36744 (Sub-No. 2).

by email only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CNR's and GTC's representative, Matthew J. Warren, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005; (4) Iowa Northern's representative, Kevin M. Sheys, Law Office of Kevin M. Sheys LLC, 42 Brush Hill Road, Sherborn, MA 01770; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245-0355. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: Applicants seek the Board's prior review and authorization pursuant to 49 U.S.C. 11323-25 and 49 CFR part 1180 for CNR and GTC to acquire control of Iowa Northern. (Appl. 1.) Applicant GTC is a non-carrier holding company through which CNR controls its U.S. rail carrier subsidiaries.<sup>2</sup> (*Id.* at 1 n.1.) Applicant Iowa Northern is a Class III rail carrier wholly owned by Cable & Ives, LLC (Cable & Ives). (*Id.* at 1-2, 11.) On December 6, 2023, GTC signed and closed an agreement to acquire 100% of the equity interest of Cable & Ives. (*Id.* at 1-2, 12.) According to Applicants, the shares of Cable & Ives were deposited into an independent voting trust pursuant to 49 CFR part 1013, pending review of the Proposed Transaction by the Board.<sup>3</sup> (Appl. 1-2, 11-12; *see also* CN Letter Filing of Voting Trust Agreement, FD 36744, Dec. 6, 2023.) Upon Board approval of the Proposed Transaction, Iowa Northern would become an indirect rail carrier subsidiary of GTC and would be indirectly controlled by CNR. (Appl. 3.)

Applicants state that Iowa Northern owns or leases approximately 175 route miles of rail line in Iowa and operates via trackage rights over an additional approximately 43 route miles of track, for a total distance of 218 route miles. (*Id.* at 1 & n.2.) Applicants explain that Iowa Northern's system is organized into four subdivisions. (*Id.*, Ex. 15, Operating Plan 3.) Applicants state that Iowa Northern's main line runs 116.7 miles extending northwest from Cedar Rapids through Waterloo (Cedar Rapids Subdivision) and Cedar Falls to Manly (Manly Subdivision). (*Id.* at 30; *id.*, Ex. 15, Operating Plan 3, Fig. 2.) Applicants further state that Iowa Northern owns the Cedar Rapids and Manly Subdivisions and connects those lines via overhead trackage rights on approximately 8.7 miles of track owned by CN. (*Id.*, Ex. 15, Operating Plan 3, 5, Fig. 4.) Applicants note that Iowa Northern also operates over a short portion of a Union Pacific Railroad Company (UP) line in Cedar Rapids, which Iowa Northern uses to access UP, CN, and the Cedar Rapids and Iowa City Railway (CRANDIC) in Cedar Rapids. (*Id.*, Ex. 15, Operating Plan 5, Fig. 5.) Regarding the Waterloo–Oelwein subdivision (Oelwein Subdivision), Applicants state that Iowa Northern owns the branch line extending from Dewar, near Waterloo, to Oelwein, and Iowa Northern accesses that line via an approximately seven-

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<sup>2</sup> CNR and its U.S. rail operating subsidiaries are referred to collectively as “CN.” (Appl. 1 n.1.)

<sup>3</sup> Applicants state that, during the voting trust period, Iowa Northern continues to operate independently and is controlled by existing Iowa Northern management. (Appl. 12.)

mile track known as the “Waterloo Industrial Lead,” extending from Waterloo to Dewar, and leased from UP. (*Id.*, Ex. 15, Operating Plan 3, Fig. 4.) Regarding the Forest City–Belmond subdivision (Garner Subdivision), Applicants state that Iowa Northern leases that line from North Central Iowa Rail Corridor, L.L.C., and accesses the line via approximately 30.2 miles of overhead trackage rights on a Canadian Pacific Kansas City Limited (CPKC) line from Nora Springs to Garner. (*Id.*, Ex. 15, Operating Plan 3, 5, Fig. 2.)

According to Applicants, CN’s current network spans approximately 18,600 route miles in 13 U.S. states and eight Canadian provinces. (*Id.*, Ex. 15, Operating Plan 8.) With respect to CN’s operations in Iowa, Applicants state that CCP is the CN rail operating subsidiary that primarily owns and operates CN’s rail lines in Iowa. (*Id.*) Applicants note that CN currently has 226 craft employees in Iowa and operates 574 route miles in the state. (*Id.*) Specifically, CN operates main lines east from Sioux City and Council Bluffs that converge near Fort Dodge and run through Waterloo and Dubuque, Iowa, with several secondary lines in between. (*Id.*)

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Proposed Transaction. Applicants state that the only relevant financial arrangement is the payment of the purchase price by GTC, as provided in the Unit Purchase Agreement. (*Id.* at 17.)

