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FEDERAL REGISTER

Vol. 78 Tuesday,

No. 218 November 12, 2013

Pages 67289–67924

OFFICE OF THE FEDERAL REGISTER

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Notice of November 7, 2013

Continuation of the National Emergency With Respect to the Proliferation of Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, the President issued Executive Order 13094 amending Executive Order 12938 to respond more effectively to the worldwide threat of weapons of mass destruction proliferation activities. On June 28, 2005, the President issued Executive Order 13382 which, *inter alia,* further amended Executive Order 12938 to improve our ability to combat proliferation. The proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States; therefore, the national emergency first declared on November 14, 1994, and extended in each subsequent year, must continue. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 7, 2013.

[FR Doc. 2013–27166
Filed 11–8–13; 8:45 am]
Billing code 3295–F4

Rules and Regulations

Federal Register

Vol. 78, No. 218

Tuesday, November 12, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0843; Special Conditions No. 25–500–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Design Roll Maneuver Condition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions; Request for Comments.

SUMMARY: These special conditions are issued for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with an electronic flight control system that provides roll control of the airplanes through pilot inputs to the flight computers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 12, 2013. We must receive your comments by December 27, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0843 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1119; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is unnecessary because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is an aluminum alloy material, blended double-bubble fuselage design, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under-wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics include five landscape primary cockpit displays. The dimensions of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometres) for both models of airplanes. Maximum operating altitude is 41,000 feet for both models of airplanes.

The current design roll maneuver requirement in Title 14, Code of Federal Regulations (14 CFR) part 25 is inadequate for addressing an aircraft with electronic flight controls that affect maneuvering. These special conditions will adjust the current roll maneuver requirement, § 25.349, to take into account the effects of an electronic flight control system.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The C-series airplanes will incorporate the following novel or unusual design features:

The airplanes are equipped with an electronic flight control system that provides control through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for control laws for which aileron deflection is proportional to control stick deflection. They do not address any nonlinearities or other effects on aileron actuation that may be caused by electronic flight controls. Since this type of system may affect flight loads, and therefore the structural capability of the airplanes, special conditions are needed to address these effects.

Discussion

These special conditions differ from current requirements in that they require that the roll maneuver be based on defined actuation of the cockpit roll control as opposed to defined deflections of the aileron itself. Also, the special conditions require an additional load condition at V_A, in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions applied on previous programs. These special conditions are limited to the roll axis only, whereas previous special conditions also included the pitch and yaw axes. Special conditions are no longer needed for the pitch or yaw axes, because Amendment 25–91 takes into account the effects of an electronic flight control system in those axes (§ 25.331 for pitch and § 25.351 for yaw).

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplanes, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

Design Roll Maneuver Condition

In lieu of compliance to § 25.349(a):

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

1. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

2. At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

3. At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph (2).

4. At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph (2).

Issued in Renton, Washington, on September 19, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26913 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0173; Airspace Docket No. 13–ASW–6]

Amendment of Class E Airspace; Carlsbad, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Carlsbad, NM. Controlled

airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Cavern City Air Terminal. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 12, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Carlsbad, NM, area, creating additional controlled airspace at Cavern City Air Terminal (78 FR 48839) Docket No. FAA–2013–0173. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to contain aircraft executing new standard instrument approach procedures at Cavern City Air Terminal, Carlsbad, NM. Accordingly, an additional segment will extend from the 7.4-mile radius of the airport to 10.7 miles southwest of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Cavern City Air Terminal, Carlsbad, NM.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW NM E5 Carlsbad, NM [Amended]

Carlsbad, Cavern City Air Terminal, NM
(Lat. 32°20′15″ N., long. 104°15′48″ W.)

Cavern City Air Terminal Localizer
(Lat. 32°20′22″ N., long. 104°15′19″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Cavern City Air Terminal, and within 1.4 miles each side of the Cavern City Air Terminal Localizer southwest course extending from the 7.4-mile radius to 9.4 miles southwest of the airport, and within 1.8 miles each side of the 044° bearing from the airport extending from the 7.4-mile radius to 8.7 miles northeast of the airport, and within 2 miles each side of the 209° bearing from the airport extending from the 7.4-mile radius to 10.7 miles southwest of the airport.

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26920 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0176; Airspace Docket No. 13–AGL–13]

Amendment of Class E Airspace; Kankakee, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Kankakee, IL. Controlled airspace is necessary to accommodate amended Area Navigation (RNAV) Standard Instrument Approach Procedures at Greater Kankakee Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates are also updated.

DATES: *Effective date:* 0901 UTC, February 6, 2014. The Director of the **Federal Register** approves this

incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 12, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Kankakee, IL, area, creating additional controlled airspace at Greater Kankakee Airport (78 FR 48841) Docket No. FAA–2013–0176. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to contain aircraft executing new standard instrument approach procedures at Greater Kankakee Airport, Kankakee, IL. Accordingly, segments will extend from the 7-mile radius of the airport to 16 miles and 16.6 miles southwest and 7.5 miles northeast of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the enroute environment. Geographic coordinates are also updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Greater Kankakee Airport, Kankakee, IL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IL E5 Kankakee, IL [Amended]

Kankakee, Greater Kankakee Airport, IL
(Lat. 41°04′17″ N., long. 87°50′47″ W.)

Kankakee VOR/DME
(Lat. 41°04′28″ N., long. 87°51′01″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greater Kankakee Airport, and within 2 miles each side of the 218° bearing from the airport extending from the 7-mile radius of the airport to 16.6 miles southwest of the airport, and within 4 miles northwest and 8 miles southeast of the Kankakee VOR/DME 212° radial extending from the 7-mile radius of the airport to 16 miles southwest of the airport, and within 2.4 miles each side of the Kankakee VOR/DME 051° radial extending from the 7-mile radius of the airport to 7.5 miles northeast of the airport.

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26927 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0172; Airspace Docket No. 13–AGL–9]

Amendment of Class E Airspace; Wadena, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Wadena, MN. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Wadena Municipal Airport. The airport's geographic coordinates are also adjusted. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest

Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 5, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Wadena, MN, area, creating additional controlled airspace at Wadena Municipal Airport (78 FR 47238) Docket No. FAA–2013–0172. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Wadena Municipal Airport, Wadena, MN. A segment added from the current 6.5-mile radius of the airport to 12.9 miles north of the airport provides adequate controlled airspace for the safety and management of IFR operations at the airport. Geographic coordinates are also to be updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Wadena Municipal Airport, Wadena, MN.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MN E5 Wadena, MN [Amended]

Wadena Municipal Airport, MN
(Lat. 46°27′00″ N., long. 95°12′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wadena Municipal Airport, and within two miles each side of the 343° bearing from the airport extending from the 6.5-mile radius to 12.9 miles north of the airport.

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26926 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0584; Airspace Docket No. 13–ACE–6]

Amendment of Class E Airspace; Washington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Washington, KS. Decommissioning of the Morrison non-directional beacon (NDB) at Washington County Memorial Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates are also updated.

DATES: *Effective Date:* 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 5, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Washington, KS, area, creating additional controlled airspace at Washington County Memorial Airport (78 FR 47239) Docket No. FAA–2013–0584. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments

were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to for standard instrument approach procedures at Washington County Memorial Airport, Washington, KS. Airspace configuration is necessary due to the decommissioning of the Morrison NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Washington County Memorial Airport, Washington, KS.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE KS E5 Washington, KS [Amended]

Washington County Memorial Airport, KS
(Lat. 39°44′07″ N., long. 97°02′51″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Washington County Memorial Airport

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26923 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0580; Airspace Docket No. 12–ASW–2]

Establishment of Class D Airspace; Mesquite, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Mesquite, TX. Establishment of an airport traffic control tower at Mesquite Metro Airport has made this action necessary for the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 12, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D airspace for Mesquite Metro Airport, Mesquite, TX (78 FR 48842) Docket No. FAA–2012–0580. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class D airspace up to but not including 2,000 feet MSL within a 3.5-mile radius of Mesquite Metro Airport, Mesquite, TX, with an extension from the 3.5-mile radius to 4.1

miles south of the airport. Controlled airspace enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Mesquite Metro Airport, Mesquite, TX.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Mesquite, TX [New]

Mesquite, Mesquite Metro Airport, TX
(Lat. 32°44′49″ N., long. 96°31′50″ W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 3.5-mile radius of Mesquite Metro Airport, and within 1 mile each side of the 181° bearing from the airport extending from the 3.5-mile radius to 4.1 miles south of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26925 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0608; Airspace Docket No. 13–ACE–14]

Establishment of Class E Airspace; Curtis, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Curtis, NE. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Curtis Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 12, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Curtis, NE., area, creating additional controlled airspace at Curtis Municipal Airport (78 FR 48838) Docket No. FAA–2013–0608. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Curtis Municipal Airport, Curtis, NE., to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Curtis Municipal Airport, Curtis, NE.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE NE E5 Curtis, NE [New]

Curtis Municipal Airport, NE
(Lat. 40°38′20″ N., long. 100°28′24″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Curtis Municipal Airport.

Issued in Fort Worth, Texas, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26921 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0280; Airspace Docket No. 13–ANM–13]

Establishment of Class E Airspace; Ennis, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Ennis, MT, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Ennis-Big Sky Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On September 4, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Ennis, MT (78 FR 54415). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Except for minor editorial changes, this rule is the same as proposed in the NPRM.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Ennis-Big Sky Airport, Ennis, MT, and 1,200 feet above the surface within the prescribed cutout, to accommodate new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Ennis-Big Sky Airport, Ennis, MT.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially

significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Ennis, MT [New]

Ennis-Big Sky Airport, Ennis, MT
(Lat. 45°16′28″ N., long. 111°38′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ennis-Big Sky Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°09′00″ N., long. 112°04′00″ W.; to lat. 45°50′00″ N., long. 111°33′00″ W.; to lat. 45°33′00″ N., long. 111°32′00″ W.; to lat. 45°11′00″ N., long. 111°27′00″ W.; to lat. 45°07′00″ N., long. 111°44′00″ W.; to lat. 45°20′00″ N., long. 112°00′00″ W.; to lat. 45°40′00″ N., long. 111°49′00″ W.; to lat. 45°51′00″ N., long. 112°27′00″ W.; to lat. 46°08′00″ N., long. 112°15′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on November 1, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–26924 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0664; Airspace Docket No. 13–ANM–22]

Modification of Class E Airspace; Cut Bank, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cut Bank, MT, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Cut Bank Municipal Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, February 6, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On August 22, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Cut Bank, MT (78 FR 52112). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. Except for editorial changes this rule is the same as published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace and Class E airspace extending upward from 700/1,200 feet above the surface, at Cut Bank Municipal Airport, Cut Bank, MT, to accommodate new RNAV (GPS) standard instrument approach procedures at the airport. The segment of the Class E surface area airspace expands from the 4.7-mile radius of the airport to 11 miles southeast of the airport; the segment of the Class E airspace area extending upward from 700 feet above the surface expands from the 7.9-mile radius of the airport to 18.4 miles southeast and 12.6 miles south of the airport; and a sector is added surrounding the airport extending upward from 1,200 feet above the surface. This action is necessary for the safety and management of IFR operations at the airport. The geographic coordinates of the airport are adjusted in accordance with the FAA's aeronautical database for the respective Class E airspace areas.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Cut Bank Municipal Airport, Cut Bank, MT.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,''

paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Cut Bank, MT [Modified]

Cut Bank Municipal Airport, MT
(Lat. 48°36′30″ N., long. 112°22′34″ W.)

Within a 4.7-mile radius of the Cut Bank Municipal Airport, and within 3.1 miles each side of the 150° bearing of the Cut Bank Municipal Airport extending from the 4.7-mile radius to 11 miles southeast of the airport.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Cut Bank, MT [Modified]

Cut Bank Municipal Airport, MT
(Lat. 48°36′30″ N., long. 112°22′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Cut Bank Municipal Airport, and within 8.3 miles northeast and 4 miles southwest of the 150° bearing of the Cut Bank Municipal Airport extending from the 7.9-mile radius to 18.4 miles southeast of the airport, and within 2.6 miles each side of the 175° bearing of the Cut Bank Municipal Airport extending from the 7.9-mile radius to 12.6 miles south of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°53′00″ N., long. 113°11′00″ W.; to lat. 48°52′00″ N., long. 112°42′00″ W.; to lat. 48°57′00″ N., long. 111°46′00″ W.; to lat. 48°27′00″ N., long. 111°01′00″ W.; to lat. 48°08′00″ N., long. 111°19′00″ W.; to lat. 47°46′00″ N., long. 112°35′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on: October 30, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–26922 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2012–0967]

RIN 1625–AA01

Anchorage Regulations: Pacific Ocean at San Nicolas Island, Calif.; Restricted Anchorage Areas

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is amending the restricted anchorage areas of San Nicolas Island, California. At the request of the United States Navy, the Coast Guard will remove the west area anchorage restriction and decrease the size of the east area anchorage restriction (see figure 1 located in the docket). After these amendments are finalized, the restricted anchorage at San Nicolas Island will accurately reflect the needs and operational use of the United States Navy.

DATES: This rule is effective February 10, 2014 unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before January 13, 2014 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by January 13, 2014, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Blake Morris, Waterways Management Branch, U.S. Coast Guard; telephone (510) 437–3801, email *Blake.J.Morris@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2012–0967 in the ''SEARCH'' box and click ''SEARCH.''

Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–0967 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by January 13, 2014, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

C. Basis and Purpose

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1, and Department of Homeland Security Delegation No. 0170.1. This rule will amend 33 CFR 110.220(a) with accurate regulatory information. The restricted anchorage areas listed do not reflect current enforcement practices or operational use by the U.S. Navy.

D. Discussion of the Rule

Restricted anchorages were established at the east and west ends of San Nicolas Island to prevent vessels from interrupting naval operations. The restricted anchorages, in current configuration, do not match operational requirements. The east-end area was designed to prevent vessels from disturbing barge offloading and fuel transfer lines in the vicinity. Under its current configuration, the east-end area does not prevent vessels from disturbing the fuel-offloading lines at the mooring buoys offshore Coast Guard Beach. It also does not prevent vessels from disturbing barge offloads. Regular barge offloading now occurs exclusively at the new pier facility, on the west edge of the restricted anchorage at Daytona Beach.

The west-end area was designed to keep vessels out of danger zones from missile launch or hazard patterns. However, restricted areas are currently established around the island, which restrict vessels from entering these danger zones during operations. The Navy can still open and close these areas in part or in whole based on operational needs, making a restricted anchorage area redundant.

Both commercial and recreational vessels take part in fishing around the island. Commercial fishing is common within section Alpha on the northern side of the restricted area around the island. Most fishing at and around the island by both recreational boaters and Navy personnel occurs in section Alpha, outside of either restricted anchorage area.

This rule will remove the western restricted anchorage area, which covered approximately 20 square nautical miles (NM). The rule will update the eastern restricted anchorage area to reflect operational use, decreasing its size from approximately 2.5 square NM to 1.3 square NM. The new restricted anchorage will include a single eastern no-anchorage zone that encompasses both the mooring buoys offshore Coast Guard Beach and the explosives safety arc around the Barge Pier at Daytona Beach (see figure 2 located in the docket). It will restrict vessels from entering these areas in order to prevent interferences with fuel, cargo or explosives-offloads in these areas.

This rule also updates and identifies the agencies and officials responsible for granting access to and enforcing the restricted anchorage area. The Commanding Officer of Naval Base Ventura County may grant permission to enter the area. Vessels in the restricted anchorage area must obey the orders of the Commanding Officer, Naval Base Ventura County; Coast Guard Eleventh District Commander; or Coast Guard Captain of the Port, Los Angeles-Long Beach, when issued to carry out the purpose of the restricted anchorage.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and

Budget has not reviewed it under those Orders. This rule simply amends the size and location of the restricted anchorage areas off of San Nicolas Island to accurately reflect the needs and operational use of the United States Navy.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of commercial or recreational vessels intending to anchor in the affected area.

The impact to these entities will not be significant since this rule will decrease the size of the eastern restricted anchorage area off San Nicolas Island, and eliminate the western area entirely. These changes will result in a net decrease in the size of the restricted anchorage area of approximately 21 square NM, allowing for more access to anchorage grounds by both commercial and recreational vessels.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the adjustment of restricted anchorage areas for Naval operations in the waters off San Nicolas Island. This rule is categorically excluded from further review under paragraph (34)(f) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 110

Anchorage Regulations.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.220 to read as follows:

§ 110.220 Pacific Ocean at San Nicolas Island, Calif; restricted anchorage areas.

(a) *The restricted area.* All waters within one-quarter nautical mile from the shoreline or manmade structures including mooring buoys, piers and jetties on the easterly end of San Nicolas Island between a point on the northeast shore at latitude 33°14′32″ N, longitude 119°26′41″ W and a point on the southeast shore at latitude 33°13′08″ N, longitude 119°27′06″ W.

(b) *The regulations.* (1) Except in an emergency, no vessel shall enter into or anchor in this restricted area without permission from the Commanding Officer, Naval Base Ventura County. Cargo and supply vessels or barges destined for San Nicolas Island may anchor in the area for unloading or loading. (2) Each person in a restricted anchorage shall obey the order or direction of the Commanding Officer, Naval Base Ventura County, Coast Guard Eleventh District Commander, or Coast Guard Captain of the Port, Los Angeles-Long Beach, when issued to carry out this section.

(c) *Enforcement.*The Coast Guard may be assisted in enforcing this rule by other Federal, state, or local agencies.

Dated: September 10, 2013.

K.L. Schultz,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2013–25642 Filed 11–8–13; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014–AA22

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Correction

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule; correction.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is correcting a document that appeared in the **Federal Register** of September 26, 2013 (78 FR 59476). The document issued a final rule that amended the Architectural Barriers Act Accessibility Guidelines by adding scoping and technical requirements for camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by or on behalf of federal agencies. The document set out the Architectural Barriers Act Accessibility Guidelines in their entirety, as amended by the final rule, and also set out the Americans with Disabilities Act Accessibility Guidelines in their entirety as word searchable text since both sets of guidelines were previously issued as ''camera ready'' images that could not be amended.

DATES: Effective November 25, 2013.

FOR FURTHER INFORMATION CONTACT: James Raggio, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone: (202) 272–0040 (voice) or (202) 272–0062 (TTY). Email address: *raggio@access-board.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2013–22876 appearing on page 59476 in the **Federal Register** of Thursday, September 26, 2013 (78 FR 59476), the following corrections are made:

Appendix B to Part 1191—Americans With Disabilities Act: Scoping [Corrected]

■ 1. On page 59500, in the third column, in 207.1 General, ''Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

■ 2. On page 59500, in the third column, and continuing on page 59501, in the first column, Table 208.2—PARKING SPACES is corrected to read as follows:

TABLE 208.2—PARKING SPACES

Total number of parking spaces provided in parking facility	Minimum number of required accessible parking spaces
1 to 25	1.
26 to 50	2.
51 to 75	3.
76 to 100	4.
101 to 150	5.
151 to 200	6.
201 to 300	7.
301 to 400	8.
401 to 500	9.
501 to 1000	2 percent of total.
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000.

■ 3. On page 59507, in the first column, in 233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations, ''Where facilities with residential dwelling units are provided by entities subject to regulations issued by the Department of Housing and Urban Development (residential dwelling units with mobility features complying with 809.2 through 809.4 in a number required by the applicable HUD regulations.'' is corrected to read ''Where facilities with residential dwelling units are provided by entities subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, such entities shall provide residential dwelling units with mobility features complying with 809.2 through 809.4 in a number required by the applicable HUD regulations.''

Appendix C to Part 1191—Architectural Barriers Act Act: Scoping [Corrected]

■ 4. On page 59509, in the second column, remove F104.3 Figures.

■ 5. On page 59515, in the third column, in F207.1 General, ''Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Means of egress

shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

Appendix D to Part 1191—Technical [Corrected]

■ 6. On page 59529, in the second column, in 404.3 Automatic and Power-Assisted Doors and Gates, ''Full-powered automatic doors shall comply with ANSI/BHMA A156.10 (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Full-powered automatic doors shall comply with ANSI/BHMA A156.10 (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

■ 7. On page 59529, in the third column, in 404.3.7 Revolving Doors, Revolving Gates, and Turnstiles, ''Revolving doors, revolving gates, and turnstiles shall not be part of an 405 Ramps'' is corrected to read ''Revolving doors, revolving gates, and turnstiles shall not be part of an accessible route.''

■ 8. On page 59529, in the third column, 405 Ramps and 405.1 General are corrected to read as set forth below.

405 Ramps

405.1 General. Ramps on accessible routes shall comply with 405.

■ 9. On page 59530, in the first column, in 406.1 General, ''Curb ramps accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.'' is corrected to read ''Curb ramps on accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.''

■ 10. On page 59530, in the second column, in 407.1 General, ''Elevators shall comply with 407 and with ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Elevators shall comply with 407 and with ASME A17.1 (incorporated by reference, see ''Referenced Standards'' in Chapter 1).

■ 11. On page 59530, in the third column, in 407.2.2.1 Visible and Audible Signals, ''A visible and audible signal shall be provided at each hoist-way entrance to indicate which car is answering a call and the car's direction of travel.'' is corrected to read ''A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call and the car's direction of travel.''

■ 12. On page 59530, in the third column, in 407.2.2.2 Visible Signals, EXCEPTION 1, ''Destination-oriented elevators shall be permitted to have signals visible from the floor area adjacent to the hoist-way entrance.'' is corrected to read ''Destination-oriented elevators shall be permitted to have signals visible from the floor area adjacent to the hoistway entrance.''

■ 13. On page 59530, in the third column, 407.2.3 Hoist-way Signs is corrected to read as follows:

407.2.3 Hoistway Signs. Signs at elevator hoistways shall comply with 407.2.3.

■ 14. On page 59530 in the third column and continuing on page 59531 in the first column, in 407.2.3.1 Floor Designations, ''Floor designations complying with 703.2 and 703.4.1 shall be provided on both jambs of elevator hoist-way entrances.'' is corrected to read ''Floor designations complying with 703.2 and 703.4.1 shall be provided on both jambs of elevator hoistway entrances.''

■ 15. On page 59531, in the first column, in 407.2.3.2 Car Designations, ''Destination-oriented elevators shall provide tactile car identification complying with 703.2 on both jambs of the hoist-way immediately below the floor designation.'' is corrected to read ''Destination-oriented elevators shall provide tactile car identification complying with 703.2 on both jambs of the hoistway immediately below the floor designation.''

■ 16. On page 59531, in the first column, in 407.3 Elevator Door Requirements, ''Hoist-way and car doors shall comply with 407.3.'' is corrected to read ''Hoistway and car doors shall comply with 407.3.''

■ 17. On page 59531, in the first column, 407.3.2 Operation is corrected to read as follows:

407.3.2 Operation. Elevator hoistway and car doors shall open and close automatically.

EXCEPTION: Existing manually operated hoistway swing doors shall be permitted provided that they comply with 404.2.3 and 404.2.9. Car door closing shall not be initiated until the hoistway door is closed.

■ 18. On page 59531, in the first column and continuing in the second column, in 407.3.3 Reopening Device, ''Elevator doors shall be provided with a reopening device complying with 407.3.3 that shall stop and reopen a car door and hoist-way door automatically if the door becomes obstructed by an object or person.'' is corrected to read ''Elevator doors shall be provided with a reopening device complying with 407.3.3 that shall stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person.''

■ 19. On page 59531, in the second column and continuing in the third column, in 407.3.4 Door and Signal Timing, ''T = D/(1.5 ft/s) or T = D/(455 mm/s) = 5 seconds minimum where T equals the total time in seconds and D equals the distance (in feet or millimeters) from the point in the lobby or corridor 60 inches (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoist-way door.'' is corrected to read ''T = D/(1.5 ft/s) or T = D/(455 mm/s) = 5 seconds minimum where T equals the total time in seconds and D equals the distance (in feet or millimeters) from the point in the lobby or corridor 60 inches (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door.''

■ 20. On page 59531, in the first column, 407.4.3 Platform to Hoist-way Clearance is corrected to read as follows:

407.4.3 Platform to Hoistway Clearance. The clearance between the car platform sill and the edge of any hoistway landing shall be 1¼; inch (32 mm) maximum.

■ 21. On page 59532, in the first column, in 407.4.7.1.3 Symbols, ''The control button for the emergency stop, alarm, door open, door close, main entry door, and phone shall be identified with tactile symbols as shown in Figure 407.4.7.3 at the end of this document.'' is corrected to read ''The control button for the emergency stop, alarm, door open, door close, main entry floor, and phone shall be identified with tactile symbols as shown in Figure 407.4.7.1.3 at the end of this document.''

■ 22. On page 59532, in the first column and continuing in the second column, in 408.1 General, ''Limited-use/limited-application elevators shall comply with 408 and with ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Limited-use/limited-application elevators shall comply with 408 and with ASME A17.1 (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

■ 23. On page 59532, in the second column, 408.2.3 Hoist-way Signs is corrected to read as follows:

408.2.3 Hoistway Signs. Signs at elevator hoistways shall comply with 407.2.3.1.

■ 24. On page 59532, in the second column, in 408.3 Elevator Doors, ''Elevator hoist-way doors shall comply with 408.3.'' is corrected to read ''Elevator hoistway doors shall comply with 408.3.''

■ 25. On page 59532, in the second column, in 408.3.1 Sliding Doors, ''Sliding hoist-way and car doors shall comply with 407.3.1 through 407.3.3 and 408.4.1.'' is corrected to read ''Sliding hoistway and car doors shall comply with 407.3.1 through 407.3.3 and 408.4.1.''

■ 26. On page 59532, in the second column, in 408.3.2 Swinging Doors, ''Swinging hoist-way doors shall open and close automatically and shall comply with 404, 407.3.2 and 408.3.2.'' is corrected to read ''Swinging hoistway doors shall open and close automatically and shall comply with 404, 407.3.2 and 408.3.2.''

■ 27. On page 59532, in the second column, 408.4.3 Platform to Hoist-way Clearance is corrected to read as follows:

408.4.3 Platform to Hoistway Clearance. The platform to hoistway clearance shall comply with 407.4.3.

■ 28. On page 59532, in the third column, in 409.3 Elevator Doors, ''Hoist-way doors, car doors, and car gates shall comply with 409.3 and 404.'' is corrected to read ''Hoistway doors, car doors, and car gates shall comply with 409.3 and 404.''

■ 29. On page 59532, in the third column, 409.3.1 Power Operation is corrected to read as follows:

409.3.1 Power Operation. Elevator car and hoistway doors and gates shall be power operated and shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1). Power operated doors and gates shall remain open for 20 seconds minimum when activated.

EXCEPTION: In elevator cars with more than one opening, hoistway doors and gates shall be permitted to be of the manual-open, self-close type.

■ 30. On page 59532, in the third column, ''409.4.3 Platform to Hoist-way Clearance'' is corrected to read ''409.4.3 Platform to Hoistway Clearance''.

■ 31. On page 59532, in the third column, in 410.1 General, ''Platform lifts shall comply with ASME A18.1 (1999 edition or 2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Platform lifts shall comply with ASME A18.1 (1999 edition or 2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

■ 32. On page 59538, in the first column and continuing in the second column, in 702.1 General, ''Fire alarm systems shall have permanently installed audible and visible alarms complying with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1), except that the maximum allowable sound level of audible notification appliances complying with section 4–3.2.1 of NFPA 72 (1999 edition) shall have a sound level no more than 110 dB at the minimum hearing distance from the audible appliance.'' is corrected to read ''Fire alarm systems shall have permanently installed audible and visible alarms complying with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1), except that the maximum allowable sound level of audible notification appliances complying with section 4–3.2.1 of NFPA 72 (1999 edition) shall have a sound level no more than 110 dB at the minimum hearing distance from the audible appliance.''

■ 33. On page 59539, Table 703.5.5—Visual Character Height is corrected to read as set forth below.

TABLE 703.5.5—VISUAL CHARACTER HEIGHT

Height to finish floor or ground from baseline of character	Horizontal viewing distance	Minimum character height
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm).	less than 72 inches (1830 mm)	⅝ inch (16 mm).
	72 inches (1830 mm) and greater	⅝ inch (16 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 72 inches (1830 mm).
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm).	less than 180 inches (4570 mm) ...	2 inches (51 mm).
	180 inches (4570 mm) and greater	2 inches (51 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 180 inches (4570 mm).
Greater than 120 inches (3050 mm)	less than 21 feet (6400 mm)	3 inches (75 mm).
	21 feet (6400 mm) and greater	3 inches (75 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 21 feet (6400 mm).

■ 34. On page 59542, in the third column, in 809.5.2 Residential Dwelling Unit Smoke Detection System, ''Residential dwelling unit smoke detection systems shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).'' is corrected to read ''Residential dwelling unit smoke detection systems shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).''

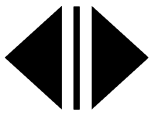
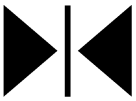
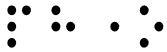
■ 35. On page 59543, in the third column, in 810.9 Escalators, ''Where provided, escalators shall comply with the sections 6.1.3.5.6 and 6.1.3.6.5 of ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1) and shall have a clear width of 32 inches (815 mm) minimum.'' is corrected to read ''Where provided, escalators shall comply with the sections 6.1.3.5.6 and 6.1.3.6.5 of ASME A17.1 (incorporated by reference, see ''Referenced Standards'' in Chapter 1) and shall have a clear width of 32 inches (815 mm) minimum.''

■ 36. On page 59546, in the third column, in 1008.2.6.1 Accessibility, ''Ground surfaces shall comply with ASTM F1951 (incorporated by reference, see Referenced Standards'' in Chapter 1). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F1951.'' is corrected to read ''Ground surfaces shall comply with ASTM F1951 (incorporated by reference, see ''Referenced Standards'' in Chapter 1). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F1951.''

■ 37. On page 59552, Figure 407.4.7.1.3 is corrected to read as set forth below.

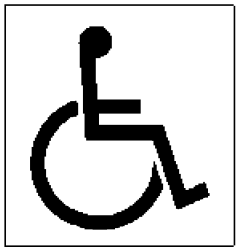
BILLING CODE 8150–01–P

Figure 407.4.7.1.3 – Elevator Control Button Identification

Control Button	Tactile Symbol	Braille Message
Emergency Stop		"ST"OP Three cells
Alarm		AL"AR"M Four cells
Door Open		OP"EN" Three cells
Door Close		CLOSE Five cells
Entry Deck		MA"IN" Three cells
Phone		 PH"ONE" Four cells

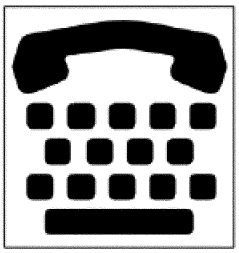
■ 38. On page 59553, Figure 703.7.2.1.1 is redesignated as Figure 703.7.2.1 and corrected as set forth below.

Figure 703.7.2.1 – International Symbol of Accessibility



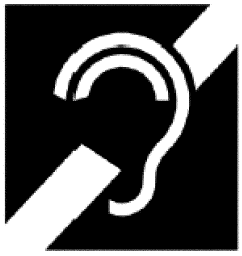
■ 39. On page 59553, Figure 703.7.2.2.1 is redesignated as Figure 703.7.2.2 and corrected as set forth below.

Figure 703.7.2.2 – International Symbol of TTY



■ 40. On page 59553, Figure 703.7.2.4.1 is redesignated as Figure 703.7.2.4 and corrected as set forth below.

Figure 703.7.2.4 – International Symbol of Access for Hearing Loss



David M. Capozzi,
Executive Director.
[FR Doc. 2013–26780 Filed 11–8–13; 8:45 am]
BILLING CODE 8150–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0582; FRL– 9902–65–Region 4]

Approval and Promulgation of Implementation Plans; Tennessee; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correcting Amendment.

SUMMARY: On June 18, 2013, EPA published a final rule approving certain infrastructure requirements of the Clean Air Act (CAA) for Tennessee's State Implementation Plan (SIP) for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Further, in the June 18, 2013, final rule, EPA explained that the Agency was not taking action on the prevention of significant deterioration (PSD) elements of Tennessee's infrastructure SIP, and that action on those infrastructure elements for the 2008 Lead NAAQS would occur in a subsequent action. This action corrects a typographical error in the regulatory language in paragraph (c) of EPA's June 18, 2013, final rule related to the status of EPA's action on these PSD elements for Tennessee's 2008 Lead NAAQS infrastructure SIP.

DATES: This action is effective November 12, 2013.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Benjamin can be reached at 404–562–9040, or via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: This action corrects a typographical error in the regulatory language that appears in paragraph (c) of Tennessee's Conditional Approval section at 40 CFR 52.2219. This typographical error stems from a June 18, 2013, final rule that approved in part, and conditionally approved in part, portions of Tennessee's October 19, 2009, SIP revision addressing the infrastructure requirements for the 2008 Lead NAAQS. *See* 78 FR 36440. In that June 18, 2013, final rulemaking, EPA described that no action was being taking on the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) of Tennessee's 2008 Lead NAAQS infrastructure submission. Inadvertently, however, EPA included a revision to the regulatory language in

paragraph (c) of Tennessee's Conditional Approval section at 40 CFR 52.2219, which incorrectly stated that EPA was conditionally approving the PSD-related elements of the 2008 Lead NAAQS. At the time of the June 18, 2013, final rulemaking, 40 CFR 52.2219(c) provided the regulatory text for the existing conditional approval of the Tennessee 2008 Ozone NAAQS infrastructure SIP for the PSD-related requirements at sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J). *See* 78 FR 14450 (finalizing conditional approval of the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) for Tennessee's 2008 Ozone NAAQS infrastructure SIP). As a result of the inadvertent inclusion of regulatory text related to a conditional approval for certain elements of Tennessee's 2008 Lead NAAQS infrastructure SIP, the June 18, 2013, rulemaking removed the existing conditional approval regulatory text provided at paragraph (c) in reference to the 2008 Ozone NAAQS infrastructure SIP and replaced it with conditional approval of certain elements for the 2008 Lead NAAQS infrastructure SIP. This change was made in error.

As noted above, EPA did not conditionally approve the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) for the 2008 Lead NAAQS infrastructure SIP, nor did it intend to remove the reference at 40 CFR 52.2219(c) to EPA's previous conditional approval of the PSD-related elements for the 2008 Ozone NAAQS infrastructure SIP. Rather, EPA's inclusion of paragraph (c) in the June 18, 2013 action was intended only to reference EPA's previous conditional approval of the PSD-related elements in Tennessee's 2008 8-Hour Ozone infrastructure SIP. Today's action corrects the reference in paragraph (c) of 40 CFR 52.2219 to reflect the conditional approval of the PSD-related portions of Tennessee's 2008 8-Hour Ozone NAAQS infrastructure SIP instead of the 2008 Lead NAAQS infrastructure SIP.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct an inadvertent error contained in paragraph (c) of 40 CFR 52.2219 of the rulemaking and has no substantive impact on EPA's June 18, 2013, rulemaking. In addition, EPA can identify no particular reason why the public would be interested in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's analysis or action to approve the addition of paragraph (c) to 40 CFR 52.2219.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the Agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, for the June 18, 2013, final rulemaking. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, which EPA approved on June 18, 2013, and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an inadvertent error in paragraph (c) of a prior rule, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 for a prior rulemaking by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, which EPA approved on June 18, 2013, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: October 28, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart RR—Tennessee

■ 2. Section 52.2219 paragraph (c) is revised to read as follows:

§ 52.2219 Conditional approval.

* * * * *

(c) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) for the 2008 8-Hour Ozone National Ambient Air Quality Standards. EPA is conditionally approving TDEC's submittal with respect to the PSD requirements of CAA sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), specifically related to the adoption of enforceable provisions for PSD increments as detailed in TDEC's October 4, 2012, commitment letter. Tennessee must submit to EPA by March 6, 2014, a SIP revision adopting specific enforceable measures related to PSD increments as described in the State's letter of commitment.

* * * * *

[FR Doc. 2013–26863 Filed 11–8–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 12–376, FCC 12–161]

Earth Stations Aboard Aircraft

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Earth Station Aboard Aircraft,* Report and Order (*Order*), which adopted licensing and service rules for Earth Stations Aboard Aircraft (ESAA) communicating with Fixed-Satellite Service geostationary-orbit space stations operating in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz and 14.0–14.5 GHz frequency bands. This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date for the new information requirements adopted.

DATES: The amendments to 47 CFR 25.132(b)(3), 25.227(b), (c), and (d) published at 78 FR 14920 on March 8, 2013, are effective on November 12, 2013.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, Satellite Division, International Bureau, at (202) 418–7877.

SUPPLEMENTARY INFORMATION: This document announces that, on June 27, 2013, OMB approved, for a period of three years, the information collection requirements relating to ESAA applications contained in the Commission's Order, FCC 12–161, published at 78 FR 14920, March 8, 2013. The OMB Control Number is 3060–1187. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1187, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on June 27, 2013, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 25. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1187.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1187.

OMB Approval Date: June 27, 2013.

OMB Expiration Date: June 30, 2016.

Title: Earth Stations Aboard Aircraft (ESAA).

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 6 respondents; 54 responses.

Estimated Time per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under Sections 4(i), 4(j), 7(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y).

Total Annual Burden: 114 hours.

Total Annual Cost: $16,200.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act: No impact(s).

Needs and Uses: The ESAA Report and Order, FCC 12–161, implements

ESAA as an application of the Fixed-Satellite Service (FSS). In particular, the ESAA Report and Order designated ESAA as a primary FSS use in the 11.7–12.2 GHz (space-to-Earth) band; an unprotected use in the 10.95–11.2 GHz and 11.45–11.7 GHz (space-to-Earth) bands; and a secondary use in the 14.0–14.5 GHz band (Earth-to-space). The ESAA Report and Order required ESAA licensees to coordinate their operations with stations in the Space Research Service and the Radioastronomy Service, adopted technical rules for the operation of ESAA systems to ensure that ESAA systems do not interfere with other FSS users or terrestrial Fixed Service (FS) users; and adopted licensing requirements and operational requirements for ESAA for both U.S.-registered aircraft operating in and outside U.S. airspace and for non-U.S.-registered aircraft operating in U.S. airspace. Each applicant for an earth station, including ESAA operators, must submit a comprehensive proposal for each proposed earth station (FCC Form 312, Schedule B, and attached narrative exhibits) to the Commission to demonstrate that it complies with the Commission's legal and/or engineering rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–26784 Filed 11–8–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 13–134]

Implementation of the Local Community Radio Act of 2010; Revision of Service and Eligibility Rules for Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial and/or dismissal of petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants in part and denies in part Prometheus Radio Project's Petition for Reconsideration of the *Sixth Report and Order* (*Sixth R&O*) in this proceeding. In particular, the Commission makes minor revisions to the rule that protects the input signals of FM translator and FM booster stations from interference by low power FM (''LPFM'') stations. The Commission also denied the remaining four petitions for reconsideration for the reasons set forth below. These actions will provide clarification of the LPFM rules for entities preparing for the upcoming LPFM filing window.

DATES: Effective December 12, 2013.

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202) 418–2789.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Order on Reconsideration (*Sixth OOR*) in MM Docket No. 99–25, FCC 13–134, adopted September 30, 2013, and released October 17, 2013. The full text of the is document is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Paperwork Reduction Act Analysis. The *Sixth OOR* does not adopt any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Report to Congress. The Commission will send a copy of the *Sixth OOR* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Summary of Sixth Order on Reconsideration

I. Background

1. On March 19, 2012, the Commission released a *Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM),* seeking comment on proposals to amend the Commission's rules to implement provisions of the Local Community Radio Act of 2010 (''LCRA'') and to promote a more sustainable community radio service. These proposed changes were intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services.

2. On December 4, 2012, the Commission released the *Sixth R&O,* in which it adopted numerous measures to complete implementation of the LCRA, service and licensing rules to promote the LCRA's aforementioned goals, and technical rules to ensure the efficient use of the radio broadcast spectrum. The five Petitions were filed following **Federal Register** publication of the *Sixth R&O,* 78 FR 2077 (Jan. 9, 2013). These Petitions address only a narrow range of rule changes—LPFM eligibility requirements, whether to identify and award construction permits to ''secondary'' grantees, protection standards for FM translator input signals, protection requirements toward LPFM stations operating with reduced power, and periodic announcements by LPFM stations regarding potential interference. One petition addresses the decisions to eliminate the LP10 service class (that is, the class of LPFM stations that is authorized to operate at a power level of up to 10 Watts) and decline adoption of an LP50 service class (that is, a class that would be authorized to operate at a power level of up to 50 Watts).

II. Discussion

3. The Petitions, for the most part, either repeat arguments that were considered and rejected in the *Sixth R&O,* raise issues that are beyond the scope of the *Sixth R&O,* or rely on arguments that were not previously presented. While reconsideration in these circumstances is generally unwarranted, we believe it is in the public interest to discuss certain of the petitioners' arguments and our analysis of the issues raised, particularly to provide guidance to potential applicants in the upcoming LPFM filing window.

A. Eligibility and Attribution Issues

4. LifeTalk Radio, Inc. (''LTR'') seeks to ''clarify or amend'' § 73.858 of the Commission's rules (''Attribution of LPFM station interests''). Pursuant to § 73.858(b), a broadcast interest of a national organization will not be attributed to the local chapter if the local chapter ''is separately incorporated and has a distinct local presence and mission.'' Determining attribution is relevant because § 73.860(a) of our rules generally prohibits LPFM licensees from holding attributable interests in other broadcast stations. LTR believes these two provisions, together, will prevent an unincorporated local chapter of a larger organization from owning an LPFM

station if the larger parent organization has other broadcast interests. LTR argues this result is inconsistent with *Montmorenci United Methodist Church* and urges the Commission to amend its rules to conform to *Montmorenci.*

5. Prometheus opposes LTR's request, noting that the LTR Petition is not appropriate because the Commission did not amend § 73.858(b) in the *Sixth R&O.* Moreover, Prometheus argues *Montmorenci* does not conflict with § 73.858(b) because that case involved a national organization and local chapter that were both *unincorporated,* and thus posed an attribution issue outside the scope of the rule.

6. We deny LTR's request to amend § 73.858(b). The *Fourth FNPRM* did not seek comment regarding changes to § 73.858(b). Thus, LTR's proposed amendment is beyond the scope of matters that can be addressed on reconsideration of the *Sixth R&O.* Moreover, on August 23, 2013, the Commission released a Memorandum Opinion and Order that, *inter alia,* concluded that the Bureau's grant of the Montmorenci United Methodist Church application was inconsistent with the language of § 73.858(b) of our rules and accordingly rescinded that grant, an action that eliminates any arguable inconsistency between this precedent and the Rule.

7. In addition, LTR, Michael Couzens and Alan Korn (collectively ''C/K'') seek to expand the ''new entrant'' comparative criterion. LTR argues our current rules are inconsistent because the broadcast interests of a national organization are attributable for purposes of awarding a point under the new entrant selection criterion, but not attributable in certain cases for satisfying the cross-ownership eligibility restrictions set forth at § 73.860. LTR contends that local LPFM applicants that have separate and local purposes distinguishable from the larger organization also should qualify for a new entrant point. Similarly, C/K argue that a student-run station that is part of a larger multi-campus system should also qualify for a new entrant point if the applicant can show it is functionally independent of the larger entity in its day-to-day decision making.

8. A number of parties oppose awarding the new entrant point to local chapters of national organizations. They contend that the new entrant point appropriately reflects the Commission's intent to increase ownership diversity. We agree. The new entrant comparative criterion and the exceptions to the general prohibition on cross-ownership, as set forth at § 73.860(b)-(d), serve different purposes. As discussed in the *Sixth R&O,* the new entrant point for LPFM applicants was adopted to encourage genuinely new entrants to broadcasting and to foster a more diverse range of community voices. In contrast, the cross-ownership exceptions reasonably expand community radio licensing opportunities for a narrow group of applicant entities consistent with the LPFM service's core localism goal. We reject the view that there is any ''inconsistency'' between these different comparative and eligibility rules. Neither LTR nor C/K provides any new information or arguments to justify reconsideration.

9. C/K also seek clarification that the acquisition of a permissible attributable interest during the pendency of an LPFM application would result in the loss of the new entrant credit and would constitute a reportable event. Our rules require applicants to continuously maintain the ''accuracy and completeness of information furnished in a pending application.'' Previously, in the NCE context, this included all changes that negatively affected the applicant's claimed points. We believe this same policy should apply to LPFM applicants. Thus, we clarify that an LPFM applicant may lose claimed points, such as the new entrant credit, as a result of changes made after the application filing. In addition, changes affecting an LPFM applicant could render the applicant ineligible for the proposed LPFM authorization.

10. Additionally, C/K seek clarification that local organizations must not only certify their pre-existing local status pursuant to § 73.872(b), but must also provide corroborative documentation of pre-existing local status. No clarification is necessary. Our revised Form 318 states: ''Nonprofit educations organizations claiming a point for [established community presence] must submit evidence of their qualifications as an exhibit to their application forms.''

11. Further, C/K seek clarification that applicants that merge and aggregate their points to prevail over other mutually exclusive applicants will be placed on public notice as the tentative selectee, allowing interested parties an opportunity to file petitions to deny. Again, no clarification is necessary. Section 73.870(d) of the Commission's rules already requires the Commission to ''issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at § 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584.''

B. ''Secondary'' Grantees

12. C/K also argue that, once the Commission has awarded a construction permit to a tentative selectee in a mutually exclusive group, ''to yield as many authorizations as possible,'' the Commission should review the other applicants in the mutually exclusive group for ''secondary'' grantees. No other party commented on this proposal. We do not believe awarding additional construction permits in this manner is appropriate. Our current policies already provide LPFM applicants numerous opportunities in the settlement process to resolve mutual exclusivities. As noted in the *Sixth R&O,* the Commission will continue to accept both partial and global technical settlements in the upcoming LPFM window. We will also permit mutually exclusive applicants to move to any available channel during the period specified by § 73.872(e). We believe these procedures provide substantial flexibility to applicants to resolve conflicts and obtain multiple grants from mutually exclusive groups.

13. Further, in the NCE context, the Commission noted that although it might be beneficial to select more than one applicant in a mutually exclusive application group, doing so could potentially result in the selection of an inferior applicant as a secondary selectee. The Commission determined that the better approach would be to dismiss all non-selected applicants in a group, and permit them to file again in the next filing window, even if a particular application is not mutually exclusive with the primary selectee of the group. We believe the same reasoning and process apply in this context.

C. Protection of FM Translator and FM Booster Station Input Signals

14. Section 6 of the LCRA requires the Commission to ''modify its rules to address the potential for predicted interference to FM translator input signals'' based on independently conducted experimental measurements. This section is intended to protect the off-air input signal of an FM translator station. To implement this requirement, the Commission amended § 73.827 to prohibit the location of an LPFM station at certain locations—within the ''potential interference area''—near an FM translator station that receives an off-air input signal on a third-adjacent channel to such LPFM station. This protection requirement applies to input signals from both ''full-service FM

stations and FM translator stations.'' However, § 73.827(a) exempts an LPFM applicant from these siting restrictions if the applicant can demonstrate that no actual interference will occur. Moreover, to assist LPFM applicants in complying with the revised rule, the Commission strongly recommended that FM translator licensees update the information concerning their input signals if they have changed that information since their last such notification.

1. Protection of FM Translators That Use Other FM Translators for Input Signals

15. Prometheus contends that there is a discrepancy between revised rule § 73.827(a) and the associated discussion in the *Sixth R&O.* As noted above, the latter concluded ''that LPFM applicants must protect the reception directly, off-air of third-adjacent channel input signals from any station, including full-service FM stations and FM translator stations.'' In contrast, § 73.827(a) protects the input signal only when ''the LPFM application proposes to operate on a third-adjacent channel *to the primary station.''* The National Translator Association (''NTA''), Educational Media Foundation (''EMF''), and National Public Radio, Inc. (''NPR'') all agree with Prometheus's observation that the rule appears to inadvertently exclude input signals from FM translators.

16. We agree that the text of § 73.827(a) does not fully and accurately reflect the Commission's conclusion that section 6 requires the protection of all signals being delivered off-air on third adjacent channels. We therefore revise the first sentence of the rule to read (with the new language in *italics* and the deleted text in ~~strikethrough~~): ''This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its *input* ~~primary station~~ signal off-air *(either directly from the primary station or from a translator station)* and the LPFM application proposes to operate on a third-adjacent channel to the ~~primary station~~ *station delivering an input signal to the translator station.''* To maintain consistency, we will also revise the third sentence of the rule to read (with the new language in *italics* and the deleted text in ~~strikethrough~~): In addition, in cases where an LPFM station is located within +/− 30 degrees of the azimuth between the FM translator station and its ~~primary station~~ *input signal,* the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station.

2. Methodology for Determining Predicted Interference to Input Signals

17. Prometheus also seeks revision of § 73.827(a)(1)'s requirement that an LPFM applicant proposing to operate near an FM translator station demonstrate ''that no actual interference will occur due to an undesired (LPFM) to desired (primary station) ratio below 34 dB at all locations.'' Prometheus argues it is unnecessary and unreasonable to make this determination *''at all locations''* and asks the Commission to modify § 73.827(a)(1) to require only that an applicant specifying a transmitter location within the defined potential interference area establish that the signal strength ratio is below 34 dB ''at the translator receive antenna'' rather than ''at all locations.''

18. NPR argues that Prometheus improperly relies on arguments not previously presented, and therefore the Commission should dismiss this portion of Prometheus's Petition. Substantively, NPR argues that section 6 of the LCRA does not permit the Commission to accept and process an LPFM application based on a showing limited to the translator receive antenna location itself. On the other hand, NTA agrees ''with Prometheus . . . that the term 'all locations' should refer to a single point which would be the receiver's input feeding the translator.''

19. Prometheus counters that NPR misunderstands its request, which seeks clarification as to the required calculations for a good-faith demonstration when an LPFM applicant is within the ''potential interference zone.'' It also notes that ''the physical reality'' is that ''the function of an in-band translator input depends only on the signal strength at its receive antenna, and not elsewhere.'' Prometheus argues it is a great burden to comply with the ''at all locations'' requirement, which it states will not technically improve the FM translator service.

20. As an initial matter, we agree with NPR that Prometheus raises a new argument on reconsideration. However, for the reasons set forth below, we believe it is in the public interest to consider the merits of the argument. Section 6 of the LCRA requires the Commission to ''modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set forth in section 2.7 of [the Mitre Report].'' In the *Fourth FNPRM* the Commission ''propose[d], *as indicated in section 2.7 of the [Mitre] Report,* that applicants may show that the ratio of [signal strengths] is below 34 dB at all locations'' to establish lack of predicted interference. Although adopted in the *Sixth R&O,* the ''at all locations'' requirement does not accurately describe the Mitre Report methodology, which measured the effect of third-adjacent channel signals on a translator's receive antenna *''at the translator input.''* Thus, contrary to NPR's claim, applying this interference standard at only one location is fully consistent with and, in fact, more faithfully implements section 6 of the LCRA because Congress determined that the predicted interference to FM translator input signals on third-adjacent channels should be consistent with the Mitre Report, which in fact measured the effect of third-adjacent channel signals on a translator's receive antenna at the translator input. We agree with Prometheus that it is neither sensible nor necessary to require LPFM applicants to demonstrate no actual interference will occur ''at all locations'' because the only technically relevant point to measure for the purpose of ''address[ing] the potential for predicted interference to FM translator input signals on third-adjacent channels,'' is the location of the translator's receive antenna. In a case where a third-adjacent channel LPFM station is causing interference to a translator input signal *at other locations,* the LPFM station is subject, of course, to § 73.810 complaint and remediation provisions. Accordingly, we will grant reconsideration on this issue.

21. For the same reasons as set forth above, we also find that the use of the term ''primary station'' in § 73.827(a)(1) erroneously excludes input signals from other FM translators. Therefore, we substitute ''station delivering signal to translator station'' for ''primary station.'' We will revise § 73.827(a)(1) to read (with the new language in *italics* and deleted language in ~~strikethrough~~): ''. . . demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (~~primary~~ station *delivering signal to translator station*) ratio below 34 dB ~~at all locations~~ *at such translator station's receive antenna.''* We recognize that this rule may place a burden on LPFM applicants because the Commission does not require licensees to submit or maintain separate receive antenna location data. Accordingly, unless a translator licensee has specified its specific receive antenna location in CDBS, LPFM applicants specifying transmitter locations within the defined potential interference area may assume that the translator receive antenna and

its associated transmit antenna are co-located.

3. Database Records Regarding FM Translator Signal Delivery Methods and Input Signal Designations

22. To add more certainty to the LPFM application process, Prometheus requests that the Commission require translator licensees to update their records with the Commission regarding their input signal data and that it take further measures to improve the accuracy of that data available to applicants prior to the opening of the LPFM window. Prometheus states it has conducted a review of the Commission's CDBS records regarding translator input signals and has found that they contain contradictory, incomplete, or missing data. In cases where the data may be inaccurate, missing or disputed, Prometheus seeks guidance on submitting a sufficient ''no interference'' showing.

23. NPR opposes Prometheus's request to require all translator licensees to update their records with the Commission. NPR points out that the Commission previously declined this Prometheus request, choosing instead to encourage licensees to voluntarily review and update this information. On the other hand, NTA and EMF agree there should be some simple path for LPFM applicants to determine the identity of the stations delivering signals to translator stations. NTA suggests that we modify CDBS to allow translators to identify translator receiver inputs, frequency, sources and locations. EMF also contends that protection of translator input signals should apply to the input signals specified in applications and construction permits for new translators as well as operational stations. Prometheus agrees with EMF that input signals specified by prior-filed translator applications should be protected by later-filed LPFM applications.

24. Our CDBS database collects all of the information specified by NTA, with the exception of the receive antenna location (*i.e.,* input signal, frequency, source, and location). As indicated in the *Sixth R&O,* we assume the receive antenna and the transmit antenna are normally co-located, thus identifying the location of transmit antennas in CDBS will suffice in identifying the receive antenna. No one has disputed the validity of this assumption and therefore we reject NTA's proposal to expand information burden collections (by requiring the fling of thousands of notifications identifying the locations of receive antennas) on translator licensees and applicants. With respect to the accuracy of the CDBS data, CDBS is a database that compiles information received by the Commission from thousands of licensees and applicants. As a result, at any given time there is some conflicting and missing translator data in CDBS, mainly data concerning translator input delivery methods. We remind translator licensees that ''[c]hanges in the primary FM station being retransmitted must be submitted to the FCC in writing,'' and that timely notification is required to qualify for the protections provided by § 73.827 with regard to LPFM applications filed in the upcoming window. We also continue to encourage FM translator licensees to review and update the Commission as to their operations, as necessary, so that staff may revise CDBS accordingly. In cases where LPFM applicants are unable to obtain data regarding signal delivery method, they should assume for evidentiary and exhibit purposes that the signal delivery method is off-air. We also direct the Media Bureau to issue a public notice providing guidance to potential LPFM applicants by identifying the various CDBS data fields that may contain relevant information.

4. Limitation on Input Signal Protection Obligations by LPFM Applicants

25. Section 73.827(b) currently provides, ''[a]n authorized LPFM station will not be permitted to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.'' Prometheus seeks revision of this rule to require that an input signal be in use ''prior to the release of the public notice announcing an LPFM application window period,'' rather than ''at the time the LPFM station is authorized.'' Prometheus also seeks clarification that the term ''in use'' in § 73.827(b) means ''in use as the input to that translator.''

26. NPR states that this attempted reconsideration of § 73.827(b) should be dismissed because Prometheus did not offer any arguments previously as to why the Commission should so limit its proposed protection of FM translator input signals. NPR also argues that section 6 of the LCRA requires the Commission to address the potential for predicted interference to an FM translator station's input signal, without limitations based on filing dates.

27. In response to Prometheus's request, NTA suggests revision of § 73.827(b) to allow FM translator licensees to change input sources as needed, at any time, and allow affected LPFM applicants to file, where necessary, displacement modification applications. Further, while NTA suggests that the Media Bureau protect changes to signal inputs up to the point the Bureau establishes a translator application filing freeze prior to the LPFM filing window, NTA also appears to acknowledge that LPFM window applicants will not be required to protect translator input signal changes made after the window. Prometheus agrees that while translators ''may change their input signals as needed, these newly changed signals cannot be considered primary to previously filed LPFM applications . . . [which] would violate the co-equal status of LPFM stations and translators.''

28. As an initial matter, while NPR is correct that Prometheus could have raised this issue earlier, for the reason discussed below, we believe it is in the public interest to consider the merits of the argument. Under the Commission's ''cut-off'' rules as between LPFM and FM translator filings, a prior-filed application in one service generally ''cuts off'' a subsequently-filed application in the other service. However, § 73.807(c) provides a different cut-off rule with regard to LPFM window filings. Only FM translator authorizations and applications filed prior to the release of the public notice announcing the LPFM window are cut-off from window-filed applications. This requirement provides stability and certainty to LPFM applicants regarding the LPFM applicants' protection responsibilities when they are searching for available frequencies. To ensure continued stability and certainty, we will apply this same policy to input signals. Moreover, we find that this cut-off rule is the best way to give effect to the LCRA section 5 requirement that the two services remain ''equal in status.'' Thus, an application for an LPFM station must protect an input signal that is in use or proposed in an application filed with the Commission prior to the release of the public notice announcing the dates for the LPFM filing window. Contrary to NPR's assertion, this policy is consistent with the plain language of section 6 of the LCRA's requirement that the Commission address the potential for predicted interference to FM translator input signals; section 6 does not restrict the Commission's authority to establish cut-off rights for both LPFM and FM translator stations regarding translator input signals.

29. We also provide the following clarifications with regard to § 73.827(b). We agree with Prometheus that the phrase ''in use'' limits the applicability

of the rule to the particular input signal that was in use as the input signal to the protected FM translator station as of the release date of the LPFM window public notice. Second, as noted by Prometheus, the text of the rule refers initially to ''an FM translator or FM booster'' but later only to ''the FM booster.'' We agree that the rule should list both types of stations and that the rule should be amended accordingly. For these reasons, we will revise § 73.827(b) to read (with the new language in *italics* and deleted language in ~~strikethrough~~): ''An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the *FM translator or* FM booster station's input signal, provided that the same input signal was in use *or proposed in an application filed with the Commission* ~~at the time the LPFM station was authorized~~ *prior to the release of the Public Notice announcing the dates for an LPFM application filing window and has been continuously in use or proposed since that time.*''

30. We will not adopt NTA's suggestion to extend protection requirements to input signal changes made and applications filed on or after June 17, 2013, the date of the release of the public notice announcing the LPFM window, and prior to the LPFM window. Translator licensees may change their input signals as needed during this period. However, pursuant to section 5(c) of the LCRA's mandate for co-equal status, these changes will cease to receive cut-off protection as of the release of the LPFM window Public Notice.

D. Protection Requirements Toward Certain Short-Spaced LPFM Stations

31. Among other things, the *Sixth R&O* implemented section 3(b)(2)(A) of the LCRA, which permits LPFM stations to request waiver of the second-adjacent channel distance separation requirements with respect to any authorized radio service. The Commission may grant a waiver if a waiver applicant demonstrates that its proposed operations ''will not result in interference to any authorized radio service.'' One method in which waiver applicants can propose to eliminate interference is through the use of directional antennas. The *Sixth R&O* made clear the protection obligations of subsequently filed FM translator applications toward LPFM stations using directional antennas to ensure interference-free operations. Specifically, the Commission decided ''[t]o simplify matters and provide clear guidance to FM translator applicants [by requiring] FM translator modification applications and applications for new FM translators to treat . . . LPFM stations [operating with directional antennas] as operating with non-directional antennas at their authorized power.''

32. Prometheus Radio Project (''Prometheus'') seeks clarification as to whether translator applicants' obligations to protect LPFM stations using directional antennas will also apply to future LPFM new station and modification applications. Specifically, Prometheus seeks clarification as to whether future LPFM applications or modifications will have to also treat LPFM stations using directional antennas as operating with non-directional antennas at their authorized power. NTA suggests the Commission treat both FM translators and LPFM stations based on their actual operating (as opposed to their authorized) power and antenna patterns. We expect minimal use of directional antennas and therefore decline to adopt this more complex licensing standard. As noted in the *Sixth R&O,* the second-adjacent channel interfering contour for LPFM stations will generally encompass only the area in the immediate vicinity of an LPFM station's transmitter site. Thus, directional antennas will have little value in limiting or eliminating the area where interference would be predicted to occur. For consistency and simplicity, we believe that it is appropriate that both FM translator and LPFM applicants should treat LPFM stations that are using directional antennas as operating non-directionally at their authorized power.

E. Periodic Announcements by Section 7(1) and Section 7(3) LPFM Stations

33. In the *Sixth R&O* the Commission also addressed ambiguous language in section 7 of the LCRA and determined that Section 7 creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be short-spaced under the third-adjacent channel spacing requirements in place when the LCRA was enacted (''Section 7(1) Stations'') and one for LPFM stations that would be fully spaced under those requirements (''Section 7(3) Stations''). Thereafter, the Commission determined that the LCRA required *Section 7(3) Stations,* but not *Section 7(1) Stations,* to broadcast periodic announcements that alert listeners to the potential for interference and codified this requirement in § 73.810(b)(2) of our rules.

34. REC Networks (''REC'') argues Congress did not intend to create two separate regimes for periodic announcements. However, it then maintains that the periodic announcement requirement should apply ''*only* . . . to LPFM stations that do not meet the minimum spacing requirements to third-adjacent channel FM stations.'' In other words, contrary to its own interpretation that the LCRA established one regime for all third adjacent channel LPFM stations, REC would require periodic announcements for *Section 7(1) Stations* and eliminate the requirement for *Section 7(3) Stations.* REC, which made a similar argument previously, relies on prior legislative versions of the LCRA to support its interpretation. We reject this argument as internally inconsistent.

35. We also reject REC's interpretation for the reasons set forth in the *Sixth R&O.* The Commission is required to implement and interpret the legislation as enacted, which REC acknowledges included the addition of section 7(1). In section 7(2), Congress required that for a period of one year after ''a new low-power FM station is constructed on a third adjacent channel, such low-power FM station shall be required to broadcast periodic announcements . . . .'' In section 7(1), in contrast, Congress applied a specific interference protection regime to ''those low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements'' under the applicable Commission rule. We recognize that the broad phrasing in section 7(3) is ambiguous, since it could be read to apply to all LPFM stations, not just those that are short-spaced. The Commission concluded based on its analysis of the text, structure, and purpose of the statute that it is more reasonable to construe the statute as reflecting two different LPFM interference protection and remediation regimes for short-spaced and non-short spaced third adjacent channel stations and to apply section 7(2) only to the latter group of stations. As the Commission stated previously, if Congress had wished to apply the periodic announcements requirement to *Section 7(1) Stations,* it could have done so explicitly in the LCRA. Instead, Congress expressly required the wholesale adoption of the well-established, comprehensive and strict § 74.1203 FM translator non-interference regime for *Section 7(1) Stations.* That regime does not include periodic announcements. As NPR notes in its Comments, REC presented similar arguments, which the Commission

rejected in the *Sixth R&O.* REC presents no new arguments or evidence in its Petition that would lead us to change that conclusion. Accordingly, we deny the REC Petition.

36. We note that REC attempts to provide further evidence that the Commission misinterpreted Section 7 of the LCRA by arguing that an LPFM's periodic announcement requirement under § 73.810(b)(2) includes no geographic limitation as to what could be a ''potentially affected'' station. Our rule regarding periodic announcements requires LPFM stations to alert listeners of a potentially affected third-adjacent channel station of the potential for interference. Specifically, ''[f]or a period of one year from the date of licensing of a new LPFM station that is constructed on a third-adjacent channel . . . such LPFM station shall broadcast periodic announcements. The announcements shall, at minimum, alert listeners of the potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station.'' However, neither the LCRA nor the *Sixth R&O* address which stations would be considered the ''potentially affected'' stations that the LPFM station must include in its periodic announcements. Consequently, according to REC, the ''periodic announcement could include hundreds if not thousands of potential interfering stations.''

37. As discussed above, the LCRA requires periodic announcements for *Section 7(3) Stations,* and not for Section 7(1) Stations. We believe it will be useful to provide some guidance to help these stations broadcast periodic announcements as directed by the LCRA. Accordingly, for purposes of § 73.810(b)(2), we will consider ''potentially affected'' stations to be the two fully spaced third-adjacent channel stations operating above and below the frequency of the LPFM station whose transmitter sites are closest to that of the LPFM station, unless any such third adjacent channel station's transmitter site is more than 100 km from the LPFM station transmitter site. We believe that this standard reasonably defines the universe of ''potentially affected'' stations for listeners within a fully-spaced LPFM station's service contour, while also being relatively easy to administer. Unlike short-spaced stations, which are subject to the more stringent Section 7(1) requirements, the potential for interference from fully-spaced LPFM stations is unlikely and when it does occur it will be both localized and limited. In this regard, the Commission has consistently held that third-adjacent channel interference is restricted to the immediate vicinity of the LPFM transmitter site. This standard is reasonably designed to identify in a simple and straight forward manner those third-adjacent channel stations that are most likely to have listeners near to the LPFM transmitter site.

F. Elimination of LP10 Class of Service

38. The *Sixth R&O* eliminated the LP10 class of service after determining licensing LP10 stations would be an inefficient utilization of spectrum. The Commission noted that LP10 stations could only offer more limited service and would be more susceptible to interference than LP100 stations. Given the increasingly crowded nature of the FM band, the Commission found it appropriate to take this into account. The Commission was also concerned that the coverage area of LP10 stations would be too small for the stations to be economically viable. Faced with the loss of the LP10 class, some commenters proposed the creation of an LP50 class, which would allow licensees to transmit at any Effective Radiated Power (''ERP'') from 1 to 50 Watts. The Commission declined to create an LP50 class, noting that the *Fourth FNPRM* only sought comment on whether to eliminate the LP10 class, retain the LP100 class, and/or introduce a new LP250 class. Accordingly, the Commission determined that a decision to introduce a new LP50 class could not have been reasonably anticipated by all interested parties, and thus, was outside the scope of this proceeding.

39. Let the Cities In!! (''LTCI''), along with a number of other parties, seeks reconsideration of the decision to eliminate the LP10 class of service and the decision not to allow another lower class of LPFM service, such as an LP50 class of service. In LTCI's view, in order to maximize the number of new LPFM facilities, the Commission should authorize stations operating at less than 50 Watts in ''urban core'' areas, those in the top 100 Arbitron Markets. NPR states LTCI's Petition should be denied because LTCI relies on the same arguments that the Commission found insufficient to retain the LP10 class of service, while National Association of Broadcasters similarly argues the Commission has addressed and disposed of LTCI's concerns previously.

40. Specifically, LTCI argues that elimination of the LP10 class violates the Administrative Procedure Act (''APA'') because the Commission offered no explanation as to why it proposed to eliminate that service. This claim is without legal basis. Section 553(b) and (c) of the APA require the Commission to give public notice of a proposed rulemaking that includes ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' and to give interested parties an opportunity to submit comments on the proposal. Notice is sufficient where the description of the subjects and issues involved affords interested parties a reasonable opportunity to participate in the proceeding. The *Fourth FNPRM* clearly and explicitly sought ''comment on whether to eliminate the LP10 class of service.'' In response, numerous parties provided comments for and against retaining the LP10 class. It is evident that all interested parties had an opportunity to submit comments on the proposal to eliminate the LP10 class of service and that APA requirements have been satisfied.

41. Substantively, LTCI maintains the Commission's technical and financial concerns do not justify the elimination of the LP10 service, which it believes could provide community radio service in ''urban core'' areas in which spectrum is very limited. LTCI argues the Commission erred in finding LP10 stations would not be an efficient use of spectrum. LTCI argues LP10 stations ''can be 'dense packed' on the same channel in a neighborhood'' to increase efficiency and the use of directional antennas can also increase the efficiency of an LP10 service class. LTCI also argues an LP10 service is technically viable since the Commission licenses 10 Watt translator stations. LTCI further argues the Commission ''has grossly overestimated the level of fund raising needed to sustain an LP10 station financially.'' Essentially, it appears LTCI believes the Commission's decision to eliminate the LP10 service is arbitrary and capricious.

42. Even though, due to spectrum congestion, some areas may present limited or no opportunities for an LP100 service, the elimination of the LP10 service is reasonable and supported by the record. The Commission must balance the various statutory objectives of the LCRA, and based on its expertise as well as the record in response to its proposed elimination of the LP10 service, the Commission reasonably concluded that LP10 stations would be an inefficient use of available spectrum.

43. First, the record supports the Commission's conclusion that the LP10 service would be susceptible to interference. In addition to the crowded nature of the FM band, other external forces can also affect the viability of the LP10 signal, such as natural and man-

made structures that lie between the transmitter and the receiver. These obstructions can affect a signal in various ways such as by attenuating the signal so that the actual signal received is weaker than that predicted in the absence of any such obstructions or by creating multipath interference, which occurs when a signal bounces off structures and the out-of-phase main and reflected signals arrive at the receiver. All of these challenges are particularly significant for the mobile receivers that account for most radio listening. Indeed, as discussed in the *Sixth R&O,* the Commission previously discontinued a class of service because of interference concerns: a similar concern regarding the crowded nature of the FM band led the Commission to cease accepting applications for Class D FM stations and require Class D FM stations to either upgrade to Class A facilities or migrate from the reserved to the non-reserved portion of the FM band or to Channel 200, where they would be considered secondary operations.

44. Additionally, for the reasons stated above, we reject LTCI's claim that the use of directional antennas will increase the efficiency of the LP10 service. Moreover, LTCI's argument about ''dense packed'' co-channel LPFMs in a neighborhood, where ''[e]ach receiver's 'capture effect' selects the strongest station for each listener,'' appears to involve a new model of licensing that would require rule changes that are beyond the scope of this proceeding.

45. We also find unpersuasive LTCI's argument that LP10 service should be allowed based on its alleged similarities to 10 Watt translator service. Translator stations generally do not originate programming and do not require a staff to operate. In contrast, LPFM stations are authorized to originate programming and require staff to operate and maintain. Moreover, a 10 Watt translator can place a 60 dBu strength signal 12 to 15 kilometers from its transmitter site, while the same signal might extend only 3 kilometers from an LP10 station's transmitter site because maximum power and height restrictions in the LP10 service (10 Watts at 30 meters HAAT) substantially restrict an LP10 station's coverage area. In contrast, certain 10 Watt FM translators can operate with no antenna height restrictions. We continue to maintain that these differences—the limited coverage area, the technical and environmental challenges, and the resources required to maintain an LPFM station—render an LP10 service difficult to sustain economically.

46. The record also supports our conclusion that an LP10 service would be difficult to sustain economically. The Commission noted that a recent study found even higher-powered LP100 stations have small service areas and are constrained in ''their ability to gain listeners'' and ''appeal to potential underwriters.'' LTCI's vague anecdotal claims about LP10 viability fail to undercut this study, which was mandated by Congress and represents the most comprehensive economic analysis of LPFM operations that exists.

47. Accordingly, in light of the significant record and the Commission's experience on the issue, as well as LTCI's failure to rebut the record submissions relied upon by the Commission, we find no merit to LTCI's claims that the Commission's concerns regarding efficiency and financial stability are insufficient to justify the elimination of the LP10 service.

48. LTCI also disagrees with the Commission's decision not to create an LP50 service. The Commission concluded that introducing a new LP50 class was not a logical outgrowth of this proceeding because it could not have been reasonably anticipated by interested parties. LTCI fails to address this notice issue, which we find bars substantive consideration of the possible LP50 class of service at this time.

49. LTCI also argues that allowing only an LP100 class of service violates section 5 of the LCRA's mandate that the Commission make available both LPFM stations and translators based on the needs of the community, because the decision not to license stations at LP50 or below will leave urban areas unserved or underserved. In the *Fourth Report and Order,* the Commission determined that sections 5(1) and (2) of the LCRA required both LPFM and translator licenses be available in as many local communities as possible, according to their needs. The Commission concluded the primary focus under section 5 was to ensure that translator licensing procedures did not foreclose or unduly limit future LPFM licensing. The Commission undertook exhaustive technical analyses to determine the availability of LPFM licensing opportunities in over 150 markets and adopted strict translator processing and dismissal standards to preserve identified LPFM licensing opportunities in these markets, including ''urban core'' areas. In doing so, as discussed above, after careful consideration of the record and based on its experience, the Commission determined that an LP10 or LP50 class of service is neither a practical or efficient use of the spectrum nor economically sustainable.

50. Finally, LTCI argues the Commission's decision violates the Equal Protection component of the Fifth Amendment to the United States Constitution because the failure to allow an LP10 or LP50 class of service disproportionally impacts racial and ethnic minorities. LTCI's general, unsupported allegations are not sufficient to establish an equal protection violation.

51. We also note the LPFM service grew out of the Commission's commitment to promote diversity on the radio airwaves. The Commission stated its ''goal in creating a new LPFM service [was] to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.'' The Commission also ''made clear that we will not compromise the integrity of the FM spectrum.'' As discussed above, we believe an LP10 service would not only be an inefficient use of the spectrum, but would also not be financially viable. We do not believe that such a precarious class of radio service would fulfill our commitment to add diversity to the airwaves.

52. For the reasons discussed above, we deny LTCI's Petition to implement a class of service for LPFM facilities operating at less than 50 Watts in ''urban core'' markets.

III. Procedural matters

A. Regulatory Flexibility Act

53. The Regulatory Flexibility Act of 1980, as amended (''RFA'') requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

54. *Final Regulatory Flexibility Certification.* As required by the RFA, as amended, the Commission has prepared this Final Regulatory Flexibility Certification of the possible impact on small entities of the *Sixth OOR.* In this proceeding, the Commission's goal

remains to implement the LCRA and to promote a more sustainable community radio service. The Commission addresses five petitions for reconsideration of the *Sixth R&O,* which adopted numerous measures to complete implementation of the LCRA, service and licensing rules to promote core localism and diversity goals, and technical rules to ensure the efficient use of the radio broadcast spectrum.

55. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated into the *Sixth R&O.* The instant *Sixth OOR* makes minor revisions to the rule which protects the input signals of FM translator and FM booster stations from interference by LPFM stations. The *Sixth OOR* makes non-substantive changes to the Commission's rules by: (1) revising the language in § 73.827(a) to accurately reflect the Commission's conclusion that the LCRA requires protection from interference of all input signals being delivered off-air on third adjacent channels; and (2) revising the language in § 73.827(b) to accurately reflect the applicability of the rule to both FM translator and FM booster stations and to reflect that the input signal must be in use prior to the public notice announcing the LPFM window and the input signal has been continuously in use. These rule changes are only for the purpose of clarification and meaning, and therefore, do not create any new rules that by regulating small entities, impose any burdens or costs of compliance on such entities.

56. Additionally, we revise the language in § 73.827(a)(1) to require demonstration of no interference at one location instead of showing no interference at multiple locations, which is consistent with the requirements of the Local Community Radio Act of 2010 and a showing at multiple locations would be irrelevant for determining potential interference. For a number of reasons, there will be no significant economic impact, if any, on a substantial number of small entities as a result of this change. First, § 73.827(a)(1) continues to apply only in cases where an LPFM applicant proposes to operate near the input signal of an FM translator station. Second, although the rule generally does not allow an LPFM station to operate near the input signal of the FM translator station, the LPFM applicant will be allowed to operate the LPFM station if it is able to comply with any one of the three provisions in § 73.827(a)(1)–(a)(3). Therefore, § 73.827(a)(1) continues to be one of three methods by which an LPFM applicant can demonstrate that it should be allowed to operate near the input signal. Finally, the change to § 73.827(a)(1) will reduce the burden and costs of the information being collected by the LPFM applicant because the modified methodology simplifies § 73.827(a)(1) ''no interference'' showing to the calculation of a single signal strength ratio at a defined location and by eliminating the requirement to make the calculation at locations which would be irrelevant for determining potential interference. Furthermore, the change does not harm the LPFM applicant's competitive ability or raise costs for the applicant in any way. Also, there is no additional cost to implement the rule; no additional record keeping requirements; and no disincentive to the LPFM applicant or station to seek or invest capital. This change also will have no impact on translator licensees. For example, the rule change does not harm the translator licensee's competitive ability or reduce its revenues or raise costs in any way. Plus, there is no cost to the translator licensee to implement the rule; no additional record keeping requirements; and no disincentive to the translator licensee to seek or invest capital for its translator.

57. Therefore, we certify that the requirements of the *Sixth OOR* will not have a significant economic impact on a substantial number of small entities.

58. The Commission will send a copy of the *Sixth OOR,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Sixth OOR* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

B. Paperwork Reduction Act

59. The *Sixth OOR* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. The information collection requirements were approved under OMB control number 3060–0920. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

IV. Ordering Clauses

60. Accordingly, *it is ordered,* pursuant to the authority contained in the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011) and the authority contained in sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, that the *Sixth OOR is adopted,* effective 30 days after date of publication in the **Federal Register**.

61. *It is ordered* that, pursuant to the authority contained in contained the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011) and the authority contained in in sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, the Commission's rules *are hereby amended.*

62. *It is further ordered* that the Petition for Partial Reconsideration, filed by REC Networks; the Petition for Reconsideration of Fifth Order on Reconsideration and Sixth R&O, filed by Michael Couzens and Alan Korn; the Petition for Reconsideration of Fifth Order on Reconsideration and Sixth R&O, filed by LifeTalk Radio, Inc.; and the Petition for Reconsideration, filed by Let the Cities In!! *Are denied. It is further ordered* that the Petition for Reconsideration, filed by Prometheus Radio Project, *is granted in part and denied in part,* to the extent discussed herein.

63. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Sixth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio broadcast services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Amend § 73.827 by revising the second and fourth sentence of paragraph (a) introductory text, paragraph (a)(1), and paragraph (b) to read as follows:

§ 73.827 Interference to the input signals of FM translator or FM booster stations.

(a) * * * This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its input signal off-air (either directly from the primary station or from a translator station) and the LPFM application proposes to operate on a third-adjacent channel to the station delivering an input signal to the translator station. * * * In addition, in cases where an LPFM station is located within +/− 30 degrees of the azimuth between the FM translator station and its input signal, the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station.

(1) Demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (station delivering signal to translator station) ratio below 34 dB at such translator station's receive antenna.

* * * * *

(b) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM translator or FM booster station's input signal, provided that the same input signal was in use or proposed in an application filed with the Commission prior to the release of the public notice announcing the dates for an LPFM application filing window and has been continuously in use or proposed since that time.

* * * * *

[FR Doc. 2013–27004 Filed 11–8–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 218
Tuesday, November 12, 2013

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

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket No. EERE–2013–BT–NOC–0039]

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting and further solicitation of members for the Commercial and Industrial Pumps Working Group.

SUMMARY: This notice announces an open meeting of the Commercial and Industrial Pumps Working Group (Pumps Working Group). The purpose of the Pumps Working Group is to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of commercial and industrial pumps, as authorized by the Energy Policy and Conservation Act of 1975, as amended.

DATES: A two-day, open meeting will be held on:

Wednesday, December 18, 2013; 10 a.m.–6 p.m. (EST) and

Thursday, December 19, 2013; 8 a.m.–3 p.m. (EST).

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Wednesday, December 18 will be in Room GH–019 and Thursday, December 19 will be in 8E–089. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register for Wednesday at *https://www1.gotomeeting.com/register/835923289* and for Thursday at *https://www1.gotomeeting.com/register/379301784.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, Supervisory Operations Research Analyst, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Established Membership
II. Purpose of Meeting
III. Public Participation

I. Established Membership

The members of the Pumps Working Group were chosen from nominations submitted in response to the Department of Energy's call for nominations published in the **Federal Register** on Tuesday, July 23, 2013 (78 FR 44036). The selections are designed to ensure a broad and balanced array of stakeholder interests and expertise on the negotiating working group for the purpose of developing a rule that is legally and economically justified, technically sound, fair to all parties, and in the public interest. All meetings are open to all stakeholders and the public, and participation by all is welcome within boundaries as required by the orderly conduct of business. The members of the Certification Group are as follows:

DOE and ASRAC Representatives

- Lucas Adin (U.S. Department of Energy)
- Tom Eckman (Northwest Power and Conservation Council)

Other Selected Members

- Robert Barbour (TACO, Inc.)
- Charles Cappellino (ITT Industrial Process)
- Greg Case (Pump Design, Development and Diagnostics)
- Gary Fernstrom (California IOUs)
- Mark Handzel (Xylem Corporation)
- Albert Huber (Patterson Pump Company)
- Joanna Mauer (Appliance Standards Awareness Project)
- Charles Powers (Flowserve Corp., Industrial Pumps)
- Howard Richardson (Regal Beloit)
- Steve Rosenstock (Edison Electric Institute)
- Louis Starr (Northwest Energy Efficiency Alliance)
- Greg Towsley (Grundfos USA)
- Meg Waltner (Natural Resources Defense Council)
- Gary Witt (Pentair Water Systems)

II. Purpose of Meeting

The Pumps Working Group is expected to provide advice and recommendations to the U.S. Department of Energy, through the Appliance Standards and Rulemaking Federal Advisory Committee, on a proposed rule for the energy efficiency of commercial and industrial pumps, as authorized by Part A–1, ''Certain Industrial Equipment,'' of Title III of the Energy Policy and Conservation Act (EPCA), as amended.

Tentative Agenda: (Subject to Change)

- Overview of Working Group's Task
- Discussion and formation of a work plan for the Commercial and Industrial Pumps Working Group to accomplish its objectives
- Preliminary discussion of product definition and scope of coverage.

III. Public Participation

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise ASRAC staff as soon as possible by emailing *asrac@ee.doe.gov* to initiate the necessary procedures, no later than Friday, November 22, 2013. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The co-chairs of the Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written

comments. ASRAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be emailed to *asrac@ee.doe.gov.*

Minutes: All notices, public comments, public meeting transcripts, and supporting documents associated with this working group are included in Docket No. EERE–2013–BT–NOC–0039.

Issued in Washington, DC on November 1, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–27034 Filed 11–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 25

[Docket No. FAA–2013–0902; Notice No. 25–13–25–SC]

Special Conditions: Airbus, Model A350–900 series Airplane; Pitch and Roll Limiting by Electronic Flight Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A350–900 series airplanes. This airplane will have a novel or unusual design feature(s) associated with the Electronic Flight Control System that limits pitch and roll attitude functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by December 27, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0902 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251. Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these proposed special conditions based on the comments we receive.

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 series airplane. Later, Airbus requested and the FAA approved an extension to the application for FAA type certification to June 28, 2009, The Model A350–900 series has a conventional layout with twin wing-mounted Rolls-Royce Trent engines. It features a twin aisle 9-abreast economy class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 series configuration will accommodate 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a Maximum Take-Off Weight of 602,000 lbs. Airbus proposes the Model A350–900 series to be certified for extended operations (ETOPS) beyond 180 minutes at entry into service for up to a 420-minute maximum diversion time.

A special condition to supplement § 25.143 concerning pitch and roll limits was developed for the Airbus A320, A330, A340, and A380 Models wherein performance of the limiting functions was monitored throughout the flight test program. The FAA expects similar monitoring to take place during the A350 flight test program in order to substantiate the pitch and roll attitude limiting functions and the appropriateness of the chosen limits.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–128.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 series because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the proposed special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and proposed special conditions, the Model A350–900 series must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 series will incorporate the following novel or unusual design features: an Electronic Flight Control system (EFCS), that when operating in its normal mode, will prevent airplane pitch attitudes greater than +30 degrees and less than –15 degrees, and roll angles greater than plus or minus 67 degrees. In addition, positive spiral stability is introduced for roll angles greater than 33 degrees at speeds below V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron control force is limited to only 45 degrees maximum bank angle.

Discussion

It is expected that high thrust-to-weight ratios will provide the most critical cases for the positive pitch limit. A margin in pitch control must be available to enable speed control in maneuvers such as climb after takeoff, and balked landing climb. The pitch limit must not impede likely maneuvering made necessary by collision avoidance efforts. A negative pitch limit must similarly not interfere with collision avoidance capability or with attaining and maintaining speeds near V_{MO}/M_{MO} for emergency descent.

Spiral stability, which is introduced above 33 degrees roll angle, and the roll limit must not restrict attaining roll angles up to 66 degrees (approximately 2.5g level turn) with flaps up and 60 degrees (approximately 2.0g level turn) with flaps down. The implementation of this spiral stability will require a steady aileron control force to maintain a constant bank angle above 33 degrees. This force must not require excessive pilot strength as stated in § 25.143(f).

Applicability

As discussed above, these proposed special conditions apply to Airbus Model A350–900 series airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes.

In addition to § 25.143, the following requirements apply:

1. The pitch limiting function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff, plus a suitable margin to allow for satisfactory speed control.

2. The pitch and roll limiting functions must not restrict or prevent attaining pitch attitudes necessary for emergency maneuvering or roll angles up to 66 degrees with flaps up, or 60 degrees with flaps down. Spiral stability, which is introduced above 33 degrees roll angle, must not require excessive pilot strength to achieve these limit roll angles. Other protections, which further limit the roll capability under certain extreme angle of attack or attitude or high speed conditions, are acceptable, as long as they allow at least 45 degrees of roll capability.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26928 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.FAA–2013–0942; Notice No. 25–13–30–SC]

Special Conditions: Bombardier Aerospace Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Autobraking System Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Aerospace Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have novel or unusual design features associated with the autobraking system for use during landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 27, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0942 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, ANM–115 Transport Airplane Directorate, Aircraft

Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1119; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is an aluminum alloy material, blended double-bubble design, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire systems with two passive/uncoupled side sticks. Avionics include five landscape primary cockpit displays. The dimensions of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometres) for both models of airplanes. Maximum operating altitude is 41,000 feet for both models of airplanes.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The C-series airplanes will incorporate the following novel or unusual design features: The C-series airplanes possess an autobrake system. This is a pilot-selectable function that allows earlier maximum braking at landing without pilot pedal input. When the autobrake system is armed before landing, it automatically commands maximum braking at main wheels touchdown. Normal procedures remain unchanged and call for manual braking after nose wheel touchdown.

Discussion

Section 25.493 addresses braked roll loads but does not contain a specific ''pitchover'' requirement addressing the loading on the nose gear, the nose gear surrounding structure, and the forward fuselage. Moreover, § 25.493 specifies airplane attitudes in accordance with figure 6 of appendix A to part 25, which are level landing attitudes. For airplanes with traditional braking systems, the current ground load requirements are considered adequate for the design of the nose gear and airframe structure. However, the C-Series airplane autobrake system, which could apply maximum braking at the main wheels with the airplane in a tail-down attitude well before the nose touches down, will cause a high nose gear sink rate and potentially higher gear and airframe loads.

Part 25 does not contain adequate requirements to address the potentially higher structural loads that could result from this type of braking system. In addition, the effects on fatigue covered by § 25.571 also need to be considered. Therefore, FAA has determined that additional airworthiness standards are needed for the certification of this unusual design feature. These special conditions propose airworthiness standards for the certification of the C-series airplanes with an autobrake system.

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

Autobraking System Loads

A landing pitchover condition must be addressed that takes into account the effect of the autobrake system. The airplane is assumed to be at the design maximum landing weight, or at the maximum weight allowed with the autobrake system on. The airplane is assumed to land in a tail-down attitude at the speeds defined by § 25.481. Following main gear contact, the airplane is assumed to rotate about the main gear wheels at the highest pitch rate generated by the autobrake system. This is considered a limit load condition from which ultimate loads must also be determined. Loads must be determined for a critical fuel and payload distribution and centers of

gravity. Nose gear loads, as well as airframe loads, must be determined. The airplane must support these loads as described in § 25.305.

In addition to the above airworthiness standards, fatigue loads must also be determined and applied in accordance to § 25.571.

Issued in Renton, Washington, on November 1, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26936 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0897; Notice No. 25–13–29–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Transient Engine Failure Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature associated with the new generation of high bypass engines and the potential loads resulting from extreme engine failure conditions.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 27, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0897 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, International Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 series airplane. Later, Airbus requested and the FAA approved an extension to the application for FAA type certification to June 28, 2009. The Model A350–900 series has a conventional layout with twin wing-mounted Rolls-Royce Trent engines. It features a twin aisle 9-abreast economy class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 series configuration will accommodate 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a Maximum Take-Off Weight of 602,000 lbs. Airbus proposes the Model A350–900 series to be certified for extended operations (ETOPS) beyond 180 minutes at entry into service for up to a 420-minute maximum diversion time.

The existing regulations are inadequate because the new, large bypass fan engines of the Model A350–900 series airplanes can cause more damage in a failure event than the previous engines. To maintain the level of safety envisioned by Title 14, Code of Federal Regulations (14 CFR) 25.61(b), more comprehensive criteria are needed for the new generation of high bypass engines. The more severe events resulting from extreme engine failure conditions would be treated as dynamic load conditions. The proposed special conditions would distinguish between the more common engine failure events and those rare events resulting from structural failures. The more common events would continue to be treated as static torque limit load conditions. The severe events would be considered ultimate loads, and include all transient loads associated with the event. An additional safety factor would be applied to the more critical airframe supporting structure.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–128.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 series airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the proposed special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and proposed special conditions, the Model A350–900

series must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model A350–900 series airplane will incorporate the following novel or unusual design features: Engines with large, bypass fans capable of producing much higher failure loads than previous engines. The Model A350–900 will therefore require additional dynamic loads analyses to assess the most severe engine failure events. The loads resulting from these conditions would be considered as ultimate loads, with an additional safety factor applied to the airframe supporting structure.

Discussion

The size, configuration, and failure modes of jet engines has changed considerably from those envisioned by Title 14 Code of Federal Regulations (14 CFR) 25.361(b) when the engine seizure requirement was first adopted. Engines have become larger and are now designed with large bypass fans capable of producing much higher failure loads. Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify special conditions for Model A350–900 series airplanes. Service history has shown that the engine failure events that tend to cause the most severe loads are fan blade failures and these events occur much less frequently than the typical ''limit'' load condition.

The regulatory authorities and industry developed a standardized requirement in the Aviation Rulemaking Advisory Committee (ARAC) forum. The technical aspects of this requirement have been agreed and have been accepted by the ARAC Loads and Dynamics Harmonization Working Group. The proposed special condition reflects the ARAC recommendation and is essentially harmonized with the corresponding EASA Certification Specifications (CS) 25. In addition, the ARAC recommendation includes corresponding advisory material that is incorporated in CS–25. This advisory material is considered an acceptable means of compliance to the proposed special conditions.

Applicability

As discussed above, these proposed special conditions apply to the Airbus Model A350–900 series airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Model A350–900 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes.

In lieu of § 25.361(b) the following special condition is proposed:

1. For turbine engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. sudden engine deceleration due to a malfunction that could result in a temporary loss of power or thrust,

b. the maximum acceleration of the engine.

2. For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. sudden auxiliary power unit deceleration due to malfunction or structural failure; and

b. the maximum acceleration of the power unit.

3. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

a. the loss of any fan, compressor, or turbine blade; and separately

b. where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3.a. and 3.b. are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. The airplane must be capable of continued safe flight considering the aerodynamic effects on controllability due to any permanent deformation that results from the conditions specified in 3.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26911 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0174; Airspace Docket No. 13–AGL–10]

Proposed Amendment of Class E Airspace; Lapeer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Lapeer, MI. Additional controlled airspace is necessary to accommodate amended Standard Instrument Approach Procedures (SIAP) at Dupont—Lapeer Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Geographic coordinates would also be updated.

DATES: Comments must be received on or before December 27, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0174/Airspace Docket No. 13–AGL–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in

person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0174/Airspace Docket No. 13–AGL–10.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate amended standard instrument approach procedures at Dupont—Lapeer Airport, Lapeer, MI. Accordingly, a segment would extend from the 6.5-mile radius of the airport to 10.9 miles north of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment. Geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Dupont—Lapeer Airport, Lapeer, MI.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 8, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Lapeer, MI [Amended]

Dupont—Lapeer Airport, MI
(Lat. 43°03′59″ N., long. 83°16′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dupont—Lapeer Airport, and within 2 miles each side of the 357° bearing from the airport extending from the 6.5-mile radius to 10.9 miles north of the airport.

Issued in Fort Worth, TX, on October 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–26888 Filed 11–8–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140–147

[Docket No. USCG–2012–0779]

RIN 1625–AC05

Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf—Extension of Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard is extending the comment period for the advance notice of proposed rulemaking (ANPRM) entitled ''Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf,'' published on September 10, 2013, until January 23, 2014. We are extending the comment period at the request of industry to ensure stakeholders have adequate time to submit complete responses.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 23, 2014 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0779 using any one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this advance notice of proposed rulemaking, call or email LCDR Marc J. Montemerlo, U.S. Coast Guard; telephone 202–372–1387, email *Marc.J.Montemerlo@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0779), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2012–0779'' in the ''Search'' box. Click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* insert ''USCG–2012–0779'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory History and Information

The Coast Guard published an ANPRM entitled ''Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf,'' on September 10, 2013 (78 FR 55230) proposing to promulgate regulations that will require all domestic and foreign-flagged vessels engaged in OCS activities to develop, implement, and maintain a SEMS that incorporates the management program and principles of API RP 75. This requirement would apply to MODUs, well stimulation vessels, FPSOs, shuttle tankers, OSVs, accommodation vessels, and other vessels engaged in OCS activities. A Coast Guard-required SEMS would help to prevent accidents, injuries, and environmental damage by reducing the probability and severity of uncontrolled releases and other undesirable events. By incorporating the management program and principles of API RP 75 as the basis for the Coast Guard's SEMS requirements for vessels, this regulatory action would leverage industry safety expertise and harmonize with BSEE's regulations for designated lease operators. All comments on this ANPRM were originally due by December 9, 2013.

III. Background and Purpose

On October 4, 2013, we received a letter from Offshore Marine Service Association (OMSA) requesting an extension of the comment period. It noted additional time was desired to review the proposal and develop answers to the sixteen questions listed in the ANPRM. The U.S. Coast Guard is extending the public comment period, as requested, to ensure stakeholders have adequate time to submit complete responses.

IV. Authority

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: November 4, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013–26878 Filed 11–8–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0562; FRL–9902–66–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Revised Transportation Conformity Consultation Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Colorado on May 11, 2012. The May 11, 2012 submittal addresses updates to Regulation Number 10 ''Criteria for Analysis of Conformity'' of the Colorado SIP including revisions to transportation conformity requirements, transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures. The submittal also removes certain provisions from the SIP so that federal rules will govern conformity of general federal actions. EPA is proposing approval of the submission in accordance with the requirements of section 110 of the Clean Air Act (CAA).

DATES: Comments must be received on or before December 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0562, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: russ.tim@epa.gov.*
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0562. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6479, fax number (303) 312–6064, or email *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, the following definitions apply:

(i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean national ambient air quality standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What is the purpose of this action?

EPA is proposing approval of revisions to Colorado's Regulation Number 10, ''Criteria for Analysis of Conformity,'' (hereafter, ''Regulation No. 10'') of the Colorado SIP that address transportation conformity SIP requirements of section 176(c) of the CAA and Title 40, part 51.390(b) of the Code of Federal Regulations (CFR). Specifically, a conformity SIP must address the following transportation conformity requirements: 40 CFR 93.105, which formalizes the consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a metropolitan planning organization's transportation plan and transportation improvement program (TIP) that must be obtained prior to a conformity determination; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination.[1]

EPA notes that the State submitted prior SIP revisions to Regulation No. 10 by a letter dated June 18, 2009. The June 18, 2009 SIP submittal addressed revisions to numerous aspects and sections in Regulation No. 10. Those prior revisions to Regulation No. 10 are contained in the May 11, 2012 revisions to Regulation No. 10. In addition to further clarifying transportation conformity consultation procedures, the May 11, 2012 revision responded to changes in federal law by removing SIP provisions related to general conformity.

EPA had previously determined that the June 18, 2009 revisions to Regulation No. 10 were fully approvable. As EPA has determined that the May 11, 2012 revisions to Regulation No. 10 are also fully approvable, we are, therefore, only acting on the May 11, 2012 Regulation No. 10 revisions as they supersede and replace the June 18, 2009 revisions. By approving these May 11, 2012 revisions to Regulation No. 10, EPA will be making them part of the federally enforceable SIP for Colorado under the CAA. EPA also notes that the May 11, 2012 SIP submission is also intended to revise and supersede the conformity SIP that was previously approved by EPA in 2001 (66 FR 48561).

III. What is the State's process to submit SIP revisions to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to us.

With regard to the prior June 18, 2009 revisions to Regulation No. 10, the Colorado Air Quality Control Commission (AQCC) held a public hearing for those revisions on November 20, 2008. There were no public comments. The AQCC adopted the revisions to Regulation No. 10 directly after the hearing. This SIP revision became state effective on December 30, 2008, and was submitted by James B. Martin, on behalf of the Governor, to us on June 18, 2009.

For the May 11, 2012 revisions to Regulation No. 10, the AQCC held a public hearing for those revisions on December 15, 2011. There were no public comments. The AQCC adopted the revisions to Regulation No. 10 directly after the hearing. This SIP revision became state effective on January 30, 2012 and was submitted by Christopher E. Urbina, on behalf of the Governor, to us on May 11, 2012.

We have evaluated the Governor's May 11, 2012 submittal for Regulation No. 10 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's May 11, 2012 submittal was deemed complete on November 11, 2012.

IV. EPA's Evaluation of the State's May 11, 2012 Submittal

EPA has reviewed the revisions to Regulation No. 10, which is Colorado's Transportation Conformity Consultation (Conformity SIP) element of the SIP, that were submitted by the Governor on May 11, 2012 and we have found that our approval is warranted. We reviewed the State's submittal for consistency with the conformity requirements in 40 CFR 51.390(b), that establish the requirements for conformity consultation SIPs, and with the conformity requirements in 40 CFR sections 93.105, 93.122(a)(4)(ii), and 93.125(c).[2] [3] We also consulted our document ''Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)'', EPA–420–B–09–001, dated January, 2009.[4]

Our review and conclusions regarding the revisions to Regulation No. 10 are detailed in a memorandum in the docket and include the following:

(a) Section I ''Requirement to comply with the Federal rule''. EPA has reviewed and finds satisfactory the revisions to section I of Regulation No. 10. Section I states that the consultation procedures described in section III address the requirements in 40 CFR 93.105(a) through (e), that the provisions in section IV address the requirements in 40 CFR 93.122(a)(4)(ii), and that the provisions in section V address the requirements in 40 CFR 93.125(c).

(b) Section II ''Definitions''. EPA has reviewed and finds acceptable the revisions and clarifications that the State made to several definitions in section II of Regulation No. 10.

(c) Section III ''Interagency Consultation''. For section III we note that 40 CFR 51.390(b) provides that each state is required to address three specific sections in EPA's transportation

[1] A conformity SIP includes a state's specific criteria and procedures for certain aspects of the transportation conformity process consistent with the federal conformity rule. A conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations, or control measures. See EPA's *Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)* for further background: *www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.*

[2] ''40 CFR 93 Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments; Final Rule'', March 24, 2010, 75 FR 14260.

[3] ''40 CFR 93 Transportation Conformity Rule Restructuring Amendments; Final Rule'', March 14, 2012, 77 FR 14979.

[4] See: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.*

conformity rule in 40 CFR Part 93, Subpart A. The relevant provisions that are required to be addressed are: 93.105 (Consultation), 93.122(a)(4)(ii) (Procedures for determining regional transportation-related emissions), and 93.125(c) (Enforceability of design concept and scope and project-level mitigation and control measures). The following is a summary of the key aspects of Regulation No. 10 to address the above requirements, with our evaluation and conclusion of each:

(1) 40 CFR 93.105, ''Consultation,'' contains five subsections, (a) through (e). In summary, the general provisions of 93.105(a) state that a conformity SIP shall include procedures for interagency consultation, conflict resolution, and public consultation. Subsection 93.105(b) provides general requirements and factors for well defined interagency consultation procedures in the implementation plan. Organizations such as metropolitan planning organizations (MPO), state and local air quality planning agencies, and state and local transportation agencies with responsibilities for developing, submitting or implementing provisions of an implementation plan must consult with each other. These organizations must also consult with local or regional offices of EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The provisions of 93.105(c) detail specific processes that must be addressed in interagency consultation procedures. The provisions of 93.105(d) require specific procedures for resolving conflicts, and the provisions of 93.105(e) require specific public consultation procedures.

EPA has concluded that the above requirements are satisfactorily addressed in the revisions to Regulation No. 10 in section III ''Interagency Consultation'' which includes; section III.A ''Roles and Responsibilities for Transportation Conformity Determinations and Related SIP Development'', section III.B ''Establishing a Forum for Regional Conformity Consultation'', section III.C ''Topics for Consultation'', section III.D ''Process for assuming the location and design concept and scope of projects disclosed to the MPO as required by paragraph (E) of this section, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122'', section III.E ''Process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build options are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed on a regular basis, and to ensure that any changes to those plans are immediately disclosed'', section III.F ''Consultation procedures for development of State Implementation Plans'', section III.G ''Agreements further describing consultation procedures'', and section III.H ''Review of Conformity Determinations by the public, Air Quality Control Commission, and resolution of conflicts''.

(2) 40 CFR 93.122(a)(4)(ii) requires enforceable written commitments for emission reduction credits. Emissions reduction credits from any control measures that are not included in the transportation plan and TIP, and do not require a regulatory action in order to be implemented, may not be included in the emissions analysis unless the conformity determination includes written commitments for implementation from the appropriate entities. EPA has concluded that this requirement is satisfactorily addressed in section IV ''Emission reduction credit for certain control measures'' of Regulation No. 10.

(3) 40 CFR 93.125(c) addresses the enforceability of design concept and scope and project-level mitigation and control measures. Before a conformity determination is made, written commitments must be obtained for any project-level mitigation or control measures. EPA has concluded that this requirement is satisfactorily addressed in section V ''Enforceability of design concept and scope and project-level mitigation and control measures'' of Regulation No. 10.

(d) Section VI ''Statements of Basis, Specific Statutory Authority, and Purpose''. EPA notes this section VI in the State's regulation merely provides information for the State regarding the SIP revision and is not necessary for an approvable Transportation Conformity Consultation SIP element revision whose purpose is to meet the requirements of CAA section 176(c)(4)(E) and 40 CFR 51.390. Therefore, EPA is not taking any action on this section.

(e) The May 11, 2012 revision removes former Part A, ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans,'' from the SIP. After amendments to 40 CFR 51.851 that EPA promulgated on April 5, 2010 (75 FR 17254), provisions governing general conformity are now an optional component of a SIP. The State's removal of Part A is thus consistent with the 2010 amendments. With the removal of Part A from the SIP, the federal rules in Subpart B of 40 CFR Part 93 will directly govern conformity of general federal actions.

V. Consideration of Section 110(1) of the Clean Air Act

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. EPA has concluded that the above-described revisions to Regulation No. 10 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VI. Proposed Action

EPA is proposing approval of the May 11, 2012 SIP revision that was submitted by Christopher E. Urbina, Executive Director of the Colorado Department of Public Health and Environment, and on behalf of the Governor of the State of Colorado. The May 11, 2012 revision updates sections I, II, III, IV, V of Regulation Number 10 ''Criteria for Analysis of Conformity'' of the Colorado SIP so as to meet the federal transportation conformity consultation requirements under section 176 of the CAA and 40 CFR 51.390(b), 40 CFR 93.105(a) through (e), 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). EPA also proposes to approve the removal of former Part A, ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans,'' from the SIP. EPA notes that revisions were also made to Colorado's Regulation Number 10, section VI ''Statements of Basis, Specific Statutory Authority, and Purpose''; however, EPA is not taking any action on the revisions to this section.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: October 28, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2013–27030 Filed 11–8–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 78, No. 218

Tuesday, November 12, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–13–0063; FV13–900–1]

Notice of Request for Extension of a Currently Approved Assessment Exemption for Organic Commodities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), this notice announces the Agricultural Marketing Service's (''AMS'') intention to request an extension for the forms currently used by marketers to apply for exemption from market promotion assessments under 22 marketing order programs.