Passenger Service Impacts. Applicants anticipate no impact on commuter or other passenger service. (*Id.* at 39.) According to Applicants, there is no commuter or other such service on Iowa Northern, and the Proposed Transaction is not expected to impact any passenger service operating on any CN lines. (*Id.*, Ex. 15 at 29.)

Discontinuances/Abandonments. Applicants state that there are no planned abandonments or discontinuances as a result of the Proposed Transaction. (*Id.* at 39, Ex. 15 at 30.) Applicants note, however, that Iowa Northern has been working with the City of Cedar Falls regarding removal of Iowa Northern’s Cedar Falls Utility Spur, and that CN will cooperate with preexisting efforts by the City of Cedar Falls to abandon and remove this track after it assumes control of Iowa Northern, including obtaining any necessary Board authority. (*Id.* at 39, Ex. 15 at 30.)

Public Interest Considerations.<sup>4</sup> Applicants assert that the Proposed Transaction would not result in the lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation. (Appl. 17.) Indeed, Applicants state that the Proposed Transaction would have no negative competitive impacts as there would be no two-to-one rail customer stations—i.e., no shipper has access exclusively to both CN and Iowa Northern. (*Id.* at 18; *id.*, App. B, V.S. Hunt § 6 & Ex. 6-1.) Applicants further argue that “while the Board’s focus is generally on preserving competition between two rail carriers,” there are only three potential three-to-two customer stations. (*Id.* at 18; *id.*, App. B, V.S. Hunt § 6 & Ex. 6-1.) According to Applicants,

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<sup>4</sup> On January 17, 2024, the Butler County Board of Supervisors submitted a statement in support of the Proposed Transaction. Additionally, several letters raising concerns about the Proposed Transaction have been submitted by individuals. These filings will be discussed in more detail in a subsequent decision.

those customer stations currently have access to CN, Iowa Northern, and UP. (Id. at 18.) Nevertheless, Applicants assert that CN has committed to ensuring continued access to UP. (Id.)

Applicants further note that CN will preserve existing access between Iowa Northern and other railroads—Iowa Northern currently interchanges with three Class I railroads (including CN) and one short line. (Id.) Applicants specifically state that CN has committed to providing Iowa Northern-served customers with commercially reasonable rates and service for interline traffic with rail carriers other than CN. (Id. at 7.) According to Applicants, this commitment encompasses interline traffic that is currently interchanged with CPKC or UP at the northwestern end of Iowa Northern; traffic that is interchanged with UP or CRANDIC in Cedar Rapids; and traffic Iowa Northern moves between UP and the UP Industrial Lead at Waterloo. (Id.) Further, Applicants note that this commitment would apply equally to traffic that originates and traffic that terminates on Iowa Northern’s lines. (Id.) Additionally, Applicants assert that CN has committed to maintaining existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (Id.)

Applicants claim that, through the Proposed Transaction, a combined CN-Iowa Northern would provide more efficient and economical service, providing customers with access to new market opportunities, while supporting reliable local service on Iowa Northern’s lines. (Id. at 20.) According to Applicants, customers in a wide range of markets—including ethanol, fertilizer, and grain—would benefit from operational efficiencies and access to markets through new, more efficient single-line service on the combined CN-Iowa Northern system. (Id. at 8.) Applicants also state that the Proposed Transaction would provide a firm financial foundation to enable a combined CN-Iowa Northern to continue providing safe, reliable local service to customers in Iowa. (Id.) Moreover, Applicants assert that the Proposed Transaction would benefit the Iowa economy and local Iowa customers and communities by supporting the growth of local businesses via new, single-line service between points on Iowa Northern and locations throughout North America over CN’s 18,600-mile rail network. (Id.)