DATES: Comments on this notice must be received by January 13, 2014.

Additional Information: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; Tel: (202) 720–2491, Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; Tel: (202) 690–3919; or Email: *jeffrey.smutny@ams.usda.gov.*

Comments: Comments are welcome and should reference the docket number and the date and page number of this issue of the **Federal Register**, as well as the appropriate Marketing Order number. Comments may be submitted by mail to the Docket Clerk, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237, or online at *www.regulations.gov.* All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours, or they can be viewed at *www.regulations.gov*.

All comments to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

SUPPLEMENTARY INFORMATION: *Title:* Organic Handler Market Promotion Assessment Exemption under 26 Federal Marketing Orders.

OMB Number: 0581–0216.

Expiration Date of Approval: March 31, 2014.

Type of Request: Extension of a currently-approved information collection.

Abstract: Marketing Order (''Order'') programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops in specified production areas to work together to solve marketing problems that cannot be solved individually.

Under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), Orders may authorize production and marketing research, including paid advertising, to promote various commodities, which is paid for by assessments that are levied on the handlers who are regulated by the Orders.

On May 13, 2002, the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7201) was amended by the Farm Security and Rural Investment Act (7 U.S.C. 7901), exempting any person who handles or markets solely 100 percent organic products from paying these assessments with respect to any agricultural commodity that is produced on a certified organic farm, as defined in the Organic Foods Production Act of 1990 (7 U.S.C. 6502). A certified organic handler can apply for this exemption by completing a ''Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,'' and submitting it to the applicable Marketing Order Committee or Board.

Section 900.700 of the regulations (7 CFR Part 900.700) provides for exemption from assessments. This notice applies to the following Orders: 7 CFR parts 906, Oranges and grapefruit grown in Lower Rio Grande Valley in Texas; 915, Avocados grown in south Florida; 922, Apricots grown in designated counties in Washington; 923, Sweet cherries grown in designated counties in Washington; 925, Grapes grown in a designated area of southeastern California; 927, Pears grown in Oregon and Washington; 929, Cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in New York; 930, Tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; 932, Olives grown in California; 948, Irish potatoes grown in Colorado; 955, Vidalia onions grown in Georgia; 956, Sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon; 958, Onions grown in certain designated counties in Idaho, and Malheur County, Oregon; 959, Onions grown in South Texas; 966, Tomatoes grown in Florida; 981, Almonds grown in California; 982, Hazelnuts grown in Oregon and Washington; 984, Walnuts grown in California; 985, spearmint oil produced in Washington, Idaho, Oregon, and parts of Nevada and Utah; 987, Domestic dates produced or packed in Riverside County, California; 989, Raisins produced from grapes grown in California; and 993, Dried prunes produced in California.

The information collected is used only by authorized Marketing Order Committee or Board employees, who are the primary users of the information, and by authorized representatives of the USDA, including the AMS Fruit and Vegetable Programs' regional and headquarters staff, who are the secondary users of the information.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Respondents are eligible certified organic handlers.

Estimated Number of Respondents: 55.

Estimated Number of Total Annual Responses: 55.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 28 hours.

Comments are invited on: (1) Whether the proposed collection of information

is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 5, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–26946 Filed 11–8–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS FV–13–0064; FV13–983–2]

Notice of Request for Extension and Revision of a Currently Approved Information Collection for Pistachios Grown in California, Arizona, and New Mexico (Marketing Order No. 983)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to the forms currently used to collect information under Federal Marketing Order No. 983, for pistachios grown in California, Arizona, and New Mexico.

DATES: Comments on this notice must be received by January 13, 2014.

Additional Information: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; (202) 720–2491, Fax: (202) 720–8938, or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or Email: *jeffrey.smutny@ams.usda.gov.*

Comments: Comments are welcome and should reference OMB No. 0581–0215 and the Marketing Order for Pistachios Grown in California, Arizona and New Mexico, Marketing Order No. 983, and the date and page number of this issue of the **Federal Register**. Comments may be submitted by mail to the Docket Clerk, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted online at *http://www.regulations.gov.* All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours or they can be viewed at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pistachios Grown in California, Arizona and New Mexico, Marketing Order No. 983.

OMB Number: 0581–0215.

Expiration Date of Approval: May 31, 2014.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), fresh fruits, vegetables and specialty crop industries can enter into marketing order programs which provide an opportunity for producers, in a specified production area, to work together to solve marketing problems. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The pistachio marketing order regulates the handling of pistachios grown in California, Arizona and New Mexico, hereinafter referred to as the order, (7 CFR part 983). The order authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only.

The order authorizes the Administrative Committee for Pistachios (Committee) to locally administer the order. The order also requires handlers submit certain information in order to effectively implement the requirements of the order, fulfill the intent of the AMAA, and assist the industry in carrying out marketing decisions. Only authorized employees of the Committee, and authorized representatives of the USDA, including AMS, Fruit and Vegetable Program's regional and headquarter's staff have access to information provided on the forms.

Requesting public comments on the forms described below is part of the process to obtain approval through the Office of Management and Budget (OMB). Forms needing OMB approval are contained in OMB No. 0581–0215 and include forms for committee nominations and ballots for producers (FV–245 and FV–246) and handlers (FV–245A and FV–244), as well as background statements for those nominated who agree to serve on the Committee (FV–243). In addition, OMB No. 0581–0215 forms include a marketing agreement (FV–242), and referendums on order amendments (FV–240A) and continuation of the order (FV–240). There are also forms to report on receipts/assessments (ACP–1), minimal testing for aflatoxins (ACP–5), inter-handler transfer (ACP–6), inventory shipments (ACP–7), producer delivery (ACP–8), exemptions for handlers (ACP–4), and failed lot notifications (ACP–2) and dispositions (ACP–3). Recently added forms are the Import Pistachios—Rework and Failed Lot Disposition Report (FV–251) and Imported Pistachios—Failed Lot Notification Report (FV–249).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Pistachio producers, handlers and testing laboratories.

Estimated Number of Respondents: 821.

Estimated Number of Responses per Respondent: 2.06.

Estimated Total Annual Burden on Respondents: 437.57 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Dated: November 5, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–27021 Filed 11–8–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 for Imports of Certain Worsted Wool Fabric.

OMB Control Number: 0625–0240.

Form Number(s): ITA–4139P, ITA–4140P.

Type of Request: Regular submission (revision and extension of a current information collection).

Burden Hours: 160.

Number of Respondents: 20.

Average Hours per Response: 3.

Needs and Uses: Title V of the Trade and Development Act of 2000 (''the Act'') as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, the Pension Protection Act of 2006, and the Emergency Economic Stabilization Act of 2008, contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (''TRQ'') for a limited quantity of worsted wool fabrics. The Act requires the President to fairly allocate the TRQ to persons who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States, and who apply for an allocation based on the amount of suits they produced in the prior year. The Department must collect certain information in order to fairly allocate the TRQ to eligible persons.

Revision: Forms for surrender and reallocation have been developed in order to create a standardized method of reporting such information. The information collected on the surrender and reallocation application is utilized to determine the eligibility of applicants for additional quota and the amount of additional quota they shall receive. The information includes:

(1) Identification. Licensee's name and the license control number; (2) the amount surrendered and/or the amount requested for reallocation.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: November 6, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–26993 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board (PRB) in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Kenneth A. Arnold
William G. Bostic, Jr.
Stephen B. Burke
Joanne Buenzli Crane
Susan R. Helper
Ron S. Jarmin
Enrique Lamas
J. Steven Landefeld
Jennifer Madans
Brian E. McGrath
Brian C. Moyer
Nancy A. Potok
Frederick Stephens
Sonja Steptoe
Frank A. Vitrano
Katherine K. Wallman
Adam Wilczewski

The term of each PRB member will expire on December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Latasha Ellis, 301–763–3727.

Dated: November 5, 2013.

Kenneth A. Arnold,

Associate Under Secretary for Management, Chair, Performance Review Board.

[FR Doc. 2013–26949 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–93–2013]

Foreign-Trade Zone 15—Kansas City, Missouri, Area; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Greater Kansas City Foreign Trade Zone, Inc., grantee of FTZ 15, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 5, 2013.

FTZ 15 was approved by the Board on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73), and expanded on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74), on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74), on February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96), on May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96), on December 8, 1997 (Board Order 934, 62 FR 65654, 12/15/97), on October 19, 1998 (Board Order 1004, 63 FR 59761, 11/5/98), on January 8, 1999 (Board Order 1016, 64 FR 3064, 1/20/99), on June 17, 1999 (Board Order 1042, 64 FR 34188, 6/25/99), on April 15, 2002 (Board Order 1226, 67 FR 20087, 4/24/02), on April 20, 2005 (Board Order 1388, 70 FR 22630, 5/2/05), on September 7, 2007 (Board Order 1524, 72 FR 53228, 9/18/07), and on October 23, 2009 (Board Order 1650, 74 FR 57658–57659, 11/9/09).

The current zone includes the following sites: *Site 1* (8.46 acres total)—within Executive Park located at 1650

North Topping and 1226 Topping Drive in Kansas City; *Site 2* (64.3 acres total)—surface/underground warehouse complex located at 8300 NE Underground Drive and at 3600 Great Midwest Drive in Kansas City; *Site 3* (9,667 acres total)—within the 10,000-acre Kansas City International Airport facility; *Site 4* (416 acres)—Carefree Industrial Park, 1600 North Missouri Highway 291, Sugar Creek; *Site 5* (1,000 acres)—CARMAR Underground Business Park/CARMAR Industrial Park, No. 1 Civil War Road, Carthage; *Site 7* (1,567 acres)—Richards-Gebaur Memorial Airport/Industrial Park, 1540 Maxwell, Kansas City; *Site 8* (26 acres)—Chillicothe Industrial Park located at Ryan Road and Brunswick in Chillicothe; *Site 9* (10 acres)—warehouse located at 3800 South 48th Terrace, St. Joseph; *Site 10* (72.31 acres)—warehouse located at 8201 East 23rd Street, Kansas City; *Site 11* (22 acres)—warehouse located at 13500 15th Street, Grandview; *Site 13* (36.57 acres, expires 10/31/2014)—7501 NW 106th Terrace, Kansas City; *Site 14* (68 acres)—within the 330-acre Air World Center Business Park, located at Interstate 29 and 112th Street, Kansas City; *Site 15* (161 acres)—city-owned Harley Davidson site, 11401 North Congress Avenue, Kansas City; *Site 16* (155 acres)—Congress Corporate Center Industrial Park, located at the northwest corner of 112th Street and North Congress, Kansas City; *Site 17* (27 acres total)—within the Grandview Industrial Park at 13700 South US 71 Highway and at 5610 East 139th Street in Grandview; and, *Site 18* (1 acre)—10201 North Everton in Kansas City.

The grantee's proposed service area under the ASF would be Andrew, Bates, Buchanan, Caldwell, Carroll, Cass, Chariton, Clay, Clinton, Cooper, Daviess, DeKalb, Henry, Howard, Jackson, Johnson, Lafayette, Livingston, Pettis, Platte, Ray and Saline Counties, Missouri, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Kansas City Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Sites 1, 2, 3, 4, 7, 8, 14, 16 and 17 as ''magnet'' sites and Sites 9, 10, 11, 13 and 15 as ''usage-driven'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 3 be so exempted. The applicant is also requesting to remove existing Sites 5 and 18 from the zone. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 15's previously authorized subzones.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 13, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 27, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 5, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–27001 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From Ukraine; Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2013, the Department of Commerce (the Department) published the preliminary results of an administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine covering Metinvest Holding LLC (Metinvest) and its affiliated companies Azovstal Iron & Steel Works (Azovstal) and Ilyich Iron and Steel Works (Ilyich). *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From Ukraine; Administrative Review,* 78 FR 46570 (August 1, 2013) and accompanying Decision Memorandum (*Preliminary Results*). The period of review (POR) is November 1, 2011 through October 31, 2012. We received no comments from interested parties. For these final results, we have made no changes to our preliminary results.

DATES: *Effective Date:* November 12, 2013.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Anne D'Alauro, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0192 or (202) 482–4830, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2008, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Ukrainian steel producers/exporters, including Azovstal and Ilyich, suspending the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine. *See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 73 FR 57602 (October 3, 2008) (Agreement). On August 1, 2013, the Department published its preliminary results of the administrative review of the Agreement for CTL plate from Ukraine produced and sold by Metinvest and its affiliated companies, Azovstal and Ilyich (collectively, the companies). *See Preliminary Results.* In its preliminary results, the Department determined that information submitted by the companies indicated that, during the POR, the companies adhered to the terms of the Agreement and that the Agreement is functioning as intended. We invited interested parties to comment on our preliminary results. No interested parties submitted comments.

Scope of Review

The products covered by the Agreement are CTL plate from Ukraine. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000,

7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the Agreement is dispositive. For a full description of the scope of this Agreement, see Appendix A of the Agreement.

Final Results of Review

We have made no changes to the preliminary results. Our review of the information submitted by Metinvest Holding and its affiliated companies, Azovstal and Ilyich, indicates that the companies have adhered to the terms of the Agreement and that the Agreement is functioning as intended. *See Preliminary Results.*

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 4, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–27013 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance (formerly Import Administration), International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on solid urea from the Russian Federation (Russia). For the final results, we continue to find that MCC EuroChem has not sold subject merchandise at less than normal value.

DATES: *Effective Date:* November 12, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance (E&C), International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2013, the Department published the preliminary results of the administrative review of the antidumping duty order on solid urea from Russia.[1] We invited interested parties to comment on the *Preliminary Results.* We received no comments.

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. Previously such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Verification

As provided in section 782(i)(3) of the Act, during August 2013, the Department conducted a verification of the sales information reported by MCC EuroChem in Russia.[2]

Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of our review, we determine that a weighted-average dumping margin of 0.00 percent exists for MCC EuroChem for the period July 1, 2011, through June 30, 2012.

Assessment Rates

In accordance with 19 CFR 351.212 and the *Final Modification,*[3] the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate entries for MCC EuroChem without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[4] This clarification will apply to entries of subject merchandise during the period of review produced by MCC EuroChem for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of solid urea from Russia entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for MCC EuroChem will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 64.93 percent, the all-others rate established in the original less-than-fair-value (LTFV) investigation.[5] The rate established in

[1] *See Solid Urea From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 46571 (August 1, 2013) (*Preliminary Results).*

[2] *See* Memorandum to the File entitled ''Solid Urea from the Russian Federation: Verification Report for MCC EuroChem's Sales'' dated August 30, 2013.

[3] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

[4] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value,* 52 FR 19557 (May 26, 1987). Also note that following the break-up of the Soviet Union, the antidumping duty order on solid urea

Continued

the LTFV investigation for the Soviet Union was applied to each new independent state, including Russia. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: November 5, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–27010 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–DS–P

from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. *See Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 FR 28828 (June 29, 1992).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XC961

[FWS–R8–ES–2013–N182]

Habitat Conservation Plan for the United Water Conservation District, Santa Clara River Watershed, Ventura County, California

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of public scoping meetings.

SUMMARY: We, the National Marine Fisheries Service and Fish and Wildlife Service (Services), in cooperation with the Army Corps of Engineers, intend to prepare an EIS under the National Environmental Policy Act (NEPA) regarding expected applications from the United Water Conservation District (United) for incidental take permits under the Federal Endangered Species Act of 1973, as amended (ESA). The EIS will analyze the environmental effects of the Services' proposed issuance of incidental take permits for United's construction, operations, and maintenance of water management facilities within the lower Santa Clara River watershed, Ventura County, California. The Services also provide this notice to announce a public scoping period, during which we invite other agencies, Tribes, and the public to submit written comments providing suggestions and information on issues and alternatives to include in the EIS.

DATES: To ensure consideration of any written comments, please submit them by January 13, 2014. Public meetings will be held on December 12, 2013, from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m.

ADDRESSES: The public meetings will be held at Courtyard by Marriott, 600 East Esplanade Drive, Oxnard, CA 93036. To request further information or submit information related to preparation of the EIS, please use one of the following methods:

1. *U.S. Mail:* You may mail written information and comments to: Darren Brumback, National Marine Fisheries Service, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802; or David Simmons, Ventura Fish and Wildlife Office, 2493 Portola Rd, Suite B, Ventura, CA 93003.

2. *In-Person Drop-off:* You may hand-deliver written information and comments to either U.S. mail address above.

3. *Email:* You may submit information and comments by electronic mail to: *unitedwaterhcp@noaa.gov.* If submitting an electronic mail attachment, please use one of these document formats: Adobe portable document format (.pdf), Microsoft Word (.doc, .docx), rich text file (.rtf), ASCII or Unicode plaintext (.txt), Microsoft Excel (.xls, .xlsx), Word Perfect (.wpd), or Microsoft Works (.wps).

FOR FURTHER INFORMATION CONTACT: Darren Brumback, by mail at the address above or by telephone at 562–980–4060; or David Simmons, by mail at the address above or by telephone at 805–644–1766. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339 or visit Federal Relay at *http://www.federalrelay.us/.* Information regarding this proposed action is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: The Services publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6, and pursuant to section 10(c) of the ESA. We intend to prepare a draft EIS to evaluate the impacts of several alternatives related to the potential issuance of incidental take permits to United, as well as impacts of the implementation of the supporting proposed Multiple Species Habitat Conservation Plan (HCP). The permits would authorize the incidental take of threatened and endangered species that could occur as a result of United's current and future water management activities. United intends to request a 50-year permit covering five species federally listed as threatened or endangered and six species that are not federally listed but may become listed during the term of the permit.

For preparation of the EIS under NEPA, the Services will serve as co-lead Federal agencies, and the Corps will serve as a cooperating agency. The primary purpose of the scoping process is for the public and other agencies to assist in developing the EIS by identifying important issues and alternatives related to the HCP and the Services' proposed action (issuance of incidental take permits). As a cooperating agency, the Corps will assist

the Services in developing the EIS and determine whether to adopt the EIS to support issuance of permits for proposed activities that are specifically regulated under section 404 of the Clean Water Act.

Additionally, United will post a separate notice of preparation for an environmental impact report (EIR) in compliance with the California Environmental Quality Act (CEQA) and in support of United's application for State incidental take permits under Section 2081 of the California Endangered Species Act. The public scoping meeting identified in this notice will be concurrent with United's public scoping meeting regarding development of an EIR under CEQA.

Background

Section 9 of the ESA (16 U.S.C. 1531 et seq.) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. The ESA defines the term ''take'' as: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1532(19)). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife, including listed fish, by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). NMFS' definition of ''harm'' includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Under section 10(a) of the ESA, the Services may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The Services' regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 13 and 50 CFR 17. NMFS' regulations governing permits for threatened and endangered species are at 50 CFR 222.22.

Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicants will carry out any other measures that the Services may require as being necessary or appropriate for the purposes of the HCP.

Additionally, applicants must satisfy the issuance criteria established by the Services (50 CFR 17.22(b)(2) and 50 CFR 222.307). Issued permits include assurances for the applicant under the Services' ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Proposed Plan

In accordance with section 10(a)(2)(A) of the ESA, United is preparing an HCP to support an application for a permit from each of the Services to incidentally take listed animal species. The following summarizes information provided by United regarding its HCP.

United is currently proposing to cover 11 species (Covered Species) under the HCP, including 5 federally listed species and 6 unlisted species that may become listed during the term of the permits. The five federally listed species are the southern California steelhead (*Oncorhynchus mykiss*), tidewater goby (*Eucyclogobius newberryi*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax trallii extimus*), and California least tern (*Sterna antillarum browni*). The six unlisted species proposed for coverage are the Pacific lamprey (*Entosphenus (=Lampetra) tridentata*), western yellow-billed cuckoo (*Coccyzus americanus*), yellow-breasted chat (*Icteria virens*), yellow warbler (*Dendroica petechia*), two-striped garter snake (*Thamnophis hammondii*), and western pond turtle (*Actinemys (=Clemmys) marmorata*). Species may be added or deleted during the course of proposed HCP development based on further analysis, new information, agency consultation, and public comment.

The geographic area proposed to be covered by the HCP includes portions of the lower Santa Clara River watershed downstream of the city of Santa Paula, California. The HCP would cover construction, operations, and maintenance of United's facilities at and near the Vern Freeman Diversion Dam (Freeman Diversion) near Saticoy, California. ''Covered Activities'' include, but are not limited to: Construction of a new fish-passage facility; operation and maintenance of the Freeman Diversion; diversion of water from the Santa Clara River; vegetation management; and operation and maintenance of fish-passage facilities, settling ponds/spreading grounds, and water conveyance structures (i.e., pipes, canals, etc.). United expects that Covered Activities could have direct and/or indirect effects on the Covered Species from the vicinity of the Freeman Diversion to the Santa Clara River estuary, a distance of approximately 10 river miles.

The Services expect the proposed HCP to minimize and mitigate to the maximum extent practicable any effects on Covered Species resulting from Covered Activities, through implementation of a conservation program that includes conservation actions and monitoring, which will be fully described in the proposed HCP. This conservation program will focus on providing for the long-term management of biological communities that support Covered Species in the plan area.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, the Services have determined that the proposed HCP may have significant effects on the human environment. Therefore, before deciding whether to issue Federal incidental take permits to United, the Services will prepare an EIS to analyze the environmental impacts associated with issuance of the incidental take permits.

The EIS will include a reasonable range of alternatives to the proposed project, and the alternatives will be considered in the Services' environmental review. The EIS will consider the impacts of the proposed action, the issuance of section 10(a)(1)(B) permits under the ESA, and of several alternatives, including but not limited to, variations in the levels, location, and types of conservation; the scope of Covered Activities; the list of Covered Species; or a combination of these factors. Additionally, a No Action alternative will be included. Under the No Action alternative, the Services would not issue section 10(a)(1)(B) permits. Further, the EIS will identify and describe direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socio-economics, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. The Services will also identify measures,

consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. Following completion of the environmental review, the Services will publish a notice of availability and a request for comment on a draft EIS and the applicant's permit application, which will include a draft of the proposed HCP.

Public Comments

We request data, comments, new information, or suggestions from the public, other governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS. We seek specific comments on:

1. Biological information and relevant data concerning the Covered Species;
2. Additional information concerning the range, distribution, population size, and population trends of the Covered Species;
3. Direct, indirect, and cumulative impacts that implementation of the proposed Covered Activities could have on endangered, threatened, and other Covered Species, and their communities and habitats;
4. Other possible alternatives that the Services should consider;
5. Other current or planned activities in the subject area and their possible impacts on the Covered Species;
6. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
7. Identification of any other environmental issues that should be considered with regard to the proposed HCP and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. Written comments also will be accepted at the scoping meeting.

Scoping Meeting

See **DATES** for the date and time of the public meeting. The scoping meeting is intended to provide the public with a general understanding of the background of the proposed HCP and activities it would cover, alternative proposals under consideration for the draft EIS, and the Services' role and steps to be taken to develop the draft EIS.

The primary purpose of the meeting and public comment period is to solicit suggestions and information on the scope of issues and alternatives for the Services to consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by the methods listed in the **ADDRESSES** section. Once the draft EIS and proposed HCP are complete and made available for review, there will be an opportunity for public comment on the content of those documents through an additional public comment period.

Meeting Location Accommodations

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Darren Brumback at 562–980–4060 or David Simmons at 805–644–1766. To allow sufficient time to process requests, please call no later than 1 week before the public meeting. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339 or visit Federal Relay at *http://www.federalrelay.us/.* Information regarding this proposed action may be available in alternative formats upon request.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and per NEPA Regulations (40 CFR 1501.7, 40 CFR 1506.6, and 1508.22).

Dated: November 5, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: November 5, 2013.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, U. S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2013–27002 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting via web conference call of the Marine Protected Areas Federal Advisory Committee (Committee). The web conference calls are open to the public, and participants can dial in to the calls. Participants who choose to use the web conferencing feature in addition to the audio will be able to view the presentations as they are being given.

DATES: Members of the public wishing to participate in the meeting must register in advance by December 2, 2013. The meeting will be held Tuesday, December 3, from 2:00 to 4:00 p.m. EST. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held via web conference call. Register by contacting Lauren Wenzel at *lauren.wenzel@noaa.gov* or 301–713–7265. Webinar and teleconference capacity may be limited.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Acting Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–7265, Fax: 301–713–3110); email: *lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://www.marineprotectedareas.noaa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, on marine protected areas.

Matters To Be Considered: The focus of the Committee's meeting is the Subcommittee workplans and their implementation (Recreation and Tourism Subcommittee and Stakeholder Engagement Subcommittee). The Committee will also hear updates from the National Oceanic and Atmospheric Administration and the Department of the Interior. The agenda is subject to change. The latest version will be posted at *http://www.marineprotectedareas.noaa.gov.*

Dated: October 30, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–26958 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC948

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 33 Gulf of Mexico gag and greater amberjack webinars.

SUMMARY: The SEDAR 33 assessment of the Gulf of Mexico stocks of gag (*Mycteroperca microlepis*) and greater amberjack (*Seriola dumerili*) will consist of two workshops and a series of webinars: a Data Workshop, an Assessment process conducted via webinars, and a Review Workshop. This series of workshops and webinars will be referred to as SEDAR 33. This notice is for additional Assessment Workshop webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The additional Assessment Workshop webinars will take place December 4, 2013 and December 11, 2013. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The Assessment Workshop webinars will be held via GoToWebinar. All workshops and webinars are open to members of the public. Those interested in participating should contact Ryan Rindone at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing pertinent information. Please request meeting information at least 24 hours in advance.

SEDAR office address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348–1630; email: *ryan.rindone@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process including a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The additional SEDAR 33 Assessment webinars are scheduled to begin at 1 p.m. on December 4, 2013 and 1 p.m. on December 11, 2013.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–26960 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Initial Patent Applications

ACTION: Proposed collection; Extension of Comment Period.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing efforts to reduce paperwork and respondent burden, extends the current 60-Day **Federal Register** comment period for 0651–0032 and invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection.

DATES: Written comments must be submitted on or before December 16, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0032 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *raul.tamayo@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION: On October 1, 2013 (78 FedReg 60256), the USPTO published a request for comments for the revision of a currently approved collection (0651–0032). The USPTO is extending that 60-day public comment period. Comments were due on or before December 2, 2013 but the comment period is now extended to December 16, 2013. Comments must be received on or before December 16, 2013.

Comments submitted will be summarized and/or included in the USPTO's request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 6, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–26943 Filed 11–8–13; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a Revised Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a revised Privacy Act System of Records.

DATES: Comments must be received no later than December 12, 2013. The new system of records will be effective December 23, 2013, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic: privacy@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The CFPB revises its Privacy Act System of Records Notice (SORN) ''CFPB.009—Employee Administrative Records System.'' In revising this SORN, the CFPB modifies: The authorities under which the system is maintained; the purpose(s) for which the system is maintained; the categories of individuals for the system; the categories of records for the system; the record source categories for the system; the method by which records are retrieved in the system; and the retention and disposal of records in the system. Additionally, as part of a biennial review of this System of Record, the CFPB modifies: The notification procedures for individuals seeking access to records maintained in this system; the system location and address; (by consolidation) two routine uses (previously routine uses 6 and 7) which include the disclosure of personally identifiable information (PII) from the system to the U.S. Department of Justice (DOJ) for its use in providing legal advice to the CFPB or in representing the CFPB in a legal proceeding; and makes several other non-substantive changes to the routine use section to ensure compliance with the Privacy Act, 5 U.S.C. 552a.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r). The revised system of records entitled ''CFPB.009—Employee Administrative Records System'' is published in its entirety below.

Dated: October 18, 2013.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.009

SYSTEM NAME:

Employee Administrative Records System

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CFPB employees, interns, fellows, volunteers, and persons who work at the CFPB (collectively ''employees''), and their named dependents and/or beneficiaries, their named emergency contacts, and individuals who have been extended offers of employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may contain identifiable information about individuals including, without limitation: (1) Identification and contact information, including name, address, email address, phone number and other contact information; (2) employee emergency contact information, including name, phone number, relationship to employee or emergency contact; (2) Social Security number (SSN), employee ID number, organization code, pay rate, salary, grade, length of service, and other related pay and leave records including payroll data; (3) biographic and demographic data, including date of birth and marital or domestic partnership status; (4) employment related information such as performance reports, training, professional licenses, certification, and memberships information, fitness center membership information, union dues, employee claims for loss or damage to personal property, and other information related to employment by the CFPB; (5) benefits data, such as health, life, travel, and disability insurance information; and (6) retirement benefits information and flexible spending account information.

General personnel and administrative records contained in this system are covered under the government-wide systems of records notice published by

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

the Office of Personnel Management (OPM/GOVT–1). This system complements OPM/GOVT–1 and this notice incorporates by reference but does not repeat all of the information contained in OPM/GOVT–1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5492–93, 5511; 31 U.S.C. 3721.

PURPOSE(S):

The information in the system is being collected to enable the CFPB to manage and administer human capital functions, including payroll, time and attendance, leave, insurance, tax, retirement and other benefits, and employee claims for loss or damage to personal property; and to prepare related reports to other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The DOJ for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons to the extent necessary to obtain information relevant to current and former CFPB employees' benefits, compensation, and employment;

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

(11) National, state or local income security and retirement agencies or entities involved in administration of employee retirement and benefits programs (e.g., state unemployment compensation agencies and state pension plans) and any of such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement or employee benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs;

(12) An executor of the estate of a current or former employee, a government entity probating the will of a current or former employee, a designated beneficiary of a current or former employee, or any person who is responsible for the care of a current or former employee, where the employee has died, has been declared mentally incompetent, or is under other legal disability, to the extent necessary to assist in obtaining any employment benefit or working condition for the current or former employee;

(13) The Internal Revenue Service (IRS) and other governmental entities that are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the CFPB pursuant to 5 U.S.C. 5516, 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(14) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114; and

(15) Carriers, providers and other federal agencies involved in administration of employee retirement and benefits programs and such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement and benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs and federal agencies that perform payroll and personnel processing and employee retirement and benefits plan services under interagency agreements or contracts, including the issuance of paychecks to employees, the distribution of wages, the administration of deductions from paychecks for retirement and benefits

programs, and the distribution and receipt of those deductions. These agencies include, without limitation, the Department of Labor, the Department of Veterans Affairs, the Social Security Administration, the Federal Retirement Thrift Investment Board, the Department of Defense, OPM, the Board of Governors of the Federal Reserve System, the Department of the Treasury, and the National Finance Center at the U.S. Department of Agriculture.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, without limitation, the individual's name, SSN, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records under the National Archives and Records Administration (NARA) schedules General Records Schedule (GRS) GRS 01, GRS 02, and GRS 18–15b.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Chief Operating Officer, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from current and former CFPB employees, their named dependents and/or beneficiaries, their named emergency contacts, individuals who have been extended offers of employment by the CFPB, and from individuals and entities associated with Federal employee benefits, retirement, human resource, accounting, and payroll systems administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–27011 Filed 11–8–13; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Retired and Senior Volunteer Program Survey. The survey will be administered to a sample of current RSVP volunteers to assess the distribution of volunteers across work plans, volunteer time, volunteer demographic information and level of psycho-social health and functioning. The survey is designed to allow CNCS to compare the results to a comparison group that is a representative sample of Americans age 50 and older.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 13, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Senior Corps Program; Attention Anthony Nerino, Research Associate, Office #10913A; 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through the Corporation's email system to *anerino@cns.gov*.

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anthony Nerino, (202–606–3913), or by email at *anerino@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

CNCS has contracted with JBS International to implement an exploratory evaluation of the Retired and Senior Volunteer Program. This evaluation will examine the distribution of volunteers by work areas to assess volunteer activity with regard to performance measurement requirements. The survey is designed to allow CNCS to compare the results to a comparison group that is a

representative sample of Americans age 50 and older. Additionally, the study will assess the relationship between various service activities and potential psycho-social health benefits. Lastly this study will support two potential future studies assessing (1) the health benefits of national service and (2) links between volunteer data and performance measurement data provided by grantees.

Current Action

CNCS seeks public comment on a new data collection instrument. The instrument contains elements of the Health and Retirement Study (*http://hrsonline.isr.umich.edu*) survey instrument and items used previously by Senior Corps to assess its Senior Companion and Foster Grandparent programs. We have added additional questions on employment or retirement status of volunteers (given recent evidence of potential employment benefits of volunteering), volunteer activity in RSVP (given the programs wider scope of service), and volunteer satisfaction.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on Expiration Date.

Type of Review: Standard.

Agency: Corporation for National and Community Service.

Title: Retired and Senior Volunteer Program Survey.

OMB Number: TBD.

Agency Number: None.

Affected Public: Volunteers in the Retired and Senior Volunteer Program.

Total Respondents: 1570.

Frequency: One time.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 785.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 5, 2013.

Erwin Tan,

Director, Senior Corps.

[FR Doc. 2013–26944 Filed 11–8–13; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Social Innovation Fund Grant Program Application Instructions for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Lois Nembhard, at (202) 606–3223 or email to *innovation@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on Tuesday, August 13, 2013 on page 49262. This comment period ended October 15, 2013. No public comments were received from this Notice.

Description: CNCS is seeking approval of Social Innovation Fund Grant Program Application Instructions, which are used by organizations applying to be Social Innovation Fund grantees.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Social Innovation Fund Grant Program Application Instructions.

OMB Number: None.

Agency Number: None.

Affected Public: Organizations applying to be Social Innovation Fund grantees.

Total Respondents: 50.

Frequency: Annual.

Average Time per Response: 24 hours.

Estimated Total Burden Hours: 1,200.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: November 5, 2013.

Lois Nembhard,

Deputy Director.

[FR Doc. 2013–26931 Filed 11–8–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0170]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 12, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: DefenseReady; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 150.

Responses per Respondent: 1.

Annual Responses: 150.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 38.

Needs and Uses: The information collection requirement is necessary to obtain, track and record the personnel security data, training information and travel history within White House Military Office (WHMO) and White House Communications Agency (WHCA).

Affected Public: DoD Contractors, retired military members, and agency visitors.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: November 6, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–26954 Filed 11–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting; New Time and Date of Proceeding

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Public Meeting and Hearing; New Time and Date.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) published a document in the **Federal Register** of August 13, 2013, (78 FR 49262), concerning notice of intent to convene a public meeting and hearing on October 22, 2013, at the Knoxville Convention Center, 701 Henley Street, Knoxville, Tennessee 37902 with regard to safety-related matters at defense nuclear facilities at the Y–12 National Security Complex. Due to the lapse in appropriations and subsequent federal government shutdown, the Board decided to postpone the meeting and hearing to a future date. The Board was unable to publish notice of the postponement in the **Federal Register** due to the shutdown. The Board has now decided on a new time and date for the proceeding. There is no change to the hearing location or the matters to be considered that were originally described in the Board's August 13, 2013, notice cited above.

NEW TIME AND DATE OF HEARING AND MEETING: Session I: 8:00 a.m.–12:00 p.m., December 10, 2013; Session II: 2:00 p.m.–6:00 p.m., December 10, 2013.

CONTACT PERSON FOR MORE INFORMATION: Mark Welch, Acting General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 6, 2013.

Peter S. Winokur,

Chairman.

[FR Doc. 2013–27049 Filed 11–8–13; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Highly Qualified Teachers Clearance; Extension of Public Comment Period; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On September 12, 2013, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** (Page 56222, Column 1) seeking public comment for an information collection entitled, ''Highly Qualified Teachers Clearance,'' ED–2013–ICCD–0121. The comment period for this information collection request has been extended to November 18, 2013 due to technical issues the public experienced in posting comments. This extension will allow the public sufficient time to submit their comments.

The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: November 6, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–27008 Filed 11–8–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

American Energy Data Challenge

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of a four-part competition.

SUMMARY: The U.S. Department of Energy (DOE) announced the administration of a four-part prize competition titled ''American Energy Data Challenge.'' The goal of this competition is to introduce the public to the open data and resources offered by DOE, to solicit feedback about the data, its organization and presentation, to spur the creation of new tools and insights for the American public, and to solicit public input on how energy generation, distribution and use could be transformed to better serve our 21st century society and economy.

DATES: See Key Challenge Dates & Deadlines in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The American Energy Data Challenge is available at *http://energychallenge.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Irwin, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, OE–50, 1000 Independence Ave. SW., Washington, DC 20585; email: *christopher.irwin@hq.doe.gov.*

Mr. Matthew Theall, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, OE–50, 1000 Independence Ave. SW., Washington, DC 20585; email: *matthew.theall@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Key Challenge Dates & Deadlines

Below is a summary of approximate challenge dates. Official dates for Contest 1 were provided when the American Energy Data Challenge was announced on November 6, 2013, as

well as expected dates for Contests 2, 3, and 4.

Contest 1: Submissions: November 6–November 29, 2013. Judging: December 2–December 13, 2013. Winners Announced: December 16–December 20, 2013.

Contest 2: Submissions: Mid-January–Mid-February 2014. Judging: Late February 2014. Winners announced: March 2014.

Contest 3: Submissions: Mid-April–Mid-May 2014. Judging: Late May 2014. Winners announced: June 2014.

Contest 4: Submissions: Mid-June–July 2014. Judging: Early August 2014. Winners announced: September 2014.

II. Introduction

The Administration launched the Energy Data Initiative in 2012 to liberate data as a fuel for innovation while rigorously protecting privacy. The primary fuel for the Energy Data Initiative is open data. Open data can take many forms but generally includes information that is machine-readable, freely accessible, and in an industry-standard format. In particular, open data from the private sector made available to consumers may spur a uniquely scalable degree of innovation. For example, enabling energy customers to securely access their own household or building energy data—via a ''Green Button'' on their utility Web site—has fueled the next generation of energy efficiency products and services. Within this context, the U.S. Department of Energy (DOE) is launching the American Energy Data Challenge (the Challenge).

The Challenge will consist of four parts: (1) Contest 1 will invite the public to identify open data sets held by the Department of Energy and other organizations that can deliver new or unexpected value, and incentivize concepts that blend open and other data in ways that could lead to future applications for American consumers and businesses. (2) Contest 2 will invite software developers to create software applications that enhance the value of open data and Green Button data in ways that benefit the public. (3) Contest 3 will invite the public to offer approaches that improve the discoverability, usability, or understanding of open data and Green Button data resources. (4) Contest 4 invites bold ideas for re-imagining all aspects of America's energy system, and how this system could be changed for the better, including the way energy is generated, delivered, secured and sold.

III. The Prizes

The prizes for this four-part Challenge will be awarded in stages after each Contest is complete and will consist of a cash award and an opportunity to be recognized at a public announcement of the final winners. Each Contest winner will be awarded a small portion of the total cash pool. Winner(s) may be invited to a public announcement event hosted by DOE and its supporters and will be highlighted on DOE's Web site. For the purposes of this Challenge, the term Submissions (''Submissions'') refers to the total portfolio of submitted ideas, products, and other entries. Monetary prizes will be awarded to each of the four Contest winners. Contestants are free to participate in one or more Contests.

IV. Authority and Prize Amount

This Challenge is being conducted under the authority of the America COMPETES Act of 2010, 15 U.S.C. 3719. Monetary prizes will be awarded, subject to the availability of funds. DOE reserves the right to suspend, cancel, extend, or curtail the Challenge as required or determined by appropriate DOE officials. Nothing within this document or in any documents supporting the Challenge shall be construed as obligating DOE or any other Federal agency or instrumentality to any expenditure of appropriated funds, or any obligation or expenditure of funds in excess of or in advance of available appropriations. DOE will award a single dollar amount to winning Team(s) and each Team, whether consisting of a single or multiple Contestants, is solely responsible for allocating any prize amount among its member Contestants as they deem appropriate. DOE will not arbitrate, intervene, advise on, or resolve any matters between entrant members. It will be up to the winning Team(s) to reallocate the prize money among its member Contestants, if they deem it appropriate.

V. Prize Eligibility

To be eligible to compete within this Challenge all of the requirements stated below must be met:

A. All Challenge entrants must be identified in their Challenge Submission under a named Team (''Team'').

B. Each Team member (''Contestant'') must be: (a) A citizen or permanent resident of the United States who is at least thirteen (13) years old at the time of entry; or (b) a private entity, such as a corporation or other organization, that is a lawfully-organized entity established in accordance with applicable State laws and in good standing in their respective jurisdiction, with operations in the U.S. or its Territories or a foreign legal entity having an officially recognized place of business in the U.S. or its Territories. Individuals submitting on behalf of corporations, nonprofits, or groups of individuals (such as an academic class) must meet the eligibility requirements for individual Contestants. A Contestant may join more than one Team.

C. Each Team that registers for the Challenge must be able to receive payments that are legally made from the U.S. in U.S. dollars. Minors must provide proof of consent of a parent or legal guardian.

D. Each Team must have a bank account into which funds can be legally deposited from the U.S. in U.S. dollars.

E. The Team and all its Contestant members must agree to assume any and all risks related to the Challenge and waive all claims against the Federal Government and related entities, except in cases of willful misconduct, for any injury, death, damage, or loss of personal property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in the Challenge competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

F. Each Team shall submit all required documentation in English and any monetary figures shall be stated or referenced in U.S. dollars.

G. DOE employees, employees of sponsoring organizations (including participating industry leaders and employees of their associated or affiliated organizations), and members of their immediate family (spouses, children, siblings, parents), and persons living in the same household as such persons, whether or not related, are not eligible to participate in the Challenge.

VI. Open Data and Green Button Data Specifications

The Department of Energy has data available in a variety of locations and in a variety of formats. For this Challenge, where use of existing datasets is required, the data resources that are to be used by Teams are the datasets that can be directly and legally accessed. Green Button data means formatted data produced by the system developed by the North American Energy Standards Board for providing web-based secure access to energy bill account information, energy usage information, and energy consumption and usage data to customers of utilities and energy providers for the purposes of business management and energy usage

management. A partial list of electricity and gas service providers supporting Green Button data is available at *http://www.greenbuttondata.org/greenadopt.html*.

Use of open data or Green Button data is mandatory to be considered for a prize in Challenges 1, 2, and 3 listed above. However, DOE also encourages combining the value of this data with other non-open data, such as weather data or GPS technologies on a smart phone.

VII. Evaluation Criteria

It is of paramount importance to the American Energy Data Challenge that any use of open data or Green Button data protects privacy. Any generated idea, application, design, or other entry that presents a potential violation of this principle will be rejected by the judges. The following evaluation criteria are common across all four Contests, but complete rules and judging criteria will be published under each Contest.

Common Criteria for Challenge

Potential Impact: Each Submission will be rated on the strength of its potential to help individuals, organizations, and communities make greater use of open data or resources held by DOE, data in the Green Button data format, or energy infrastructure in the United States.

Creativity and Innovation: Each Submission will be rated for the degree of new thinking it brings to the subject matter of each Contest, and the creativity shown in designing for impact.

Helps Deliver Services Smarter and Faster: Each Submission will be rated for the degree to which public resources can be discovered and utilized or how open data and energy infrastructure can be efficiently leveraged to greatest citizen benefit.

Use of Open Data: Each Submission in Contests 1, 2, and 3 must make use of open data or Green Button data. Judges will be looking at both the depth of usage for each data stream and the breadth of different data streams that are integrated.

Submissions will be judged by an expert panel as well as the public. The expert judging panel will be appointed by DOE, may include both Federal and non-Federal personnel, and will determine winners of Contests 1–4. Each Contest will also feature a Popular Choice award, to be determined by public vote. Public votes will be displayed on the Challenge Web site, but will be verified for integrity. The winners of the Popular Choice Awards will be determined on the basis of the verified vote counts, as determined by DOE, and DOE reserves the right to suspend, cancel or extend the Popular Choice voting period at any time for any reason.

VIII. Submission Requirements

The official time-keeping device will be announced at the launch of each Contest, which shall be used for determining submission date and time, and compliance with submission timelines. The rules for Submissions—subject to modification as the individual Contests require—by Teams are as follows:

(a) Visit *http://energychallenge.energy.gov/* and click ''Sign Up'' to create a Contest account, or click ''Log In'' and log in with an existing account.

(b) Register your interest in participating by clicking ''Accept this Challenge'' on the Challenge Web site in order to receive important Challenge updates. Registration is free.

(c) After you sign up on the Challenge Web site, a confirmation email will be sent to the email address you provided. Use the confirmation email to verify your email address. As a registered Contestant, you will then be able to enter the each Contest by crafting a Submission that conforms to the requirements set forth in the Official Rules.

(d) For Contest 1, submit an idea. For Contest 2, create a software application according to the Official Rules. For Contest 3, meet the requirements for the relevant prize category (visualization, information design, directory, etc). For Challenge 4, create a video.

(e) Challenge Submission Requirements: Timing of Submission requirements will be announced when each Contest is launched, with Contest 1 commencing on the date specified above. When a Submission is made, you will be required to visit *http://energychallenge.energy.gov/* to confirm that you have read and agree to the Official Rules.

(g) Submission Rights:

1. For Contest 1, Submissions must be submitted and released to the public under a *Creative Commons Attribution 3.0 Unported License*.

2. By sending in a Submission to this Challenge, you grant to DOE, and the other supporters a royalty-free license to: (i) Post on *http://energychallenge.energy.gov/* your Submission(s) and if applicable a link to the downloadable product in the online store of the applicable software platform (*e.g.,* Google Play) or, if not distributed through such platform, to your Web site; and (ii) publicize the names of Challenge Contestants (including the individual members of a team) and winners and their Submissions through media and events of DOE's choosing. Such license shall remain in force for the duration of the Challenge and for a period of no less than 12 consecutive months following the announcement of the Challenge winners.

(h) Submission Requirements: In order for Submissions to be eligible to win a Contest, they must meet the following requirements:

1. Acceptable platforms—The Submission, if in the form of software, must be designed for the web, a personal computer, a mobile handheld device, console, or any platform broadly accessible on the open internet.

2. Data used—For Contests 1, 2, and 3, the Submission must utilize open data or Green Button data. The use of or reference to data from other sources in conjunction with required data is strongly encouraged.

3. No DOE logo—The Submission must not use DOE's logo or official seal in the Submission, and must not claim DOE endorsement.

4. Functionality/Accuracy—In the case of software applications, such applications may be disqualified if the software application fails to function as expressed in the description and video provided by the user, or if the software application provides inaccurate information.

5. Third Party Approval—Submissions requiring approval from a third party, such as an ''app store'' like the Apple App Store, in order to be accessible to the public, must be submitted to such third party or app store for review before the end of the Contest period. For any software platform that is not easily shared on the web before store approval, such as Apple iPhone, you may submit your working software product using a web framework designed for those platforms (such as PhoneGap), and provide the required link to a video of your working application. DOE may request access to the product in person or via device provisioning to verify any criteria or functionality of your product.

6. Security—Submissions must be free of malware. Contestant agrees that DOE may conduct testing on the Submission to determine whether malware or other security threats may be present. DOE may disqualify the Submission if, in DOE's judgment, the Submission may damage Government or others' equipment or operating environment.

7. No Previous Winners—Contestant may not submit a Submission that is substantially similar to a Submission that has previously been submitted by

the Team to another competition and has won a prize.

8. DOE will also screen Submissions for Team eligibility, IT security, and compliance with the challenge Web site's Terms of Participation. Once a Submission has been submitted, the Team cannot make any changes or alterations to any part of the Submission. Ideas and products failing to meet Submission requirements or other Submission screenings will be deemed ineligible to win a prize. Posting a software application to *http://energychallenge.energy.gov/does* not constitute DOE's final determination of Team eligibility.

9. Each Submission must be original, the work of the Team, and must not infringe, misappropriate, or otherwise violate the lawful rights of any individual or organization including intellectual property rights and proprietary rights, privacy rights, or any other rights of any person or entity. Each Team further represents and warrants to DOE and the other sponsors that the Submission, and any use thereof by DOE or the other sponsors (or any of their respective partners, subsidiaries and affiliates), shall not: (i) Be defamatory or libelous in any manner toward any person, (ii) constitute or result in any misappropriation or other violation of any person's publicity rights or right of privacy, and (iii) infringe, misappropriate, or otherwise violate any intellectual property rights, proprietary rights, privacy rights, moral rights, or any other rights of any person or entity.

10. It is an express condition of eligibility that each Team warrants and represents that the Team's Submission is solely owned by the Team, that the Submission is wholly original with the Team, and that no other party has any ownership rights or ownership interest in the Submission.

11. A Team may contract with a third party for technical assistance to create the Submission, provided the idea or product is solely the Team's work product and the result of the Team's ideas and creativity and the Team owns all rights to it.

12. Each Submission must be in English or, if in a language other than English, the Submission must be accompanied by an English translation of the text.

13. Submissions will not be accepted if they contain any matter that, in the sole discretion of DOE or its judges, is indecent, obscene, defamatory, libelous, in bad taste, or demonstrates a lack of respect for public morals or conduct. If DOE, in its discretion, finds any Submission to be unacceptable, then such Submission shall be deemed disqualified.

14. Winners are responsible for both reporting and paying all applicable Federal, state, and local taxes payable from any prize amounts awarded under this Challenge.

IX. Additional Terms and Conditions

Challenge Subject to Applicable Law: the Challenge is subject to all applicable Federal laws and regulations. Registering for this Challenge constitutes each Team and/or Contestant's agreement to the official rules as set forth on *http://energychallenge.energy.gov/* and administrative decisions, which are final and binding in all matters related to the Challenge. Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein.

Judges: The Submissions will be judged by a qualified judging panel selected by DOE at its sole discretion. The judging panel will judge the Submissions on the judging criteria identified in the Contest rules in order to select winners in each category.

Publicity: Except where prohibited, participation in the Challenge constitutes each winner's consent to DOE's and its agents' use of each winner's name, likeness, photograph, voice, biographical information, opinions, and/or hometown and state information for promotional purposes through any form of media, worldwide, without further permission, payment, or consideration.

Liability and Insurance: Any and all information provided by or obtained from the Federal Government is without any warranty or representation whatsoever, including but not limited to its suitability for any particular purpose. Upon registration, all Contestants agree to assume and, thereby, have assumed any and all risks of injury or loss in connection with or in any way arising from participation in this competition, development of any application, or the use of any application by the Contestants or any third party. Upon registration, all Contestants agree to and, thereby, do waive and release any and all claims or causes of action against the Federal Government and its officers, employees and agents for any and all injury and damage of any nature whatsoever (whether existing or thereafter arising, whether direct, indirect, or consequential and whether foreseeable or not), arising from their participation in the Challenge, whether the claim or cause of action arises under contract or tort. Upon registration, all Contestants agree to and, thereby, shall indemnify and hold harmless the Federal Government and its officers, employees and agents for any and all injury and damage of any nature whatsoever (whether existing or thereafter arising, whether direct, indirect, or consequential and whether foreseeable or not), including but not limited to any damage that may result from a virus, malware, etc., to Government computer systems or data, or to the systems or data of end-users of the software and/or application(s) which results, in whole or in part, from the fault, negligence, or wrongful act or omission of the Contestants or Contestants' officers, employees or agents.

Records Retention and FOIA: All materials submitted to DOE as part of a Submission become DOE records and cannot be returned. No confidential information will be accepted with any Submission. Submitters will be notified of any Freedom of Information Act requests for their Submissions in accordance with 10 CFR part 1004.

508 Compliance: Participants should keep in mind that the Department of Energy considers universal accessibility to information a priority for all individuals, including individuals with disabilities. In this regard, the Department is strongly committed to meeting its compliance obligations under Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, to ensure the accessibility of its programs and activities to individuals with disabilities. This obligation includes acquiring accessible electronic and information technology. When evaluating Submissions for this contest, the extent to which a Submission complies with the requirements for accessible technology required by Section 508 will be considered.

Public Voting: DOE is not responsible for, nor is it required to count, incomplete, late, misdirected, damaged, unlawful, or illicit votes, including those secured through payment or achieved through automated means.

X. Contact Information

Department of Energy, Office of Public Affairs, 7A–145, Attn: American Energy Data Challenge, 1000 Independence Ave. SW., Washington, DC 20585.

For questions about the Official Rules, contact *DataInnovation@hq.doe.gov.*

Issued in Washington, DC on November 6, 2013.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–26976 Filed 11–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Invitation for Public Comment on Draft Test Plan for the High Burnup Dry Storage Cask Research and Development Project (CDP)

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice; request for public comments.

SUMMARY: The U.S. Department of Energy (DOE) is providing notice of request for public comment on its draft test plan for the High Burnup Dry Storage Cask Research and Development Project (CDP). The test plan will guide the Department's activities, research, and development throughout the execution of the High Burnup Dry Storage Cask Research and Development Project. The draft test plan places its focus on ''why'' the project is being performed and ''what'' the Department plans to accomplish with the CDP. The details on ''how'' the test plan will be executed will be added when Dominion Virginia Power, who is part of the Electric Power research Institute (EPRI) team, submits a License Amendment Request for the existing North Anna Generating Station Independent Spent Fuel Storage Installation (ISFSI). The License Amendment Request will be submitted to the NRC in the future. The public will be provided an opportunity to provide comments to the NRC on the CDP test plan at that time. The DOE's Office of Used Nuclear Fuel Disposition Research and Development has coordinated this effort in collaboration with its contractor EPRI and several DOE national laboratories. The DOE is seeking public stakeholder comment to ensure CDP resources are invested wisely to achieve measurable improvements in our Nation's data on High Burnup Casks.

DATES: Written comments should be submitted by December 12, 2013. Comments received after this date will be considered if it is practical to do so; however, the DOE is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

Electronic Form: Go to *http://www.id.energy.gov/insideNEID/PublicInvolvement.htm*. Locate the area on the page that pertains to the draft test plan for the High Burnup Dry Storage Cask Research and Development Project (CDP). Click on the link for the electronic comment form. Populate the form and click on ''Submit''.

E-Mail: CDP@id.doe.gov.

Mail: U.S. Department of Energy, C/O Melissa Bates, 1955 Freemont Ave., MS 1235, Idaho Falls, ID 83415.

Hand Delivery or Courier: U.S. Department of Energy, Willow Creek Building Ground Floor, Room 185B, 1955 Fremont Ave., Attn: Melissa Bates, Idaho Falls, ID, between 8 a.m. and 3:30 p.m. MT, Monday through Thursday, except Federal holidays.

Fax: 208–526–6249.

FOR FURTHER INFORMATION CONTACT: Mrs. Melissa Bates, Contracting Officers Representative, High Burnup Dry Storage Cask Research and Development Project, U.S. Department of Energy—Idaho Operations Office, MS 1235, 1955 Fremont Ave., Idaho Falls, ID 83415, (208) 526–4652, *batesmc@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) has performed recent assessments focusing on long-term aging issues important to the performance of the structures, systems, and components of the dry cask storage systems for high burnup spent nuclear fuel. A number of technical issues and research and data needs have emerged from these assessments. DOE has determined that a large scale cask research and development project using various configurations of dry storage cask systems and experiments would be beneficial.

A draft test plan for the High Burnup Dry Storage Cask Research and Development Project (CDP) has been drafted by DOE's contractor the Electric Power Research Institute (EPRI) to document what is planned to be accomplished by the CDP. DOE is soliciting comments from the public to obtain feedback on what the Department plans to execute.

A copy of the draft test plan can be found at the following link: *http://www.id.energy.gov/insideNEID/PublicInvolvement.htm*. Locate the area on the page that pertains to the High Burnup Dry Storage Cask Research and Development Project (CDP). Click on the link for the draft test plan.

Submitting Comments

Stakeholder's comments should be aligned, if possible, with the goals and objectives of the CDP. All comments will be considered that are received by the deadline that appears in the **DATES** section.

Instructions: Submit comments via any of the mechanisms set forth in the **ADDRESSES** section above. Identify your name, organization affiliation, comments on the draft test plan, email, and phone number. If an email or phone number is included, it will allow the DOE to contact the commenter if questions or clarifications arise. No responses will be provided to commenters in regards to the disposition of their comments. All comments will be officially recorded without change or edit, including any personal information provided.

Privacy Act: Data collected via the mechanisms listed above will not be protected from the public view in any way. DOE does not intend to publish the comments received externally; however, data collected will be seen by multiple entities while comments are resolved.

Dated: November 5, 2013.

Jay Jones,

Office of Fuel Cycle Technologies, Office of Nuclear Energy.

[FR Doc. 2013–26977 Filed 11–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–362]

Notice of Availability for the Draft Environmental Impact Statement and Announcement of Public Hearings for the Proposed Champlain Hudson Power Express Transmission Line Project; Correction

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and public hearings; correction.

SUMMARY: The Department of Energy (DOE) published a document in the **Federal Register** of November 1, 2013, announcing the availability for the Draft Environmental Impact Statement and public hearings for the proposed Champlain Hudson Power Express transmission line project. This document corrects an error in that notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Brian Mills at *Brian.Mills@hq.doe.gov.*

Correction

In the **Federal Register** of November 1, 2013 in FR Doc. 2013–26080, 78 FR 65622, please make the following correction:

On page 65623, in the table, the third row is corrected to read:

Holiday Inn Albany Wolf Road	Tuesday, November 19, 2013, 6:00 p.m	205 Wolf Rd., Albany, NY 12205.

Issued in Washington, DC, on November 5, 2013.

Brian Mills,

NEPA Compliance Officer, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–26983 Filed 11–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Revision of a Currently Approved Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will be used to report the progress of participants in the DOE Better Buildings programs, including the Better Buildings Challenge, Better Buildings, Better Plants program, and the Better Buildings Alliance. These voluntary programs are intended to drive greater energy efficiency in the commercial and industrial marketplace to create cost savings and jobs. This will be accomplished by highlighting the ways participants overcome market barriers and persistent obstacles with replicable, marketplace solutions. These programs will showcase real solutions and partner with industry leaders to better understand policy and technical opportunities. Since the published 60-Day Notice and request for comments on April 11, 2013, Vol. 78, No. 70, page 21602, there are noted changes to the following supplemental information items: (6) Annual Estimated Number of Total Responses are reduced from 3,178 to 2,333; (7) Annual Estimated Number of Burden Hours are reduced from 5,077 to 4,651.89; and (8) Annual Estimated Reporting and Recordkeeping Cost Burden is reduced from$194,926 to $183,610.

DATES: Comments regarding this collection must be received on or before December 12, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to Nancy Gonzalez, EE–2F/ Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–5234 or by email at *nancy.gonzalez@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nancy Gonzalez, EE–2F/ Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–5234 or by email at *nancy.gonzalez@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.*1910–5141; (2) *Information Collection Request Title:* Better Buildings Challenge, Better Buildings Alliance and the Better Buildings, Better Plants Voluntary Pledge Program; (3) *Type of Request:* Amendment; (4) *Purpose:* The collected information is being amended to be used to report the progress of participants in the Better Buildings Alliance, as well as additional information for the Better Buildings, Better Plants program. The collection is being amended to account for an increase in the number of respondents; (5) *Annual Estimated Number of Total Respondents:* 550; (6) *Annual Estimated Number of Total Responses:* 2,333; (7) *Annual Estimated Number of Burden Hours:* 4,651.89; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $183,610.

Statutory Authority: Section 421 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17081); Section 911 of the Energy Policy Act of 2005, as amended (42 U.S.C. 16191).

Issued in Washington, DC on November 1, 2013.

Maria Vargas,

Director, Better Buildings Challenge, Buildings Technologies Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–26984 Filed 11–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–401–001]

AltaGas Facilities (U.S.), Inc. (AltaGas); Notice of Application

Take notice that on October 21, 2013, AltaGas Facilities (U.S.), Inc. (AltaGas), 1700, 355 4th Avenue SW., Calgary, Alberta T2P 0J1, filed an application in Docket No. CP00–401–001, requesting authorization to terminate its Natural Gas Act section 3 authorization and its related Presidential Permit for its facilities extending from the international boundary in Toole County, Montana to Alberta, Canada. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

On July 31, 2001, AltaGas was authorized to construct, connect, operate, and maintain 60 feet of six-inch diameter natural gas pipeline extending from the international boundary with Canada in T37N, R3W, to an interconnection with the natural gas gathering facilities which AltaGas owns in Toole County, Montana. In addition with the request to terminate the section 3 authorization, AltaGas also requests waiver of the requirement to remove the pipeline, as required by Article 9 of its Presidential Permit. AltaGas proposes to abandon the 60 foot pipeline in-place. The pipeline would be treated, capped, and tagged underground prior to its abandonment. The records of the internal and external corrosion control programs would be maintained for two years.

Any questions regarding this application should be directed to Nicole Axelson Plumb, MA, Regulatory Analyst, AltaGas Holdings, Inc., 1700, 355 4th Avenue SW., Calgary, Alberta T2P 0J1, Canada, or by telephone at (403) 691–7594.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 25, 2013.

Dated: November 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26914 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–10–000]

Natural Gas Pipeline Company of America LLC; Notice of Application

Take notice that on October 18, 2013 Natural Gas Pipeline Company of America LLC (Natural), at 3250 Lacey Road, Downers Grove, IL 60615, filed an application in Docket No. CP14–10–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to abandon certain pipeline lateral and compressor facilities located in Moore County, Texas. Specifically, Natural proposes to abandon, by sale to Eagle Rock Field Services, L.P.: A 9.6 mile 24-inch diameter lateral and appurtenances (North Moore Lateral); a 6.1 mile 16-inch diameter lateral and appurtenances (Shamrock Lateral); and two 1,265 horsepower compressor units. In conjunction with the abandonment, Natural seeks a determination that the lines are gathering facilities exempt from the Commission's jurisdiction under NGA Section 1(b), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Any questions regarding this application should be directed Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, or by calling (630) 725–3070 (telephone) *bruce_newsome@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other

milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 22, 2013.

Dated: November 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26916 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP14–81–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits tariff filing per 154.204: NAESB Copyright to be effective 11/30/2013.
Filed Date: 10/30/13.
Accession Number: 20131030–5160.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–82–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits tariff filing per 154.204: NAESB Copyright to be effective 11/30/2013.
Filed Date: 10/30/13.
Accession Number: 20131030–5164.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–83–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits tariff filing per 154.204: NAESB Copyright to be effective 11/30/2013.
Filed Date: 10/30/13.
Accession Number: 20131030–5165.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–84–000.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits tariff filing per 154.204: NAESB Copyright to be effective 11/30/2013.
Filed Date: 10/30/13.
Accession Number: 20131030–5166.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–85–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company's 2012–2013 Gas Sales and Purchases Report.
Filed Date: 10/30/13.
Accession Number: 20131030–5172.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–86–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company's 2012–2013 Gas Sales and Purchases Report.
Filed Date: 10/30/13.
Accession Number: 20131030–5173.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–87–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.601: Negotiated Rate Service Agreement Rice Drilling B, to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5017.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–88–000.
Applicants: Southern Union Company.
Description: Petition for Commission Approval of Request for Temporary Waivers of Capacity Release Regulations and Actions Necessary to Permit the Transfer of Transportation and Storage Contracts and Request for Expedited Action.
Filed Date: 10/30/13.
Accession Number: 20131030–5191.
Comments Due: 5 p.m. ET 11/6/13.

Docket Numbers: RP14–89–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: Annual Interruptible Storage Revenue Credit.
Filed Date: 10/31/13.
Accession Number: 20131031–5032.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–90–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Update Rate Schedule TAPS to be effective 12/1/2013.
Filed Date: 10/31/13.

Accession Number: 20131031–5034.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–91–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agmt Filing (Atmos 120) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5036.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–92–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Neg Rate Agmt filing (NextEra 33367) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5037.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–93–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Agreement (BP Energy 1076) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5038.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–94–000.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits tariff filing per 154.204: Continental Resources Agreement to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5039.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–95–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Amendment to Neg Rate Agmt (BP 37–12) to be effective 10/31/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5041.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–96–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Cap Rel Neg Rate Agmt (Vanguard 598, 597 to Tenaska 1148, 1149) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5042.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–97–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Cap Rel Neg Rate Agmt (Chesapeake 34684 to BP 41371 and Tenaska 41341) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5045.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–98–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendment To Neg Rate Agmt (Sequent 34693–16) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5046.
Comments Due: 5 p.m. ET 11/12/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated October 31, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26968 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–10–000.
Applicants: Elgin Energy Center, LLC.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of Elgin Energy Center, LLC.
Filed Date: 10/25/13.
Accession Number: 20131025–5139.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: EG14–11–000.
Applicants: Grand Tower Energy Center, LLC.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of Grand Tower Energy Center, LLC.
Filed Date: 10/25/13.
Accession Number: 20131025–5140.
Comments Due: 5 p.m. ET 11/15/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1786–004.
Applicants: Credit Suisse Energy LLC.
Description: Revised Appendix B and Clarification of Affiliations of Credit Suisse Energy LLC.
Filed Date: 10/28/13.
Accession Number: 20131028–5075.
Comments Due: 5 p.m. ET 11/18/13.

Docket Numbers: ER13–611–001.
Applicants: NorthWestern Corporation.
Description: Compliance Filing—SA 664 and 665—TSAs with PPL Montana to be effective 1/1/2014.
Filed Date: 10/25/13.
Accession Number: 20131025–5110.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: ER13–2091–001.
Applicants: Southwest Power Pool, Inc.
Description: Credit Policy Criteria Compliance to be effective 3/1/2014.
Filed Date: 10/25/13.
Accession Number: 20131025–5117.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: ER14–75–001.
Applicants: Entergy Arkansas, Inc.
Description: Metadata Correction—Sec. 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5099.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: ER14–76–001.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: Metadata Correction—Section 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5104.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: ER14–77–001.
Applicants: Entergy Louisiana, LLC.
Description: Metadata Correction—Section 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5105.
Comments Due: 5 p.m. ET 11/15/13.

Docket Numbers: ER14–78–001.
Applicants: Entergy Mississippi, Inc.
Description: Metadata Correction—Section 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5106.

Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–79–001.
Applicants: Entergy New Orleans, Inc.
Description: Metadata Correction—Section 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5107.
Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–80–001.
Applicants: Entergy Texas, Inc.
Description: Metadata Correction—Section 1.01 Amendment to be effective 12/31/9998.
Filed Date: 10/25/13.
Accession Number: 20131025–5108.
Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–106–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2013–10–25 MWP Gaming Amend to be effective 10/17/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5000.
Comments Due: 5 p.m. ET 11/6/13.
Docket Numbers: ER14–183–000.
Applicants: New England Power Company.
Description: Small Generator Interconnection Agreement with Vuelta Solar & CEII Request to be effective 9/17/2013.
Filed Date: 10/25/13.
Accession Number: 20131025–5093.
Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–184–000.
Applicants: ITC Midwest LLC.
Description: Concurrence with IPL's Amended and Restated O&T Agreement to be effective 9/27/2013.
Filed Date: 10/25/13.
Accession Number: 20131025–5109.
Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–185–000.
Applicants: New England Power Company.
Description: Small Generator Interconnection Agmt with Old Wardour Holdings & CEII Request to be effective 9/17/2013.
Filed Date: 10/25/13.
Accession Number: 20131025–5111.
Comments Due: 5 p.m. ET 11/15/13.
Docket Numbers: ER14–186–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS114 SPS–CVEC to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5001.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–187–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS115 SPS–FEC to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5002.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–188–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS116 SPS–LCEC to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5003.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–189–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company 10–28–13_RS117 SPS–REC to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5004.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–190–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS118 SPS_Sharyland to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5005.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–191–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS137 SPS–WTMPA to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5006.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–192–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits 10–28–13_RS135 SPS–GSEC to be effective 1/1/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5007.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–193–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits 2513 Generation Energy, Inc. GIA Cancellation to be effective 1/1/2014.
Filed Date: 10/28/13.
Accession Number: 20131028–5024.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–194–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida, Inc. Cost-Based Rates Tariffs to be effective 12/27/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5041.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–195–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits CBR Name Change to be effective 12/27/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5042.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–196–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida, Inc. OATT and Service Agreements to be effective 12/24/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5054.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–197–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits OATT Name Change to be effective 12/10/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5056.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–198–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits Rate Schedules Name Change Filing No. 1 to be effective 12/24/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5061.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–199–000.
Applicants: Lakewood Cogeneration Limited Partnership.
Description: Lakewood Cogeneration Limited Partnership submits Filing of Reactive Tariff to be effective 1/1/2014.
Filed Date: 10/28/13.
Accession Number: 20131028–5064.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–200–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida, Inc. Rate Schedules to be effective 12/20/2013.
Filed Date: 10/28/13.
Accession Number: 20131028–5065.
Comments Due: 5 p.m. ET 11/18/13.
Docket Numbers: ER14–201–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Termination of NextEra Mutual Termination of Trans Service Agmt to be effective 1/14/2014.
Filed Date: 10/28/13.
Accession Number: 20131028–5080.

Comments Due: 5 p.m. ET 11/18/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: October 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26964 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–19–000.

Applicants: TransAlta Corporation, TransAlta Holdings U.S. Inc., FPL Energy Wyoming, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Consideration of FPL Energy Wyoming, LLC, et al.

Filed Date: 10/30/13.

Accession Number: 20131030–5171.

Comments Due: 5 p.m. ET 11/20/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2794–015; ER10–2849–014; ER11–2028–015; ER12–1825–013; ER11–3642–013.

Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC, EDF Industrial Power Services (OH), LLC, Tanner Street Generation, LLC.

Description: Notice of Non-Material Change in Status of EDF Trading North America, LLC, et al.

Filed Date: 10/30/13.

Accession Number: 20131030–5179.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER13–2117–001.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits Compliance Filing—Amendment to Pending Compl Filing of 080613 to be effective 10/31/2013.

Filed Date: 10/30/13.

Accession Number: 20131030–5156.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER13–2490–001.

Applicants: Simon Solar, LLC.

Description: Simon Solar, LLC submits Supplement Record in Pending Filing to be effective 10/1/2013.

Filed Date: 10/30/13.

Accession Number: 20131030–5167.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER14–233–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits 10–30–2013 SA 2314 MidAmerican Lehigh-Webster IA 2nd Revised to be effective 10/31/2013.

Filed Date: 10/30/13.

Accession Number: 20131030–5131.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER14–234–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits 10–30–2013 SA 764/766 ATC D–T IA Update to be effective 12/29/2013.

Filed Date: 10/30/13.

Accession Number: 20131030–5139.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER14–236–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits Transource Missouri Formula Rate to be effective 1/1/2014.

Filed Date: 10/30/13.

Accession Number: 20131030–5154.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER14–237–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits Cost-Based Master Power Purchase & Sale Agreement to be effective 12/1/2013.

Filed Date: 10/30/13.

Accession Number: 20131030–5155.

Comments Due: 5 p.m. ET 11/20/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–3–000.

Applicants: Alabama Electric Marketing, LLC, Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, CSOLAR IV South, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC.

Description: Quarterly Land Acquisition Report of the Tenaska MBR Sellers.

Filed Date: 10/30/13.

Accession Number: 20131030–5188.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: LA13–3–000.

Applicants: All Dams Generation, LLC, Arlington Valley Solar Energy II, LLC, Bluegrass Generation Company, L.L.C., Calhoun Power Company, LLC, Centinela Solar Energy, LLC, Cherokee County Cogeneration Partners, LLC, DeSoto County Generating Company, LLC, Doswell Limited Partnership, Lake Lynn Generation, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP Safe Harbor Holdings, LLC, LSP University Park, LLC, PE Hydro Generation, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Seneca Generation, LLC, Tilton Energy LLC, University Park Energy, LLC, and Wallingford Energy LLC.

Description: Quarterly Land Acquisition Report of the LS MBR Sellers.

Filed Date: 10/30/13.

Accession Number: 20131030–5189.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: LA13–3–000.

Applicants: Macquarie Energy LLC, Brea Generation LLC, Brea Power II, LLC.

Description: Quarterly Land Acquisition Report of Macquarie Energy LLC, et al.

Filed Date: 10/30/13.

Accession Number: 20131030–5190.

Comments Due: 5 p.m. ET 11/20/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: October 31, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26965 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2848–004; ER11–1939–006; ER11–2754–006; ER12–999–004; ER12–1002–004; ER12–1005–004; ER12–1006–004; ER12–1007–005.

Applicants: AP Holdings, LLC, AP Gas & Electric (PA), LLC, AP Gas & Electric (IL), LLC, AP Gas & Electric (MD), LLC, AP Gas & Electric (NJ), LLC, AP Gas & Electric (OH), LLC, AP Gas & Electric (NY), LLC, AP Gas & Electric (TX), LLC.

Description: Notification of Non-Material Change in Status of AP Holdings Subsidiaries.

Filed Date: 10/31/13.

Accession Number: 20131031–5189.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–23–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Northern States Power Company, a Minnesota corporation submits 2013–10–31_SuppTheRecordInER14–23 to be effective N/A.

Filed Date: 10/31/13.

Accession Number: 20131031–5154.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–238–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits SGIA and Distribution Service Agmt with NRG Solar Blythe II LLC to be effective 12/31/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5003.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–239–000.

Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.

Description: Consolidated Edison Company of New York, Inc. submits Amended Restated LGIA No. 1668—NYISO, Con Edison, Bayonne Energy Center to be effective 10/16/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5005.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–240–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc. submits Lyntegar Contract File to be effective 12/31/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5079.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–241–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii: 2014–2015 NTTG Funding Agreement to be effective 1/1/2014.

Filed Date: 10/31/13.

Accession Number: 20131031–5089.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–242–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Section 205 Transmission Depreciation Rates 2013 Filing to be effective 1/1/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5110.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–243–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Section 205 Requirements Depreciation Rates 2013 Filing to be effective 1/1/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5112.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–244–000.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Company submits HQUS Transfer Agreement to be effective 1/1/2014.

Filed Date: 10/31/13.

Accession Number: 20131031–5136.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–245–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits BPA Trans System Interconnection Agmt—Wine Country to be effective 12/31/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5169.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–246–000.

Applicants: Central Minnesota Municipal Power Agency.

Description: On behalf of Central Minnesota Municipal Power Agency, Midcontinent Independent System Operator, Inc. submits Request for Authorization to Recover Regulatory Asset in Rates.

Filed Date: 10/31/13.

Accession Number: 20131031–5181.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–247–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits November 2013 Membership Filing to be effective 10/1/2013.

Filed Date: 10/31/13.

Accession Number: 20131031–5188.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–248–000.

Applicants: Dynegy Oakland, LLC.

Description: Dynegy Oakland, LLC submits Annual RMR Section 205 Filing and RMR Schedule F Informational Filing to be effective 1/1/2014.

Filed Date: 10/31/13.

Accession Number: 20131031–5202.

Comments Due: 5 p.m. ET 11/21/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–56–000.

Applicants: Transource Missouri, LLC.

Description: Second Amendment to September 20, 2013 Application of Transource Missouri, LLC for Authorization Under Section 204(A) of the Federal Power Act to Borrow Up to $350 Million.

Filed Date: 10/31/13.

Accession Number: 20131031–5143.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: ES14–8–000.

Applicants: Baltimore Gas & Electric Company.

Description: Application of Baltimore Gas & Electric Company under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.

Filed Date: 10/31/13.

Accession Number: 20131031–5175.

Comments Due: 5 p.m. ET 11/21/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–3–000.

Applicants: Spring Canyon Energy LLC, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC,

Grays Harbor Energy LLC, Forward Energy LLC, Willow Creek Energy LLC, Sheldon Energy LLC, Hardee Power Partners Limited, Spindle Hill Energy LLC, Invenergy Cannon Falls LLC, Beech Ridge Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Vantage Wind Energy LLC, Stony Creek Energy LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC and California Ridge Wind Energy LLC.

Description: Quarterly Land Acquisition Report of Spring Canyon Energy LLC, et al.

Filed Date: 10/31/13.

Accession Number: 20131031–5170.

Comments Due: 5 p.m. ET 11/21/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: October 31, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26966 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–78–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Negotiated Rate—Nicor to be effective 11/1/2013.

Filed Date: 10/29/13.

Accession Number: 20131029–5057.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–79–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. Operational Purchases and Sales.

Filed Date: 10/29/13.

Accession Number: 20131029–5103.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–80–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Tennessee Gas Pipeline Company, L.L.C. submits tariff filing per 154.204: Volume No. 2—MPP Project—Chesapeake—Revised Exhibit A to be effective 11/1/2013.

Filed Date: 10/29/13.

Accession Number: 20131029–5108.

Comments Due: 5 p.m. ET 11/12/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 30, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26967 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–72–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—BP to be effective 11/1/2013.

Filed Date: 10/28/13.

Accession Number: 20131028–5025.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–73–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/28/13 Negotiated Rates—BP Energy Company (HUB) 1410–89 to be effective 11/1/2013.

Filed Date: 10/28/13.

Accession Number: 20131028–5027.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–74–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/28/13 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 11/1/2013.

Filed Date: 10/28/13.

Accession Number: 20131028–5040.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–75–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.204: Reservation Charge Crediting Provisions to be effective 12/2/2013.

Filed Date: 10/28/13.

Accession Number: 20131028–5136.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–76–000.

Applicants: TransColorado Gas Transmission Company L.

Description: TransColorado Gas Transmission Company LLC submits tariff filing per 154.402: Statement of Rates Correction to be effective 10/1/2013.

Filed Date: 10/28/13.

Accession Number: 20131028–5165.

Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–77–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.601: Negotiated Rate Service Agreement—EQT Energy, LLC to be effective 10/1/2013.

Filed Date: 10/29/13.

Accession Number: 20131029–5002.

Comments Due: 5 p.m. ET 11/12/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated October 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26970 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–7–000]

New England Power Generators Association, Inc. v. ISO New England Inc.; Notice of Complaint

Take notice that on October 31, 2013, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2013), the New England Power Generators Association, Inc. (NEPGA or Complainant) filed a complaint against ISO New England, Inc. (ISO–NE or Respondent). NEPGA alleges that the provisions of the ISO–NE Tariff that set capacity prices during circumstances termed Insufficient Competition and Inadequate Supply and the tariff rules known as the Capacity Carry Forward Rule, each of which is a component of the Forward Capacity Market administered by ISO–NE, are creating unreasonable and unduly discriminatory price disparities between new and existing capacity resources and do not approximate competitive market outcomes. As more fully explained in its complaint, NEPGA requests that the Commission find that its proposed revisions to the ISO–NE tariff are just and reasonable.

NEPGA certifies that copies of the complaint were served on the contacts for ISO–NE as listed on the Commission's list of Corporate Officials in accordance with Rule 206(c), 18 CFR 385.206(c).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 20, 2013.

Dated: November 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26917 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–8–000]

Vineland Municipal Electric Utility v. Atlantic City Electric Company PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on November 1, 2013, pursuant to sections 205, 206, 306, and 309 of the Federal Power Act, 16 USC 824d, 824e, 825e, and Rules 206 and 217 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and 385.217 (2013), Vineland Municipal Electric Utility (Vineland or Complainant) filed a complaint against Atlantic City Electric Company and PJM Interconnection, L.L.C. (Respondents). Vineland seeks an order granting full and immediate refunds of all amounts paid in violation of the Interconnection Agreement and PJM Open Access Transmission Tariff, specifically relating to the allocation of unaccounted for energy (UFE) to Vineland's hourly loads; and seeking an order that such UFE shall be removed from Vineland's hourly load data for the purpose of calculating Vineland's capacity and transmission obligations for future periods.

Complainant certifies that copies of the Complaint were served on the contacts for the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 21, 2013.

Dated: November 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26969 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–125–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Giles County Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Giles County Project, proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to construct and operate natural gas pipeline facilities in Virginia and West Virginia that would provide about 46,000 dekatherms of natural gas per day to a manufacturing plant in Virginia.

The EA assesses the potential environmental effects of the construction and operation of the Giles County Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Giles County Project includes 12.6 miles of 8-inch-diameter pipeline loop [1] in Giles County, Virginia and Summers and Monroe Counties, West Virginia. Columbia would also construct miscellaneous aboveground equipment including the installation of a pig launcher,[2] pig receiver, mainline valve, and a gas heater.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before December 2, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP13–125–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–125). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: November 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26915 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ14–1–000]

City of Vernon, California; Notice of Filing

Take notice that on October 29, 2013, City of Vernon, California submitted its tariff filing per 35.28(e): 2014 Transmission Revenue Requirement and Transmission Revenue Balancing Account Adjustment to be effective 1/1/2014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 13, 2013.

Dated: November 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26918 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–209–000]

PowerOne Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of PowerOne Corporation's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 19, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26963 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–166–000]

Rigby Energy Resources, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Rigby Energy Resources, LP's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 19, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–26962 Filed 11–8–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–59–ORD]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of Five New Equivalent Methods

AGENCY: Office of Research and Development; Environmental Protection Agency (EPA).

ACTION: Notice of the designation of five new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, five new equivalent methods, one for measuring concentrations of PM_{10}, one for measuring concentrations of $PM_{10\text{-}2.5}$, two for measuring $PM_{2.5}$, and one for measuring NO_2 in the ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of five new equivalent methods for measuring pollutant concentrations in the ambient air: One for measuring concentrations of $PM_{10\text{-}2.5}$, one for measuring concentrations of PM_{10}, two for measuring concentrations of $PM_{2.5}$ and one for measuring concentrations of NO_2. These designations are made under the provisions of 40 CFR Part 53, as amended on August 31, 2011 (76 FR 54326–54341).

Two of the new equivalent methods for PM are automated monitoring methods utilizing a measurement principle based on sample collection by filtration and analysis by an inertial micro-balance that provides direct mass measurements in near real time. Separation of the PM_{10} aerosol into $PM_{10\text{-}2.5}$ and $PM_{2.5}$ particle size fractions is by a virtual impactor. The newly designated equivalent methods are identified as follows:

EQPM–1013–207, ''Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particular Monitor with FDMS®,'' configured for dual filter sampling of fine ($PM_{2.5}$) and coarse particles using the US EPA PM_{10} inlet specified in 40 CFR part 50 Appendix L, Figs. L–2 thru L–19 and a virtual impactor, with a total flow rate of 16.67 L/min, fine sample flow of 3 L/min, and coarse sample flow rate of 1.67 L/min, and operating with firmware version 1.70 and later, operated with or without external enclosures, and operated in accordance with the Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particulate Monitor Instruction Manual. This designation applies to $PM_{10\text{-}2.5}$ measurements only.

EQPM–1013–208, ''Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particular Monitor with FDMS®,'' configured for dual filter sampling of fine ($PM_{2.5}$) and coarse particles using the US EPA PM_{10} inlet specified in 40 CFR part 50 Appendix L, Figs. L–2 thru L–19 and a virtual impactor, with a total flow rate of 16.67 L/min, fine sample flow of 3 L/min, and coarse sample flow rate of 1.67 L/min, and operating with firmware version 1.70 and later, operated with or without external enclosures, and operated in accordance with the Thermo Scientific TEOM® 1405–DF Dichotomous Ambient Particulate Monitor Instruction Manual. This designation applies to PM_{10} measurements only.

Applications for the equivalent method determinations for these candidate methods were received by the EPA Office of Research and Development on July 26, 2011 and March 6, 2009. The monitors are commercially available from the applicant, Thermo Fisher Scientific, Air Quality Instruments, Environmental Instruments Division, 27 Forge Parkway, Franklin, MA 02038.

Two of the new equivalent methods are automated monitoring methods utilizing a measurement principle based on sample collection by filtration and analysis by beta radiation attenuation. The newly designated equivalent methods are identified as follows:

EQPM–1013–209, ''Met One Instruments, Inc. BAM–1022 Beta Attenuation Mass Monitor—Outdoor $PM_{2.5}$ FEM Configuration,'' configured for 24 1-hour average measurements of $PM_{2.5}$ by beta attenuation, using a glass fiber filter tape roll (460130) and a sample flow rate of 16.67 liters/min and with the standard (BX–802) EPA PM_{10} inlet (meeting 40 CFR part 50 Appendix L specifications) and with a BGI VSCC® Very Sharp Cut Cyclone (BX–808) particle size separator, and equipped with external enclosure BX–922 and BX–592 ambient temperature sensor or BX–596 ambient temperature/barometric combination sensor or BX–597 ambient temperature/barometric pressure/relative humidity combination sensor. Instrument must be operated in accordance with the BAM 1022 Particulate Monitor operation manual, revision 3 or later. This designation applies to $PM_{2.5}$ measurements only.

The application for the equivalent method determination for this candidate method was received by the EPA Office of Research and Development on January 16, 2013. The monitor is commercially available from the applicant, Met One Instruments, Inc., 1600 Washington Blvd., Grants Pass, Or 97526.

EQPM–1013–211, ''Environnement S.A. Model MP101M $PM_{2.5}$ Beta Attenuation Monitor'' using a glass fiber filter tape roll, operated at a sample flow rate of 16.67 liters/min for 24-hour average measurements of $PM_{2.5}$, configured with the standard EPA PM_{10} inlet (meeting 40 CFR part 50 Appendix L specifications) associated with a BGI VSCC® Very Sharp Cut Cyclone particle size separator and using a temperature regulated sampling tube with ambient meteorological sensor. With or without optional ESTEL analog inputs/outputs, serial link: 1 RS–232/422; USB port; Ethernet port (TCP/IP). Instrument must be operated in accordance with the Ambient Air Continuous Particulate Monitor Model MP101M operation manual. This designation applies to $PM_{2.5}$ measurements only.

The application for the equivalent method determination for this candidate method was received by the EPA Office of Research and Development on June 11, 2013. The monitor is commercially available from the applicant, Environment S.A., 111 bd Robespierre, 78300 POISSY, France.

The new equivalent method for NO_2 is an automated method (analyzer) utilizing the principle of Cavity Attenuated Phase Shift spectroscopy and the calibration procedure specified in the operation manual. The newly designated equivalent method is identified as follows:

EQNA–1013–210, ''Environnement S.A. Model AS32M cavity attenuated phase shift spectroscopy Nitrogen Dioxide Analyzer'', operated on any full scale range between 0–500 ppb and 0–

1000 ppb, at any ambient temperature in the range of 20°C to 30°C, with automatic response time ON, set to 11, in accordance with the associated instrument manual; with sample particulate filter; zero gas inlet and zero check enabled; sample permeation dryer. Serial link: 2 RS–232; USB port; Ethernet port (TCP/IP); onboard html web server and, with or without any of the following options: Internal permeation bench; ESTEL analog inputs/outputs.

The application for equivalent method determination for the NO2 method was received by the Office of Research and Development on November 29, 2012. This analyzer model is commercially available from the applicant, Environment S.A., 111 bd Robespierre, 78300 POISSY, France.

Test monitors representative of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR Part 53, as amended on August 31, 2011. After reviewing the results of those tests and other information submitted in the applications, EPA has determined, in accordance with Part 53, that these methods should be designated as equivalent methods.

As designated equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the methods must be used in strict accordance with the operation or instruction manuals associated with the methods and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designated descriptions (see the identification of the methods above).

Use of the methods also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program'' EPA–454/B–08–003, December, 2008. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

Consistent or repeated noncompliance should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the methods should be directed to the applicant.

Desmond Mayes,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2013–27016 Filed 11–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2013–0470] [FRL–9902–76–Region 4]

Public Water System Supervision Program Revision for the Commonwealth of Kentucky

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the Commonwealth of Kentucky is revising its approved Public Water System Supervision Program. Kentucky has adopted the following rules: Consumer Confidence Report, Ground Water and Long Term 1 Enhanced Surface Water Treatment. The EPA has determined that Kentucky's rules are no less stringent than the corresponding federal regulations. Therefore, the EPA is tentatively approving this revision to the Commonwealth of Kentucky's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by December 12, 2013, to the Regional Administrator at the EPA Region 4 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by December 12, 2013, a public hearing will be held. If the EPA Region 4 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this tentative approval shall become final and effective on December 12, 2013. Any request for a public hearing shall include the following information: The name, address and telephone number of the individual, organization or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Kentucky Department for Environmental Protection, Division of Water, 200 Fair Oaks Lane, Fourth Floor, Frankfort, Kentucky 40601; and the U.S. Environmental Protection Agency Region 4, Safe Drinking Water Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Thames, the EPA Region 4, Safe Drinking Water Branch, at the address given above, by telephone at (404) 562–9454, or at *thames.brian@epa.gov.*

EPA Analysis: On November 19, 2009, the Commonwealth of Kentucky submitted requests that the Region approve revisions to the Commonwealth's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Consumer Confidence Report Rule and the Long Term 1 Enhanced Surface Water Treatment Rule. On October 14, 2010, the Commonwealth of Kentucky also submitted a request that the Region approve revisions to the Commonwealth's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Ground Water rule. For the revisions to be approved, the EPA must find the State Rules, 401 KAR 8:075, Section 1(1); 401 KAR 8:150, Section 8; and 401 KAR 8:150, Section 10 to be no less stringent than the Federal Rules codified at 40 CFR part 141, Subpart O—Consumer Confidence Reports; 40 CFR part 141, Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People; and 40 CFR part 141, Subpart S—Ground Water Rule. The EPA reviewed the applications using the Federal statutory provisions (Section 1413 of the Safe Drinking Water Act), Federal regulations (at 40 CFR part 142), State regulations, rule crosswalks, and EPA regulatory guidance to determine whether the request for revisions is approvable. The EPA determined that the Kentucky

revisions are no less stringent than the corresponding Federal regulations.

EPA Action: The EPA is tentatively approving this revision. If the EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this tentative approval will become final and effective on December 12, 2013.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: October 29, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–27022 Filed 11–8–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 14, 2013, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 10, 2013.

B. New Business

- Conclusion of Pilot Investment Programs and Withdrawal of Proposed Rule.

C. Reports

- Ethics Update Report.

Closed Session*

- Office of Secondary Market Oversight Quarterly Report.

*Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Dated: November 7, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–27123 Filed 11–7–13; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Monday, December 9, 2013 in the Commission Meeting Room, from 1 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

DATES: December 9, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The FCC Technological Advisory Council will discuss progress on work areas announced at its initial meeting of the year on March 11, 2013. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–27007 Filed 11–8–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 26, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The James M. and Devon J. Goetz Family Trust Five,* Mandan, North Dakota; to acquire voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly acquire voting shares of Security First

Bank of North Dakota, New Salem, North Dakota.

Board of Governors of the Federal Reserve System, November 6, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–26980 Filed 11–8–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Choice Financial Holdings, Inc.,* Grafton, North Dakota; to acquire 100 percent of the voting shares of Great Plains National Bank, Belfield, North Dakota.

In connection with this application, Applicant also has applied to acquire 51 percent of the voting shares of Great Plains National Insurance Agency, LLC, LaMoure, North Dakota, and thereby indirectly engage in general insurance agency activities in a community that has a population not exceeding 5,000, pursuant to section 225.28(b)(11)(iii)(A).

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Carroll County Bancshares, Inc.,* Carrollton, Missouri; to acquire up to 24.99 percent of the voting shares of Adams Dairy Bancshares, Inc., and thereby indirectly acquire voting shares of Adams Dairy Bank, both in Blue Springs, Missouri.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *FB Bancshares, Inc.,* Wichita Falls, Texas; to merge with Byers Bancshares, Inc., and thereby indirectly acquire First National Bank, both in Byers, Texas.

Board of Governors of the Federal Reserve System, November 6, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–26981 Filed 11–8–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Hao Wang, M.D., Ph.D., Western University—Canada (formerly University of Western Ontario): Based on the report of an investigation conducted by Western University—Canada (WU) and ORI's subsequent oversight analysis, ORI found that Dr. Hao Wang, former Associate Professor of Surgery and Pathology, Schulich School of Medicine and Dentistry, WU, engaged in research misconduct in research supported by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), subaward 0016244 from Prime Award U01 AI074676 to the University of Pittsburgh.

ORI found that Respondent engaged in research misconduct by falsifying data that were included in:

- An abstract and poster presentation for the 2011 American Transplant Congress—Abstract [1537.5]: Wang, H., Baroja, M., Lan, Z., Arp, J., Lin, W., Relmann, K., Garcia, B., Jevnikar, A., & Rothstein, D. ''Combination of Novel Anti-CD45RB and Anti-CD40 Chimeric Antibodies Proglons Renal Allograft Survival in Cynomolgus Monkeys.''

Specifically, ORI found that the Respondent falsified the status of two animals as successfully treated renal allograft recipients in a 2011 American Transplant Congress abstract and meeting presentation and in false representations to the project principal investigators and colleagues. Respondent falsely claimed long term survival, normal serum creatinine concentrations, and lack of adverse effects in two Cynomolgus monkeys treated with chimeric antibodies following bilateral nephrectomies and receipt of renal allografts, when in fact the transplant surgery had failed and the animals' survival was due to a native kidney that was left in place in each animal. Respondent also falsified or failed to correct known falsifications (identifying the two monkeys as transplant recipients) in numerous clinical records, including anesthesia records, progress, notes, treatment records, and clinical laboratory reports.

It is expressly agreed that while Respondent asserts that there are extenuating factors for his actions, Respondent agrees to enter into the Agreement because contesting the findings would cause him undue financial hardship and stress, and Respondent wishes to seek finality. Respondent also claims that based on the data obtained from the same experimental group, the removal of these two monkeys from the data would not alter the scientific conclusion.

Dr. Wang has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on October 22, 2013:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed-upon supervision plan;

(2) that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract, and that the text in such submission is his own or properly cites the source of copied language and ideas; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–26991 Filed 11–8–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10–1/8%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2013. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)) and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: October 18, 2013.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2013–26994 Filed 11–8–13; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 12, 2013, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Karen Abraham-Burrell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the efficacy and safety of new drug application (NDA) 202293, dapagliflozin tablet, submitted by Bristol-Myers Squibb. Dapagliflozin is a sodium-glucose cotransporter 2 inhibitor developed as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at: *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 27, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2013.

Persons attending FDA's advisory committee meetings are advised that the

Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Abraham-Burrell at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–26868 Filed 11–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 11, 2013, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3063, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On December 11, 2013, the committee will discuss, make recommendations, and vote on information related to the premarket approval application regarding the Boston Scientific WATCHMAN Left Atrial Appendage (LAA) Closure Technology. The WATCHMAN LAA Closure Technology is a percutaneously delivered permanent cardiac implant placed in the left atrial appendage. This device is intended to prevent thrombus embolization from the left atrial appendage, thereby preventing the occurrence of ischemic stroke and systemic embolism, and reduce the risk of life-threatening bleeding events in patients with non-valvular atrial fibrillation who are eligible for warfarin therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 27, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–26891 Filed 11–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1361]

Determination That Adderall (Amphetamine Aspartate; Amphetamine Sulfate; Dextroamphetamine Saccharate; Dextroamphetamine Sulfate) Tablet and 13 Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Amy Hopkins, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6207, Silver Spring, MD 20993–0002, 301–796–5418.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug	Applicant
NDA 011522	ADDERALL (amphetamine aspartate; amphetamine sulfate; dextroamphetamine saccharate; dextroamphetamine sulfate) Tablet; Oral, 5 milligrams (mg), 7.5 mg, 10 mg, 12.5 mg, 15 mg, 20 mg, 30 mg.	Teva Womens Health Inc., 41 Moores Rd., P.O. Box 4011, Frazer, PA 19355.
NDA 011601	KENALOG (triamcinolone acetonide) Cream; Topical, 0.025%, 0.1%.	Apothecon Pharmaceuticals, General Offices, P.O. Box 4500, Princeton, NJ 08543–4500.
NDA 013601	MUCOMYST (acetylcysteine) Solution; Inhalation, Oral, 10%, 20%.	Do.
NDA 018531	NITROGLYCERIN (nitroglycerin) Injectable; Injection, 5mg/milliliter (mL).	Hospira Inc., 275 North Field Dr., Bldg. H2, Lake Forest, IL 60045–5046.
NDA 018726	WESTCORT (hydrocortisone valerate) Ointment; Topical, 0.2%.	Ranbaxy Inc., 600 College Rd., East Princeton, NJ 08540.
NDA 018830	TAMBOCOR (flecainide acetate) Tablet; Oral, 50 mg, 100 mg, 150 mg.	Medicis Pharmaceutical Corp., 7720 North Dobson Rd., Scottsdale, AZ 85256.
NDA 020336	DYNACIRC CR (isradipine) Tablet; Extended Release, Oral, 5 mg, 10 mg.	GlaxoSmithKline LLC., 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808.
NDA 020518	RETROVIR (zidovudine) Tablet; Oral, 300 mg	ViiV Healthcare, 5 Moore Dr., Research Triangle Park, NC 27709.
NDA 021745	RYZOLT (tramadol HCl) Tablet; Extended Release, Oral, 100 mg, 200 mg, 300 mg.	Purdue Pharma Products LP, 1 Stamford Forum, Stamford, CT 06901.
NDA 022021	ALTACE (ramipril) Tablet; Oral, 1.25 mg, 2.5 mg, 5 mg, 10 mg.	Pfizer Inc., 501 5th St., Bristol, TN 37620.
NDA 050808	SOLODYN (minocycline HCl) Tablet; Extended Release; Equivalent to (EQ) 45 mg Base, EQ 90 mg Base, EQ 135 mg Base.	Medicis Pharmaceutical Corp., 7720 North Dobson Rd., Scottsdale, AZ 85256.
ANDA 081295	ESTRACE (estradiol) Tablet; Oral, 0.5 mg	Bristol Myers Squibb, P.O. Box 4000, Princeton, NJ 08543.
ANDA 084499	ESTRACE (estradiol) Tablet; Oral, 1 mg	Do.
ANDA 084500	ESTRACE (estradiol) Tablet; Oral, 2 mg	Do.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–26856 Filed 11–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements

OMB No. 0915–0307—Revision

Abstract: Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White HIV/AIDS Program), Part A section 2604(c), Part B section 2612(b), and Part C section 2651(c), requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs for individuals with HIV/AIDS, identified and eligible under the legislation. In order for grantees under Parts A, B, and C to be exempted from the 75 percent core medical services requirement, they must request and receive a waiver from HRSA, as required in the Act.

On October 25, 2013, HRSA published revised standards for core medical services waiver requests in the **Federal Register** (78 FR 63990). These revised standards will allow grantees more flexibility to adjust resource allocation based on the current situation in their local environment. These standards ensure that grantees receiving waivers demonstrate the availability of core medical services, including antiretroviral drugs, for persons with HIV/AIDS served under Title XXVI of the PHS Act. The core medical services waiver uniform standard and waiver request process will apply to Ryan White HIV/AIDS Program Grant Awards under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers will be effective for a 1-year period that is consistent with the grant award period. Grantees may submit a waiver request before the annual grant application, with the application, or up to 4 months after the grant award has been made.

Need and Proposed Use of the Information: HRSA uses the documentation submitted in core medical services waiver requests to determine if the applicant/grantee meets the statutory requirements for waiver eligibility including: (1) No waiting lists for AIDS Drug Assistance Program (ADAP) services; and (2) evidence of core medical services availability within the grantee's jurisdiction, state, or service area to all individuals with HIV/AIDS identified and eligible under Title XXVI of the PHS Act. See sections 2604(c)(2), 2612(b)(2), and 2651(c)(2) of the PHS Act.

Likely Respondents: Ryan White HIV/AIDS Program Part A, B, and C grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Waiver Request	20	1	20	5.5	110
Total	20	1	20	5.5	110

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: November 4, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–26974 Filed 11–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Advanced Education Nursing Traineeship (AENT) Program Application.

OMB No.: 0915–xxxx—NEW

Abstract: The Health Resources and Services Administration (HRSA) provides advanced education nursing training grants to educational institutions to increase the numbers of advanced education nurses through the AENT Program. The AENT Program is governed by Title VIII, Section 811(a)(2) of the Public Health Service Act (42 U.S.C. 296j(a)(2)). This new request includes the Program Specific AENT Tables. The proposed AENT Tables will include data on the distribution of graduates from the organization who are working in rural, underserved, and public health settings, as well as the distribution of graduates who received traineeship support and are working in rural, underserved, and public health settings; and the number of projected students to receive traineeship support by their enrollment status (full-time or part-time), the degree program (master's, post-nursing master's certificate, or doctoral), and the specialty in which they are enrolled (nurse practitioner or nurse midwifery) by budget year one and by budget year two.

Need and Proposed Use of the Information: HRSA will use this information gathered from the tables in determining the amount of traineeship support to be awarded per student, per institution, and to succinctly capture data for the number of projected students for determining eligibility for Special Consideration and Statutory Funding Preference.

Likely Respondents: Eligible applicants are schools of nursing, nursing centers, academic health centers, state or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that submit an application and are accredited for the provision of primary care nurse practitioner and nurse midwifery programs accredited by a national nurse education accrediting agency recognized by the Secretary of the U.S. Department of Education. The school must be located in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondent	Number responses per respondent	Average burden per response (in hours)	Total hour burden
Grantee	Table 1a: Rural, Underserved, or Public health Practice Settings: Graduate Data.	70	1	3.19	223.3
Grantee	Table 1b: Rural, Underserved, or Public health Practice Settings: Graduates Supported Data.	70	1	3.19	223.3
Grantee	Table 2a: Number of Projected Master's Degree and Post Nursing Master's Certificate Student To Receive Traineeship Support by Role (budget year 1 and budget year 2).	70	1	3.11	217.7
Grantee	Table 2b: Number of Projected Doctoral (PhD and/or DNP) Degree Nursing Students To Receive Traineeship Support by Role (budget year 1 and budget year 2).	70	1	3.11	217.7
Total		70			882

Dated: November 4, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–27006 Filed 11–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Addition to the Vaccine Injury Table to Include All Vaccines Against Seasonal Influenza

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Through this notice, the Secretary of the U.S. Department of Health and Human Services (the Secretary) announces that all FDA-approved vaccines against seasonal influenza are covered under the National Vaccine Injury Compensation Program (VICP), which provides a system of no-fault compensation for certain individuals who have been injured by covered childhood vaccines. Prior to this publication, trivalent influenza vaccines were included under Category XIV on the Vaccine Injury Table (Table) and will continue to be listed in that category. This notice serves to include all vaccines against seasonal influenza (not already covered under Category XIV) as covered vaccines under Category XVII of the Table (new vaccines covered under the VICP). This notice ensures that petitioners may file petitions relating to all vaccines against seasonal influenza (not already covered under the VICP) with the VICP even before such vaccines are added as a separate and distinct category to the Table through rulemaking.

DATES: This notice is effective on November 12, 2013. As described below, all vaccines against seasonal influenza (except trivalent influenza vaccines, which are already covered under the VICP) will be covered under the VICP on November 12, 2013.

FOR FURTHER INFORMATION CONTACT: Vito Caserta, M.D., M.P.H., Acting Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–5287.

SUPPLEMENTARY INFORMATION: The statute authorizing the VICP provides for the inclusion of additional vaccines in the VICP when they are recommended by the Centers for Disease Control and Prevention (CDC) to the Secretary for routine administration to children. See section 2114(e)(2) of the Public Health Service (PHS) Act, 42 U.S.C. 300aa–14(e)(2). Consistent with section 13632(a)(3) of Public Law 103–66, the regulations governing the VICP provide that such vaccines will be included as covered vaccines in the Table as of the effective date of an excise tax to provide funds for the payment of compensation with respect to such vaccines (42 CFR 100.3(c)(5)).

By way of background, trivalent influenza vaccines (meaning they each contain three vaccine virus strains which are thought most likely to cause disease outbreaks during the influenza season) are routinely given to millions of individuals in the United States each year. Trivalent influenza vaccines include an inactivated (killed) virus vaccine administered using a syringe as well as a live, attenuated product administered in a nasal spray. All trivalent vaccines have been covered under the VICP since July 1, 2005. On April 12, 2005, the Health Resources and Services Administration (HRSA) published a notice in the **Federal Register** announcing that such vaccines were covered under the category for new vaccines on the Table. See 70 FR 19092. Subsequently, the Secretary engaged in rulemaking to add trivalent influenza vaccines as a separate category on the Table (category XIV on the Table). See 76 FR 36367.