Time Schedule for Consummation. As noted above, Applicants state that, on December 6, 2023, GTC signed and closed on an agreement to acquire from Sabin Group Holdings, L.L.C., and TCFII IANR SPE LLC, 100% of the equity interest of Cable & Ives, which wholly owns Iowa Northern. (Id. at 1.) Applicants state that the shares of Cable & Ives were deposited into an independent voting trust pursuant to 49 CFR part 1013, pending review of the Proposed Transaction by the Board. (Id. at 2, 11-12; see also CN Letter Filing of Voting Trust Agreement, FD 36744, Dec. 6, 2023.) According to Applicants, they expect to consummate the Proposed Transaction as soon as practicable after the Board’s decision approving the Application becomes effective. (Appl. 13.)

Environmental Impacts. Applicants state that, pursuant to 49 CFR 1105.6(c)(1), no environmental reporting is required because the environmental impacts of the Proposed Transaction fall below the thresholds established in 49 CFR 1105.7(e)(4) and (5). (Appl. 2, 33.)

Historic Preservation Impacts. Applicants state that no historic report is required under 49 CFR 1105.8, as the Proposed Transaction is for the purpose of continued rail operations and

Applicants have no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. (Appl. 2, 38.)

Labor Impacts. Applicants state that Iowa Northern currently employs 83 craft employees. (Id., Ex. 15 at 31.) According to Applicants, while some positions may be relocated or modified to permit various efficiencies and service improvements, all Iowa Northern craft employees will be retained to maintain and expand operations. (Id.) Applicants further assert that the Board's standard labor protection conditions have been exceeded by employees being offered substantial retention bonuses, in addition to continuation of existing compensation and benefit levels. (Id.)

Notwithstanding the above, however, Applicants state that they agree to imposition of labor conditions in accordance with New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979). (Appl., Ex. 15 at 31-32.)

Related Filings. Two verified notices of exemption were filed in connection with the Proposed Transaction. Applicants state that the requests are for mutual trackage rights between Iowa Northern and CCP, and that the proposed trackage rights are intended to give the combined CN-Iowa Northern maximum operational flexibility by allowing those carriers to operate trains with their own crews over each other's track in Iowa. (Appl. 2.)<sup>5</sup>

*CCP Acquisition of Trackage Rights.* In Docket No. FD 36744 (Sub-No. 1), CCP seeks overhead and limited local trackage rights from Iowa Northern, pursuant to 49 CFR 1180.2(d)(7), for a rail line extending between IANR milepost 157.5 at Cedar Falls Junction in Cedar Falls and IANR milepost 225.8 at Manly Yard in Manly, a distance of approximately 68.3 miles. CCP states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction. CCP states that employees would be protected by the conditions set forth in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

*Iowa Northern Acquisition of Trackage Rights.* In Docket No. FD 36744 (Sub-No. 2), Iowa Northern seeks overhead and limited local trackage rights from CCP for: (1) rail extending from CCP milepost 275.8 at Waterloo east to CCP milepost 183.0 at Dubuque, a distance of approximately 92.8 miles; (2) rail extending from CCP milepost 275.8 at Waterloo west to CCP milepost 381.2 at Tara, Iowa, a distance of approximately 105.4 miles; and (3) an approximately 2.7-mile connecting track at Waterloo. In total, the lines consist of approximately 200.9 miles. Iowa Northern states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction. Iowa Northern states that employees would be protected by the

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<sup>5</sup> Also, on January 30, 2024, Applicants filed a motion for protective order in Docket No. FD 36744, which was granted by decision served on February 8, 2024.

conditions set forth in Norfolk & Western Railway—Trackage Rights, 354 I.C.C. 605, as modified in Mendocino Coast Railway—Lease & Operate, 360 I.C.C. 653.

**PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED.** The Board finds that the Proposed Transaction would be a “minor transaction” under 49 CFR 1180.2(c), and the Board accepts the Application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. Additionally, the Board is accepting for consideration the related verified notices of exemption filed in Docket Nos. FD 36744 (Sub-No. 1) and FD 36744 (Sub-No. 2), which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board’s treatment differs depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor”—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as “significant” if neither of these determinations can be made.

The Board finds the Proposed Transaction to be a “minor transaction” because it appears from the face of the Application that the efficiency and other public interest benefits would clearly outweigh whatever anticompetitive effects may exist. As discussed in the Application, Iowa Northern shippers could benefit from operational efficiencies and access to markets through single-line service on the combined CN-Iowa Northern system. (See Appl. 7, 14.) The Proposed Transaction, if approved and implemented, could also provide a firm financial foundation for a combined CN-Iowa Northern to provide safe, reliable local service to customers in Iowa. (See *id.* at 7, 15.) In addition, Iowa Northern customers could benefit from access to a broader range of railroad equipment and improved equipment utilization. (See *id.* at 15.)