Since that time, quadrivalent influenza vaccines (meaning that they contain four vaccine virus strains which are thought most likely to cause disease outbreaks during the influenza season) have been approved by the Food and Drug Administration (FDA), and such vaccines are expected to be administered as an alternative to trivalent influenza vaccines during the upcoming and future flu seasons. On June 25, 2013, Public Law 113–15 was enacted, extending the applicable excise tax on trivalent influenza vaccines to also include any other vaccines against seasonal influenza. See Public Law 113–15 (amending 26 U.S.C. § 4132(a)(1)(N)).

The amendment included in Public Law 113–15 ensures that all FDA-approved seasonal influenza vaccines, including quadrivalent influenza vaccines, and other new seasonal influenza vaccines are covered under the VICP. Under the regulations governing the VICP, Category XVII of the Table specifies that ''[a]ny new vaccine recommended by CDC for routine administration to children, after publication by the Secretary of a notice of coverage'' is a covered vaccine under the Table (42 CFR 100.3(a), Item XVII). As explained in HRSA's notice of coverage with respect to the coverage of trivalent influenza vaccines, the CDC recommended in its May 28, 2004, issue of the Morbidity and Mortality Weekly Report (MMWR) that influenza vaccines be routinely administered to children between 6 and 23 months of age because children in this age group are at an increased risk for complications from influenza. That recommendation extends to seasonal influenza vaccines beyond trivalent vaccines. The latest CDC update of its annual influenza vaccination recommendation was published in the MMWR on September 20, 2013. MMWR 2013;62, No. 7. This report updated the 2012 recommendations by the CDC and its Advisory Committee on Immunization Practices regarding the use of influenza vaccines for the prevention and control of seasonal influenza. Routine annual influenza vaccination is recommended for all persons aged 6 months and older. For the 2013–14 influenza season, it is expected that trivalent live attenuated influenza vaccine (LAIV3) will be replaced by a quadrivalent LAIV formulation (LAIV4). Inactivated influenza vaccines (IIVs) will be available in both trivalent (IIV3) and quadrivalent (IIV4) formulations. No preferential recommendation was made for one influenza vaccine product over another for persons for whom more than one product is otherwise appropriate.

This notice serves to satisfy the regulation's publication requirement. Through this notice, all vaccines against seasonal influenza (beyond trivalent influenza vaccines, which are already covered under Category XIV on the Table) are included as covered vaccines under Category XVII of the Table (new vaccines).

Under section 2114(e) of the PHS Act, as amended by section 13632(a) of the Omnibus Budget Reconciliation Act of 1993, coverage for a vaccine recommended by the CDC for routine administration to children shall take effect upon the effective date of the tax enacted to provide funds for compensation with respect to the vaccine included as a covered vaccine in the Table. Under Public Law 113–15, the excise tax for vaccines against seasonal influenza (beyond trivalent influenza vaccines) ''shall apply to sales and uses on or after the later of: (A) The first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [i.e., Pub. L. 113–

15]; or (B) the date on which the Secretary of Health and Human Services lists any vaccines against seasonal influenza (other than any vaccine against seasonal influenza listed by the Secretary prior to the date of the enactment of this Act) for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.'' Public Law 113–15, § 1. The law further provides that if the vaccines were sold before or on the effective date of the excise tax, but delivered after this date, the delivery date of such vaccines shall be considered the sale date. *Id.*

Under this statutory language, the effective date of the excise tax for seasonal influenza vaccines other than trivalent influenza vaccines is the later of August 1, 2013 (which is the first day of the first month beginning more than 4 weeks after the effective date of Public Law 113–15, which was June 25, 2013), or the date on which the Secretary publishes a notice of coverage under the VICP for seasonal influenza vaccines not previously covered under the VICP. This publication is the notice referred to in the latter requirement. Because this publication is made after August 1, 2013, the effective date of coverage for all vaccines against seasonal influenza (beyond trivalent influenza vaccines, which are already covered by the VICP) is the effective date of this publication, November 12, 2013.

Petitions filed concerning vaccine-related injuries or deaths associated with all vaccines against seasonal influenza vaccines must be filed within the applicable statute of limitations. The filing limitations applicable to petitions filed with the VICP are set out in section 2116(a) of the PHS Act (42 U.S.C. 300aa–16(a)). In addition, section 2116(b) of the PHS Act lays out specific exceptions to these statutes of limitations that apply when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases. Under this provision, persons who may be eligible to file petitions based on the addition of a new category of vaccines under Category XVII of the Table may file a petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table (42 U.S.C. 300aa–16(b)). Thus, persons whose petitions may not be timely under the limitations periods described in section 2116(a) of the PHS Act, may still file petitions concerning vaccine-related injuries or deaths associated with seasonal influenza vaccines (with the exception of trivalent influenza vaccines that are already covered under the VICP) until November 12, 2015, as long as the vaccine-related injury or death occurred on or before November 12, 2021 (8 years prior to the effective date of the addition of non-trivalent seasonal influenza vaccines as covered vaccines).

The Table will be amended through subsequent rulemaking to include all vaccines against seasonal influenza in place of only trivalent influenza vaccines under Category XIV of the Table. Once that is done, the Table's coverage provisions (codified at 42 CFR 100.3(c)) will explain that trivalent influenza vaccines are included on the Table as of July 1, 2005, and that other seasonal influenza vaccines are included on the Table as of November 12, 2013.

Dated: November 5, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–26992 Filed 11–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Virology—A Study Section, October 03, 2013, 08:30 a.m. to October 04, 2013, 05:30 p.m., Embassy Suites Baltimore—Downtown, 222 St. Paul Place, Baltimore, MD which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57169–57170.

The meeting will start on December 16, 2013 at 9:00 a.m. and end December 17, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: *November 5, 2013.*

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26894 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 10, 2013, 09:00 a.m. to October 10, 2013, 03:00 p.m., National Institutes of Health, 6700 B Rockledge Drive, 3137, Bethesda, MD, 20892 which was published in the **Federal Register** on September 16, 2013, 78 FR 56904.

The meeting notice is amended to change the date of the meeting from October 10, 2013 to December 5, 2013. The meeting is closed to the public.

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26906 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: December 6, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda,

MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov.*

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: December 13, 2013.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 7194, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: *November 5, 2013.*

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26892 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section, October 17, 2013, 08:00 a.m. to October 18, 2013, 06:00 PM, Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 20, 2013, 78 FR 183 Pgs. 57866–57867.

The meeting will start on December 9, 2013 at 8:00 a.m. and end December 10, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26895 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft Report on Carcinogens Monographs for ortho-Toluidine and Pentachlorophenol and By-products of Its Synthesis; Availability of Documents; Request for Comments; Notice of Rescheduled Meeting

SUMMARY: The notice announces the meeting to peer review the Draft Report on Carcinogens (RoC) Monographs for ortho-Toluidine and Pentachlorophenol and By-products of its Synthesis (hereafter referred to as ''pentachlorophenol''). These documents were prepared by the Office of the Report on Carcinogens (ORoC), Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS). The peer-review meeting, originally scheduled for October 7–8, 2013 (78 FR 51733), was cancelled due to the Federal government shutdown, and has been rescheduled for December 12–13, 2013. Written public comments previously submitted for the originally scheduled meeting are applicable for this meeting and do not need to be resubmitted. Persons planning to attend the meeting and/or present oral comments are asked to re-register.

DATES: *Meeting:* December 12, 2013, 8:30 a.m. to approximately 5:00 p.m. Eastern Standard Time (EST) and December 13, 2013, from 8:30 a.m. until adjournment, approximately 11:30 a.m.

Document Availability: Draft monographs are available at *http://ntp.niehs.nih.gov/go/38853.*

Public Comments Submissions: Deadline is November 21, 2013.

Pre-Registration for Meeting and/or Oral Comments: Deadline is December 5, 2013.

ADDRESSES: *Meeting Location:* The meeting location will be in the Research Triangle Park, NC area and announced on the meeting page (*http://ntp.niehs.nih.gov/go/38853)* when set.

Agency Meeting Web page: Information for the peer review including draft monographs, draft agenda, roster, and other meeting materials will be posted, when available at *http://ntp.niehs.nih.gov/go/38853.* Online registration is available on this Web page.

Webcast: The meeting will be available via webcast at *http://www.niehs.nih.gov/news/video/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, NTP Designated Federal Official, Office of Liaison, Policy and Review, DNTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709. Phone: (919) 541–9834, Fax: (301) 480–3272, Email: *whiteld@niehs.nih.gov.* Hand Delivery/Courier: 530 Davis Drive, Room 2136, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

Information regarding this peer-review meeting, originally scheduled for October 7–8, 2013 was published in the **Federal Register** (78 FR 51733). Due to the Federal government shutdown in October 2013, the meeting was cancelled and is now rescheduled for December 12–13, 2013. This notice provides updated information about the meeting including deadlines for registration and submission of public comments.

Meeting and Registration

The meeting is open to the public with time set aside for oral public comment; attendance is limited only by the space available. The exact location of the meeting has not been set, although it will be in the Research Triangle Park, NC area and posted on the meeting Web site when available.

The meeting is scheduled for December 12, 2013, 8:30 a.m. to approximately 5:00 p.m. EST and December 13, 2013, from 8:30 a.m. until adjournment, approximately 11:30 a.m. Two days are set aside for the meeting; however, it may adjourn sooner if the panel completes its peer review of the draft monographs. Pre-registration to attend the meeting and/or provide oral comments is by December 5, 2013, at *http://ntp.niehs.nih.gov/go/38853.* For planning purposes by the NTP, anyone who pre-registered for the October 7–8 meeting should re-register for the December 12–13 meeting if they want to attend. Registered attendees are encouraged to access the meeting Web page at *http://ntp.niehs.nih.gov/go/38853* to stay abreast of the most current information regarding the meeting.

Request for Comments

The NTP invites written and oral public comments on the draft monographs. Written public comments previously submitted for the originally scheduled meeting on October 7–8, 2013, (78 FR 51733) are applicable for this meeting, do not need to be resubmitted, and have been posted to the NTP Web site *(http://ntp.niehs.nih.gov/go/40594)* and shared with the peer-review panel and NTP staff. The deadline for submission of additional written comments is November 21, 2013, to enable review by

the peer-review panel and NTP staff prior to the meeting.

Persons wishing to make oral comments, including those who originally registered to present comments at the October 7–8, 2013 and those now interested in making comments, are asked to register online at *http://ntp.niehs.nih.gov/go/38853* by December 5, 2013. As noted in the previous **Federal Register** notice (78 FR 51733), oral public comments may be presented in person or by teleconference line and will adhere to the procedures stated in that notice. The lines will be open from 8:30 a.m. until approximately 5:00 p.m. EST on December 12 and from 8:30 a.m. EST until adjournment on December 13, and oral comments will be received only during the formal public comment periods indicated on the preliminary agenda.

Dated: November 6, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–26937 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diversity R03 Applications in Digestive Diseases and Nutrition.

Date: December 16, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26900 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 3, 2013, 1:00 p.m. to October 3, 2013, 3:00 p.m., DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 10, 2013, 55265–55266 FR 175.

Meeting will be held November 20, 2013 from 12 p.m. to 3 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: November 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26907 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Evaluation of Trichloroethylene for the Report on Carcinogens; Request for Nominations of Scientific Experts for Proposed Webinar

SUMMARY: The National Toxicology Program (NTP) Office of the Report on Carcinogens (ORoC) requests nominations of speakers for a proposed webinar to obtain information related to evaluating the potential association of exposure to trichloroethylene (TCE) and cancer.

DATES: The deadline for receipt of nominations of speakers is December 9, 2013.

ADDRESSES: Information can be submitted electronically on the ORoC TCE Web page (*http://ntp.niehs.nih.gov/go/37899*) or to *lunn@niehs.nih.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, Director, ORoC, Division of the NTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709. Phone: (919) 316–4637, FAX: (301) 480–2970, email: *lunn@niehs.nih.gov*. Hand Delivery/Courier: NIEHS, Room 2138, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Information on Proposed Webinar: TCE is a candidate substance under evaluation for the Report on Carcinogens (RoC) (*http://ntp.niehs.nih.gov/go/37899*). Several comprehensive reviews have identified non-Hodgkin's lymphoma and cancer of the liver and kidney as sites of concern in humans, and the RoC evaluation will be limited to these outcomes.

As part of the evaluation, the ORoC proposes to convene a webinar to obtain input on scientific issues related to evaluating human epidemiologic studies of exposure to TCE and cancer risk and use this input to help inform its cancer evaluation of TCE. The webinar will include a series of presentations by invited speakers that address the quality of the methods used in the epidemiology studies to assess exposure to TCE and cancer outcome (primarily lymphohematopoietic cancer) and information on TCE exposure in the studies. Speakers on exposure and cancer-outcome classification will be asked to (1) identify the methods used to assess exposure or outcome, (2) discuss the validity and reliability of the methods used to classify exposure (such as job title, job exposure matrix, biomonitoring, and expert assessment) or cancer outcome (such as mortality or incidence data), and (3) examine how misclassification of exposure (either qualitative or quantitative) or cancer outcome would affect interpretation of the study's findings. The speaker addressing TCE exposure will be asked to compare measured or estimated levels of exposure to TCE and its prevalence in the epidemiologic studies and to discuss how these data may explain potential heterogeneity of findings across studies and inform the assessment for a specific type of cancer.

It is envisioned that the webinar will include time for questions to speakers by webinar attendees and open discussion. Once plans are finalized, the list of speakers and logistical details for

the webinar will be announced in the **Federal Register**.

Request for Nomination of Speakers: The ORoC invites nominations of speakers for the webinar with expertise in exposure assessment, industrial hygiene, cancer epidemiology, or lymphohematopoietic cancers and knowledge of cancer studies on exposure to TCE. Self nomination is permitted. Each nomination should include (1) contact information for the nominee [name, affiliation (if any), address, telephone, and email], (2) a short description of the individual's expertise relative to topics covered above in ''Information on Proposed Webinar,'' and (3) current curriculum vitae. Nominations of experts can be submitted on-line via the TCE candidate substance Web page (*http://ntp.niehs.nih.gov/go/37899*) or by email to *lunn@niehs.nih.gov;* receipt will be acknowledged by email. Persons submitting nominations on-line or by email should provide their name, contact information, affiliation, and sponsoring organization (if any). The deadline for nominations is December 9, 2013. Persons selected as speakers will be notified by email at least 30 days prior to the webinar.

Responses to this request for nominations are voluntary. This request for nominations is for planning purposes only. Please note that the U.S. Government will not pay for the preparation of any information submitted, and no proprietary, classified, confidential, or sensitive information should be included in the submission.

Background Information on TCE: TCE, a volatile chlorinated alkene used mainly as a metal cleaner and degreaser, has been listed in the RoC as *reasonably anticipated to be a human carcinogen* since 2000 (*http://ntp-server.niehs.nih.gov/ntp/roc/twelfth/profiles/Trichloroethylene.pdf*). The NTP selected TCE for evaluation to determine whether a change in its listing status in the RoC might be warranted because of the extensive database of recent cancer studies on TCE and the public health concern due to its pervasiveness in the environment and its presence in food, numerous consumer products, and the workplace. Additional information on the status of the RoC review of TCE is available at *http://ntp.niehs.nih.gov/go/37899.*

Background Information on the RoC: The RoC is a congressionally mandated, science-based, public health report that identifies agents, substances, mixtures, or exposures (collectively called ''substances'') in our environment that pose a cancer hazard for people in the United States. The NTP prepares the RoC, on behalf of the Secretary of Health and Human Services, using a four-part process and established criteria (*http://ntp.niehs.nih.gov/go/rocprocess*). Published biennially, each edition of the RoC is cumulative and consists of substances newly reviewed in addition to those listed in previous editions. The 12th RoC, the latest edition, was published on June 10, 2011 (available at *http://ntp.niehs.nih.gov/go/roc12*). The 13th RoC is under development.

Dated: November 5, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–26909 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, October 22, 2013, 08:00 a.m. to October 22, 2013, 04:00 p.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA, 94115 which was published in the **Federal Register** on September 10, 2013, 78 FR 55266.

The meeting will be held on November 25, 2013, 08:00 a.m. to November 25, 2013, 04:00 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892. The meeting is closed to the public.

Dated: *November 5, 2013.*

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26898 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Genetics Study Section, October 10, 2013, 08:00 a.m. to October 10, 2013, 06:30 p.m., Renaissance Arlington Capital View Hotel, 2800 South Potomac Ave, Arlington, VA, 22202 which was published in the **Federal Register** on September 11, 2013, 78 FR 176 Pgs. 55752–55753.

The meeting will be held at the Embassy Suites Chevy Chase, 4300 Military Rd. NW., Washington, DC 20015. The meeting will start on January 10, 2014 at 8:00 a.m. and end January 10, 2014 at 6:00 p.m. The meeting is closed to the public.

Dated: November 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26893 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB P41 NMR Meeting (2014/05).

Date: March 13–14, 2014.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26903 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 21, 2013, 01:00 p.m. to October 21, 2013, 04:00 p.m., National Institutes of Health, 6700 B Rockledge Drive, 3137, Bethesda, MD, 20892 which was published in the **Federal Register** on September 16, 2013, 78 FR 56904.

The meeting notice is amended to change the date and time of the meeting from October 21, 2013 to December 11, 2013 at 9:00 a.m. until 12:00 p.m. The meeting is closed to the public.

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26905 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; HBV Ancillary Study.

Date: December 19, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26901 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biostatistical Methods and Research Design Study Section, October 18, 2013, 08:00 a.m. to October 18, 2013, 06:00 p.m., Holiday Inn Inner Harbor, 301 W. Lombard Street, Baltimore, MD, 21201 which was published in the **Federal Register** on September 24, 2013, 78 FR 58547–58548.

The meeting will be held on December 4, 2013 from 8:00 a.m. to 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26897 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; COBRE III Meeting 1.

Date: November 6, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3As.19K, Bethesda, MD 20892–4874, 301–594–2704, *newmanla2@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Peer Review of SCORE (SC) Grant Application.

Date: November 13, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington/Bethesda, 7301 Waverly Street, Bethesda, MD 21045.

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Genomes to Natural Products.

Date: November 14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street NW., Washington, DC 20036.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3As.19A, Bethesda, MD 20892–4874, 301–435–0807, *slicelw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Peer Review of SCORE (SC) Grant Application.

Date: November 18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18J, Bethesda, MD 20892–4874, 301–594–2773, *laffanjo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: November 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26908 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB P41 Microbeam Meeting 2014/05.

Date: February 25, 2014.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892. 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26904 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–13–008: Restoration of Resources lost due to Hurricane Sandy.

Date: November 20, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally A Mulhern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Multidisciplinary Studies of HIV/AIDS and Aging.

Date: November 21, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Airway Hypersensitivity Syndrome Overflow.

Date: December 4, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bahiru Gametchu, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26896 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, October 22, 2013, 04:00 p.m. to October 22, 2013, 06:00 p.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA, 94115 which was published in the **Federal Register** on September 10, 2013, 78 FR 55266.

The meeting will be held on November 25, 2013, 04:00 p.m. to November 25, 2013, 06:00 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892. The meeting is closed to the public.

Dated: November 5, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26899 Filed 11–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA Disaster Technical Assistance Center Training, Webinar, Podcast, and Mobile Application Feedback Forms—New

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval for a 3-year data collection effort associated with the SAMHSA Disaster Technical Assistance Center Training, Webinar, Podcast, and Mobile Application Feedback Forms—New. The collection includes five data collection instruments—the Training Feedback Form, the Webinar/Podcast Feedback Form, the Mobile Application Feedback Form, the Training Evaluation Follow-Up Interview Guide, and the Webinar Feedback Form Follow-Up Interview Guide. All of the proposed data collection efforts will be used to gather feedback on several training, webinar, and podcast events provided by SAMHSA DTAC throughout the year, as well as feedback on a SAMHSA application for mobile devices. The information will be used to: (1) Enhance SAMHSA DTAC training, webinar, and podcast curricula and content and enhance these resources as feedback is gathered through this data collection effort; and (2) Enhance the SAMHSA application for mobile devices.

SAMHSA DTAC will be responsible for administering the data collection instruments and analyzing the data. SAMHSA DTAC will use data from the Training Feedback Form, the Webinar/Podcast Feedback Form, the Training Follow-Up Interview Guide, and the Webinar Feedback Form Follow-Up Interview Guide to inform current and future training, webinar, and podcast activities and to ensure these activities continue to align with state/territory/tribe and local disaster behavioral health needs. SAMHSA will use data from the Mobile Application Feedback Form to inform updates and enhancements to the SAMHSA application for mobile devices. The components of the data collection are listed and described below, and a summary table of the number of respondents and respondent burden has also been included.

Training Feedback Form and Webinar/Podcast Feedback Form. The Training Feedback Form and the Webinar/Podcast Feedback Form will assess the following: content, presentation style, and presentation mode; relevance of the information presented; and satisfaction with the information presented. These surveys will be administered to all training and webinar participants immediately following each SAMHSA DTAC training or event, and periodically to those who have viewed podcasts. Six events or podcasts are estimated to be presented and made available each year. For webinars, podcasts, and web-based training events, the survey will be administered online. For those who attend in-person training events, the survey will be administered in person using hard copies of the survey instrument.

Mobile Application Feedback Form. The Mobile Application Feedback Form is designed to elicit feedback on the usefulness of the SAMHSA application for mobile devices, satisfaction with the application, and suggestions for improvements. It will be administered as a link to a web-based survey directly through the application to all users of the SAMHSA application. Training Feedback Form Follow-Up Interviews and Webinar Feedback Form Follow-Up Interviews. The Training Feedback Form Follow-Up Interviews and Webinar Feedback Form Follow-Up Interviews will be conducted 1 month following participation in a SAMHSA DTAC training or webinar, with a sample of up to 10 percent of event attendees (or five individuals if 10 percent of participants is fewer than five). Data will be collected during one-on-one in-depth telephone interviews. The interviews will gather greater contextual information not available through administration of the respective Feedback Forms. The interviews will examine participants' experiences with the training and webinar and will include: the level to which the event met expectations; memory for information learned during the training and webinar; ability to apply the information to job tasks; suggestions for enhancing SAMHSA DTAC events; and suggestions for future training and webinar topics. The information collected will inform the content and presentation style of future SAMHSA DTAC trainings, webinars, and podcasts and associated materials.

Internet-based technology will be used to collect data via web-based surveys and for data entry and management of all proposed instruments. A 3-year clearance is requested for this project. The average annual respondent burden is estimated below. All proposed instruments will be ongoing data collection efforts. Table 1 presents the estimated annual data collection burden. These estimates reflect the average annual number of respondents, the average annual number of responses, the time required for each response, and the average annual burden in hours. It is estimated that each participant will attend or view no more than an average of two webinar or podcast events each year; participants will be asked to complete the Training Feedback Form or Webinar/Podcast Feedback Form for each event they attend or view. Participants will only be asked to participate in one Training Feedback Form Follow-Up Interview and one Webinar Feedback Form Follow-Up Interview each year.

TABLE 1—ANNUALIZED ESTIMATE OF RESPONDENT BURDEN

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours	Hourly wage rate [1]	Total cost
Training Feedback Form							
Advanced Scheduled Event	300	1	300	0.25	75.0	$35	$2,625.00
Quick-turnaround Event	1,200	1	1,200	0.25	300.0	35	10,500.00

TABLE 1—ANNUALIZED ESTIMATE OF RESPONDENT BURDEN—Continued

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours	Hourly wage rate [1]	Total cost
Webinar/Podcast Feedback Form							
Advanced Scheduled Event	750	2	1,500	0.25	375.0	35	13,125.00
Quick-turnaround Event	1,200	1	1,200	0.25	300.0	35	10,500.00
Mobile Application Survey	600	1	600	0.25	150.0	35	5,250.00
Training Feedback Form Follow-Up Interviews	150	1	150	0.50	75.0	35	2,625.00
Webinar Feedback Form Follow-Up Interviews	195	1	195	0.50	97.5	35	3,412.50
Annual Total	4,395		5,145		1,372.5		48,037.50

Written comments and recommendations concerning the proposed information collection should be sent by December 12, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2013–26942 Filed 11–8–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality (CBHSQ), is requesting a revision to the National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119), which expires on June 30, 2015. The N–MHSS provides national and state-level data on the number and characteristics of mental health treatment facilities in the United States, annually, and national and state-level data on the number and characteristics of persons treated in these facilities, biennially.

An immediate need under N–MHSS is to update the information about facilities on SAMHSA's online Behavioral Health Treatment Services Locator (see: *http://findtreatment.samhsa.gov*), which was last updated with information from the abbreviated N–MHSS (N–MHSS-Locator Survey) in 2012. A full-scale N–MHSS will be conducted in 2014 and 2016 to collect (1) the information about facilities needed to update the online Locator, such as the facility name and address, specific services offered, and special client groups served, and (2) additional information including client counts and the demographics of persons treated in these facilities. An abbreviated N–MHSS (N–MHSS-Locator Survey) will be conducted in 2015 to update the information about facilities on the online Locator. A data collection in conjunction with adding new facilities to the online Locator as they become known to SAMHSA is also being requested. Both the 2015 N–MHSS-Locator Survey and the addition of new facilities to the online Locator will use the same N–MHSS-Locator Survey instrument.

This requested revision seeks to change the content of the currently approved abbreviated N–MHSS (i.e., N–MHSS-Locator) survey instrument, and the previously approved 2010 full-scale N–MHSS (OMB No. 0930–0119) to accommodate two related N–MHSS activities:

(1) collection of information from the total N–MHSS universe of mental health treatment facilities during 2014, 2015, and 2016.; and

(2) collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the online Locator.

The survey mode for both data collection activities will be web with telephone follow-up.

The database resulting from the N–MHSS will be used to update SAMHSA's online Behavioral Health Treatment Services Locator and to produce a national directory of mental health facilities on compact disk (CD), both for use by the general public, behavioral health professionals, and treatment service providers. In addition, a data file derived from the survey will be used to produce a summary report providing national and state-level data. The report and a public-use data file will be used by researchers, mental health professionals, State governments, the U.S. Congress, and the general public.

The request for OMB approval will include a request to conduct the full-scale N–MHSS in 2014 and 2016 and an abbreviated N–MHSS-Locator survey in 2015.

The following table summarizes the estimated annual response burden for the N–MHSS:

ESTIMATED ANNUAL RESPONSE BURDEN FOR THE N–MHSS

Type of respondent	Number of respondents	Responses per respondent	Average hours per response	Total burden hours
Facilities in full-scale N–MHSS universe in 2014 and 2016	17,000	1	0.75	12,750
Newly identified facilities in Between-Survey Update in 2014, 2015, and 2016 [1]	1,700	1	0.42	714
Facilities in N–MHSS-Locator Survey universe in 2015	17,000	1	0.42	7,140
Average Annual Total	18,700	1	0.62	11,594

[1] Collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the Locator.

Written comments and recommendations concerning the proposed information collection should be sent by December 12, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2013–26940 Filed 11–8–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930–0279)—Reinstatement

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major initiative designed to: (1) prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems; and, (3) build prevention capacity and infrastructure at the State-, territorial-, tribal- and community-levels.

Five Steps Comprise the SPF

Step 1: Profile population needs, resources, and readiness to address the problems and gaps in service delivery.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices and infrastructure development activities.

Step 5: Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.

An evaluation is currently in process with the SPF SIG Cohorts III, IV and V. The primary objective for this evaluation is to determine the impact of SPF SIG on the reduction of substance abuse related problems, on building state prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee- and community-levels will provide information about process and system outcomes at the grantee and community levels as well as context for analyzing participant-level NOMs outcomes.

This notice invites comments for reinstatement to the protocol for the ongoing Cross-site Evaluation of the Strategic Prevention Framework State Incentive Grant (SPF SIG) (OMB No. 0930–0279) which expired on 11/30/12. This revision includes two parts:

1. Submission of the instruments for the cross-site evaluation of the SPF SIG Cohorts IV and V: (a) The two-part Community-Level Instrument (CLI Parts I and II); and (b) the two Grantee-Level Instruments (GLI)—the GLI Infrastructure Instrument and the GLI Implementation Instrument.

2. Calculation of burden estimates for Cohorts IV and V, 24 and 10 grantees, respectively, for the 2-part CLI and the 2 GLIs. Per guidance from the previous OMB submission for the GLI and CLI Instruments (OMB No. 0930–0279), the number of items have been reduced, resulting in a reduced burden.

Grantee-Level Data Collection

Two web-based surveys, GLI Infrastructure Instrument and GLI Implementation Instrument, were developed for assessing grantee-level efforts and progress. These instruments gather information about the infrastructure of the grantee's overall prevention system and collect data regarding the grantee's efforts and progress in implementing the Strategic Prevention Framework 5-step process. The total burden for these instruments has been reduced by deleting items that are no longer necessary as baseline data has already been gathered from all grantees. Information for both surveys will be gathered once, at the end of the three year approval period. The estimated annual burden for grantee-level data collection is displayed below in Table 1.

Community-Level Data Collection

The Community-level Instrument (CLI) is a two part, web-based survey for capturing information about SPF SIG implementation at the community level. Data from this instrument allows CSAP to assess the progress of the communities in their implementation of both the SPF and prevention-related interventions funded under the initiative. Part I of the instrument gathers information on the communities' progress implementing the five SPF SIG steps and efforts taken to ensure cultural competency throughout the SPF SIG process. Subrecipient communities receiving SPF SIG awards will be required to complete Part I of the instrument annually.

Part II captures data on the specific prevention intervention(s) implemented at the community level, and is completed for each prevention intervention strategy implemented during the specified reporting period. Specific questions are tailored to match the type of prevention intervention strategy implemented (e.g., Prevention Education, Community-based Processes, and Environmental). Information collected on each strategy will include date of implementation, numbers of groups and participants served, frequency of activities, and gender, age, race, and ethnicity of population served/affected. Subrecipient communities' partners receiving SPF SIG awards are required to update Part II of the instrument a minimum of every six months.

The estimated annual burden for specific segments of the community-level data collection is displayed in Table 1. The total burden assumes an average of 15 community-level subrecipients per grantee, annual completion of the CLI Part I, a minimum of two instrument updates per year for the CLI Part II, and an average of three distinct prevention intervention strategies implemented by each community during a 6-month period.

Total Estimates of Annualized Hour Burden

Estimates of total and annualized reporting burden for respondents by evaluation cohort are displayed below in Table 1. CSAP is requesting an average annual estimate of: 167.28 hours at the grantee-level and 5,737.5 hours at the community-level. These hours are a reduction in the average annual estimate requested in the previous submission for grantees and communities.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Instrument Type	Respondent	Number of respondents	Number of responses per respondent	Total number of responses	Burden per response (hrs.)	Total burden (hrs.)
Grantee-Level Burden						
GLI Infrastructure Instrument	Grantee	34	1	34	2.22	75.48
GLI Implementation Instrument	Grantee	34	1	34	1.95	66.30
CLI Part I, 1–20: Community Contact Information—Updates	Grantee	34	3	102	0.25	25.50
Total Grantee-Level Burden	Grantee	34		170		167.28
Community-Level						
CLI Part I, 21–172: Community SPF Activities—Updates	Community	510	3	1,530	0.75	1,147.50
CLI Part II—Updates	Community	510	18	9,180	0.50	4,590.00
Total Community-Level Burden	Community	510		10,710		5,737.50

Written comments and recommendations concerning the proposed information collection should be sent by December 12, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2013–26941 Filed 11–8–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0927]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees and Working Groups will meet on December 10 through 12, 2013, in Washington, DC, to discuss marine transportation of hazardous materials. The meetings will be open to the public.

DATES: The following CTAC Subcommittees and Working Groups will meet on December 10 and 11, 2013: (1) Harmonization of Response and Carriage Requirements for Biofuels and Biofuel Blends, (2) Recommendations on Safety Standards for the Design of Vessels Carrying Natural Gas or Using Natural Gas as Fuel, (3) Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations, (4) Recommendations for Guidance on the Implementation of Revisions to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) Annex II and the IBC

Code to 46 CFR 153, (5) Requirements for Third-Party Surveyors of MARPOL Annex II Prewash, and (6) Improving Implementation and Education of MARPOL Discharge Requirements Under MARPOL Annex II and V. Subcommittees and Working Groups will meet Tuesday, December 10, 2013, from 8 a.m. to 5 p.m. and Wednesday, December 11, 2013, from 8 a.m. to 5 p.m. The full CTAC committee will meet Thursday, December 12, 2013, from 8 a.m. to 5 p.m. Please note that the meetings may close early if the committee has completed its business.

All written materials, comments, and requests to make oral presentations at the meeting should reach Patrick Keffler, Alternate Designated Federal Officer (ADFO) for CTAC by December 3, 2013. For contact information please see the **FOR FURTHER INFORMATION CONTACT** section below. Any written material submitted by the public will be distributed to the Committee and become part of the public record.

ADDRESSES: The meetings will be held at the U.S. Coast Guard Headquarters, Room 6i10–01–a 2703 Martin Luther King Jr. Ave. SE., Washington, DC. Attendees will be required to pre-register no later than 5:00 p.m. on December 3, 2013, to be admitted to the building. U.S. citizens must provide name, position, company, telephone number, date of birth and social security number to LT Cristina Nelson (202–371–1419 or *Cristina.E.Nelson@uscg.mil*). Non-U.S. citizens must submit name, position, company, telephone number, date of birth, country of citizenship, and passport number. Attendees will be required to provide a government-issued picture identification card in order to gain admittance to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Patrick Keffler as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than December 3, 2013, and may be submitted by *one* of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* (Preferred method to avoid delays in processing.)

(2) *Fax:* 202–493–2252

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: This notice, and documents or comments related to it, may be viewed in our online docket, USCG–2013–0927 at *http://www.regulations.gov*.

A public comment period will be held during each subcommittee and the full committee meeting concerning matters being discussed. Public comments will be limited to three minutes per speaker. Please note that the public comment period may end before the time indicated following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Patrick Keffler, Alternate Designated Federal Officer (ADFO) of the CTAC, telephone 202–372–1424, fax 202–372–1926. If you have any questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. (Pub. L. 92–463).

CTAC is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Deputy Commandant for Operations on matters relating to marine transportation of hazardous materials. The Committee advises, consults with, and makes recommendations reflecting its independent judgment to the Secretary.

Agendas of Meetings

Subcommittee and Working Group Meetings on December 10 and 11.

Subcommittees and working groups will meet to continue to address the items of interest listed in paragraph (2) of the agenda for the December 12 meeting and the tasks given at the last CTAC meeting. The tasks from the last CTAC meeting are located at Homeport at the following address: *https://homeport.uscg.mil*. Go to: Missions > Ports and Waterways > Safety Advisory Committees > CTAC Subcommittees and Working Groups. The agenda for each working group will include the following:

1. Review task statements, which can be found at Homeport at the following address: *https://homeport.uscg.mil*, then go to: Missions > Ports and Waterways > Safety Advisory Committees > CTAC > Subcommittees and Working Groups.
2. Work on tasks assigned in task statements mentioned above.
3. Public comment period.
4. Discuss and prepare proposed recommendations for CTAC meeting on December 12 on tasks assigned in task statements mentioned above.

Committee Meeting on December 12

The agenda for the CTAC meeting on December 12 is as follows:

1. Introductions and opening remarks.
2. Public comment period.
3. Subcommittee will meet to review, discuss and formulate recommendations on the following items of interest:
   a. Harmonization of Response and Carriage Requirements for Biofuels and Biofuel Blends
   b. Recommendations on Safety Standards for the Design of Vessels Carrying Natural Gas or Using Natural Gas as Fuel
   c. Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations
   d. Recommendations for Guidance on the Implementation of Revisions to MARPOL Annex II and the IBC Code to 46 CFR 153
   e. Requirements for Third-Party Surveyors of MARPOL Annex II Prewash
   f. Improving Implementation and Education of MARPOL Discharge Requirements Under MARPOL Annex II and V.
4. USCG presentations on the following items of interest:
   a. Update on International Maritime Organization as it relates to the marine transportation of hazardous materials
   b. Update on U.S. Regulations as it relates to the marine transportation of hazardous materials
   c. Update on Bulk Chemical Data Guide (Blue Book)
   d. Vessel to vessel transfer of hazardous materials in bulk
5. Presentation of Items of Interest.

6. Set next meeting date and location.
7. Set Subcommittee and Working Group Meeting schedule.

Dated: November 6, 2013.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–27031 Filed 11–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4152–DR; Docket ID FEMA–2013–0001]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–4152–DR), dated October 29, 2013, and related determinations.

DATES: *Effective Date:* October 29, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from severe storms, flooding, and mudslides during the period of September 9–22, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Mexico have been designated as adversely affected by this major disaster:

Catron, Chaves, Cibola, Colfax, Eddy, Guadalupe, Los Alamos, McKinley, Mora, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, and Torrance Counties for Public Assistance.

All counties within the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–26986 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4154–DR; Docket ID FEMA–2013–0001]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4154–DR), dated October 31, 2013, and related determinations.

DATES: *Effective Date:* October 31, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 31, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe winter storm during the period of October 4–5, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Adams, Bowman, Grant, Hettinger, Morton, Sioux, and Slope Counties for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–26990 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4153–DR; Docket ID FEMA–2013–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4153–DR), dated October 29, 2013, and related determinations.

DATES: *Effective Date:* October 29, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from severe storms, flooding, landslides, and mudslides on July 27, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Ashe, Avery, Catawba, Lincoln, Watauga, and Wilkes Counties for Public Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–26989 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4151–DR; Docket ID FEMA–2013–0001]

Santa Clara Pueblo; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Santa Clara Pueblo (FEMA–4151–DR), dated October 24, 2013, and related determinations.

DATES: *Effective Date:* October 24, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Santa Clara Pueblo resulting from severe storms and flooding during the period of September 13–16, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Santa Clara Pueblo and associated lands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide debris removal and emergency protective measures (Categories A and B) under the Public Assistance program for the Santa Clara Pueblo and associated lands. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Santa Clara Pueblo for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–26988 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4150–DR; Docket ID FEMA–2013–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4150–DR), dated October 22, 2013, and related determinations.

DATES: *Effective Date:* October 22, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 22, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of July 22 to August 16, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Christian Van Alstyne, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Barber, Barton, Bourbon, Butler, Chase, Cherokee, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Dickinson, Edwards, Elk, Ellsworth, Ford, Geary, Greenwood, Hamilton, Harper, Harvey, Hodgeman, Kingman, Kiowa, Lane, Linn, Lyon, Marion, McPherson, Meade, Montgomery, Morris, Ness, Ottawa, Pawnee, Pratt, Reno, Republic, Rice, Saline, Sumner, Washington, Wilson, and Woodson Counties for Public Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–26987 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Importer ID Input Record

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importer ID Input Record (CBP Form 5106). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: Written comments should be received on or before January 13, 2014, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importer ID Input Record.

OMB Number: 1651–0064.

Form Number: CBP Form 5106.

Abstract: The collection of the information on the Importer ID Input Record (CBP Form 5106) is the basis for identifying entities who wish to import merchandise in to the United States, act as consignee on an importation when not the importer of record, or otherwise do business with CBP that would involve the payment of duties, taxes, fees, or the issuance of a refund. Each person, business firm, Government agency, or other organization that intends to file an import entry must file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form must also be filed by or on behalf of the ultimate consignee at the first importation in which the party acting as ultimate consignee is so named.

CBP Form 5106 is authorized by 19 USC 1484 and provided for by 19 CFR 24.5. This form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_5106.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected on CBP Form 5106.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents Annually: 300,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75,000.

Dated: November 6, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–26996 Filed 11–8–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–41]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process Property Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 13, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Office of Single Family Program, Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Approval Number: 2502–0429.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–91022; HUD–50002; HUD–27011; HUD–9539; HUD–9519–A; HUD–50012.

Description of the need for the information and proposed use: This collection of information consists of the sales contracts and addenda that will be used in binding contracts between purchasers of acquired single-family assets and HUD.

Respondents (i.e. affected public): Business.

Estimated Number of Respondents: 324.

Estimated Number of Responses: 1,087,913.

Frequency of Response: monthly.

Average Hours per Response: 30 minutes.

Total Estimated Burdens: 1,347,549.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 6, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–27033 Filed 11–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–98]

30-Day Notice of Proposed Information Collection: FHA PowerSaver Pilot Program (Title I Property Improvement and Title II—203(k) Rehabilitation Mortgage Insurance)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: December 12, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 9, 2013.

A. Overview of Information Collection

Title of Information Collection: FHA PowerSaver Pilot Program (Title I Property Improvement and Title II—203(k) Rehabilitation Mortgage Insurance).

OMB Approval Number: 2502-New.

Type of Request: New collection.

Form Number: HUD–20753, 637.

Description of the need for the information and proposed use: Like all FHA-insured loans, loans originated under FHA PowerSaver Pilot program are made by private sector lenders and insured by HUD against loss from defaults. FHA PowerSaver is a pilot mortgage insurance product from the FHA that will enable homeowners to make energy saving improvements to their homes. The information collection requirements will (a) facilitate HUD's monitoring of use of incentive payments funds to ensure funds are used accordingly, and be provide information about the performance of loans that finance energy efficient improvements.

Respondents (i.e. affected public): Individuals and households.

Estimated Number of Respondents: 7,620. Estimated Number of Responses: 38,218.

Frequency of Response: Periodic. Average Hours per Response: .011.

Total Estimated Burdens: 53,313.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: November 6, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27038 Filed 11–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–42]

60-Day Notice of Proposed Information Collection: Application for Mortgage Insurance for Cooperative and Condominium Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 13, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142; email Theodore Toon at *Theodore.K.Toon@hud.gov* or telephone 202–708–1142. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Toon.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for Mortgage Insurance for Cooperative and Condominium Housing.

OMB Approval Number: 2502–014.

Type of Request: Extension of a currently approved collection.

Form Number: 93201.

Description of the need for the information and proposed use: The information collected on the ''Application for Mortgage Insurance for Cooperative and Condominium Housing'' form is used to analyze data, cost data, drawings, and specifications to determine cooperative or condominium project eligibility for FHA mortgage insurance.

Respondents (i.e. affected public): Business or other for profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Frequency of Response: On Occasion.

Average Hours per Response: 4 hours.

Total Estimated Burdens: 80 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 6, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–27037 Filed 11–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–16]

Announcement of Funding Awards; Indian Community Development Block Grant Program Fiscal Year 2013

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2013 (FY 2013) Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Roberta L. Youmans, Lead Grants Management Specialist, Office of Native Programs, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–3316. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2013 awards announced in this Notice were selected for funding in a competition posted on HUD's Web site on January 15, 2013, and in a technical amendment posted on August 6, 2013. Applications were scored and selected for funding based on the selection criteria in those notices and Area ONAP geographic jurisdictional competitions.

The amount appropriated in FY 2013 to fund the ICDBG was $56,861,640. Of this amount $3,500,000 was retained to fund imminent threat grants in FY 2013. In addition, a total of $253,370 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover from prior years, were as follows:

Eastern/Woodlands	$6,129,147
Southern Plains	11,463,693
Northern Plains	7,662,430
Southwest	19,804,882
Northwest	2,821,668
Alaska	5,733,190
Total	53,615,010

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 76 awards made under the various regional competitions in Appendix A to this document.

Dated: November 1, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

Name/address of applicant	Amount funded	Activity funded	Project description
Absentee Shawnee Tribe, Edwina-Butler Wolfe, Governer, 2025 South Gordon Cooper, Shawnee, OK 74801, 405–275–4030.	$800,000	ED	Tribal youth camp and job training.
All Mission Housing Authority (La Jolla), Dave Shaffer, Executive Director, 27740 Jefferson Ave, Ste 260, Temecula, CA 92590, 951–760–7390.	567,530	HC	Three new housing units.
All Mission Housing Authority (Pauma), Dave Shaffer, Executive Director, 27740 Jefferson Ave, Ste 260, Temecula, CA 92590, 951–760–7390.	566,933	HC	Three new housing units.

APPENDIX A—Continued

Name/address of applicant	Amount funded	Activity funded	Project description
All Mission Housing Authority (Torres Martinez), Dave Shaffer, Executive Director, 27740 Jefferson Ave, Ste 260, Temecula, CA 92590, 951–760–7390.	569,304	HC	Three new housing units.
All Mission Housing Authority (Viejas), 27740 Jefferson Ave, Ste 260, Temecula, CA 92590, 951–760–7390.	568,006	HC	Three new housing units.
Aroostook Band of Micmacs, Richard Getchell, #7 Northern Road, Presque Isle, ME 04769, 800–355–1435.	600,000	PFC	Expansion of health clinic and Head Start building.
Arctic Village, Jonathan John, First Chief, P.O. Box 22069, Arctic Village, AK 99722, 907–587–5523.	600,000	HC	Construction of two energy efficient single-family homes.
Bear River Band of Rohnerville Rancheria, Willam Sand, Chairperson, 266 Kiesner Road, Loleta, CA 95551, 707–733–1900.	605,000	HC	Four new homeownership units and related infrastructure.
Bois Forte Reservation Tribal Council, Kevin Leecy, P.O. Box 16, Nett Kake, MN 55772, 218–757–3312.	600,000	HR	Rehabilitation of 31 housing units.
Cahuilla Band of Mission Indians, Luther Salgado, Chairperson, P.O. Box 391760, Anza, CA 925399, 951–763–5549.	605,000	HC	Four new manufactured homes.
Chemehuevi Indian Tribe, Edward Smith, Chairperson, P.O. Box 1976, Havasu Lake 92363, 760–858–4219.	605,000	PF	Construction of a ferry boat marina and maintenance facility.
Cherokee Nation, Bill John Baker, Principal Chief, P.O. Box 948, Talequah, OK, 918–456–0671.	800,000	MI	Microenterprise program.
Chevak Native Village, James Ayuluk, President, PO Box 140, Chevak, AK 99563, 907–587–5523.	600,000	PFC	Construction of a new health clinic.
Chickasaw Nation, Bill Anoatubby, Governor, P.O. Box 1528, Ada, OK 74821, 907–580–2603.	800,000	PF	Children's Development Center.
Chippewa-Cree Tribe, Richard Morsette, RRI, Box 544, Box Elder, MT 59521, 406–395–4478.	900,000	HC	Construction of six energy efficient rental units and creation of eight new jobs.
Citizen Potawatami Nation, John A. Barrett, Chairman, 1601 South Gordon Copper Drive, Shawnee, OK 74801, 405–275–3121.	800,000	PFC	Workforce Development Center.
Cocopah Indian Housing and Development, Michael Reed, Executive Director, 10488 Steamboat Street, Somerton, AZ 83350, 928–627–8863.	605,000	HR and HC	Rehabilitation of two housing units and construction of three units.
Coleville Indian Housing Authority, Brook Kristovich, P.O. Box 528, Nespelem, WA 99155, 509–634–2162.	500,000	PFC	Community Center.
Comanche Nation Housing Authority, Mr. Lamoni Yazzie, Executive Director, P.O. Box 908, Lawton, OK 73502, 580–357–4956.	800,000	HR	Rehabilitation of __ housing units for the elderly and handicapped.
Crow Creek Housing Authority, Ronnette Walton, P.O. Box 19, Fort Thompson, SD 57339, 605–245–2250.	242,430	HR	Rehabilitation of 35 housing units.
Enterprise Rancheria of Maidu Indians, Glenda Nelson, Chairperson, 2133 Monte Vista, Oroville, CA 95966, 530–532–9214.	584,590	HC	Construction of three new homes.
Fond du Lac Band of Lake Superior Chippewa, Karen Diver, 1720 Big Lake Road, Cloquet, MN 55720, 218–879–4593.	600,000	PFI	Infrastructure waterline construction project.
Hannahville Indian Community, Kenneth Meshigaud, N14911 Hannahville BI Road, Wilson, MI 49896, 906–466–2342.	600,000	ED	Relocation of pharmacy.
Houlton Band of Maliseets, Brenda Commander, P.O. Box 88, Houlton, ME 04730, 207–532–2660.	182,872	PFI	Lighting for athletic field and walking track.
Ho-Chunk Nation of Wisconsin, John Greendeer, W9814 Airport Road, Black River Falls, WI 54615, 715–284–9343.	600,000	HC	Infrastructure to development site.
Hualapai Indian Tribe, Sherry Count, Chairperson, P.O. Box 179, Peach Springs, AZ 86434, 928–769–2216.	825,000	PFC	Construction of a youth camp pavilion and laundry facility.
Iowa Tribe of Oklahoma, Gary Pratt, Chairman, 335588 E. 750 Rd, Perkins, OK 74059, 405–547–2402.	800,000	PF	Fire department and emergency training center and improved water pipeline.
Kaw Nation, Guy Munroe, Chairman, Drawer 50, Kaw City, OK 74641, 580–269–2552.	800,000	ED	Kaw Lake Deli and Dollar Store.
Knik Tribe, Debra Call, President, P.O. Box 871565, Wasilla, AK 99687, 907–373–7991.	600,000	HR	Acquisition and renovation of two buildings for six new housing units.
Keweenah Bay Indian Community, Warren Swartz, 16429 Beartown Road, Baraga, MI 49908, 906–353–6623.	600,000	PFC	Construction of a multipurpose community center.
Keweenah Bay Indian Community, Warren Swartz, 16429 Beartown Road, Baraga, MI 49908, 906–353–6623.	600,000	PFI	Wastewater transfer station, (for an application submitted in FY 2012).
Kickapoo Tribe of Kansas, The Honorable Steve Cadue, Chairman, 1107 Goldfinch Road, Horton, KS 66439, 785–486–2131.	541,600	PFC	Community service center.
Lac du Flambeau Band of Chippewa, Tom Malson, PO Box 67, Lac du Flambeau, WI 54538, 715–588–7930.	600,000	HC	Relocation and new homes for 20 families.
Leech Lake Band of Ojibwe, Carri Jones, 6530 US Highway 2 NW, Cass Lake, MN 56633, 218–335–8200.	600,000	PFC	Construction of a multipurpose community center.
Lower Brule Sioux Tribe, Stuart Langdeau, 187 Oyate Circle, Lower Brule, SD 57548, 605–473–5522.	900,000	HR	Rehabilitation of 18 rental housing units, training and creation of 3 jobs.
Lummi Nation, Diane Phair, 2828 Kwina Road, Bellingham, WA 98226, 360–312–8407.	500,000	PFI	Infrastructure for construction of 12 single-story triplexes.
Menominee Indian Tribe of Wisconsin, Randall Chevalier, P.O. Box 910, Keshena, WI 54135, 715–799–3373.	546,275	PFC	Renovation of tribal Head Start center.

APPENDIX A—Continued

Name/address of applicant	Amount funded	Activity funded	Project description
Mentasta Traditional Council, C. Nora David, P.O. Box 6019, Mentasta, AK 99780, 907–291–2319.	600,000	PFC	Construction of a primary health care facility.
Muscogee (Creek) Nation, George Tiger, Principal Chief, P.O. Box 580, Okmulgee, OK 74447, 918–756–8700.	800,000	PF	Food distributiong Grocery store.
Native Village of Chignik, Roderick Carlson, President, P.O. Box 50, Chignik, AK 99564, 907–749–2445.	600,000	HC	Construction of five single family homes.
Native Village of False Pass, Ruth Hoblet, President, P.O. Box 29, False Pass, AK 99583, 907–548–2227.	242,156	HR	Rehabilitation and accessibility improvements on eight units.
Native Village of Shungnak, Glenn Douglas, President, P.O. Box 64, Shugnak, AK 99773, 907–437–2163.	600,000	HR	Weatherization and rehabilitation of 25 homes and construction of up to 7 two-bedroom additions.
Nikolai Village, Nick Alexia, Sr. First Chief, P.O. Box 9105, Nikolai, AK 99691, 907–293–2311.	600,000	PFC	Construction of new health clinic.
Northern Arapaho Housing Authority, Patrick Goggles, 501 Ethete Road, Ethete, WY 82520, 307–332–5318.	1,100,000	PFS	Renovation of Fort Washakie clinic.
Northern Cheyenne Tribal Housing Authority, Lafe Haugen, P.O. Box 327, Lame Deer, MT 59043, 406–477–6419.	900,000	HR	Rehabilitation of 27 homeownership units and job opportunities.
Northern Ponca Housing Authority, Joel Nathan, 1501 Michigan Ave, Norfolk, NE 68701, 402–379–8224.	700,000	HR	Rehabilitation of 69 rental.
Northern Pueblos Housing Authority (Picuris), Scott Beckman, Interim Executive Director, 5 West Gutierrez, Suite 10, Santa Fe, NM 87506, 888–347–6360.	605,000	PFC	Demolition of dilapidated structure, design and construction of a new fire station.
Northern Pueblos Housing Authority (San Ildefonso), Scott Beckman, Interim Executive Director, 5 West Gutierrez, Suite 10, Santa Fe, NM 87506, 888–347–6360.	605,000	PFI	Rehabilitation of 16 low rent units.
Northern Pueblos Housing Authority (Tesuque), Scott Beckman, Interim Executive Director, 5 West Gutierrez, Suite 10, Santa Fe, NM 87506, 888–347–6360.	605,000	HR	Installation of water, sewer, and electrical lines, roads and building pad improvements for 23 single-family homes.
North Fork Rancheria of Mono Indians, Judy Fink, Chairperson, P.O. Box 929, North Fork, CA 93643, 559–877–2461.	344,191	HR	Installation of solar photovoltaic systems in 16 low rent units.
Oglala Sioux (Lakota) Housing Authority, Doyle Pipe on Head, P.O. Box 603, 4 SuAnne Center Dr., Pine Ridge, SD 57770, 605–867–5161.	1,100,000	HR	Mold remediation and minor rehabilitation of 190 rental units.
Ohkay Owingeh Housing Authority, Tomasita Duran, P.O. Box 1059, Ohkay Owingeh, NM 87566, 505–852–0189.	825,000	HR	Rehabilitation of 18 historic homeownership units.
Organized Village of Kake, Gary Williams, Executive Director, P.O. Box 316, Kake, AK 99830, 907–785–6471.	600,000	PFC	Renovation and expansion of Kake Senior Community Center.
Ottawa Tribe of Oklahoma, Ethel E. Cook, Chief, P.O. Box 110, Miami, OK 74355, 918–540–1536.	800,000	ED	Adawe Travel Plaza.
Pascua Yaqui Tribe, Peter Yucupicio, Chairperson, 7474 South Camino de Oeste, Tucson, AZ 85757, 520–883–5000.	2,200,000	PFI	Construction of final phase of wellness center and gym.
Port Gamble S'Klallam Housing Authority, Chris Placentia, 32000 Little Boston Road, S.E., Kingston, WA 98346, 360–297–6351.	500,000	HR	Rehabilitation of 15 homeownership units.
Pueblo de Cochiti Housing Authority, Rick Tewa, Executive Director, P.O. Box 98, Cochiti Pueblo, NM 87072, (505–465–0264.	498,235	HR	Rehabilitation of 14 homeownership units.
Pueblo of Jemez, Isaac Perez, Executive Director, P.O. Box 100, Jemez Pueblo, NM 87024, 505–771–9291.	825,000	HR	Rehabilitation of 21 homeownership units.
Qagan Tayagungin Tribe of Sand, Point Village, David Osterback, President, P.O. Box 447, Sand Point, AK 99683, (907) 383–5616.	78,012	HC	Construction of a wind turbine on a prototype home.
Quapaw Tribe of Oklahoma, John Berrey, Chairman, P.O. Box 765, Quapaw, OK 74363, (918–542–1853.	800,000	PF	Wellness Center.
Quartz Valley Reservation, Harold Bennett, Chairperson, 16301 Quartz Valley Road, Fort Jones, CA 96032, 530–468–5907.	605,000	PFC	Expansion of Anav Tribal Health Clinic.
Sac and Fox Nation of Missouri in Kansas and Nebraska, Rita Bahr, Acting Tribal Chairman, 305 North Main Street, Reserve, KS 66434, 785–742–0053.	522,103	HR	Rehabilitation of 34 substandard housing units.
San Carlos Apache Housing Authority, Ronald Boni, Executive Director, PO Box 740, Peridot, AZ 85542, 928–475–2346.	1,618,019	HR	Rehabilitation of 48 single- family homes.
San Felipe Pueblo Housing Authority, Issac Perez, Executive Director, P.O. Box 4222, San Felipe Pueblo, NM 87001, 505–771–9291.	825,000	HR	Construction of seven single- family homes.
Santo Domingo Tribal Housing Authority, Greta Armijo, Executive Director, P.O. Box 10, Santo Domingo, NM 87052, 505–465–1003.	822,500	HR	Rehabilitation of substandard historic Kewa homes.
Spokane Tribe of Indians, Lux Devereaux, P.O. Box 100, Wellpinit, WA 99040, 509–458–6502.	324,608	PFC	Community Center.
Suquamish Tribe, Scott Crowell, P.O. Box 498, Suquamish, WA 98392, 360–394–8415.	497,060	PFI	Infrastructure for the development of 14 buildable housing lots.
Susanville Indian Rancheria, Stacy Dixon, Chairperson, 745 Joaquin Street, Susanville, CA 96130, 530–257–6264.	605,000	HC	Construction of five new homes.

APPENDIX A—Continued

Name/address of applicant	Amount funded	Activity funded	Project description
Tohono O'odham—KiKi Association, Pete Delgado, Executive Director, P.O. Box 790, Sells, AZ 85634, 520–383–2202.	2,750,000	HC	Substantial rehabilitation of 24 single-family Mutual Help units.
Tonkawa Tribe, Donald L. Patterson, President, 1 Rush Buffalo Road, Okemah, OK 76859, 580–628–2561.	799,990	ED	Tonkawa Travel Plaza.
Tunica-Biloxi Tribe of Louisiana, Earl Barbry, Sr., Chairman, P.O. Box 1589, Marksville, LA 71351, 318–253–9767.	800,000	PFI	Earl J. Barbry, Sr. Boulevard Roadway Construction.
Utah Paiute Housing Authority, Jessie Laggis, 665 North, 100 East, Cedar City, UT 84720, 435–586–1122.	900,000	HR	Rehabilitation of 15 rental housing units and 38 new roofs.
Ute Indian Tribally Designated Housing Entity, Tom Yellow Wolf, P.O. Box 250, Fort Duchesne, UT 84026, 435–722–4656.	900,000	HR	Rehabilitation of 23 homeownership units and creation of 2 permanent jobs.
Village of Venetie, Julius Roberts, First Chief, P.O. Box 81119, Venetie, AK 99781, 907–849–8212.	600,000	HC	Construction of two single family homes.
Warm Springs Housing Authority, Scott Moses, P.O. Box 1167, Warm Springs, OR 97761, 541–553–3250.	500,000	HR	Rehabilitation of 29 rental housing units.
Wyandotte Nation, Billy Friend, Chief, 64700 E. Highway 60, Wyandotte, OK 74370, 918–678–2297.	800,000	PF	Cultural Center.

[FR Doc. 2013–27012 Filed 11–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N253; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before December 12, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by December 12, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a

hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Houston Zoo, Houston, TX; PRT–14237B

The applicant requests a permit to import a live, female captive-bred Baird's tapir (*Tapirus bairdii*) for the purpose of enhancement of the survival of the species.

Applicant: University of California San Diego, San Diego, CA; PRT–03110B

The applicant requests a permit to import biological samples from deceased captive-bred specimens of Chimpanzee (*Pan troglodytes*), Western lowland gorilla (*Gorilla gorilla*), and Bornean orangutan (*Pongo pygmaeus pygmaeus*) from the Primate Brain Bank, Amsterdam, Netherlands, for the purpose of scientific research.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–069323

The applicant requests renewal of their permit to authorize the export and re-export of captive-bred/captive hatched live specimens and the export of viable eggs of California condors (*Gymnogyps californianus*) originating in the United States, as well as the re-export of wild live specimens or condors originating in Mexico, to La Secretaria de Medio Ambiente y Rescoursos Naturales (SEMARNAT), San Angel, Mexico, for re-introduction into the wild to enhance the survival of the species through completion of identified tasks and objectives mandated under the U.S. Fish and Wildlife Service Condor Recovery Plan. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of California Santa Cruz, San Diego, CA; PRT–96462A

The applicant requests a permit to import biological samples from one captive-bred Bonobo (*Pan paniscus*) from Desire Rech, Saldris, France, for the purpose of scientific research. This amends the notification published in the **Federal Register** (78 FR 40762; July 8, 2013) and reopens the 30-day comment period.

Applicant: Guy Quinn, Bonita Springs, FL; PRT–19966B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Seward Association for the Advancement of Marine Science, Alaska SeaLife Center, Seward, AK; PRT–11219B

The applicant requests a permit to take non-releasable Pacific walrus (*Odobenus rosmarus*) for the purpose of public display. These would be animals that strand in Alaska and that the Service would declare non-releasable because they do not demonstrate the skills and abilities needed to survive in the wild. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–26952 Filed 11–8–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2013–0090; 50120–1112–0000–F2]

Early Scoping for Proposed Application for Incidental Take Permit and Habitat Conservation Plan; Pennsylvania Game Commission and Pennsylvania Department of Conservation and Natural Resources

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of scoping.

SUMMARY: Pursuant to the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service), announce our intent to prepare a NEPA document for a pending Incidental Take Permit (ITP) application and associated draft habitat conservation plan (HCP) from the Pennsylvania Game Commission (PGC) and Pennsylvania Department of Conservation and Natural Resources (DCNR) for forestry activities on State lands that provide potential habitat for the federally listed endangered Indiana bat (*Myotis sodalis*) and the northern long-eared bat (*Myotis septentrionalis*). Northern long-eared bats have recently been proposed for listing as endangered under the ESA. Forestry operations on these lands have the potential to incidentally take Indiana bats and northern long-eared bats and their habitat. Therefore, PGC and DCNR are developing an ITP application and HCP to address these activities.

In advance of receiving the ITP application for this project, the Service is providing this notice to request information from other agencies, tribes, and the public on the scope of the NEPA review and issues to consider in the NEPA analysis and in development of the HCP. We are also using this opportunity to seek comments on the appropriate level of NEPA review—whether an environmental assessment (EA) or an environmental impact statement (EIS) would be most appropriate, based on potential effects to the human environment.

DATES: We will accept comments received or postmarked on or before December 12, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal Web site at: *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2013–0090, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.

By hard copy: Submit by U.S. mail or hand-delivery to Public Comments Processing, Attn: FWS–R5–ES–2013–0090, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments by only the methods described above. We will post all information received on the Web site at: *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Pamela R. Shellenberger, by mail at U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, PA 16801, or by telephone at 814–234–4090, extension 241.

SUPPLEMENTARY INFORMATION: We announce our intent to prepare a NEPA document for a pending ITP application and associated draft HCP from the PGC

and DCNR for forestry activities on approximately 3.9 million acres of State lands. PGC manages 1.4 million acres of State Game Lands, and DCNR manages 2.2 million acres of State Forests and 295,000 acres of State Parks. These predominantly forested lands provide potential foraging, roosting, maternity colony, and fall swarming habitat for all bat species that occur in Pennsylvania, including the federally listed endangered Indiana bat and the northern long-eared bat. Northern long-eared bats have recently been proposed for listing as endangered under the ESA. Forestry operations on these lands have the potential to incidentally take Indiana bats and northern long-eared bats and their habitat. Therefore, PGC and DCNR are developing an ITP application and HCP to address these activities.

In advance of receiving the ITP application for this project, the Service is providing this notice to request information from other agencies, tribes, and the public on the scope of the NEPA review and issues to consider in the NEPA analysis and in development of the HCP. We are also using this opportunity to seek comments on the appropriate level of NEPA review—whether an EA or an EIS would be most appropriate, based on potential effects to the human environment.

Request for Information

We request data, comments, information, and suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider all comments we receive in complying with the requirements of NEPA and in the development of the HCP and ITP.

We seek comments particularly related to:

(1) Information concerning the range, distribution, population size, and population trends of Indiana bats, northern long-eared bats, and other federally listed species in Pennsylvania;

(2) Additional biological information concerning Indiana bats, northern long-eared bats, and other federally listed species that occur in Pennsylvania that could be affected by proposed covered activities;

(3) Relevant data and information concerning timber management practices and bat interactions;

(4) Current or planned activities in the project planning area and their possible impacts on Indiana bats, northern long-eared bats, and other federally listed species in Pennsylvania;

(5) The presence of facilities within the project planning area that are eligible to be listed on the National Register of Historic Places, or whether other historical, archeological, or traditional cultural properties may be present;

(6) The appropriate level of NEPA review, specifically whether an EA or an EIS would be most appropriate based on potential effects to the human environment; and

(7) Any other environmental issues that we should consider with regard to the project planning area and potential ITP issuance.

You may submit your comments and materials considering this notice by one of the methods listed in the **ADDRESSES** section.

Background

Indiana bats are listed as an endangered species under the ESA. The population decline of this species has historically been attributed to habitat loss and degradation of both winter hibernation habitat and summer roosting habitat, human disturbance during hibernation, and possibly pesticides. A recent new threat to Indiana bats is White-nose Syndrome (WNS), a disease caused by a fungus (*Pseudogymnoascus destructans,* previously classified as *Geomyces destructans*) that invades the skin of bats. The fungus causes ulcers that alter hibernation arousal patterns, which can cause emaciation. WNS is resulting in significant population declines in some parts of the species' range, including the northeastern and southeastern United States.

The range of the Indiana bat includes much of the eastern United States, including Pennsylvania. Winter habitat for Indiana bat includes caves and mines that support high humidity and cool-but-stable temperatures. In the summer, Indiana bats roost in trees (dead, dying, or alive) with exfoliating bark, cracks, crevices, and/or hollows. During summer, males roost alone or in small groups, while females and their offspring can roost in larger groups. Indiana bats forage for insects in and along the edges of forested areas and wooded stream corridors.

Northern long-eared bats have recently been proposed for listing as endangered under the ESA. WNS is the predominant threat to the species, though other threats may include impacts to hibernacula, summer habitat, and disturbance of hibernating bats. Northern long-eared bats have been abundant in the eastern United States and are often captured in summer mist nets surveys and detected during acoustic surveys. Northern long-eared bats are known to frequent forested habitats throughout Pennsylvania. Similar to Indiana bats, northern long-eared bats generally hibernate in caves and mines during the winter. During the summer, the bats roost in live trees and snags, though are also known to use human made structures such as barns, sheds, and bat boxes.

Comprehensive forest management strategies on Pennsylvania State lands create wildlife habitat and enhance forest health and diversity, while generating revenues from recreation and timber harvest that fund resource management on these lands. The ability of both PGC and DCNR to manage these properties in accordance with State law depends on these forest management strategies.

The Federal action that will be analyzed through NEPA will be the potential issuance of an ITP to allow incidental take of Indiana bats, northern long-eared bats, and other federally listed species from forest management activities that will be described in the HCP. The HCP will incorporate avoidance, minimization, mitigation, monitoring, and reporting measures aimed at addressing the impact of the covered activities to Indiana bats and northern long-eared bats. The project planning area for the HCP is the 3.9 million acres of largely forested lands in Pennsylvania owned and managed by PGC and DCNR. The covered forest management activities in the HCP are anticipated to be as follows: Timber harvesting, installation of deer fencing, cutting and collecting of firewood, construction and maintenance of roads and trails, and use of prescribed fire. The PGC and DCNR do not anticipate that other forest management activities in the planning area will result in incidental take of Indiana bats, northern long-eared bats, or their habitat. In addition, they do not anticipate that other forest management activities in the planning area will result in incidental take of any other federally listed species. Potential minimization measures may include, but are not limited to, protection of roost trees and surrounding habitat, setback distances from known roost trees, mapping and avoidance of foraging areas, protection and enhancement of hibernacula, and protection and enhancement of Indiana bat and northern long-eared bat roosting and foraging habitat. The duration of the ITP will be 30 years.

The Service has not made any decision with regard to the appropriate level of NEPA analysis (i.e., EA or EIS), or developed any NEPA alternatives to the proposed Federal action (i.e., issuance of an ITP conditioned on implementation of the HCP). The NEPA

analysis will assess the direct, indirect, and cumulative impacts of the proposed Federal action on the human environment, comprehensively interpreted to include the natural and physical environment and the relationship of people with that environment. It will also analyze several alternatives to the proposed Federal action, to include no action and other reasonable courses of action (potentially including minimization and mitigation measures not considered in the proposed action). Relevant information provided in response to this notice will aid in developing the draft HCP and NEPA analysis.

Next Steps

In this phase of the project, we are seeking information to assist development of the NEPA analysis and the HCP, and to inform what level of environmental analysis would be necessary for project implementation. We will then develop a draft NEPA document based on the ITP application, draft HCP, any associated documents, and public comments received through this early scoping effort. The NEPA process will vary somewhat, depending on whether the project requires an EA or an EIS. We may solicit additional public, agency, and Tribal input to identify the nature and scope of the environmental issues that should be addressed during NEPA review, following appropriate public notice. We will then publish a notice of availability for the draft NEPA document and draft HCP and seek additional public comment before completing our final analysis to determine whether to issue an ITP.

Public Comments

The Service invites the public to provide comments that will assist our NEPA analysis during this 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES.**

Public Availability of Comments

We will post all public comments and information received electronically or via hardcopy on our Web site at: *http://regulations.gov.* All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to NEPA regulations (40 CFR 1501.7 and 1508.22).

Dated: November 4, 2013.

Spencer Simon,

Acting Assistant Regional Director, Ecological Services, Northeast Region.

[FR Doc. 2013–26950 Filed 11–8–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana RAC will be held on December 5, 2013 in Miles City, Montana. The meeting will start at 8:00 a.m. and the public comment period will start at 11:00 a.m. and run for one hour. The meeting will adjourn at 4:00 p.m.

ADDRESSES: The meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301, (406) 233–2831, *mark_jacobsen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Eastern Montana—Dakotas District, Miles City and Billings Field Office manager updates, Field Office Resource Management Planning updates, individual council member briefings and other topics that the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations should contact the BLM as provided above.

Dated: October 25, 2013.

Diane M. Friez,

Eastern Montana—Dakotas District Manager.

[FR Doc. 2013–26796 Filed 11–8–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO630000.L18200000.XP0000]

New Dates for Close of Public Comment and Protest Periods Due to Federal Government Shutdown

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has established new dates for certain public comment and protest periods that were ongoing or that ended during the Federal Government shutdown resulting from a lapse in appropriations, which began on October 1, 2013, and ended on October 16, 2013.

DATES: The new dates can be found in the table under the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Please refer to the contact information and commenting procedures listed in the original **Federal Register** notices. Web links to the original notices are provided in the following table.

SUPPLEMENTARY INFORMATION: Before the Federal Government shutdown, the BLM published notices in the **Federal Register** that informed the public they could obtain copies of various agency documents on BLM Web sites. The notices also contained closing dates for

public comment periods and the submission of protests. Three of the dates originally were set to close during the government shutdown and seven others originally were set to close after the shutdown ended.

The public was unable to access certain documents on the BLM Web site during the government shutdown. Accordingly, the BLM announced new dates through the issuance of a press release for each of the comment periods and protest periods identified in this **Federal Register** notice. Comment periods and protest periods that were set to conclude during the shutdown have been adjusted by adding the number of days from the beginning of the shutdown to the original due date. These additional days were added to the date of the press release notifying the public of the new dates. Comment periods and protest periods that were originally set to close after the shutdown were adjusted by adding 16 days, the number of the days of the shutdown. In some cases, the BLM is extending comment periods for an additional period of time. Any additional extensions were reflected in the new dates provided in the individual press releases.

Federal Register notice title	Original date	New date	Web link
Notice of Availability of the Proposed Winnemucca District Resource Management Plan and Final Environmental Impact Statement, NV.	10/7/13	10/29/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-09-06/pdf/2013-21766.pdf* (published 9/6/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-09-06/pdf/2013-21793.pdf* (EPA **Federal Register** notice (FRN) published 9/6/13).
Notice of Availability of the Draft Environmental Impact Statement for the 3 Bars Ecosystem and Landscape Restoration Project in Eureka County, NV.	11/12/13	11/29/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-09-27/pdf/2013-23484.pdf* (published 9/27/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-09-27/pdf/2013-23652.pdf* (EPA FRN published 9/27/13).
Notice of Availability of the Draft Tri-County Resource Management Plan and Draft Environmental Impact Statement for the Las Cruces District Office, New Mexico.	10/12/13	11/4/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-04-12/pdf/2013-08534.pdf* (published 4/12/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-04-12/pdf/2013-08661.pdf* (EPA FRN published 4/12/13).
Notice of Availability of the Final Supplemental Environmental Impact Statement and Proposed Resource Management Plan Amendment for the Silver State Solar South Project, Clark County, NV.	10/21/13	11/6/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22877.pdf* (published 9/20/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22963.pdf* (EPA FRN published 9/20/13).
Notice of Availability of the Proposed Bureau of Land Management Tres Rios Field Office and San Juan National Forest Land and Resource Management Plan/Final Environmental Impact Statement.	10/21/13	11/6/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22785.pdf* (published 9/20/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/pdf/2013-22963.pdf* (EPA FRN published 9/20/13).
Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Palen Solar Electric Generating System and Draft California Desert Conservation Area Plan Amendment.	10/24/13	11/14/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-07-31/pdf/2013-18386.pdf* (published 7/31/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-07-26/pdf/2013-18059.pdf* (EPA FRN published 7/26/13).
Notice of Availability of the Draft Environmental Impact Statement for the Jump Creek, Succor Creek, and Cow Creek Watersheds Grazing Permit Renewal, ID.	11/4/13	11/20/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10250.pdf* (published 5/3/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10537.pdf* (EPA FRN published 5/3/13).
Notice of Availability of a Supplement to the Bighorn Basin Draft Resource Management Plan/Environmental Impact Statement, Cody and Worland Field Offices, WY.	10/12/13	11/1/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-07-12/pdf/2013-16630.pdf* (published 7/12/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-07-12/pdf/2013-16761.pdf* (EPA FRN published 7/12/13).
Notice of Availability of the Draft Visual Resource Management and Areas of Critical Environmental Concern Amendment to the Resource Management Plan for the Rawlins Field Office and Associated Environmental Assessment, WY.	10/28/13	11/13/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21118.pdf* (published 8–30–13, no EPA publication).
Notice of Availability of the Northwest Colorado Greater Sage-Grouse Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for the Northwest Colorado District.	11/14/13	12/2/13	*http://www.gpo.gov/fdsys/pkg/FR-2013-08-16/pdf/2013-19837.pdf* (published 8/16/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-08-16/pdf/2013-20019.pdf* (EPA FRN published 8/16/13).
Notice of Availability of the North Dakota Greater Sage-Grouse Draft Resource Management Plan Amendment and Draft Environmental Impact Statement.	12/26/13	1/13/14	*http://www.gpo.gov/fdsys/pkg/FR-2013-09-27/pdf/2013-23485.pdf* (published 9/27/13). *http://www.gpo.gov/fdsys/pkg/FR-2013-09-27/pdf/2013-23652.pdf* (EPA FRN published 9/27/13).

Celia Boddington,

Assistant Director, Communications.

[FR Doc. 2013–26995 Filed 11–8–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[G63–0982–9832–100–96–76, 84–55000]

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2014 is 3.50 percent.

Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2013, through and including September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Denver, Colorado 80225; telephone: 303–445–2888.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 3.50 percent for fiscal year 2014.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.9424 percent. This rate, rounded to the nearest one-eighth percent, is 3.00 percent, which is a change of more than the one-quarter of 1 percent allowed. Therefore; based on the fiscal year 2013 rate of 3.75 percent, the fiscal year 2014 rate is 3.50 percent.

The rate of 3.50 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: October 18, 2013.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2013–27089 Filed 11–8–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC Se–13–029]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 13, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–909 (Second Review) (Low-Enriched Uranium from France). The Commission is currently scheduled to complete and file its determinations on or before November 26, 2013; Commissioners' opinions will be issued on November 26, 2013.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: November 6, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27079 Filed 11–7–13; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–031]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 19, 2013 at 12:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–505 and 731–TA–1231–1237 (Preliminary) (Grain-Oriented Electrical Steel from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia). The Commission is currently scheduled to complete and file its determinations on or before November 20, 2013; Commissioners' opinions will be issued on November 27, 2013.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 6, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–27098 Filed 11–7–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Exhibit B to Registration Statement (Foreign Agents)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue NW., National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the proposed information collection instrument with instructions, or for additional information, please contact the Registration Unit at (202) 233–0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit B to Registration Statement (Foreign Agents)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–4. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1, 2011, permits registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the required FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.,* and must set forth the agreement or understanding between the registrant and each of his foreign principals, as well as, the nature and method of performance of such agreement or understanding, and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately .33 hours (20 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 54 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street, NE., Washington, DC 20530.

Dated: November 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26883 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Registration Statement (Foreign Agents)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue NW, National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the collection instrument with instructions, or for additional information, please contact the Registration Unit at 202.233.0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Registration Statement (Foreign Agents)

(3) *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–1. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1, 2011, permits registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the required FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public who are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form contains registration statement and information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The total estimated number of responses is 67 at approximately 1.375 hours (1 hour and 22 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 92 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street NE., Washington, DC20530.

Dated: November 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26880 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0002]

Agency Information Collection Activities: Proposed collection; comments requested: Supplemental Statement (Foreign Agents)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue NW., National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the collection instrument with instructions, or for additional information, please contact the Registration Unit at 202–233–0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Supplemental Statement (Foreign Agents).

(3) *The agency form number and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–2. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1 2011, permits registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the required FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public who are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must be filed by the foreign agent within thirty days after the expiration of each period of six months succeeding the original filing date, and must contain accurate and complete information with respect to the foreign agent's activities, receipts and expenditures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 491 respondents at 1.375 hours (1 hour and 22 minutes) per response (2 responses annually).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,375 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: November 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26881 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0003]

Agency Information Collection Activities: Proposed collection; comments requested: Amendment to Registration Statement (Foreign Agents)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, please write to U.S. Department of Justice, 10th &

Constitution Avenue NW., National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the collection instrument with instructions, or for additional information, please contact the Registration Unit at (202) 233–0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Amendment to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–5. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1, 2011, permits registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public who are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, not-for-profit institutions, and individuals or households. The form is used in registration of foreign agents when changes are required under the provisions of the Foreign Agents Registration Act of 1938 as amended, 22 U.S.C. 611 *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 175 who will complete a response within 1½ hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 262 hours annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: November 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26882 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0005]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Short-Form Registration Statement (Foreign Agents)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014 This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, especially regarding the estimated public burden or associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue NW., National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the collection instrument with instructions, or for additional information, please contact the Registration Unit at 202–233–0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Short-form Registration Statement (Foreign Agents)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–6. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1, 2011, permits registrants to file their

registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the required FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public who are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.* Rule 202 of the Act requires that a partner, officer, director, associate, employee and agent of a registrant who engages directly in activity in furtherance of the interests of the foreign principal, in other than a clerical, secretarial, or in a related or similar capacity, file a short-form registration statement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 523 at approximately .429 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 224 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: November 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26884 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Exhibit A to Registration Statement (Foreign Agents)

ACTION: 60-Day Notice of Information Collection Under Review:

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. This process is conducted in accordance with 5 CFR 1320.10.

For comments, especially on the estimated public burden or associated response time, suggestions, copies of the proposed information collection instrument with instructions or for additional information, please write to U. S. Department of Justice, 10th & Constitution Avenue NW., National Security Division, Counterespionage Section/Registration Unit, Bicentennial (BICN) Building—Room 10118, Washington, DC 20530. For a copy of the collection instrument with instructions, or for additional information, please contact the Registration Unit at 202–233–0776.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Exhibit A to Registration Statement (Foreign Agents).

(3) *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–3. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the FARA eFile system in operation since March 1, 2011, permits registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA eFile is accessed via the FARA public Web site located at *http://www.fara.gov,* and provides instructions to assist registrants in completing, signing and submitting the required FARA registration forms, as well as instructions on how to electronically pay the required registration fees via online credit or debit card payments.

(4) *Affected public who are asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must set forth the information required to be disclosed concerning each foreign principal, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately .49 hours (29 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 80 annual total burden hours associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Suite 3W–1407B, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26885 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 1, 2013, the Department of Justice lodged a proposed a Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States* v. *Alcoa Inc., the City of East St. Louis, IL, and Alton & Southern Railway, Co.,* Civil Action No. 3:13–cv–01126–MJR–SCW.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The United States' complaint names Alcoa Inc., the City of East St. Louis, IL, and Alton & Southern Railway, Co., as defendants. The complaint requests recovery of costs that the United States incurred responding to releases of hazardous substances at Operable Unit 1 at the North Alcoa Superfund Site in East St. Louis, Illinois. The complaint also seeks injunctive relief. Under the terms of the Consent Decree, the Defendants have agreed to pay EPA's past and future response costs and perform the remedial action that EPA selected for the Operable Unit 1 portion of the Site. In return, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA for Operable Unit 1 of the North Alcoa Superfund Site.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Alcoa Inc., the City of East St. Louis, IL, and Alton & Southern Railway, Co.,* D.J. Ref. No. 90–11–3–10590. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $39.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices, the cost is $14.50.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–26982 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI System Alliance, Inc.

Notice is hereby given that, on October 10, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beijing Pansino Solutions Technology Co., Beijing, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on July 22, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 15, 2013 (78 FR 49769).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–26961 Filed 11–8–13; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on September 25, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Rice Lake Weighing Systems, Inc., Rice Lake, WI; Halstrup-Walcher GmbH, Kirchzarten, GERMANY; Imperx, Inc., Boca Raton, FL; Wittenstein AG; Igersheim, GERMANY; Canrig Drilling Technologies, Ltd., Houston, TX; Schenck Process, Darmstadt, GERMANY; Badger Meter, Inc., Milwaukee, WI: wenglor sensoric gmbh, Tettnang, GERMANY; EUCHNER GmbH + Co., KG, Leinfelden-Echterdingen, GERMANY; Systeme Helmholz GmbH, Grossenseebach, GERMANY; C.E. Electronics, Inc., Bryan, OH; CTH Systems Inc., Calgary, CANADA; and Mecco Partners, LLC, Cranberry Township, PA, have been added as parties to this venture.

Also, Amphenol Sine Systems Corporation, Clinton Township, MI; Sanyo Machine Works, Ltd., Nishikasugai-gun, Aichi, JAPAN; Camozzi SpA, Brescia, ITALY; Racine Federated, Inc., Milwaukee, WI; Flowserve Corporation, Lynchburg, VA; MORI SEIKI CO., LTD, and Nagoya City, Aichi, JAPAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on June 13, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 18, 2013 (78 FR 42975).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–26975 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Telemanagement Forum

Notice is hereby given that, on October 7, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The TeleManagement Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties has been added as a party to this venture: DAM Solutions, Mexico City, MEXICO; OneNet Ingeniería S.A., Santiago, CHILE; GTA Teleguam, Tamuning, GUAM; Beijing C-platform Digital Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Valtira LLC, Minneapolis, MN; Applied Network Solutions, Inc., Columbia, MD; BillingPlatform, Denver, CO; ICT Solutions Central America, Guatemala City, GUATEMALA; MedPal Health Solutions, Tel Aviv, ISRAEL; Suvitech Co. Ltd., Bangkok, THAILAND; Symantec Corporation, Mountan View, CA; MDC (Management and Development Company), Beirut, LEBANON; SpiderCloud Wireless, San Jose, CA; Stanford McLeod & Associates Pty Ltd., Point Cook, AUSTRALIA; Telefonica Moviles Argentina, Buenos Aires, ARGENTINA; Splunk, San Francisco, CA; PRESECURE Consulting GmbH, Munster, GERMANY; JBS, Chernihiv, UKRAINE; CIMI Corporation, Voorhees, NJ; MicroStrategy South Africa (Pty) Ltd., Johannesburg, SOUTH AFRICA; TURKSAT AS, Ankara, TURKEY; Broadband Infraco (SOC) Ltd., Gauteng, SOUTH AFRICA; ComScore, Reston, VA; KIBO FZC, Ras Al Kaimah, UNITED ARAB EMIRATES; AMKB Cloud, Denver, CO; Infinera Corp., Sunnyvale, CA; CenterNODE Ltd., Cobh, IRELAND; Neul Ltd., Cambridge, UNITED KINGDOM; Hydro-Quebec, Montreal, CANADA; PiA Bilişim Hizmetleri Ltd., İstanbul, TURKEY; Attensity Group, Palo Alto, CA; Bakcell LTD, Baku, AZERBAIJAN; Finserve Africa Ltd., Nairobi, KENYA; NISCERT Corporation, Toronto, CANADA; GVT, Parana, BRAZIL; ACBIS, Trois, CANADA; ADVANCED INFO SERVICE PLC. (AIS), Phayathai Bangkok, THAILAND; Metro Ethernet Forum, Los Angeles, CA; PT Indosat Tbk, Jakarta Pusat, INDONESIA; Iprotel Ltd., Reading, UNITED KINGDOM; Shaw Communications, Calgary, CANADA; CyberFlow Analytics, La Jolla, CA; Telesens IT, Kharkiv, UKRAINE; and Icaro Technologies, Campinas, BRAZIL.

The following members have withdrawn as parties to this venture: ADVA Optical Networking Ltd., York, UNITED KINGDOM; Avvasi Inc., Ontario, CANADA; CBOSS, Moscow, RUSSIA; Celona Technologies, London, UNITED KINGDOM; EITC(DU), Dubai, UNITED ARAB EMIRATES; Etisalat Cote d'Ivoire, Abidjan, COTE D'IVOIRE; Etisalat Misr, Cairo, EGYPT; Etisalat UAE, Abu Dhabi, UNITED ARAB EMIRATES; Futuro Exito Sp. z o.o., Lubin, POLAND; globeOSS, Shah Alam, MALAYSIA; IBB Consulting Group, Philadelphia, PA; Kazakhstan Business Review, Astana, KAZAKHSTAN; Kazgorset, Kazan, RUSSIA; Lavastorm Analytics, Warrington, UNITED KINGDOM; LINK Development, Cairo, EGYPT; Maxis Broadband Sdn Bhd, Kuala Lumpur, MALAYSIA; Millicom International Cellular S.A., Leudelange, LUXEMBOURG; MindTree, Paris, FRANCE; Nawras, Muscat, OMAN; Neosynapse, Dublin, IRELAND; Nephologic Ltd, Dublin, IRELAND; PT Global Innovation Technology, Jakarta, INDONESIA; Salesforce.com, San Francisco, CA; Securit Kft, Szilasliget, HUNGARY; Smart Path Ltd., Tel Aviv, ISRAEL; Smartecute, LLC., Marietta, GA; Stevens Institute of Technology, Hoboken, NJ; TeleworX LLC., Reston, VA; Trendium, Boulder, CO; UBS Financial Services, Weehawken, NJ; uFONE, Islamabad, PAKISTAN; VC4, Alkmaar, NETHERLANDS; Vietnam Posts and Telecommunications Group, Hanoi, VIETNAM; ENTEREST GmbH, Hamburg, GERMANY; MTN Business Solutions (Pty) Ltd., Johannesburg, SOUTH AFRICA; OMANTEL, Muscat, OMAN; Seavus AB, Malmo, SWEDEN; and Sooth Technology, Pepper Pike, OH.

The following members have changed their names: France Telecom Orange to Orange, Paris, FRANCE; Vodafone UK to Vodafone Group, Newbury, UNITED KINGDOM; QATAR TELECOM (Qtel International) to Ooredoo (Former Qtel International), Doha, QATAR; Accanto Systems to Accanto Systems Oy, Modena, ITALY; N-Pulse AG to N-Pulse GmbH, Heppenheim, GERMANY; Broadband Infraco (Pty) Ltd., to Broadband Infraco (SOC) Ltd., Johannesburg, SOUTH AFRICA; Rancore Technologies Private Ltd. to Reliance Jio Infocomm Ltd., Navi Mumbai, INDIA; Northrop Grumman Systems Corp., acting through its Northrop Grumman Information Systems Sector, Defense Technologies Division to Northrop Grumman Systems Corp., acting through its Northrop Grumman Information Systems Sector, Cyber Solutions Division, McLean, VA; Sandvine to Sandvine, Inc., Ontario, CANADA; Institute of Technology, Faculty of Electronics and Information Technology, Warsaw University of Technology to Institute of Telecommunications, Faculty of Electronics and Information Technology, Warsaw University of Technology, Warsaw, POLAND; and Cyber Squared to ThreatConnect (Division of Cyber Squared), Arlington, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on July 16, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 15, 2013 (78 FR 49769).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–26972 Filed 11–8–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 24, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AudioVisual Preservation Solutions, New York, NY; Chellomedia Direct Programming, B.V., Amsterdam, NETHERLANDS; Syncro Services, Inc., New York, NY; SVT, Stockholm, SWEDEN; George Blood (individual member), Philadelphia, PA; and Chris Dee (individual member), Babylon, NY, have been added as parties to this venture.

Also, Panasonic Corp., Kadoma City, Osaka, JAPAN; National Film Board of Canada, Montreal, CANADA; Al Kovalick (individual member), Santa Clara, CA; and Chris Lacinak (individual member), New York, NY, have withdrawn as parties to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 21, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 18, 2013 (78 FR 42976).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–26959 Filed 11–8–13; 8:45 am]

BILLING CODE P

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

Solicitation of Written Comments by the Military Compensation and Retirement Modernization Commission

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Notice seeking comments.

SUMMARY: The Military Compensation and Retirement Modernization Commission (MCRMC) was established by the National Defense Authorization Act FY 2013. Pursuant to the Act, the Commission is seeking written comments from the general public and interested parties on measures to modernize the military compensation and retirement systems.

DATES: Pursuant to the Act, the Commission published a notice seeking comments on October 1, 2013. The comment period closed November 1, 2013. By this notice, the Commission is reopening the period for public comment until further notice.

ADDRESSES: Electronic responses are preferred and may be addressed to *www.mcrmc.gov.* Written responses should be addressed to Military Compensation and Retirement Modernization Commission, P.O. Box 13170, Arlington VA 22209. Email responses may be addressed to *response@mcrmc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Military Compensation and Retirement Modernization Commission, P.O. Box 13170, Arlington, VA 22209, telephone 703–692–2080, fax 703–697–8330, email *christopher.nuneviller@mcrmc.gov.*

SUPPLEMENTARY INFORMATION: The Military Compensation and Retirement Modernization Commission (MCRMC) was established by the National Defense Authorization Act FY 2013, Public Law 112–239, 126 Stat. 1787 (2013). The Commission is required to seek written comment from the general public and interested parties, to hold public hearings and to transmit to the President a report containing the findings and conclusions of the Commission together with legislative language to implement its recommendations.

Under the Act, the Commission will make its recommendations only after it examines all laws, policies and practices of the Federal Government that result in any direct payment of authorized or appropriated funds to current and former members (veteran and retired) of the uniformed services, including the reserve components of those services, as well as the spouses, family members, children, survivors, and other persons authorized to receive such payments as a result of their connection to the members of these uniformed services. See § 671(b)(1)(A).

The Commission will also examine all laws, policies, and practices of the Federal Government that result in any expenditure of authorized or appropriated funds to support the persons named in § 671(b)(1)(A) and their quality of life, including:

- Health, disability, survivor, education, and dependent support programs of the Department of Defense and the Department of Veterans Affairs, including outlays from the various Federal trust funds supporting those programs;
- Department of Education impact aid;
- Support or funding provided to States, territories, colleges and universities;
- Department of Defense morale, recreation, and welfare programs, the resale programs (military exchanges and commissaries), and dependent school systems;
- The tax treatment of military compensation and benefits; and military family housing. See § 671 (b)(1)(B).

In addition, the Act allows the Commission to examine such other matters as it considers appropriate. See § 671 (b)(1)(C).

Since October 1, 2013, the Commission has been taking comments from the public on measures to modernize the military compensation and retirement systems. Pursuant to the Act the comment period closed November 1, 2013. By this notice, the Commission reopens for public comment. It is vitally important to the Commission that interested members of the public forward comments regarding the pay, retirement, health benefits and quality of life programs of the Uniformed Services to the Commission so they can be read, considered and possibly incorporated into the Commission's final report. The comment period will remain open until further notice.

It is the policy of the MCRMC to include all comments it receives in the public docket without change and to make them available on its Web site including any personal information provided unless comments include information claimed and identified as confidential business information (CBI)

or other information whose disclosure is restricted by statute.

Christopher Nuneviller,

Associate Director, Administration and Operations.

[FR Doc. 2013–26951 Filed 11–8–13; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. NRC–2013–0117, –0118, –0119]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 9, 2013 (78 FR 41116).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Forms 540 and 540A, Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page; NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page; NRC Forms 542 and 542A, Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation, and Continuation Page.

3. *Current OMB approval number:*

NRC Form 540 and 540A: OMB #3150–0164.

NRC Form 541 and 541A: OMB #3150–0166.

NRC Form 542 and 542A: OMB #3150–0165.

4. *The form number if applicable:*

NRC Form 540 and 540A.

NRC Form 541 and 541A.

NRC Form 542 and 542A.

5. *How often the collection is required:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.

6. *Who will be required or asked to report:* All NRC or Agreement State low-level waste facilities licensed pursuant to Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

7. *An estimate of the number of annual responses:*

NRC Form 540 and 540A: 5,740.

NRC Form 541 and 541A: 5,600.

NRC Form 542 and 542A: 756.

8. *The estimated number of annual respondents:*

NRC Form 540 and 540A: 220.

NRC Form 541 and 541A: 220.

NRC Form 542 and 542A: 22.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:*

NRC Form 540 and 540A: 4,305.

NRC Form 541 and 541A: 18,480.

NRC Form 542 and 542A: 567.

10. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the A suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. The NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR Part 172, and the waste tracking requirements of the NRC in 10 CFR Part 20. The NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. The NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packaging are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on the NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statements, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The documents will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 12, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0164, –0166, –0165), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 4th day of November, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–26858 Filed 11–8–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0249]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any

amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 17 to October 30, 2013. The last biweekly notice was published on October 29, 2013 (78 FR 64541).

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0249. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0249 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0249.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0249 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital information (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an

exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Duke Energy Progress, Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit No. 1, Wake County, North Carolina

Date of amendment request: November 29, 2012, as supplemented by letter dated January 3, 2013.

Description of amendment request: This is being re-noticed in its entirety due to an error in the amendment description of the notice published in the **Federal Register** on February 19, 2013 (78 FR 11691). The proposed amendment would revise the degraded voltage time delay values in Technical Specification (TS) Table 3.3–4. In conjunction with planned plant modifications and reanalysis of the final safety analysis design basis large break loss of coolant accident (LOCA), the revisions would resolve a nonconservative TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Technical Specifications (TS) Table 3.3–4, Functional Unit 9.b. Loss of Offsite Power, 6.9 kV (kilovolt) Emergency Bus Undervoltage—Secondary time delay values. The Loss of Offsite Power, 6.9 kV (kilovolt) Emergency Bus Undervoltage—Secondary instrumentation functions are not initiators to any accident previously evaluated. As such, the probability of an accident previously evaluated is not increased. The revised values continue to provide reasonable assurance that the Loss of Offsite Power, 6.9 kV (kilovolt) Emergency Bus Undervoltage—Secondary function will continue to perform its intended safety functions. As a result, the proposed change will not increase the consequences of an accident previously evaluated.

Concurrent with this proposed change, the Harris Nuclear Plant is revising its large break loss of coolant accident analysis. The revised analysis will be evaluated in accordance with 10 CFR 50.59 to confirm that a change to the technical specifications incorporated in the license is not required, and the change does not meet any of the criteria in Paragraph (c)(2) of that regulation. The revised analysis will employ the plant-specific methodology ANP–3011(P), Harris Nuclear Plant, Unit 1, Realistic Large Break LOCA Analysis, Revision 1, as approved by NRC Safety Evaluation dated May 30, 2012.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS Table 3.3–4, Functional Unit 9.b. Loss of Offsite Power, 6.9 kV (kilovolt) Emergency Bus Undervoltage—Secondary time delay values. No new operational conditions beyond those currently allowed are introduced. This change is consistent with the safety analyses assumptions and current plant operating practices. This simply corrects the setpoint consistent with the accident analyses and therefore cannot create the possibility of a new or different kind of accident from any previously evaluated accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change revises the TS Table 3.3–4, Functional Unit 9.b. Loss of Offsite Power, 6.9 kV (kilovolt) Emergency Bus Undervoltage—Secondary time delay values. This proposed change implements a reduced time delay to isolate safety buses from offsite power if a Loss of Coolant Accident were to occur coincident with a sustained degraded voltage condition. This provides improved margin to ensure that emergency core cooling system pumps inject water into the reactor vessel within the time assumed and evaluated in the accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Manager—Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Jessie F. Quichocho.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of amendment request: July 26, 2013, as supplemented by letter dated October 16, 2013.

Description of amendment request: The proposed amendment would align St. Lucie TSs with NUREG–1432, Revision 4, Combustion Engineering Plants Standard Technical Specifications (STSs) describing the Administrative Controls requirements for the Responsibility and Organization, which includes Onsite and Offsite Organizations and the Unit Staff. The proposed amendment will revise TSs 6.1, Responsibility and 6.2, Organization to be consistent with STSs 5.1 Responsibility and 5.2 Organization, which directly reference the requirements in 10 CFR 50.54(m). The current Units 1 and 2 TSs 6.1 and 6.2 use custom language to define the requirements of the regulation.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve reformatting, renumbering, and rewording. The revisions have no technical implications with respect to the station organization, responsibilities, or unit staffing requirements. The changes do not affect the minimum shift complement in any mode of operation nor decrease the effectiveness of the shift personnel. The proposed changes are minor or editorial in nature and will not result in any significant increase in the probability of consequences of an accident as previously evaluated, as the proposed TS changes are consistent with the NUREG–1432, Combustion Engineering Plant Standard Technical Specifications. Further, the proposed changes do not introduce additional risk or greater potential for consequences of an accident that has not previously been evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are minor or editorial in nature. The proposed changes do not involve a physical modification of the plant or methods governing normal plant operation. No new or different type of equipment will be installed. The proposed changes will not introduce new failure modes/effects that could lead to an accident not previously analyzed. The proposed changes will not impose any new or change existing requirements that are not consistent with NUREG–1432, Combustion Engineering Plant Standard Technical Specifications.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve reformatting, renumbering, and rewording. The revisions have no technical implications with respect to the station organization, responsibilities, or unit staffing requirements. The changes do not affect the minimum shift complement in any mode of operation nor decrease the effectiveness of the shift personnel. The proposed changes will not involve a significant reduction in a margin of safety in that the changes are minor or editorial in nature. No plant equipment or accident analyses will be affected. Additionally, the proposed changes will not relax any criteria used to establish safety limits, safety system settings, or the bases for any limiting conditions for operation. Safety analysis acceptance criteria are not affected. Plant operation will continue within the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant, and maintain the plant in a safe shutdown condition. Consequently, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Douglas A. Broaddus.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: April 25, 2013, as supplemented on September 4, 2013.

Description of amendment request: The proposed license amendment request would revise certain requirements from Section 5, ''Administrative Controls,'' of the CR–3 Improved Technical Specifications (ITSs). The revisions would revise and remove certain requirements in Section 5.1 ''Responsibility,'' 5.2 ''Organization,'' 5.6 ''Procedures, Programs and Manuals,'' 5.7 ''Reporting Requirements,'' and 5.8 ''High Radiation Area,'' that are no longer applicable to CR–3 in the permanently defueled condition. The September 4, 2013, supplement supersedes the April 25, 2013, application, and replaces it in its entirety. In addition, the proposed no significant hazards consideration determination in the basis section below corrects a typographical numbering error for TS 5.2.1.b (the section was incorrectly labeled ''5.1.2.b'' in Section 4.1 of Attachment B of the September 4, 2013, application).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each proposed change, which is presented below:

A. ITS Section 5.1.1:

This section defines the responsible position for overall unit operation and for approval of each proposed test, experiment, or modification to systems or equipment that affect stored nuclear fuel and fuel handling. The responsible position title is changed from the Plant General Manager to the Plant Manager.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change reflects that the remaining credible accident is a fuel handling accident or loss of spent fuel cooling. The change in the position title of the responsible person is administrative and cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change reflects an organizational change to transition from an operating plant to a permanently defueled plant. Such an administrative change cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The position title proposed here does not involve any physical plant limits or parameters and therefore cannot affect any margin of safety.

B. ITS Section 5.1.2:

This section identifies the responsibilities for the control room command function associated with Modes of plant operation, and is based on personnel positions and qualifications for an operating plant. It identifies the need for a delegation of authority for command in an operating plant when the principal assignee leaves the control room.

This section is being changed to eliminate the MODE dependency for this function and personnel qualifications associated with an operating plant. The proposed change establishes the Shift Supervisor as having command of the shift.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This is a change to the requirements for control room staffing. In a permanently defueled plant, the fuel handling building accident is the only credible accident previously evaluated. This action cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes proposed here for control room staffing cannot create a new or different kind of accident since they do not change the function of any plant structures, systems, or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes proposed here for control room staffing do not directly involve any limits or parameters and therefore cannot affect any margin of safety.

C. ITS Section 5.2.1.a:

The introduction to this section identifies that organizational positions are established that are responsible for the safety of the nuclear plant.

This is changed to require that positions be established that are responsible for the safe storage and handling of nuclear fuel. This change removes the implication that CR–3 can return to operation.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change in the description of functional responsibility of organizational positions places emphasis on the safe storage and handling of nuclear fuel. This focus on their principal responsibility cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change in the description of functional responsibility of organizational positions cannot create a new or different kind of accident since they do not change the function of any plant structures, systems, or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any physical limits or parameters and therefore cannot affect any margin of safety.

D. ITS Section 5.2.1.b:

This section identifies the organizational position responsible for overall nuclear plant safety, for the safe operation of the plant, and for control of activities necessary for the safe operation and maintenance of the plant.

This section is being changed to recognize that the safety concerns for a permanently defueled plant are for the safe storage and handling of nuclear fuel. It changes responsibility for overall safety for storage and handling of nuclear fuel to the Decommissioning Director. It changes responsibility for control over onsite activities necessary for safe handling and storage of nuclear fuel to the Plant Manager.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change in the description of functional responsibility of organizational positions places emphasis on the safe storage and handling of nuclear fuel. This focus on their principal responsibility cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change in the description of functional responsibility of organizational positions cannot create a new or different kind of accident since they do not change the function of any plant structures, systems, or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any physical limits or parameters and therefore cannot affect any margin of safety.

E. ITS Section 5.2.1.c:

This paragraph addresses the requirement for organizational independence of the operations, health physics, and quality assurance personnel from operating pressures.

This is changed to replace ''operating staff'' with ''Certified Fuel Handlers,'' and to replace ''their independence from operating pressures'' to ''their ability to perform their assigned functions.''

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change continues to ensure that personnel in specifically identified positions retain independence from organizational pressures and will not increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

F. ITS Section 5.2.2.a:

This paragraph addresses that one auxiliary nuclear operator must be assigned to the operating shift whenever fuel is in the reactor.

Since this can never occur again at CR–3, the minimum requirement is changed to a minimum crew compliment of one Shift Supervisor and one Non-certified Operator.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change, in conjunction with new paragraph 5.2.2.f, continues to ensure that personnel trained and qualified for the safe handling and storage of nuclear fuel are onsite. This cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

G. ITS Section 5.2.2.b:

This paragraph addresses the conditions under which the minimum shift compliment may be reduced. It contains a reference to 10 CFR 50.54(m) which establishes the minimum requirements for a licensed operating staff for facility operation.

This reference is removed since CR–3 will not return to operation in the future, and the requirement for licensed operating personnel will no longer be required to protect public health and safety.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change continues to ensure that the minimum shift compliment of qualified

personnel will not be decreased for more than a limited period. It removes the qualification requirements for personnel who are capable of responding to operating plant transients and accidents. This does not involve an increase in the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

H. ITS Section 5.2.2.c:

This paragraph establishes the requirement for one licensed Reactor Operator to be in the control room when fuel is in the reactor and for one Senior Reactor Operator to be in the control room during operating Modes 1–4.