Further, the Proposed Transaction does not appear to pose any significant anticompetitive effects. The Application indicates that the Proposed Transaction would not result in any two-to-one customer stations (although, as Applicants acknowledge, there are three potential three-to-two customer stations). (*Id.* at 4, 6, 18; *id.*, App. B, V.S. Hunt § 6 & Ex. 6-1.) Additionally, CN has made a gateway commitment to ensure that Iowa Northern customers would continue to have access to interline options on commercially reasonable terms. (*Id.* at 7). See also Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087, slip op. at 10 (STB served Nov. 26, 2007) (designating transaction as minor where, among other things, Applicants committed to protecting interline options with other carriers through an open gateway commitment). Specifically, CN represents that it “will commit to the Board and to Iowa Northern customers that, if the Proposed Transaction is approved, CN would provide Iowa Northern-served customers with commercially reasonable rates and service for interline traffic with rail carriers other than CN,” and that such

commitment would apply equally both to traffic that originates and terminates on Iowa Northern's lines. (Appl. 7.) CN has also committed to maintain existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (Id.)

For these reasons, based on the information provided in the Application, the Board finds the Proposed Transaction to be a minor transaction under 49 CFR 1180.2(c). The Board emphasizes that this is not a final determination and may be rebutted by subsequent filings and evidence submitted into the record for this proceeding. Further, this determination should not be read to mean that the Proposed Transaction is insignificant or of little importance. Indeed, after the record is fully developed, the Board will conduct a careful review before making a final determination as to whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest. See 49 U.S.C. 11324(d)(1)-(2). The Board may also consider imposing conditions on the Proposed Transaction.

**PROCEDURAL SCHEDULE.** The Board has considered Applicants' motion for a procedural schedule, filed January 30, 2024. Any person who wishes to participate in this proceeding as a Party of Record must file a notice of intent to participate no later than March 15, 2024; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application, including filings by DOJ and DOT, must be filed by April 1, 2024; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Transaction must be filed by May 1, 2024. The Board is required to issue "a final decision by the 45th day after the date on which it concludes the evidentiary proceedings," 49 U.S.C. 11325(d)(2), and will do so here.<sup>6</sup> The adopted procedural schedule is in the Appendix to this decision.

**NOTICE OF INTENT TO PARTICIPATE.** Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than March 15, 2024, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Applicants' representatives.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

**SERVICE ON PARTIES OF RECORD.** Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies

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<sup>6</sup> This notice will be published in the Federal Register on February 29, 2024, and all subsequent deadlines will be calculated from this date. Deadlines for filings are calculated in accordance with 49 CFR 1104.7(a).

of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

**SERVICE OF DECISIONS, ORDERS, AND NOTICES.** The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at [www.stb.gov](http://www.stb.gov).

**ACCESS TO FILINGS.** Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at [www.stb.gov](http://www.stb.gov).<sup>7</sup> In addition, the Application may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application filed in Docket No. FD 36744 is accepted for consideration and the related verified notices of exemption filed in Docket Nos. FD 36744 (Sub-No. 1) and FD 36744 (Sub-No. 2) are accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.
3. This decision is effective on February 29, 2024.

Decided: February 26, 2024.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

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<sup>7</sup> Applicants have submitted a public version and highly confidential version of the Application. The public version is available on the Board's website. The highly confidential version may be obtained from the Applicants' representatives subject to the provisions of the protective order issued by the Board on February 8, 2024.

**APPENDIX**

**PROCEDURAL SCHEDULE**

January 30, 2024	Application filed.
February 29, 2024	Board notice of acceptance of Application served.
March 15, 2024	Notices of intent to participate in this proceeding due.
April 1, 2024	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application, including filings of DOJ and DOT, due.
May 1, 2024	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the Application due.
June 13, 2024	Record closes.
July 26, 2024	Date by which a final decision will be served.
August 25, 2024 <sup>8</sup>	Board's decision becomes effective.

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<sup>8</sup> The final decision will become effective 30 days after it is served.