The change establishes the requirements for either a Non-certified operator or Certified Fuel handler to be in the control room when fuel is stored in the pools.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change continues to ensure that personnel trained and qualified for the handling and storage of nuclear fuel man the control room. This cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

I. ITS Section 5.2.2.d:

This paragraph established the requirement for a person qualified in Radiation Protection procedures to be onsite when fuel is in the reactor.

This paragraph is revised to require a person qualified in Radiation Protection procedures to be onsite during fuel handling operations and during movement of heavy loads over the fuel storage racks.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This is an administrative change that cannot affect the probability of a fuel handling accident. The consequences of a fuel handling accident are governed by the characteristics of the fuel element and are not affected by the presence or absence of radiation protection trained personnel.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

J. ITS Section 5.2.2.e (New):

A new paragraph is added to establish the requirement for having oversight of fuel handling operations to be performed by a Certified Fuel Handler.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Certified Fuel Handlers are specifically trained and qualified to safely handle irradiated fuel. Applying these qualifications to fuel movement ensures that the probability or consequences of a fuel handling accident are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

K. ITS Section 5.2.2.f (New):

A new paragraph is added to establish that the Shift Supervisor must be a Certified Fuel Handler.

In the permanently defueled plant, the Certified Fuel Handler is the senior position on the operating crew. It is not necessary for the Shift Supervisor to hold a Senior Reactor Operator license if the plant cannot operate to generate power.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Certified Fuel Handlers are specifically trained and qualified to safely handle irradiated fuel. Applying these qualifications to the supervision of fuel movement ensures that the probability or consequences of a fuel handling accident are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

L. ITS Section 5.3.1:

This paragraph is changed to remove the requirements for the Shift Technical Advisor since that position is only required for a plant authorized for power operations.

The paragraph retains the previous requirements for the personnel filling unit staff positions meet or exceed the minimum qualifications of ANSI [American National Standard Institute] N18.1, 1971, and the Radiation Protection Manager meet or exceed the qualifications of Regulatory Guide 1.8, September 1975.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Shift Technical Advisor position was established to assist the control room operating personnel to diagnose the cause and advise on the response to operating transients and accidents. The absence of a staff member with those qualifications does not change the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any physical equipment limits or parameters and therefore cannot affect any margin of safety.

M. ITS Section 5.3.2:

This new paragraph is added to identify that responsibility for the training and retraining of Certified Fuel Handlers is assigned to the Plant Manager.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This section recognizes the importance of establishing and maintaining Certified Fuel Handler qualifications and assigns a manager responsibility for this program. Training and retraining Certified Fuel Handlers specifically trained to safely handle nuclear fuel will not increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any physical limits or parameters and therefore cannot affect any margin of safety.

N. ITS Section 5.6.1.1.a:

This section states the requirement for procedures to be established, implemented and maintained covering various plant activities.

The scope is reduced to procedures applicable to the safe handling and storage of nuclear fuel.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The procedures necessary for the safe handling of nuclear fuel are included in the group of procedures applicable to the safe storage of nuclear fuel. With these procedures in effect for fuel handling, the probability or consequences of a fuel handling accident will not be increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The applicable procedures for the safe storage of nuclear fuel will direct the correct use of fuel handling equipment. These procedures are currently in place and have been used effectively for the safe handling of fuel. These procedures will not direct the use of plant structures, systems, or components in a different manner, therefore, they cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

O. ITS Section 5.6.2.3:

In this section, the authority for approval of changes to the Offsite Dose Calculation Manual (ODCM) is changed from the Plant General Manager to the Plant Manager consistent with the position title change in 5.1.1.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This is a change to the requirements for the position responsible for approving ODCM changes. In a permanently defueled plant, the fuel handling accident is the only credible accident previously evaluated. This action cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change proposed here, identifying a different position responsible for ODCM change approval, cannot create a new or different kind of accident since this does not change the function of any plant structures, systems, or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes proposed here for ODCM approval do not directly involve any limits or parameters for operating systems and therefore cannot affect any margin of safety.

P. ITS Section 5.6.2.4: Primary Coolant Sources Outside Containment:

This program was established to minimize leakage from portions of systems outside containment that could contain highly radioactive fluids during a serious transient or accident.

The program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The fuel handling accident is the only credible accident for a permanently defueled plant. This change eliminates an inspection program that is no longer necessary to limit the consequences of operating transients and accidents. This change cannot increase the probability or consequences of the fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

Q. ITS Section 5.6.2.5: Component Cyclic or Transient Limit:

This program provided controls to track cyclic and transient occurrences to ensure that components were maintained within their design limits.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Eliminating an administrative event tracking program cannot increase the probability of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Eliminating an administrative event tracking program cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

R. ITS Section 5.6.2.8: Inservice Inspection Program:

This program required periodic inspections, examinations, and tests of plant pressure boundary components to ensure their continued integrity for power operation.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Inservice Inspection Program does not apply to nuclear fuel or fuel handling equipment. Therefore eliminating this program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

For an operating plant the Inservice Inspection Program provided confidence that plant systems that were either a potential source of an accident or transient or served to mitigate events continued to meet their physical requirements. For a permanently shutdown plant, no transient, or accident can occur, so ending this inspection program cannot affect any margin of safety.

S. ITS Section 5.6.2.9: Inservice Testing Program:

This program required periodic testing of ASME Code Class 1, 2, and 3, components including applicable supports in accordance with the ASME Operations and Maintenance (OM) Code.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Inservice Testing Program does not apply to nuclear fuel or fuel handling equipment. Therefore eliminating this program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

For an operating plant, the Inservice Testing Program provided confidence that plant components that were required for safe

shutdown would perform as expected. For a permanently shutdown plant, the transients or accidents that would require safe shutdown equipment cannot occur, so ending this testing program cannot affect any margin of safety.

T. ITS Section 5.6.2.10: Steam Generator (OTSG) Program:

The Steam Generator Program established and implemented practices to ensure that OTSG tube integrity was maintained.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The condition of the steam generator tubes inside the containment has no effect on fuel handling in the auxiliary building within the spent fuel pools. Therefore, eliminating the program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The CR–3 steam generators will remain out of service until removed from the plant. In this state, the condition of the steam generator tubes is immaterial and cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

U. ITS Section 5.6.2.11: Secondary Water Chemistry Program:

This program provided controls for monitoring secondary water chemistry to inhibit steam generator tube degradation and low pressure turbine disc stress corrosion cracking.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The secondary piping systems do not interconnect with the fuel cooling or fuel handling systems. Therefore, eliminating the Secondary Water Chemistry Program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The components this program was intended to protect will no longer function for power production. Therefore, eliminating this program cannot affect any margin of safety.

V. ITS Section 5.6.2.13: Explosive Gas and Storage Tank Radioactivity Monitoring Program:

This program provided controls for potentially explosive gas mixtures contained in the Radioactive Waste Disposal (WD) System, and the quantity of radioactivity contained in gas storage tanks or fed into the offgas treatment system.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This program is required for an operating plant where hydrogen and radioactive gases are created and must be controlled. Controlled release of any gases currently in the tanks, in accordance with existing procedures, will ensure there will be no hazard to public health and safety. Therefore, elimination of this program cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This program is required for an operating plant where hydrogen and radioactive gases are created and must be controlled. Controlled release of any gases currently in the tanks, in accordance with existing procedures, will ensure there will be no hazard to public health and safety. Therefore, elimination of this program cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margins of safety.

W. ITS Section 5.6.2.18: Core Operating Limits Report (COLR):

This program established that core operating limits be established prior to each reload cycle.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This program for controlling the design and operation of the reactor core has no bearing on fuel storage after fuel has been moved into the spent fuel pools. Therefore, eliminating this program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Since CR–3 can never load a core into the reactor again, eliminating this control program cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Since CR–3 can never load a core into the reactor again, eliminating this control program cannot affect any margin of safety.

X. ITS 5.6.2.19: Reactor Coolant System (RCS) Pressure And Temperature Limits Report (PTLR):

This program ensured that RCS pressure and temperature limits, including heatup and cooldown rates, criticality, and hydrostatic and leak test limits, be established and documented in the PTLR.

This program is being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This program contains no actions or limits that affect the storage or handling of nuclear fuel. Therefore, eliminating this program cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This report is no longer needed since the reactor coolant system is not subject to pressurization and the reactor contains no fuel. Therefore, eliminating this control program cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The limits established in this report do not apply to nuclear fuel stored in the spent fuel pools. Therefore, eliminating this program cannot affect any margin of safety.

Y. ITS Section 5.6.2.20: Containment Leakage Rate Testing Program:

This program was established to implement the leakage rate testing of the containment.

This program is being eliminated in accordance with Regulatory Guide 1.1.84.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Since fuel can never be returned to the CR–3 containment, ending containment leakage rate testing cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not introduce any changes to the function of any plant structures, systems, or components therefore it cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not directly involve any limits or parameters and therefore cannot affect any margin of safety.

Z. ITS Section 5.7.2: Special Reports:

This section is being revised to eliminate reporting requirements associated with programs that are being eliminated.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Eliminating reporting requirements for programs that are no longer required in a permanently defueled plant cannot increase the probability or occurrence of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Eliminating reporting requirements that are no longer required cannot create a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Eliminating reporting requirements that are no longer required cannot affect any margin of safety.

AA. ITS Section 5.8.2: High Radiation Area Controls:

Changes one of the personnel responsible for locked high radiation area key control from the Control Room Supervisor to the Shift Supervisor.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This is a change to the requirements for the position title responsible for key control. In a permanently defueled plant, the fuel handling accident is the only credible accident previously evaluated. This action cannot increase the probability or consequences of a fuel handling accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change proposed here, identifying a different position title responsible for key control, cannot create a new or different kind of accident since they do not change the function of any plant structures, systems, or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes proposed here for key control do not directly involve any limits or parameters and therefore cannot affect any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, 550 South Tryon Street, Charlotte, North Carolina, 28202.

NRC Branch Chief: Jessie F. Quichocho.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220, and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of amendment request: October 7, 2013.

Description of amendment request: The proposed amendment modifies the Nine Mile point Units 1 and 2 TS definition of ''Shutdown Margin'' (SDM) to require calculation of the SDM at a reactor moderator temperature of 68 °F or a higher temperature that represents the most reactive state throughout the operating cycle. This change is needed to address new Boiling Water Reactor (BWR) fuel designs which may be more reactive at shutdown temperatures above 68 °F.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on November 19, 2012; 77 FR 69507, on possible amendments to revise the plant specific TS, to modify the TS definition of ''Shutdown Margin'' (SDM) to require calculation of the SDM at a reactor moderator temperature of 68 °F or a higher temperature that represents the most reactive state throughout the operating cycle, including a model safety evaluation and model NSHC [no significant hazards consideration] determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on February 26, 2013 (78 FR 13100). The licensee affirmed the applicability of the model NSHC determination in its application dated October 7, 2013, which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. SDM is not an initiator to any accident previously evaluated. Accordingly, the proposed change to the definition of SDM has no effect on the probability of any accident previously evaluated. SDM is an assumption in the analysis of some previously evaluated accidents and inadequate SDM could lead to an increase in consequences for those accidents. However, the proposed change revises the SDM definition to ensure that the correct SDM is determined for all fuel types at all times during the fuel cycle. As a result, the proposed change does not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis regarding SDM.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the definition of SDM. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the SDM assumed in determining safety limits, limiting safety system settings or limiting conditions for operation is correct for all fuel types at all times during the fuel cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves NSHC.

Attorney for licensee: Gautam Sen, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

NRC Branch Chief: Robert Beall.

South Carolina Electric and Gas, Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: September 25, 2013.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) Tier 2* material by revising reference document APP–OCS–GEH–220, ''AP1000 Human Factors Engineering Task Support Verification Plan,'' from Revision B to Revision 1. APP–OCS–GEH–220 is incorporated by

reference in the UFSAR as a means to implement the activities associated with the human factors engineering verification and validation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The HFE Task Support Verification Plan is one of several verification and validation (V&V) activities performed on human-system interface (HSI) resources and the Operation and Control Centers System (OCS), where applicable. The Task Support Verification Plan is used to assess and verify displays and activities related to normal and emergency operation. The changes are to the Task Support Verification Plan to clarify the scope and amend the details of the methodology. The Task Support Verification Plan does not affect the plant itself. Changing the Plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. The Probabilistic Risk Assessment is not affected. No safety-related structure, system, component (SSC) or function is adversely affected. The change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to the Task Support Verification Plan change information related to validation and verification on Human System Interface and Operational Control Centers. Therefore, the changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification will be adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the Task Support Verification Plan affect the validation and verification on the Human System Interface and the Operational Control Centers. Therefore, the changes do not affect the plant itself. These changes do not affect the design or operation of safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

South Carolina Electric & Gas, Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: September 25, 2013.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) Tier 2* material by revising reference document APP–OCS–GEH–120, ''AP1000 Human Factors Design Engineering Verification Plan,'' from Revision B to Revision 1. APP–OCS–GEH–120 is incorporated by reference in the updated UFSAR as a means to implement the activities associated with the human factors engineering verification and validation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Design verification provides a final check of the adequacy of the Human System Interface (HSI) Resources and Operation and Control Centers System (OCS) design. The changes do not affect the plant itself, and so there is no change to the probability or consequences of an accident previously evaluated. Changing the design verification plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses as the purpose of the plan is simply to verify implementation of design criteria. The Probabilistic Risk Assessment is not affected. No safety-related structure, system, component (SSC) or function is adversely affected. The change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Design verification provides a final check of the adequacy of the HSI Resources and Operation and Control Centers System design. The changes do not affect the plant itself, and so there is no new or different kind of accident from any accident previously evaluated. Therefore, the changes do not affect safety-related equipment, nor does it affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification is adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the design verification plan provide a final check of the adequacy of the HSI Resources and Operation and Control Centers System design. The changes do not affect the assessments or the plant itself. The changes do not affect safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or

fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

South Carolina Electric and Gas, Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: October 3, 2013.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) Tier 2* material by revising material by revising reference document APP–OCS–GEH–520, ''AP1000 Plant Startup Human Factors Engineering Design Verification Plan,'' from Revision B to Revision 2. APP–OCS–GEH–520 is incorporated by reference in the UFSAR as a means to implement the activities associated with the human factors engineering verification and validation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The APP–OCS–GEH–520, document confirms aspects of the human system interface (HSI) and Operation and Control Centers Systems (OCS) design features that could not be evaluated in other Human Factors Engineering (HFE) verification and validation (V&V) activities. It also confirms that the as-built in the plant HSIs, procedures, and training conform to the design that resulted from the HFE program. Additionally, it confirms that all HFE-related issues (including human error discrepancies (HEDs)) documented in the SmartPlant Foundation (SPF) Human Factors (HF) Tracking System are verified as adequately addressed or resolved. Finally, it confirms the HFE adequacy for risk-important human actions in the local plant, including the ability for the tasks to be completed within the time window according to the Probabilistic Risk Assessment (PRA). The changes to the plan are to clarify the scope and amend the details of the methodology. The plan does not affect the plant itself. Changing the plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. The PRA is not affected. No safety-related Structure, System, or Component (SSC) or function is adversely affected. The document revision change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. Because the changes to the plan do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

APP–OCS–GEH–520, ''AP1000 Plant Startup Human Factors Engineering Design Verification Plan'' is the plan to confirm aspects of the HSI and OCS design features that could not be evaluated in other HFE V&V activities. The plan also confirms that the as-built in the plant HSIs, procedures, and training conform to the design that resulted from the HFE program. Additionally, it confirms that all HFE-related issues (including HEDs) documented in the SPF HF Tracking System are verified as adequately addressed or resolved. Finally, it confirms the HFE adequacy for risk-important human actions in the local plant, including the ability for the tasks to be completed within the time window according to the PRA. These functions support evaluating the HSI and OCS. Therefore, the changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification will be adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

APP–OCS–GEH–520, ''AP1000 Plant Startup Human Factors Engineering Design Verification Plan'' is the plan to confirm aspects of the HSI and OCS design features that could not be evaluated in other HFE V&V activities. The plan also confirms that the as-built in the plant HSIs, procedures, and training conform to the design that resulted from the HFE program. Additionally, it confirms that all HFE-related issues (including HEDs) documented in the SPF HF Tracking System are verified as adequately addressed or resolved. Finally, it confirms the HFE adequacy for risk-important human actions in the local plant, including the ability for the tasks to be completed within the time windows in the PRA. These functions support evaluating the HSI and OCS. The proposed changes to the plan do not affect the design or operation of safety-related equipment or equipment whose failure could initiate an accident, nor does the plan adversely affect the interfaces with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes.

Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

South Carolina Electric & Gas, Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: October 3, 2013.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) Tier 2* material by revising reference document APP–OCS–GEH–420, ''AP1000 Human Factors Engineering Discrepancy Resolution Process,'' from Revision B to Revision 1. APP–OCS–GEH–420 is incorporated by reference in the UFSAR as a means to implement the activities associated with the human factors engineering

verification and validation (TAC No. RQ0403) (LAR 13–18).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The HFE Discrepancy Resolution Process is used to capture and resolve Human Engineering Discrepancies (HEDs) identified during the Human Factors Engineering (HFE) verification and validation (V&V) activities. These discrepancy resolution process activities are used to support the final check of the adequacy of the HFE design of the Human-System Interface (HSI) resources and the Operation and Control Centers Systems (OCS) design. The discrepancy resolution process activities are performed as part of the V&V activities against the final configuration and control documentation, simulator or installed target system. The changes are to the Discrepancy Resolution Process to clarify the scope and amend the details of the methodology. The Discrepancy Resolution Process does not affect the plant itself. Changing the Discrepancy Resolution Process does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. No safety-related structure, system, component (SSC) or function is adversely affected. The document revision does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to the Discrepancy Resolution Process information are related to discrepancy resolution of HEDs during the HFE V&V activities on the HSI and the OCS. Therefore, the changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification will be adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the Discrepancy Resolution Process affect discrepancy resolution of HEDs during the HFE V&V activities on the HSI and the OCS. Therefore, the changes do not affect the assessments or the plant itself. These changes do not affect the design or operation of safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 20, 2013.

Brief description of amendment: The amendments revised the corporate name of the licensee in each facility's operating license from Carolina Power & Light Company to Duke Energy Progress, Inc.

Date of issuance: October 21, 2013.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 263, 291, 142, and 236.

Renewed Facility Operating License Nos. DPR–71, DPR–62, NPF–63, and DPR–23: Amendments revised the Licenses and Appendix cover pages.

Dates of initial notice in ***Federal Register:*** May 28, 2013 (78 FR 31982) and correction to initial notice on June 21, 2013 (78 FR 37595).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 2013.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 20, 2013.

Brief description of amendment: The amendment changes the name of the Licensee in the Facility Operating License.

Date of issuance: October 18, 2013.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment No.: 243.

Facility Operating License No. DPR–72: Amendment revises the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 30, 2013 (78 FR 25314).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 2013.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: July 1, 2011, as supplemented by letters dated September 2, 2011, April 27, 2012, June 29, 2012, August 9, 2012, October 15, 2012, November 9, 2012, January 14, 2013, February 1, 2013, May 1, 2013, June 21, 2013, and September 16, 2013.

Brief description of amendments: The amendments revised the facility operating licenses and transitions the Donald C. Cook Nuclear Plant fire protection program to a new risk-informed, performance-based alternative in accordance with 10 CFR 50.48(c), which incorporates by reference the National Fire Protection Association (NFPA) Standard 805 (NFPA 805), ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants—2001.''

Date of issuance: October 24, 2013.

Effective date: As of the date of issuance and shall be implemented by October 24, 2014.

Amendment Nos.: Unit 1—322; Unit 2—305.

Facility Operating License No. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** October 4, 2011 (76 FR 61396). The supplemental letters dated September 2, 2011, April 27, 2012, June 29, 2012, August 9, 2012, October 15, 2012, November 9, 2012, January 14, 2013, February 1, 2013, May 1, 2013, June 21, 2013, and September 16, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 2013.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 27, 2013, as supplemented June 25, 2013.

Brief description of amendment: The amendment revised the Seabrook TS. The amendment modifies TS requirements regarding steam generator tube inspections and reporting as described in TS Task Force (TSTF)-510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' using the Consolidated Line Item Improvement Process (CLIIP). The changes are consistent with Industry/TSTF Standard Technical Specification Change Traveler, TSTF–510. The availability of this TS improvement was announced in the **Federal Register** on October 27, 2011 (76 FR 66763), as part of the CLIIP.

Date of issuance: October 25, 2013.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment No.: 138.

Facility Operating License No. NPF–86: The amendment revised the Facility Operating License and TS.

Date of initial notice in ***Federal Register:*** April 30, 2013 (78 FR 25316). The supplement dated June 25, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2013.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: June 19, 2013, and revised by the letter dated August 27, 2013.

Brief description of amendment: The proposed amendment would depart from VEGP Units 3 and 4 plant-specific Design Control Document (DCD) Tier 2* and associated Tier 2 material incorporated into the Updated Final Safety Analysis Report (UFSAR) by revising requirements for design spacing of shear studs and the design of structural elements in order to address interferences and obstructions other than wall openings.

Date of issuance: October 8, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 3–14, and Unit 4–14.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register***: August 6, 2013 (78 FR 47792).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2013.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish,

for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is

requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital information (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: October 7, 2013, as supplemented by letters dated October 8 and October 9, 2013.

Description of amendment request: This notice was previously published in the **Federal Register** on October 29, 2013 (78 FR 64550). This notice is being reissued in its entirety as it was

inadvertently placed in the incorrect section of the Biweekly report published on October 29, 2013. The amendment revised Technical Specification (TS) 3.6.9, ''Distributed Ignition System (DIS),'' to allow Train B of the DIS to be considered operable with two inoperable ignitors. The existing TS defines train operability as having no more than one ignitor inoperable. The amendment also allows one of five specific primary containment regions to have zero ignitors operable. The existing TS requires that at least one ignitor be operable in each region. The proposed TS revision is applicable until the fall 2014 refueling outage, or until the unit enters a mode that allows replacement of the affected ignitors without exposing personnel to significant radiation and safety hazards.

Date of issuance: October 9, 2013.

Effective date: As of the date of issuance, to be implemented within 1 day.

Amendment No.: 321.

Renewed Facility Operating License No. DPR–58: Amendment revised the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 9, 2013.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert D. Carlson.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 6, 2013, as supplemented by letters dated October 15, 21, and 22, 2013 and two letters dated October 23, 2013.

Description of amendment request: The amendment revised the Updated Safety Analysis Report (USAR) for pipe break criteria for high energy piping outside of containment. Specifically, the proposed amendment would allow the use of NRC guidance provided in Branch Technical Position Mechanical Engineering Branch 3–1, Revision 2, which allows for the exemption of specific piping sections from postulated failures if certain criteria are met.

Date of issuance: October 25, 2013.

Effective date: As of its issuance date and shall be implemented upon approval.

Amendment No.: 273.

Renewed Facility Operating License No. DPR–40: The amendment revised the facility operating license.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (*Omaha-World Herald,* located in Omaha, Nebraska, from October 9 through October 15, 2013). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. One comment was received and evaluated.

The supplemental letters dated October 15, 21, and 22, 2013, and two letters dated October 23, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the *Omaha-World Herald* from October 9 through 15, 2013.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination (including the comment received on the NSHC) are contained in a safety evaluation dated October 25, 2013.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 1st day of November 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–27025 Filed 11–8–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Plan for Civil Earth Observations; Request for Information

ACTION: Notice of Request for Information (RFI).

SUMMARY: The purpose of this Request for Information (RFI) is to solicit input from all interested parties regarding recommendations for the development of a National Plan for Civil Earth Observations (''National Plan''). The public input provided in response to this Notice will inform the Office of Science and Technology Policy (OSTP) as it works with Federal agencies and other stakeholders to develop this Plan.

DATES: Responses must be received by December 6, 2013 to be considered.

ADDRESSES: You may submit comments by any of the following methods.

- *Downloadable form/email:* To aid in information collection and analysis, OSTP encourages responses to be provided by filling out the downloadable form located at *http://www.whitehouse.gov/administration/eop/ostp/library/shareyourinput* and emailing that form, as an attachment, to: *earthobsplan@ostp.gov.* Please include ''National Plan for Civil Earth Observations'' in the subject line of the message.
- *Fax:* (202) 456–6071.
- *Mail:* Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC, 20504. Information submitted by postal mail should allow ample time for processing by security.

Response to this RFI is voluntary. Respondents need not reply to all questions listed; however, they should clearly identify the questions to which they are responding by listing the corresponding number for each question. Each individual or institution is requested to only submit one response. Responses to this RFI, including the names of the authors and their institutional affiliations, if provided, may be posted on line. OSTP therefore requests that no business proprietary information, copyrighted information, or personally-identifiable information be submitted in response to this RFI. Given the public and governmental nature of the National Plan, OSTP deems it unnecessary to receive or to use business proprietary information in its development. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, 202–419–3471, *tstryker@ostp.eop.gov,* OSTP.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Government is the world's largest single provider of civil environmental and Earth-system data. These data are derived from Earth observations collected by numerous Federal agencies and partners in support of their missions and are critical to the protection of human life and property; economic growth; national and homeland security; and scientific research. Because they are provided through public funding, these data are made freely accessible to the greatest extent possible to all users to advance human knowledge, to enable industry to provide value-added services, and for general public use.

Federal investments in Earth observation activities ensure that decision makers, businesses, first responders, farmers, and a wide array of other stakeholders have the information they need about climate and weather; natural hazards; land-use change; ecosystem health; water; natural resources; and other characteristics of the Earth system. Taken together, Earth observations provide the indispensable foundation for meeting the Federal Government's long-term sustainability objectives and advancing the Nation's societal, environmental, and economic well-being.

As the Nation's capacity to observe Earth systems has grown, however, so has the complexity of sustaining and coordinating civil Earth observation research, operations, and related activities. In October 2010, Congress charged the Director of OSTP to address this challenge by producing and routinely updating a strategic plan for civil Earth observations (see *National Aeronautics and Space Administration Authorization Act of 2010, Public Law 111–267, Section 702*).

Responding to Congress, in April 2013, OSTP released a National Strategy for Civil Earth Observations (''the National Strategy'', *see http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc_2013_earthobsstrategy.pdf*). In April 2013, OSTP also re-chartered the U.S. Group on Earth Observations (USGEO) Subcommittee of the National Science and Technology Council's Committee on Environment, Natural Resources, and Sustainability. USGEO will carry out the National Strategy and support the formulation of the National Plan.

As requested by Congress, the National Plan is being developed by USGEO to advise Federal agencies on the Strategy's implementation through their investments in and operation of civil Earth observation systems. The Plan will provide a routine process, on a three-year cycle, for assessing the Nation's Earth observation investments; improving data management activities; and enhancing related interagency and international coordination. Through this approach, the Plan will seek to facilitate stable, continuous, and coordinated Earth observation capabilities for the benefit of society.

Congress also requested that development of the National Plan include a process for collecting external independent advisory input. OSTP is seeking such public advisory input through this RFI. The public input provided in response to this Notice will inform OSTP and USGEO as they work with Federal agencies and other stakeholders to develop the Plan.

Definitions and Descriptions

The term ''Earth observation'' refers to data and information products from Earth-observing systems and surveys.

''Observing systems'' refers to one or more sensing elements that directly or indirectly collect observations of the Earth, measure environmental parameters, or survey biological or other Earth resources (land surface, biosphere, solid Earth, atmosphere, and oceans).

''Sensing elements'' may be deployed as individual sensors or in constellations or networks, and may include instrumentation or human elements.

''Observing system platforms'' may be mobile or fixed and are space-based, airborne, terrestrial, freshwater, or marine-based. Observing systems increasingly consist of integrated platforms that support remotely sensed, *in-situ,* and human observations.

Assessing the Benefits of U.S. Civil Earth Observation Systems

To assist decision-makers at all levels of society, the U.S. Government intends to routinely assess its wide range of civil Earth observation systems according to the ability of those systems to provide relevant data and information about the following Societal Benefit Areas (SBAs):

- Agriculture and Forestry
- Biodiversity
- Climate
- Disasters
- Ecosystems (Terrestrial and Freshwater)
- Energy and Mineral Resources
- Human Health
- Ocean and Coastal Resources and Ecosystems
- Space Weather
- Transportation
- Water Resources
- Weather

The U.S. Government also intends to consider how current and future reference measurements (*e.g.,* bathymetry, geodesy, geolocation, topography) can enable improved observations and information delivery.

To address measurement needs in the SBAs, the U.S. Government operates a wide range of atmospheric, oceanic, and terrestrial observing systems. These systems are designed to provide: (a) Sustained observations supporting the delivery of services, (b) sustained observations for research, or (c) experimental observations to address specific scientific questions, further technological innovation, or improve services.

Questions To Inform Development of the National Plan

Through this RFI, OSTP seeks responses to the following questions:

1. Are the 12 SBAs listed above sufficiently comprehensive?

a. Should additional SBAs be considered?

b. Should any SBA be eliminated?

2. Are there alternative methods for categorizing Earth observations that would help the U.S. Government routinely evaluate the sufficiency of Earth observation systems?

3. What management, procurement, development, and operational approaches should the U.S. Government employ to adequately support sustained observations for services, sustained observations for research, and experimental observations? What is the best ratio of support among these three areas?

4. How should the U.S. Government ensure the continuity of key Earth observations, and for which data streams (*e.g.,* weather forecasting, land surface change analysis, sea level monitoring, climate-change research)?

5. Are there scientific and technological advances that the U.S. Government should consider integrating into its portfolio of systems that will make Earth observations more efficient, accurate, or economical? If so, please elaborate.

6. How can the U.S. Government improve the spatial and temporal resolution, sample density, and geographic coverage of its Earth observation networks with cost-effective, innovative new approaches?

7. Are there management or organizational improvements that the U.S. Government should consider that will make Earth observation more efficient or economical?

8. Can advances in information and data management technologies enable coordinated observing and the integration of observations from multiple U.S. Government Earth observation platforms?

9. What policies and procedures should the U.S. Government consider to ensure that its Earth observation data and information products are fully discoverable, accessible, and useable?

10. Are there policies or technological advances that the U.S. Government should consider to enhance access to Earth observation data while also reducing management redundancies across Federal agencies?

11. What types of public-private partnerships should the U.S. Government consider to address current gaps in Earth observation data coverage

and enhance the full and open exchange of Earth observation data for national and global applications?

12. What types of interagency and international agreements can and should be pursued for these same purposes?

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2013–26890 Filed 11–8–13; 8:45 am]

BILLING CODE 3170–F4–P

SECURITIES AND EXCHANGE COMMISSION

Notice of Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 14, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 7, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27182 Filed 11–7–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70808; File No. SR–EDGX–2013–41]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amendments to the EDGX Exchange, Inc. Fee Schedule

November 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to decrease the rebate to add liquidity under the Market Depth Tier 1 from $0.0033 per share to $0.0032 per share. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to decrease the rebate to add liquidity under the Market Depth Tier 1 from $0.0033 per share to $0.0032 per share. Footnote 1 of the Fee Schedule currently provides that Members may qualify for the Market Depth Tier 1 and receive a rebate of $0.0033 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the TCV in average daily trading volume (''ADV'') on EDGX in total, where at least 1,800,000 shares are non-displayed orders that yield Flag HA. The Exchange proposes to amend Footnote 1 of its Fee Schedule to decrease the rebate of the Market Depth Tier 1 from $0.0033 per share to $0.0032 per share. The remainder of the footnote as it pertains to the Market Depth Tier 1 would remain unchanged.

Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule on November 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the reduced rebate of $0.0032 per share for adding liquidity on EDGX is an equitable allocation of reasonable dues, fees, and other charges as the additional revenue that results from the lower rebate enables the Exchange to cover increased infrastructure and administrative expenses.

The Exchange also believes that the decreased rebate for the Market Depth Tier 1 represents an equitable allocation of reasonable dues, fees, and other charges because the lower rebate is directly correlated with this tier's criteria. The Exchange recently decreased the ADV requirement of the Market Depth Tier 1 from 2,000,000 shares of ADV to 1,800,000 shares of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

ADV.[6] The Exchange believes that the lower volume requirement necessary to achieve the Market Depth Tier 1 justifies its lower rebate. For example, for a Member to qualify for the tier most similar to the Market Depth Tier 1, the Market Depth Tier 2 and receive a rebate of $0.0029 per share, a Member needs to add 10,000,000 shares or more of ADV on a daily basis, measured monthly, and add at least 1,000,000 shares as non-displayed orders that yield Flag HA. For a Member to qualify for the Market Depth Tier 1, a Member must post at least 0.50% of the TCV in ADV on EDGX in total, where at least 1.8 million shares are non-displayed orders that add liquidity to EDGX yielding Flag HA. Based on a TCV of six (6) billion shares, this would amount to 30,000,000 shares for the Market Depth Tier 1 while the Market Depth Tier 2 would require an ADV of 10,000,000 shares. Members seeking to achieve the Market Depth Tier 1 would also be required to post at least 1.8 million shares of non-displayed orders that add liquidity to EDGX yielding Flag HA, whereas the Market Depth Tier 2 would require that Members post 1,000,000 shares of non-displayed orders that add liquidity to EDGX yielding Flag HA.

Lastly, the Exchange believes that its proposal to decrease the rebate offered by the Market Depth Tier 1 is non-discriminatory because the proposed rate would continue to apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will increase of [sic] decrease4 [sic] intermarket competition or impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that its proposal would neither increase or decrease intramarket competition because the rate for the Market Depth Tier 1 would continue to apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased price discovery and better market quality at the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–41 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26955 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 69911 (July 2, 2013), 78 FR 41132 (July 9, 2013) (SR–EDGX–2013–25).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4 (f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70805; File No. SR–BOX–2013–51]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on BOX

November 5, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule for trading on the BOX Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 1, 2013. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. In particular, the Exchange proposes to amend certain Exchange Fees for Professionals and Broker Dealers and adjust the Tiered Auction Transaction Fees for Initiating Participants based upon monthly average daily volume (ADV) as set forth in Section I of the Fee Schedule. Additionally, the Exchange proposes to increase the existing liquidity fees and credits for certain PIP Transactions within Section II of the Fee Schedule.

In Section I., Exchange Fees, the Exchange proposes to increase Auction Transaction[5] fees for Professional Customers and Broker Dealers to $0.37 from $0.35. For Non-Auction Transactions, the Exchange proposes to increase Professional Customer and Broker Dealer fees to $0.42 from $0.40. The Exchange notes that the proposed fees for Professionals are within the range of fees presently assessed in the industry.[6]

In Section I.A., Auction Transaction Tiered Fee Schedule for Initiating Participant based upon Monthly Average Daily Volume (''ADV'') in Auction Transactions, the Exchange proposes to remove the top two volume tiers and lower the per contract fees within each of the remaining tiers. The Exchange currently gives volume incentives for auction transactions to Initiating Participants that, on a daily basis, trade an average daily volume, as calculated at the end of the month, of more than 5,000 contracts on BOX. The new per contract fee for Initiating Participants in Auction Transactions set forth in Section I.A. of the BOX Fee Schedule will be as follows:

Initiating participant monthly ADV in auction transactions	Per contract fee (all account types)
≥50,001	$0.03
20,001 to 50,000 contracts	0.12
10,001 to 20,000 contracts	0.20
5,001 to 10,000 contracts	0.25
1 to 5,000 contracts	0.30

In Section II., Liquidity Fees and Credits, the Exchange proposes to increase the fees and credits for PIP Transactions in classes with a minimum price variation of $0.01 (i.e., Penny Pilot classes where the trade price is less than $3.00 and all series in QQQ, SPY, and IWM). Currently transactions in the BOX PIP are either assessed a fee for adding liquidity or provided a credit for removing liquidity regardless of account type.[7] PIP Orders (i.e., the agency orders opposite the Primary Improvement Order[8]) receive the ''removal'' credit and Improvement Orders[9] are charged the ''add'' fee. For orders that remove liquidity from the BOX Book, the Exchange proposes to raise the Penny Pilot class per contract credit to $0.35 from $0.30. Accordingly, for orders that add liquidity to the BOX Book, the Exchange also proposes to raise the Penny Pilot class per contract fee to $0.35 from $0.30

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Exchange Fees

The Exchange believes that raising the per executed contract fee for Professionals and Broker-Dealers in both Auction Transactions and non-Auction Transactions is reasonable, equitable and not unfairly discriminatory. BOX simply aims to recover costs incurred by assessing Professionals and Broker-Dealers a market competitive fee. Further, the proposed fees charged to Professionals and Broker-Dealers have been designed to be comparable to the fees that such accounts would be charged at competing venues. Finally, the Exchange believes that charging Professionals and Broker-Dealers the same fee for all transactions is not unfairly discriminatory as the fees will apply to all Professionals and Broker-Dealers equally. Professionals and Broker-Dealers remain free to change the manner in which they access BOX.

The Exchange believes it is equitable and not unfairly discriminatory that Public Customers be charged lower fees in both Auction Transactions and non-Auction Transactions than Professionals and Broker-Dealers. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Auction Transactions are those transactions executed through the Price Improvement Period (''PIP''), Solicitation, and Facilitation auction mechanisms.

[6] For example, on the NASDAQ Options Market (''NOM''), in non-Penny Pilot securities both Professional Customers and Broker Dealers are charged $0.45 per contract for adding liquidity and $0.89 for removing liquidity. In Penny Pilot securities, Professional Customers are credited $0.25 to $0.48 (depending on ADV) for adding liquidity and charged $0.48 for removing liquidity; while Broker Dealers are credited $0.10 for adding liquidity and charged $0.48 for removing liquidity. *See* the NOM Fee Schedule, available at: *http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing*

[7] *See* Section II of the BOX Fee Schedule.

[8] A Primary Improvement Order is the matching contra order submitted to the PIP on the opposite side of an agency order.

[9] An Improvement Order is a response to a PIP auction.

[10] 15 U.S.C. 78f(b)(4) and (5).

to be charged lower Exchange fees than those charged to Professional Customers and Broker Dealers. Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements.

Secondly, the Exchange believes its proposed amendments to the tiered fee structure for Initiating Participants in Auction Transactions are reasonable, equitable and not unfairly discriminatory. The reduced fees related to trading activity in BOX Auction Transactions are available to all BOX Options Participants that initiate Auction Transactions, and they may choose whether or not to trade on BOX to take advantage of the discounted fees for doing so. The Exchange also believes that amending the volume discounts to Options Participants initiating Auction Transactions is reasonable as Participants will benefit from the opportunity to aggregate their trading in the BOX Auction mechanisms to more easily attain a discounted fee tier.

The Exchange believes it is appropriate to provide an incentive to BOX Participants to submit their customer orders to BOX, particularly into the PIP for potential price improvement. Such a discount will limit the exposure Initiating Participants have to Section II fees, where they are charged a fee for adding liquidity should their principal order execute against the customer order in any BOX Auction Transaction. The Exchange believes that lowering the fees in this tiered fee structure will attract more order flow to BOX, providing greater potential liquidity within the overall BOX market and its auction mechanisms, to the benefit of all BOX market participants.

Liquidity Fees and Credits

The Exchange believes that it is equitable and not unfairly discriminatory to increase the fees and credits for PIP Transactions in classes with a minimum price variation of $0.01 (i.e., Penny Pilot classes where the trade price is less than $3.00 and all series in QQQ, SPY, and IWM). Such fees and credits apply uniformly to all categories of Participants, across all account types.

The Exchange believes it is reasonable to raise the liquidity fees and credits for PIP transactions in these classes. The Exchange notes that the proposed fees and credits for transactions on BOX offset one another in any particular transaction. The result is that BOX will collect a fee from Participants that add liquidity on BOX and credit another Participant an equal amount for removing liquidity. Stated otherwise, the collection of these liquidity fees will not directly result in revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract order flow. The Exchange believes it is appropriate to provide incentives to market participants to use PIP, because doing so may result in potential benefit to customers through price improvement, and to all market participants from greater liquidity on BOX.

As stated above, BOX operates within a highly competitive market in which market participants can readily direct order flow to any of the other competing venues if they deem fees at a particular venue to be excessive. The Exchange believes that these higher PIP transaction fees and credits are fair and reasonable and must be competitive with fees and credits in place on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee changes are reasonably designed to enhance competition in BOX transactions, particularly auction transactions.

The proposed rule change raises the fees charged to Broker Dealers and Professional Customers in both Auction and non-Auction transactions, which the Exchange believes does not impose a burden on competition because all transactions for these Participants are affected to the same extent. Further, the Exchange fees for Broker Dealers and Professional Customer will continue to be identical.

The proposed rule change also modifies the tiered fees charged to Initiating Participants based on their monthly ADV in Auction Transactions, and raises the liquidity fees and credits for certain PIP transactions. BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX, and to the PIP in particular. The Exchange does not believe that the proposed liquidity fees and credits burden competition by creating such a disparity between the fees an Initiating Participant pays and the fees a competitive responder pays that would result in certain participants being unable to compete with initiators. In fact, the Exchange believes that these changes will not impair these Participants from adding liquidity and competing in Auction Transactions and will help promote competition by providing incentives for market participants to submit customer order flow to BOX and thus, create a greater opportunity for retail customers to receive additional price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–51. This file number should be included on the

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–51 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26933 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70806; File No. SR–CBOE–2013–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to CBSX Trading Permit Holder Eligibility

November 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a CBOE Stock Exchange, LLC (''CBSX'') rule regarding eligibility for CBSX Trading Permit Holders. The text of the proposed rule change to [sic] is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX is a stock execution facility of CBOE. Therefore, CBOE, as a self-regulatory organization, conducts surveillance of trading on CBSX, and surveils and examines the securities-related operations of its Trading Permit Holders for compliance with CBSX Rules and the federal securities laws, rules and regulations. The Exchange proposes to add CBSX Rule 50.4A.[3] Proposed CBSX Rule 50.4A provides that a CBSX Trading Permit Holder may become or remain a CBSX Trading Permit Holder only if it is a member of a national securities association.[4] All CBSX Trading Permit Holders that are effective as of the approval date of this filing shall have six months from the date of approval of this rule filing to become a member of a national securities association. The proposed rule also provides that CBSX will terminate, upon written notice, the Trading Permit Holder status of any CBSX Trading Permit Holder that fails to meet this requirement.[5]

CBSX Trading Permit Holders may submit orders to other trading venues as customers through executing broker-dealers, which are ultimately executed on those other trading venues (''away-trading activity''). Because away-trading activity does not occur on CBSX's market, CBOE does not have access to all necessary order and trade information for this trading activity, as it does for trading activity done directly on CBSX, from which it can directly conduct systematic surveillance reviews.[6] As such, the Exchange believes that the proposed CBSX Trading Permit Holder eligibility requirement will enhance the general regulatory oversight of CBSX Trading Permit Holders and their away trading activity.

More specifically, FINRA rules currently require each FINRA member to submit order data for its trading activity on all trading venues (including its away-trading activity) to FINRA on a regular basis.[7] Through this audit trail, FINRA has the necessary information

[3] The proposed Rule also furthers compliance with Undertaking O of the June 11, 2013 Order Instituting Administrative and a Cease-and-Desist Proceedings (''Order'') involving CBOE and its affiliate exchange, C2 Options Exchange, Incorporated (''C2''). Undertaking O requires CBOE to enhance its regulation of CBSX-only Trading Permit Holders, *i.e.,* Trading Permit Holders that are not CBOE Trading Permit Holders or members of another national securities exchange or a national securities association (''CBSX-Only Trading Permit Holders''). The proposed rule change is only one component of the Exchange's effort to enhance its regulation of all CBSX Trading Permit Holders, including CBSX-Only Trading Permit Holders, and to satisfy Undertaking O. Although there will technically no longer be any CBSX-Only Trading Permit Holders if the proposed rule change is approved, the Exchange still believes the proposed rule change will enhance the general regulatory oversight of CBSX Trading Permit Holders, including those former CBSX-Only Trading Permit Holders, as further described in this filing.

[4] Currently, Financial Industry Regulatory Authority, Inc. (''FINRA'') is the only registered national securities association.

[5] The Exchange notes that the termination of the Trading Permit Holder status of a CBSX Trading Permit Holder, that is also a CBOE Trading Permit Holder, in accordance with proposed Rule 50.4A, will not affect that CBSX Trading Permit Holder's status as a CBOE Trading Permit Holder.

[6] The Exchange notes that as a member of the Intermarket Surveillance Group (''ISG''), the Exchange receives an equity audit trail of all equity market orders and trade information for away-trading activity. However, the equity audit trail the Exchange receives does not provide the granular level of detail to denote when a CBSX Trading Permit Holder is executing a trade as a customer through another broker dealer on an away market. Without such granular information, the Exchange is limited in the reviews it can conduct of this away activity.

[7] *See, e.g.,* FINRA Rules 7440 and 7450.

related to each member's away-trading activity to review for and detect possible violations of the federal securities laws, rules and regulations, including those related to anti-fraud and anti-manipulation. The proposed requirement that all CBSX Trading Permit Holders be members of a national securities association (*i.e.,* FINRA) to remain or become a CBSX Trading Permit Holder ensures that CBSX Trading Permit Holders are submitting their order data for their trading activity on all trading venues (including away-trading) on a regular basis to FINRA, thus allowing FINRA to detect possible violations of federal securities laws, rules, and regulations, including those related to anti-fraud and anti-manipulation. Moreover, if FINRA detects potential violative activity, it has the authority to take appropriate regulatory and disciplinary action against the CBSX Trading Permit Holder as one of its regulators, or otherwise refer such matter to CBOE for further review and consideration of disciplinary action. The Exchange notes that certain other exchanges require their members to be members of another national securities exchange or a national securities association.[8] The Exchange believes that requiring CBSX Trading Permit Holders to be a member of FINRA but not providing the option of becoming a member of another national securities exchange is appropriate to ensure that the CBSX Trading Permit Holders' away-trading activity is subject to appropriate regulatory review. As is the case with CBSX, other national securities exchanges may not have direct access to the order and transaction information related to the away-trading activity of its members and therefore would not be in a position to review the activity for potential violations of federal securities laws, rules and regulations.[9] Additionally, the Exchange notes that requiring CBSX Trading Permit Holders to be a member of FINRA is similar to former NYSE Rule 2(b), which provided that membership in FINRA was a condition precedent to becoming a member organization of NYSE.[10]

Finally, proposed Rule 50.4A provides that the Trading Permit Holder Status of a current CBSX Trading Permit Holder will be terminated upon written notice if it fails to meet the eligibility requirement set forth in the proposed rule (*i.e.,* to become a member of a national securities association). The Exchange recognizes that certain CBSX Trading Permit Holders may need a reasonable amount of time to become members [sic] FINRA. Accordingly, the Exchange proposes to require CBSX Trading Permit Holders to become a member of FINRA within six months of the date of approval of this rule change.[11] The Exchange will announce the date by which CBSX Trading Permit Holders must comply with this new requirement (the ''Compliance Date'') in a Regulatory Circular to be published no later than seven (7) days following the approval of this filing.[12] Notwithstanding the foregoing, if the Exchange determines that there are extenuating circumstances which result in a CBSX Trading Permit Holder not being able to comply by the Compliance Date, the Exchange may permit a CBSX Trading Permit Holder to retain its Trading Permit Holder status beyond the Compliance Date for such period of time as the Exchange deems reasonably necessary to enable the CBSX Trading Permit Holder to become a member of FINRA.[13] In the event the firm fails to meet this eligibility requirement by the Compliance Date, the Exchange will issue written notice to the CBSX Trading Permit [sic] that its Trading Permit Holder status will terminate in thirty (30) days in accordance with proposed Rule 50.4A and Rule 3.5, unless the CBSX Trading Permit Holder was granted an extension based upon extenuating circumstances or the CBSX Trading Permit Holder files a timely appeal in accordance with the provisions of Chapter XIX. The Exchange notes there is similar authority to terminate a CBSX Trading Permit Holder under Rules 3.5 and 3.19 with respect to current eligibility requirements of CBSX Trading Permit Holders. The Exchange believes this proposed provision (which would require termination upon failure to satisfy the proposed eligibility requirement) is appropriate to ensure that all trading activity of CBSX Trading Permit Holders will be subject to appropriate oversight and regulation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will improve its oversight of all CBSX Trading Permit Holders by enhancing the ability to detect, regardless of trade venue, potential violations of CBSX rules and federal securities laws, rules and regulations, including anti-fraud and anti-market manipulation rules, which will help to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Additionally, the proposed rule change will enhance CBOE's regulation of CBSX-Only Trading Permit Holders in particular as required by Undertaking O of the Order, which is consistent with the Section 6(b)(5) requirements. More specifically, as described above, all CBSX Trading Permit Holders,

[8] *See, e.g.,* BATS Exchange, Inc. Rule 2.3, BATS Y-Exchange, Inc. Rule 2.3, EDGA Exchange, Inc. Rule 2.3(a), EDGX Exchange, Inc. Rule 2.3(a), NASDAQ Stock Market LLC Rule 1002(e), and New York Stock Exchange LLC Rule 2.

[9] The Exchange notes that it will be in a position to have an audit trail of this ''away activity'' from which it will be able to conduct direct systematic surveillance reviews once the National Market System consolidated audit trail (''CAT'') is finalized and implemented.

[10] *See* Securities Exchange Act Release No. 56654 (October 12, 2007) 72 FR 59129 (October 18, 2007) (Order Approving Proposed Rule Change Relating to NYSE Rule 2) (SR–NYSE–2007–67). NYSE subsequently amended Rule 2(b) in 2009 to make its rule similar to BATS Rule 2.3, in order ''to make its membership more broadly available to other registered brokers or dealers who are not FINRA members but who are members of another registered securities exchange and do not transact business with public customers or conduct business on the Floor of the [NYSE].'' *See* Securities Exchange Act Release No. 60318 (July 16, 2009) 74 FR 36797 (July 24, 2009) (SR–NYSE–2009–63).

[11] Currently, there are 42 CBSX Trading Permit Holders that would be affected by this eligibility requirement (*i.e.,* are not already members of FINRA).

[12] The Exchange will also issue periodic written reminders to all CBSX Trading Permit Holders affected by this requirement that the CBSX Trading Permit Holder must become a FINRA member by the Compliance Date.

[13] The Exchange notes that the ability to extend certain time limits where extenuating circumstances exist is consistent with and similar to other Exchange rules. *See e.g.,* CBOE Rule 3.19 and CBOE Rule 3.30.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

including CBSX-Only Trading Permit Holders, would be required to submit their order data for their trading activity on all trading venues (including away-trading) on a regular basis to FINRA, thus allowing FINRA to detect possible violations of federal securities laws, rules, and regulations, including those related to anti-fraud and anti-manipulation. If FINRA detects potential violative activity, it may refer such matter to CBOE for further review and consideration of disciplinary action.

The Exchange also believes that the proposed rule change is designed to not permit unfair discrimination among market participants as the proposed rule change will apply to all CBSX Trading Permit Holders. While the proposed rule change may impose an additional burden on CBSX Trading Permit Holders, the Exchange believes this is outweighed by the Exchange's need to enhance its regulation of the CBSX market and the overall trading activity of CBSX Trading Permit Holders, which enhanced regulation will ultimately protect investors and the public interest. The Exchange believes that any additional burden imposed on CBSX Trading Permit Holders that would not currently satisfy the proposed eligibility requirement is justified because their away-trading activity may currently be subject to less regulation than that of the CBSX Trading Permit Holders that would currently satisfy the proposed eligibility requirement. The proposed rule change will ultimately subject the trading activity of all CBSX Trading Permit Holders to a similar level of regulatory oversight.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all CBSX Trading Permit Holders. Additionally, the proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change is intended to enhance its regulation of all CBSX Trading Permit Holders, including CBSX-Only Trading Permit Holders, and is one part of the Exchange's overall effort to comply with Undertaking O of the Order. The Exchange believes the proposed rule change will enhance the oversight of CBSX Trading Permit Holders' overall trading activity and the ability of the Exchange and other self-regulatory organizations to detect violations of federal securities laws, rules and regulations, including anti-fraud rules. While the proposed rule change may impose an additional burden on CBSX Trading Permit Holders, the Exchange believes this burden is similar to a burden imposed by several other exchanges on their members [17] and is outweighed by the Exchange's need to enhance its regulation of the CBSX market and the trading activity of CBSX-Only Trading Permit Holders, which enhanced regulation will ultimately benefit all market participants. See the discussion above for additional information regarding the potential burden imposed by the proposed rule change on CBSX Trading Permit Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–100 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26934 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 6 [sic].

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70807; File No. SR–NYSEArca–2013–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Amend the Rule Governing the Listing and Trading of Shares of the WisdomTree Global Real Return Fund

November 5, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 29, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (''Managed Fund Shares''). [sic] proposes to [sic] reflect a change to the means of achieving the investment objective applicable to the WisdomTree Global Real Return Fund (the ''Fund''). The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares'').

The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (''Shares'') of the Fund under NYSE Arca Equities Rule 8.600 [4] (''Managed Fund Shares'').[5] The Shares are offered by the WisdomTree Trust (''Trust''), which was established as a Delaware statutory trust on December 15, 2005 and registered with the Commission as an open-end investment company.[6] The Fund is currently listed and traded on the Exchange.

[4] The Commission originally approved the listing and trading of the Shares on the Exchange on March 12, 2010 as Shares of the WisdomTree Real Return Fund. *See* Securities Exchange Act Release No. 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR–NYSEArca–2010–04) (order approving listing and trading of WisdomTree Real Return Fund) (''March 2010 Order''); *see also* Securities Exchange Act Release No. 61519 (February 16, 2010), 75 FR 8164 (February 23, 2010) (SR–NYSEArca–2010–04) (notice of proposal relating to WisdomTree Real Return Fund). Before the Shares were listed, the Commission approved a proposed rule change filed by the Exchange to seek certain changes to the Fund's investment strategy that were not reflected in the March 2010 Order. *See* Securities Exchange Act Release Nos. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving proposed rule change to list and trade the WisdomTree Global Real Return Fund) (''Prior Order''); and 64411 (May 5, 2011), 76 FR 27127 (May 10, 2011) (SR–NYSEArca–2011–21) (notice of filing of proposed rule change to list and trade WisdomTree Global Real Return Fund) (''Prior Notice'' and, together with the Prior Order, the ''Prior Release'').

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (File Nos. 333–132380 and 811–21864) (''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On September 26, 2013, the Trust filed with the Commission a supplement to the Registration Statement. *See* Form 497, Supplement to Registration Statement on Form N–1A for the Trust. The descriptions of the Fund and the Shares contained herein are based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812–13458) (''Exemptive Order''). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. is the investment adviser (''Adviser'') to the Fund. Western Asset Management Company serves as sub-adviser for the Fund (''Sub-Adviser'').[7]

In this proposed rule change, the Exchange proposes to make the following changes, described below, to the investment strategy the Sub-Adviser will use to obtain the Fund's investment objectives (the ''Proposed Amendments'').[8] Under the Proposed Amendments, the Fund proposes to:

(1) Reduce the Fund's minimum investment in investment grade [9] securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets); [10]

(2) Increase the permitted percentage of the Fund's assets invested in more

based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

[7] Mellon Capital Management Corporation was cited as the Sub-Adviser in the Prior Release.

[8] The Proposed Amendments described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement or supplement thereto. *See* note 5 [sic], *supra.* The Prior Notice stated that the Fund intends to invest at least 70% of its net assets in ''Fixed Income Securities'' as defined therein. The Adviser represents that the Adviser and the Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Notice, and the Fund will not implement the Proposed Amendments described herein until the instant proposed rule change is operative.

[9] The Adviser represents that the term ''investment grade'' for purposes of this proposed rule change mean securities rated in the Baa/BBB categories or above by one or more nationally recognized statistical rating organizations (''NRSROs''). If a security is rated by multiple NRSROs, the Fund will treat the security as being in the highest rating category received from an NRSRO.

[10] The determination by the Adviser or Sub-Adviser that an unrated security is of comparable quality to another security rated below investment grade will be based on, among other factors, a comparison between the unrated security and securities issued by similarly situated companies to determine where in the spectrum of credit quality the unrated security would fall. The Adviser or Sub-Adviser would also perform an analysis of the unrated security and its issuer similar, to the extent possible, to that performed by a NRSRO in rating similar securities and issuers. *See Credit Analysis of Portfolio Securities,* Commission No-Action Letter (May 8, 1990).

speculative debt securities (''Speculative Debt'') from not more than 10% of Fund assets invested in securities rated BB or below by Standard & Poor's Corporation (''S&P'') or equivalently rated by Moody's Investors Service (''Moody's'') or Fitch Ratings (''Fitch'') to not more than 15% of Fund assets invested in securities rated B or below by S&P or equivalently rated by Moody's or Fitch; [11] and

(3) Eliminate the current 20% limitation on investments in corporate bonds and include corporate bonds [12] within the 70% minimum intended investment in Fixed Income Securities.

The Adviser represents that the Fund's investments in non-investment grade debt securities and corporate bonds, will in each case be limited to securities that are liquid with readily available quotations.[13] The Adviser represents that there is no change to the Fund's investment objective.[14] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the Proposed Amendments noted above, all other facts presented and representations made in the Rule 19b–4 filing underlying the Prior Release remain unchanged. The Adviser represents that the Proposed Amendments would be consistent with the Exemptive Order under the 1940 Act and the rules thereunder.

Terms used herein but not otherwise defined shall have the meanings ascribed to them in the Rule 19b–4 filing underlying the Prior Release.[15]

The Exchange notes that the Commission has previously approved for listing other actively-managed exchange-traded funds that collectively include each of the conditions contained in the Proposed Amendments.[16]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [17] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. As discussed below, the Exchange believes that the Proposed Amendments will not either individually, nor taken collectively, make the Shares more difficult to value or make them susceptible to manipulation, but rather the Proposed Amendments will retain conditions on Fund investments that are intended to result in such underlying investments being generally liquid and transparent. As stated above, the Fund:

(1) Proposes to reduce the Fund's minimum investment in investment grade securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets). The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because the Fund will continue to principally hold investment grade assets and, as stated above, the Adviser represents that the Fund will invest solely in non-investment grade securities that are liquid and for which intra-day quotes are readily available.

(2) Proposes to invest not more than 15% of its assets in in securities rated B or below by S&P or equivalently rated by Moody's or Fitch. The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because, although the proposed rule change would increase the percentage of Speculative Debt in which the Fund may invest, and lowers from BB to B the minimum investment rating for such Speculative Debt, the Adviser represents that the Fund will invest solely in Speculative Debt securities that are liquid and for which intra-day quotes are readily available.

(3) Proposes to eliminate the current 20% limitation on investments in corporate bonds and include corporate bonds within the 70% minimum investment in Fixed Income Securities. As stated in the Prior Release, the Fund generally will limit its investment in corporate bonds to corporate bonds having a minimum par amount outstanding of not less than $200 million. The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because, the Adviser represents that the Fund will invest solely in corporate debt

[11] Debt securities rated B or below represent over 44% of the $1.2 trillion high yield bond market. Source: Merrill Lynch High Yield Master II Index. The Average Daily Trading Volume (''ADTV'') of U.S. corporate bonds rated B has typically been comparable to, and often higher, than the ADTV of U.S. corporate bonds rated BB between January 2005 and June 2013. Source: *http://www.sifma.org/research/statistics.aspx.*

[12] The Exchange notes that the Prior Release did not specify a limit to the Fund's investments in Rule 144A securities not deemed illiquid by the Adviser or Sub-Adviser. Under this proposed rule change, the Fund may therefore invest without limit in corporate bonds that are Rule 144A securities and are deemed liquid by the Adviser or Sub-Adviser. The Fund may also invest up to 15% of the Fund's net assets (calculated at the time of investment) in illiquid assets, including Rule 144A securities that are deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance. The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

In reaching liquidity decisions, the Adviser or Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the securities and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[13] The average daily trading volume (''ADTV'') in non-investment grade U.S. corporate debt (including both publicly traded and Rule 144A securities) during each of the first two calendar quarters of 2013 exceeded $10 billion, as compared with an ADTV for investment grade U.S. corporate debt exceeding $16 billion. Source: *http://www.sifma.org/research/statistics.aspx.* Intra-day prices on non-investment grade debt securities are available through TradeWeb and Market Axess.

[14] The Proposed Amendments will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement and upon effectiveness and operativeness of this proposal.

[15] *See* note 4, *supra.*

[16] *See* Securities Exchange Act Release No. 68863 (February 7, 2013), 78 FR 10222 (February 13, 2013) (order approving listing and trading of Guggenheim Enhanced Total Return ETF)(SR–NYSEArca-2012–142) (''Guggenheim ETF Order''). The Guggenheim ETF Order permitted the Guggenheim Enhanced Total Return ETF to invest in a manner consistent with the Proposed Amendments. *See, also,* Securities Exchange Act Release No. 68073 (October 19, 2012), 77 FR 65237 (October 25, 2013) (SR–NASDAQ–2012–98) (order approving listing and trading of WisdomTree Global Corporate Bond Fund, explicitly permitting that fund to invest up to 45% of its assets in non-investment grade securities and up to 15% of its assets in securities rated B or below by S&P or equivalently rated by Moody's or Fitch). The WisdomTree Global Corporate Bond Fund, therefore, is permitted to invest a higher percentage of that fund's assets in non-investment grade securities (45%) than is proposed under this proposed rule change (40%).

[17] 15 U.S.C. 78f(b)(5).

securities that are liquid and for which intra-day quotes are readily available.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of the proposed rule change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by: (1) Reducing the Fund's minimum intended investment in investment grade securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets); (2) increasing the percentage of the Fund's Speculative Debt from currently not more than 10% of Fund assets invested in securities rated BB or below by S&P or equivalently rated by Moody's or Fitch to not more than 15% of Fund assets invested in securities rated B or below by S&P or equivalently rated by Moody's or Fitch; and (3) eliminating the current 20% limitation on investments in corporate bonds.

The Adviser represents that the Proposed Amendments are therefore consistent with the Exemptive Order under the 1940 Act and the rules thereunder. Except for the changes noted regarding the Proposed Amendments above, all other representations made in the Prior Release remain unchanged.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the continued listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will permit the Adviser and Sub-Adviser additional flexibility in achieving the Fund's investment objective, and will permit the Fund to better compete with other issues of Managed Fund Shares that are subject to investment parameters and limitations similar to those in the Proposed Amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2013–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2013–117. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2013–117 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26935 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70811; File No. SR–EDGX–2013–42]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

November 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Increase the fee for orders yielding Flag K, which routes to NASDAQ OMX PSX (''PSX'') using ROUC or ROUE routing strategies; and (ii) decrease the fee for orders yielding Flag RW, which routes to the CBOE Stock Exchange (''CBSX'') and adds liquidity. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) increase the fee for orders yielding Flag K, which routes to PSX using ROUC or ROUE routing strategies; and (ii) decrease the fee for orders yielding Flag RW, which routes to CBSX and adds liquidity.

Flag K

In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0028 per share for Members' orders that yield Flag K, which routes to PSX using ROUC or ROUE routing strategies. The Exchange proposes to amend its Fee Schedule to increase this fee to $0.0030 per share from $0.0028 per share for Members' orders that yield Flag K. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to PSX when it does not qualify for a volume tiered reduced fee. The Exchange notes that the proposed change is in response to PSX's November 2013 fee change where PSX increased the fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0028 per share to a fee of $0.0030 per share for orders that are routed to PSX.[4] When DE Route routes to PSX, it is charged a standard rate of $0.0030 per share.[5] DE Route will pass through this rate on PSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Flag RW

In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0050 per share for Members' orders that yield Flag RW, which routes to CBSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease this fee from $0.0050 per share to $0.0018 per share for Members' orders that yield Flag RW. The proposed change represents a pass through of the rate that DE Route, the Exchange's affiliated routing broker-dealer, is charged for routing orders to CBSX when it does not qualify for a volume tiered reduced fee. The Exchange notes that the proposed change is in response to CBSX's November 2013 fee change where CBSX decreased the fee it charges its customers, such as DE Route, from a fee of $0.0050 per share to a fee of $0.0018 per share for orders that are routed to CBSX in select symbols.[6] Prior to CBSX's November 2013 fee change, CBSX charged DE Route a fee of $0.0050 per share to remove [sic] liquidity from CBSX for maker transactions in select symbols and a fee of $0.0018 for all other symbols. DE Route charged its Members the higher possible fee of $0.0050 per share.[7] In November 2013, CBSX removed the list of select symbols from its fee schedule, thereby decreasing the fee it charges its customers, such as DE Route, to remove [sic] liquidity from CBSX in select symbols from a fee of $0.0050 per share to a fee of $0.0018 per share.[8] Therefore, when DE Route routes to CBSX, it is now charged a standard rate of $0.0018 per share for all symbols.[9] DE Route will pass through this rate on CBSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on November 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* PSX, NASDAQ OMX PSX Pricing List, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing. See also* SR–PHLX–2013–111.

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on PSX, its rate for Flag K will not change.

[6] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

[7] Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). Prior to November 1, 2013, CBSX listed the select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.* In its filing with the Commission, the Exchange noted that, due to internal system limitations, the Exchange would assess a flat fee for all orders that yield Flag RW. Securities Exchange Act Release No. 34–70134 (August 8, 2013), 78 FR 49561 (August 14, 2013) (SR–EDGX–2013–26).

[8] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

[9] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on CBSX, its rate for Flag RW will not change.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag K

The Exchange believes that its proposal to increase the pass through fee for Members' orders that yield Flag K from $0.0028 per share to $0.0030 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through DE Route. Prior to PSX's November 2013 fee change, PSX charged its members a fee of $0.0028 per share to remove liquidity from PSX using routable order types and charged DE Route a fee of $0.0030 per share to remove liquidity using non-routable order types, which DE Route passed through to the Exchange and the Exchange charged a discounted fee of $0.0028 to its Members. In November 2013, PSX increased the fee it charges its customers, to remove liquidity from PSX using routable order types from a fee of $0.0028 per share to a fee of $0.0030 per share.[12] Therefore, the Exchange believes that the proposed change in Flag K from a fee of $0.0028 per share to a fee of $0.0030 per share is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to PSX. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag RW

The Exchange believes that its proposal to decrease the pass through fee for Members' orders that yield Flag RW from $0.0050 per share to $0.0018 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to CBSX through DE Route. Prior to CBSX's November 2013 fee change, CBSX charged DE Route a fee of $0.0050 per share to remove [sic] liquidity from CBSX for maker transactions in select symbols and a fee of $0.0018 per share for all other symbols, which DE Route passed through to the Exchange and the Exchange charged its Members the higher possible fee of $0.0050 per share.[13] In November 2013, CBSX removed the list of select symbols from its fee schedule, thereby decreasing the fee it charges its customers, such as DE Route, to remove [sic] liquidity from CBSX in select symbols from a fee of $0.0050 per share to a fee of $0.0018 per share.[14] Therefore, the Exchange believes that the proposed change in Flag RW from a fee of $0.0050 per share to a fee of $0.0018 per share is equitable and reasonable because it accounts for the pricing changes on CBSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to CBSX. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag K

The Exchange believes that its proposal to pass through a fee of $0.0030 per share for Members' orders that yield Flag K would increase intermarket competition because it offers customers an alternative means to route to PSX for the same price as entering orders on PSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag RW

The Exchange believes that its proposal to pass through a fee of $0.0018 per share for Members' orders that yield Flag RW would increase intermarket competition because it offers customers an alternative means to route to CBSX for the same price as entering orders on CBSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–42 on the subject line.

[12] *See* PSX, NASDAQ OMX PSX Pricing List, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing. See also* SR–PHLX–2013–111.

[13] Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). Prior to November 1, 2013, CBSX listed the select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.* In its filing with the Commission, the Exchange noted that, due to internal system limitations, the Exchange would assess a flat fee for all orders that yield Flag RW. Securities Exchange Act Release No. 34–70134 (August 8, 2013), 78 FR 49561 (August 14, 2013) (SR–EDGX–2013–26).

[14] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4 (f)(2).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–42 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26956 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70812; File No. SR–EDGA–2013–33]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

November 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Increase the fee for orders yielding Flag K, which routes to NASDAQ OMX PSX (''PSX'') using ROUC or ROUE routing strategies; and (ii) decrease the fee for orders yielding Flag RW, which routes to the CBOE Stock Exchange (''CBSX'') and adds liquidity. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Increase the fee for orders yielding Flag K, which routes to PSX using ROUC or ROUE routing strategies; and (ii) decrease the fee for orders yielding Flag RW, which routes to CBSX and adds liquidity.

Flag K

In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0028 per share for Members' orders that yield Flag K, which routes to PSX using ROUC or ROUE routing strategies. The Exchange proposes to amend its Fee Schedule to increase this fee to $0.0030 per share from $0.0028 per share for Members' orders that yield Flag K. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to PSX when it does not qualify for a volume tiered reduced fee. The Exchange notes that the proposed change is in response to PSX's November 2013 fee change where PSX increased the fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0028 per share to a fee of $0.0030 per share for orders that are routed to PSX.[4] When DE Route routes to PSX, it is charged a standard rate of $0.0030 per share.[5] DE Route will pass through this rate on PSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Flag RW

In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0050 per share for Members' orders that yield Flag RW, which routes to CBSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease this fee from $0.0050 per share to $0.0018 per share for Members' orders that yield Flag RW. The proposed change represents a pass through of the rate that DE Route, the Exchange's affiliated routing broker-dealer, is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* PSX, NASDAQ OMX PSX Pricing List, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing. See also* SR–PHLX–2013–111.

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on PSX, its rate for Flag K will not change.

charged for routing orders to CBSX when it does not qualify for a volume tiered reduced fee. The Exchange notes that the proposed change is in response to CBSX's November 2013 fee change where CBSX decreased the fee it charges its customers, such as DE Route, from a fee of $0.0050 per share to a fee of $0.0018 per share for orders that are routed to CBSX in select symbols.[6] Prior to CBSX's November 2013 fee change, CBSX charged DE Route a fee of $0.0050 per share to remove [sic] liquidity from CBSX for maker transactions in select symbols and a fee of $0.0018 for all other symbols. DE Route charged its Members the higher possible fee of $0.0050 per share.[7] In November 2013, CBSX removed the list of select symbols from its fee schedule, thereby decreasing the fee it charges its customers, such as DE Route, to remove [sic] liquidity from CBSX in select symbols from a fee of $0.0050 per share to a fee of $0.0018 per share.[8] Therefore, when DE Route routes to CBSX, it is now charged a standard rate of $0.0018 per share for all symbols.[9] DE Route will pass through this rate on CBSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag K

The Exchange believes that its proposal to increase the pass through fee for Members' orders that yield Flag K from $0.0028 per share to $0.0030 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through DE Route. Prior to PSX's November 2013 fee change, PSX charged its members a fee of $0.0028 per share to remove liquidity from PSX using routable order types and charged DE Route a fee of $0.0030 per share to remove liquidity using non-routable order types, which DE Route passed through to the Exchange and the Exchange charged a discounted fee of $0.0028 to its Members. In November 2013, PSX increased the fee it charges its customers, to remove liquidity from PSX using routable order types from a fee of $0.0028 per share to a fee of $0.0030 per share.[12] Therefore, the Exchange believes that the proposed change in Flag K from a fee of $0.0028 per share to a fee of $0.0030 per share is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to PSX. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag RW

The Exchange believes that its proposal to decrease the pass through fee for Members' orders that yield Flag RW from $0.0050 per share to $0.0018 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to CBSX through DE Route. Prior to CBSX's November 2013 fee change, CBSX charged DE Route a fee of $0.0050 per share to remove [sic] liquidity from CBSX for maker transactions in select symbols and a fee of $0.0018 per share for all other symbols, which DE Route passed through to the Exchange and the Exchange charged its Members the higher possible fee of $0.0050 per share.[13] In November 2013, CBSX removed the list of select symbols from its fee schedule, thereby decreasing the fee it charges its customers, such as DE Route, to remove [sic] liquidity from CBSX in select symbols from a fee of $0.0050 per share to a fee of $0.0018 per share.[14] Therefore, the Exchange believes that the proposed change in Flag RW from a fee of $0.0050 per share to a fee of $0.0018 per share is equitable and reasonable because it accounts for the pricing changes on CBSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to CBSX. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag K

The Exchange believes that its proposal to pass through a fee of $0.0030 per share for Members' orders that yield Flag K would increase intermarket competition because it offers customers an alternative means to route to PSX for the same price as entering orders on PSX directly. The

[6] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

[7] Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). Prior to November 1, 2013, CBSX listed the select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.* In its filing with the Commission, the Exchange noted that, due to internal system limitations, the Exchange would assess a flat fee for all orders that yield Flag RW. Securities Exchange Act Release No. 34–70135 (August 8, 2013), 78 FR 49568 (August 14, 2013) (SR–EDGA–2013–19).

[8] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

[9] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on CBSX, its rate for Flag RW will not change.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] *See* PSX, NASDAQ OMX PSX Pricing List, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing. See also* SR–PHLX–2013–111.

[13] Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). Prior to November 1, 2013, CBSX listed the select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.* In its filing with the Commission, the Exchange noted that, due to internal system limitations, the Exchange would assess a flat fee for all orders that yield Flag RW. Securities Exchange Act Release No. 34–70135 (August 8, 2013), 78 FR 49568 (August 14, 2013) (SR–EDGA–2013–19).

[14] *See* CBSX, CBOE Stock Exchange (CBSX) Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf. See also* SR–CBOE–2013–105.

Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag RW

The Exchange believes that its proposal to pass through a fee of $0.0018 per share for Members' orders that yield Flag RW would increase intermarket competition because it offers customers an alternative means to route to CBSX for the same price as entering orders on CBSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2013–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2013–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–33 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26957 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4 (f)(2).

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 13, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

Statement of Agricultural Employer (Year Prior to 1988; and 1988 and later)—20 CFR 404.702, 404.802, 404.1056—0960–0036. If agricultural workers believe their employers (1) did not report their wages or (2) reported incorrect wage amounts, SSA will assist them in resolving this issue. Specifically, SSA will send Forms SSA–1002–F3 or SSA–1003–F3 to the agricultural employers to collect evidence of wages paid. The respondents are agricultural employers whose workers request wage verification or correction for their earnings records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1002	7,500	1	30	3,750
SSA–1003	25,000	1	30	12,500
Totals	32,500			16,250

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 12, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. *Request for Corrections of Earnings Record—20 CFR 404.820 and 20 CFR 422.125—0960–0029.* Individuals alleging their earnings records in SSA's files are inaccurate use Form SSA–7008 to provide the information SSA needs to check earnings posted, and as necessary, initiate development to resolve any inaccuracies. The respondents are individuals who request correction of earnings posted to their Social Security earnings record.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper Form	37,500	1	10	6,250
In-Person or Telephone Interview	337,500	1	10	56,250
Totals	375,000			62,500

2. *Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions (Bench Decision Regulation)—20 CFR 404.953 and 416.1453—0960–0694.* If an administrative law judge (ALJ) makes a wholly favorable oral decision that includes all the findings and rationale for the decision for a claimant of Title II or Title XVI payments at an administrative appeals hearing, the ALJ sends a Notice of Decision (Form HA–82), as the records from the oral hearing preclude the need for a written decision. We call this the incorporation-by-reference process. In addition, the regulations for this process state that if the involved parties want a record of the oral decision, they may submit a written request for these records. SSA collects identifying information under the aegis of Sections 20 CFR 404.953 and 416.1453 of the Code of Federal Regulations to determine how to send interested individuals written records of a favorable incorporation-by-reference oral decision made at an administrative review hearing. Since there is no prescribed form to request a written record of the decision, the involved parties send SSA their contact information and reference the hearing for which they would like a record. The respondents are applicants for Disability Insurance Benefits and Supplemental Security Income (SSI) payments or their representatives to whom SSA gave a wholly favorable oral decision under the regulations cited above.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–82	2,500	1	5	208

3. *Protection and Advocacy for Beneficiaries of Social Security (PABSS)—20 CFR 435.51–435.52—0960–0768.* In March of 2013, Social Security announced its intention to award grants to reestablish community-based protection and advocacy projects in every State, U.S. Territories, and the Hopi and Navajo tribal nations, as authorized under Section 1150 of the Social Security Act (Act). Awardees are the 57 Protection & Advocacy (P&A) organizations established under Title I of the Developmental Disabilities Assistance and Bill of Rights Act. The PABSS projects are part of Social Security's strategy to increase the number of Social Security Disability Insurance (SSDI) or SSI recipients who return to work and achieve financial independence and self-sufficiency as the result of receiving support, representation, advocacy, or other services. The overarching objective of the PABSS program is to provide information and advice about obtaining vocational rehabilitation and employment services, and to provide advocacy or other services a beneficiary with a disability may need to secure, maintain, or regain gainful employment. The PABSS Annual Program Performance Report collects statistical information from each of the PABSS projects in an effort to manage and capture program performance and quantitative data. Social Security uses the information to evaluate the efficacy of the program, and to ensure beneficiaries are receiving quality services. The project data is valuable to Social Security in its analysis of and

future planning for the SSDI and SSI programs. The respondents are the 57 PABSS project sites, and recipients of SSDI and SSI programs.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
PABSS Program Grantees	57	1	60	57
Beneficiaries	5,000	1	30	2,500
Totals	5,057			2,557

Dated: November 6, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–26953 Filed 11–8–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No 367]

Delegation of Authority With Respect to Administration and Enforcement of Immigration and Nationality Laws Relating to Powers, Duties and Functions of Diplomatic and Consular Officers

By virtue of the authority vested in me as Secretary of State, including by Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and by the Immigration and Nationality Act (INA), I hereby delegate certain authorities to the Assistant Secretary for Consular Affairs:

(1) To the extent authorized by law, and subject to the limitations contained in section 104 of the INA (8 U.S.C. 1104) outlined in paragraph (2) of this delegation, and in section 428 of the Homeland Security Act (6 U.S.C. 236), I delegate to the Assistant Secretary for Consular Affairs authority for the administration and enforcement of the INA and all other immigration and nationality laws relating to the powers, duties and functions of diplomatic and consular officers of the United States, as well as any actions necessary to implement responsibilities of the Department of State, including consular officers, under the INA, including but not limited to establishing forms and publishing implementing regulations.

(2) There are hereby excluded from the authority delegated under paragraph (1) of this order: (a) The powers, duties, and functions conferred upon consular officers relating to the granting or refusal of visas; (b) authorities requiring the Secretary to determine that a matter is in the national interest or would affect U.S. foreign policy, relations, or interests; and (c) powers, duties, and functions designated by statute that are to be exercised solely by the Secretary or specified officers.

(3) The authorities covered by this delegation of authority may be re-delegated, to the extent authorized by law.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management may at any time exercise any authority or function delegated by this delegation of authority.

No other delegations of authority are affected by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: September 17, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–27000 Filed 11–8–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8515]

Defense Trade Advisory Group; Notice of Open Meeting

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet in open session to discuss current defense trade issues and topics for further study. Specific agenda topics will be posted on the Directorate of Defense Trade Controls Web site, at *www.pmddtc.state.gov,* approximately 10 days prior to the meeting. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political Military Affairs, and advises the Department on policies, regulations, and technical issues affecting defense trade.

Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the DTAG Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Alternate Designed Federal Officer (DFO) by close of business Friday, November 15, 2013. If notified after this date, the Department's Bureau of Diplomatic security may not be able to complete the necessary processing required for the intended participant to attend the plenary session. A person requesting reasonable accommodation should notify the Alternate DFO by the same date.

Anyone who wishes to attend this plenary session should provide: His/her name; company or organizational affiliation (if any); date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Alternate DFO, Lisa Aguirre, via email at *aguirrelv@state.gov.* A RSVP list will be provided to Diplomatic Security. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, passport, U.S. Government ID, or other Government-issued photo ID.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

DATES: The meeting will be held on Friday, November 22, 2013, from 9:00 a.m. until 12:00 p.m. and 1:15 p.m. until 4:00 p.m.

ADDRESSES: The meeting will be held in George C. Marshall Auditorium, Harry S. Truman Building, U.S. Department of State, 2201 C. Street NW., Washington, DC 20520. Entry and registration will begin at 8:30 a.m. Please use the building entrance located on 21st Street between C and D Streets.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or email *aguirrelv@state.gov.*

Dated: October 29, 2013.

Kenneth B. Handelman,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2013–27005 Filed 11–8–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 8516]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d), and in compliance with section 36(f), of the Arms Export Control Act.

DATES: *Effective Date:* As shown on each of the 23 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa V. Aguirre, Directorate of Defense Trade Controls, Department of State, telephone (202) 663–2830; email *DDTCResponseTeam@state.gov.* ATTN: Congressional Notification of Licenses.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2778) mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Following are such notifications to the Congress:

July 29, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel to support the development and manufacture of various component parts of pistols and rifles.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–108.

July 25, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearm parts and components abroad controlled under the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of rifles to Canada for commercial resale.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–109.

July 26, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) an 36 (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of Significant Military Equipment abroad and export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture and export of defense articles, including technical data, and defense services to the Czech Republic, Iraq, Poland, and Taiwan. The agreement includes the manufacture, assembly and testing of components for the F124 and TFE1042 engines and associated ground support equipment for end-use by the Czech Republic, Iraq, Poland, and Taiwan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–015.

July 24, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) an 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of Significant Military Equipment abroad and export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the manufacture and export of defense articles, including technical data, and defense services to Italy and Turkey. The agreement includes the manufacture of the F–35 Lightning II's Center Fuselage and related assemblies, subassemblies and components including composite components

associated with all variants of the F–35 aircraft. The amendment also authorizes the retransfer of hardware to the F–35 Assembly checkout facility in Italy.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–048.

July 24, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to France, Kazakhstan, Luxembourg, Russia, and Sweden to support the Proton launch of the Intelsat DLA–2 Commercial Communications Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–097.

July 24, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data, and defense articles for the manufacture in Japan of the CH–47J Chinook Helicopter for end-use by the Japan Defense Agency.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–093.

August 29, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Algeria to support the installation, training, operation, test, repair, and calibration of the Algerian Maritime Surveillance System and Air Defense Automated Radar Coverage System.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–092.

August 29, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of 100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Belgium, Denmark, France, Germany, Ireland, and Portugal to support the integration, installation, technical reviews, studies, surveys, and testing related to the improved Air Defense Ground Environment (ADGE) System for end-use by NATO.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–107.

August 12, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) an 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of Significant Military Equipment abroad and export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture and export of defense articles, including technical data, and defense services to Canada, the Czech Republic, Germany, India, Israel, Mexico, Poland, Serbia, Turkey, and the United Kingdom. The agreement includes the assembly, design,

development, maintenance, manufacture, overhaul, repair, testing and troubleshooting of aircraft Auxiliary Power Units and their subassemblies, parts and components for end-use by 52 countries.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–067.

August 16, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, and defense services to provide operational support, engineering training, and overhaul of T700–GE–700/701/701A/701C/701D/401/401C engines for various end users.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–096.

August 8, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to an existing manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, defense services, and manufacture know-how for the design, manufacture, and integration of the Weapons Bay Door Drive System for all variants of the F–35 Lightning II aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–111.

August 8, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of bolt action rifles to France for commercial resale.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–113.

August 23, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, and defense services to provide organizational, intermediate, and depot level maintenance, repair, and overhaul for the Republic of Korea, Ministry of National Defense's F100 aircraft engines.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–115.

August 16, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to France, Kazakhstan, Russia, and Sweden to support the Proton launch of the EchoStar TerreStar-2 Commercial Communications Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the

Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–117.

August 8, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture, integration, installation, operation, training, testing, maintenance, and repair of the dynamically tuned gyroscopes.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–118.

August 8, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel to support the development and manufacture of component parts of pistols and rifles.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–120.

September 16, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of defense articles, including technical data, and defense services to include significant military equipment in the amount of $50,000,000 or more.

The transaction contained in the attached certification amends an existing agreement that authorizes the export of defense articles, including technical data, and defense services to the U.S. Embassy Country Team in Pakistan to support the Government of Pakistan's Ministry of Interior Air Wing in the surveillance and interdiction of terrorists, narcotics, arms, and other unlawful border activities along the Pakistan-Afghanistan boarder.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–079.

September 20, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of pistols and revolvers to Turkey for commercial resale.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–121.

September 16, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, and defense services used in support of the manufacture, assembly and installation of the Environmental Control System (ECS) used on the EP–3, P–3C, and UP–3 series aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–122.

September 20, 2013

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada, Philippines, and the Republic of Korea to support the manufacture of printed wiring boards.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–125.

September 24, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Pakistan to support the integration, installation, testing, verification, and maintenance of AN/APG–68(V)9 Radar in the F–16 aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–098.

September 23, 2013.

Honorable John A. Boehner, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, and defense services to support the integration of the F135 Propulsion System in the F–35 aircraft during final assembly and check-out activities for ultimate end-use by the Government of Italy.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Thomas B. Gibbons,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 13–123.

Dated: October 4, 2013.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Department of State.

[FR Doc. 2013–27003 Filed 11–8–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before December 2, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0861 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 6, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–086.1

Petitioner: Mr. William G. Ogilvie.

Section of 14 CFR Affected:

14 CFR 141.33(a)(4)(ii).

Description of Relief Sought:

Petitioner seeks relief to substitute military flight time experience in lieu of commercial experience requirements in applying for a pilot school certificate as an authorized instructor in an FAA approved part 141 airline transport pilot certification training program.

[FR Doc. 2013–26979 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–53]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 2, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0778 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 6, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0778.

Petitioner: Embry-Riddle Aeronautical University.

Section of 14 CFR Affected:

14 CFR Part: 141 Appendix: C (4)(b)(5).

Description of Relief Sought:

Embry-Riddle Aeronautical University (Embry-Riddle) is requesting relief for an approved training course for the instrument rating. The relief requested would allow time obtained in an Advanced Aviation Training Device (AATD) to be creditable for up to 40% of the total hour requirement of the course.

[FR Doc. 2013–26978 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2013–0023]

Congestion Mitigation and Air Quality Improvement Program Interim Guidance

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Interim Guidance; Request for Comment.

SUMMARY: The FHWA is issuing Interim Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program (Interim Guidance). The Interim Guidance revises CMAQ Program Guidance issued in October 2008 (''2008 CMAQ Program Guidance'').[1] The revisions in the Interim Guidance explain changes to the CMAQ Program as a result of the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). The Interim Guidance also contains changes to clarify the 2008 CMAQ Program Guidance. Because the Interim Guidance contains information needed for grantees to plan CMAQ-funded projects and use CMAQ funds during FY 2013, the Interim Guidance is effective on the date of the publication of this notice in the **Federal Register**. By this notice, the FHWA invites public comments on the changes contained in the Interim Guidance, which is available electronically at the docket established for this notice. The FHWA will consider all comments submitted to the Docket and will publish a notice of the availability of the resulting final guidance in the **Federal Register**.

DATES: This Interim Guidance is effective November 12, 2013. Comments must be received on or before January 13, 2014. Late comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through

[1] *See http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2008_guidance/.*

Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Michael Koontz, CMAQ Program Manager, FHWA Office of Natural Environment, (202) 366–2076, or via email at *michael.koontz@dot.gov.* For legal questions, please contact Janet Myers, Assistant Chief Counsel for Program Legal Services, FHWA Office of the Chief Counsel, (202) 366–2019, or via email at *janet.myers@dot.gov.* Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *www.regulations.gov.* The Web site is available 24 hours every day each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the **Federal Register**'s home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

I. Background

The CMAQ Program was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, Dec. 18, 1991) and continued under the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178; Oct. 1998) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005). Through 2012, the program supported more than 28,000 transportation projects, providing resources to the transportation environmental community in every State across the country. In the most recent authorization of the Federal-aid highway program, Congress amended the CMAQ Program, and authorized funding to support eligible CMAQ projects in FY 2013 and FY 2014 (see sections 1101, 1105 and 1113 of the MAP–21).[2] More than $2.2 billion in total CMAQ apportionments to the States are estimated for each year of the authorization. The total apportioned Federal-aid highway program is authorized at just under $38 billion for each year of the MAP–21 authorization.

This Interim Guidance updates and replaces the 2008 CMAQ Program Guidance, which covers the program as it existed under SAFETEA–LU.[3] The Interim Guidance continues to focus on project eligibility information, geographic area eligibility, the flexibility and transferability provisions available to States, requirements for annual reporting of CMAQ program obligations, and a discussion of the pertinent program and administrative responsibilities of Federal, State, and Metropolitan Planning Organizations (MPOs), transit agencies, and private sector project sponsors. Importantly, this Interim Guidance includes a number of discussions and interpretations of new or emphasized areas in the MAP–21. For example, the Interim Guidance provides information on the focus that MAP–21 continues from SAFETEA–LU on diesel retrofits and overall diesel emissions mitigation. In addition, the Interim Guidance outlines the policies behind the new priority set-aside for $PM_{2.5}$ obligations created by MAP–21 and describes implementing procedures. The Interim Guidance outlines performance management requirements for both congestion and emissions measures required by section 1203 (23 U.S.C. 150) of MAP–21. The MAP–21 also enhanced the SAFETEA–LU focus on project cost-effectiveness; these related issues are discussed in the Interim Guidance, as well. In 2012, the Environmental Protection Agency (EPA) revoked the 1997 8-hour ozone standard for transportation conformity purposes only. Although EPA has proposed full revocation of the 1997 8-hour ozone standard, this interim guidance does not address potential CMAQ implementation issues due to the revocation. The FHWA will provide additional guidance once EPA finalizes the revocation of that standard.

The Interim Guidance is available electronically at the docket established for this notice and is effective on the date of the publication of this notice in the **Federal Register**. The FHWA will consider all comments submitted to the Docket and will publish a notice of the availability of the resulting final guidance in the **Federal Register**.

II. Section-by-Section Analysis

The main differences between the Interim Guidance and the 2008 CMAQ Guidance are described below. The FHWA invites public comment on these changes. In addition, the Interim Guidance reorganizes some parts of the 2008 CMAQ Guidance, updates references, and changes some language to improve clarity without altering the substance of the 2008 CMAQ Guidance.

1. Section III.B. Authorization Levels Under the MAP–21: Transferability of CMAQ Funds

The MAP–21 changed the transfer provisions for CMAQ considerably. Prior to MAP–21, State transfer of CMAQ funds to other elements of the Federal-aid highway program was subject to a specific statutory process that served to limit such annual transfer flexibility to approximately 20 percent of a State's overall CMAQ funds (the percentage varied somewhat by State). Section 1509 of MAP–21 removed this unique transfer provision for CMAQ. The Interim Guidance explains that, with the removal of this special provision for CMAQ, the standard transferability provisions of 23 U.S.C. 126 now apply. Under 23 U.S.C. 126, a limit of 50 percent of CMAQ program funds can be transferred each year. The Interim Guidance clarifies, however, that the section 126 transfer provision does not apply to the statutory $PM_{2.5}$ priority set-aside funds (discussed in Section V). In addition, the FHWA's Fiscal Management Information System now includes a separate accounting code for the CMAQ setaside, which is blocked from transfer flexibility.

2. Section IV. Cost Effectiveness and Priority Use of CMAQ Funds

The MAP–21 continues the emphasis introduced by SAFETEA–LU on cost-effective projects that generate the greatest emissions reduction possible for the CMAQ funds invested. The SAFETEA–LU focus was on diesel retrofits and congestion-mitigation

[2] Section 149(m) of title 23, United States Code, states that ''[a] State may obligate funds apportioned under section 104(b)(2) [of Title 23]. . . .'' The FHWA has interpreted the reference to section 104(b)(2), which is the Surface Transportation Program, as a drafting error. Under prior law, section 104(b)(2) was the funding authorization for the CMAQ program, and MAP–21 placed CMAQ funding in section 104(b)(4). The FHWA intends to apply section 149(m) as though the reference read ''funds apportioned under section 104(b)(4). . . .''

[3] The 2008 CMAQ Program Guidance is available at: *http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2008_guidance/.*

efforts that produced an air quality benefit. Section 1113(b)(6) of MAP–21 not only expands the priority for efficiency and cost effective project selection with a broader emphasis on projects that are proven to reduce $PM_{2.5}$, but also calls for evaluation and assessment of projects. This includes the development of a series of graphs and tables that describe the various cost-benefit relationships of a cross-section of CMAQ project types. The Interim Guidance outlines these legislative priorities and discusses the intended role of these tables and other graphic representations. The Interim Guidance emphasizes that the tables and the supporting research are to inform States, MPOs, and other project sponsors about the air quality benefits derived from the wide range of projects studied and the relative costs associated with these efforts. The Interim Guidance also offers a number of options for States and MPOs to use prior to the FHWA's completion of the tables and graphics required by MAP–21.

3. Section V.A–B. Annual Apportionment Process for CMAQ Funds: State Federal-aid Apportionment and CMAQ Apportionment

Under ISTEA, TEA–21, and SAFETEA–LU, funding apportionments for each State were calculated based on a formula for weighted populations in ozone and carbon monoxide nonattainment and maintenance areas. Unlike previous legislation, MAP–21 does not contain a specific statutory distribution formula for CMAQ apportionment. The CMAQ apportionments under MAP–21 are determined based on overall share of the program in FY 2009. Under 23 U.S.C. 104(b)(4), CMAQ apportionments are determined using a ratio of the State's FY 2009 CMAQ funding relative to the State's total apportioned Federal-aid highway program funding for FY 2009. The resulting ratio applies to the calculation of the FY 2013 and FY 2014 CMAQ apportionments. The weighting factors from SAFETEA–LU, shown in Table 2 of the Interim Guidance, have been carried forward through MAP–21's use of the FY 2009 apportionments to set the FY 2013 and 2014 apportionments. The Interim Guidance discusses these changes.

4. Section V.C. Annual Apportionment Process for CMAQ Funds: Priority Set-aside for $PM_{2.5}$ Areas

Section 1113(b)(6) of MAP–21 established a clear priority for $PM_{2.5}$ emissions reductions with respect to CMAQ obligations in 23 U.S.C. 149(k). Under the legislation, States with such nonattainment or maintenance areas are required to invest a portion of their CMAQ funds on projects that reduce $PM_{2.5}$ emissions. The Interim Guidance describes the legislative priority for $PM_{2.5}$ reductions, outlines potentially eligible project types, including the MAP–21 focus on construction equipment and vehicles, and summarizes the interim approach to calculating the $PM_{2.5}$ priority set-aside. The FHWA is proposing a higher weighting factor through the rulemaking and public comment process. The FHWA will use the interim approach until the rulemaking is completed.

5. Section V.D and F. Annual Apportionment Process for CMAQ Funds: State Flexibility and Federal Share and State/Local Match Requirements

The Energy Independence and Security Act of 2007 amended 23 U.S.C. 120, *Federal share payable,* to provide temporary flexibility for States to use a 100-percent Federal share on all CMAQ projects. This flexibility was carried forward with each of the SAFETEA–LU extensions, but was not continued under the MAP–21. Consequently, the Interim Guidance clarifies that, as of October 1, 2012, Federal share requirements for CMAQ reverted to the standard provisions of 23 U.S.C. 120, which provides for an 80 percent Federal share.

6. Section VII.A.2, Project Eligibility Provisions: Operating Assistance

Section 1113(b)(6) of MAP–21 added paragraph (m) to the CMAQ provisions in 23 U.S.C. 149. Paragraph (m) expressly allows States to obligate CMAQ funds for operating assistance. The FHWA interprets paragraph (m) to allow the continuation of the Program's longstanding support for start-up and transition costs, but also to support additional flexibility in the timing of such assistance. Accordingly, the Interim Guidance continues to embody FHWA's interpretation that start-up and transition operating costs are eligible for funding under the CMAQ Program, but that long-term operating assistance support is not eligible because such costs are akin to maintenance and normal system operating costs that are the responsibility of the States and local governments.

The Interim Guidance also revises the 3-year approach under the 2008 CMAQ Program Guidance. The 3 years of operating assistance allowable under the 2008 CMAQ Program Guidance may now be spread over a longer time period, for a total of up to 5 sequential years of support. Grantees electing to provide operating support may spread the third year amount (an amount not to exceed the greater of year 1 or 2) across an additional 2 years (i.e., years 4 and 5) to provide an incremental, taper-down approach. The FHWA developed the option to spread the third year of assistance over a longer period (years 3, 4, and 5) to provide more flexibility to grantees. This provides for a smoother transition to more independent system operation. This new approach is designed to gradually reduce the Federal financial assistance once the activity has had an opportunity to become established. This is in keeping with the expectation that a new activity should increasingly be able to support itself through ridership growth and by procuring other sources of operating support. The Interim Guidance includes information on the eligibility of previous recipients of CMAQ operating assistance.

Subsection VII.A.2.a of the Interim Guidance includes a reference to passenger rail service as one of the types of service the States may fund for operating assistance. The FHWA previously acknowledged the eligibility of certain types of rail service in a January 16, 2002, **Federal Register** notice (67 FR 2278), and in a March 8, 2010, letter from FHWA Administrator Victor M. Mendez to the National Railroad Passenger Corporation. The new 23 U.S.C. 149(m) states that the CMAQ funds for operating assistance apply ''in an area of such State that is otherwise eligible for obligations of such funds for operating costs under chapter 53 of title 49. . . .'' Considered alone, the phrase ''otherwise eligible'' could be read as a reference to funding that was provided to certain transit operators prior to MAP–21. In reading 23 U.S.C. 149(b)(3) together with 23 U.S.C. 149(m), however, it is clear that MAP–21 did nothing to alter the availability of CMAQ funds to help start up viable new public transportation services that demonstrate air quality benefits regardless of the area in which the service is provided. The eligibility applies regardless of the size of the urbanized area or whether a particular grantee is or was previously authorized to use funding under 49 U.S.C. Chapter 53 for operating assistance.

Finally, 23 U.S.C. 149(m) states that operating assistance is allowed ''on a system that was previously eligible under this section.'' The FHWA interprets this statutory language to refer to those uses previously eligible for operating assistance funding under the exceptions in SAFETEA–LU sections 1808(g) through (k) and certain provisions in appropriations acts. Those

uses are eligible for CMAQ operating assistance for an additional 5 years as discussed in the Interim Guidance.

7. Section VII.F.1, Diesel Engine Retrofits & Other Advanced Truck Technologies

The Interim Guidance discusses CMAQ eligibility for diesel retrofits under MAP–21. While SAFETEA–LU included eligibility provisions for diesel retrofit projects, MAP–21 places increased emphasis on the use of diesel retrofits. Such projects are included in the ''Priority Consideration'' provisions in 23 U.S.C. 149(g)(3), and MAP–21 includes diesel retrofit eligibility for projects undertaken to reduce $PM_{2.5}$ emissions using the $PM_{2.5}$ set-aside under 23 U.S.C. 149(k).

8. Section VII.F.6.c–e, Transit Improvements: Fuel, Operating Assistance and Transit Fare Subsidies

The Interim Guidance discusses transit-specific aspects of transit fuel assistance, operating assistance, and transit fare subsidies. The MAP–21 does not alter the types of transit projects or the range of transit project sponsors able to receive this type of assistance. The Interim Guidance relocates the primary discussion of operating assistance to Section VII.A.2, leaving only transit-specific details in VII.F.6.d.

9. Section VII.F.7. Bicycle and Pedestrian Facilities Programs

The Interim Guidance explains that CMAQ eligibility is available to programs authorized in the bicycle and pedestrian programs governed by 23 CFR Part 652, with an example discussed.

10. Section VII.F.17. Alternative Fuels and Vehicles

The Interim Guidance explains that stand-alone fuel acquisitions outside of transit operating support are not eligible for CMAQ funding. The fuel exception from SAFETEA–LU 1808(k) continues under MAP–21, subject to the time period and other limitations that govern all types of operating assistance.

The Interim Guidance discusses the scope of CMAQ eligibility for electric vehicle charging stations and natural gas vehicle refueling stations under 23 U.S.C. 149(c)(2). The Interim Guidance reaffirms prior FHWA guidance that, consistent with 23 U.S.C. 111(a), such activities may be located in Interstate rest areas only if no fee is charged to users.

11. Section IX.B.3. Federal Agency Responsibilities and Coordination: Tracking Mandatory/Flexibility and $PM_{2.5}$ Set-aside Funds

The MAP–21 provisions on flexible funding and the $PM_{2.5}$ set-aside created a need for revised financial management systems. The Interim Guidance adds a description of the Fiscal Management Information System coding used to track mandatory and flexible CMAQ spending, including the new $PM_{2.5}$ set-aside.

12. Section IX.D. Performance Plan

Under MAP–21, MPOs serving a transportation management area (as defined in 23 U.S.C. 134) with a population over 1,000,000 people and representing a nonattainment or maintenance area are required to develop a performance plan under 23 U.S.C. 149(l). The requirements for the plan are discussed in the Interim Guidance, together with how FHWA plans to administer the reporting requirement in 23 U.S.C. 149(l). Performance planning and performance management are key elements of MAP–21, and several parts of MAP–21 contain performance planning and management requirements that touch on activities under the CMAQ Program. Several of the provisions will be the subject of rulemaking, and CMAQ guidance will be updated as needed following the conclusion of the rulemaking proceedings.

III. Request for Comments

The FHWA invites interested parties to submit comments on the Interim Guidance's implementation of MAP–21 and other changes to the 2008 Program Guidance. The FHWA will consider these comments in developing final guidance for the CMAQ Program. Late-filed comments will be considered to the extent practicable.

Authority: 23 U.S.C. 104(b)(4), 126, and 149.

Issued on: October 18, 2013.

Victor M. Mendez,

FHWA Administrator.

[FR Doc. 2013–26795 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Road Machinery Co SA de CV with U.S. Department of Transportation (USDOT) number 2091627, which applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before November 22, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0097 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1- 202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001. Telephone (202) 510–0211 or email *marcelo.perez@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

Submitting Comments

If you submit a comment, please include the docket number (FMCSA–2011–0097), indicate the specific question to which each comment responds, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box. Locate this document in the list and click on ''Comment Now!'' If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box and locate this document in the list. Next, click ''Open Docket Folder'' and click on the title of the document you wish to view. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on August 8, 2012. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (''Successful Pre-Authorization Safety Audit (PASA) Information'') set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA

results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., [INSERT MX NUMBER]);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov,* and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR Part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility

that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier that has completed the PASA.

TABLE 1

Row number in Tables 2, 3 and 4 of the Appendix to today's notice	Name of carrier	USDOT No.
1	Road Machinery SA de CV	2091627

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 3 AND 4)

Column A—Row No.	Column B—Name of carrier	Column C—U.S. DOT No.	Column D—FMCSA register No.	Column E—PASA initiated	Column F—PASA completed	Col. G—PASA results	Col. H—FMCSA register	Col. I U.S. drivers	Col. J—U.S. vehicles
1	Road Machinery Co SA de CV.	2091627	MX–729757	July 23, 2012	August 16, 2012.	Pass	October 23, 2013.	1	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 2 AND 4)

Column A—Row No.	Column B—Name of carrier	Column C—U.S. DOT No.	Column D—FMCSA register No.	Column K—Passed verification of 5 elements (yes/no)	Column L—If no, which element failed	Column M—Passed phase 1 factor 1	Column N—Passed phase 1 factor 2	Column O—Passed phase 1 factor 3	Column P—Passed phase 1 factor 4
1	Road Machinery Co SA de CV.	2091627	MX–729757	YES	N/A	YES	YES	YES	YES

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION AS OF SEPTEMBER 9, 2011 (SEE ALSO TABLES 2 AND 3)

Column A—Row No.	Column B—Name of carrier	Column C—U.S. DOT No.	Column D—FMCSA register No.	Column Q—Passed phase I factor 5	Column R—Passed phase I Factor 6	Column S—Number U.S. vehicles inspected	Column T—Number U.S. vehicles issued CVSA decal	Column U—Controlled substance collection	Column V—Name of controlled substances and alcohol collection facility
1	Road Machinery Co SA de CV.	2091627	MX–729757	YES	YES	1	1	U.S	J 2 Laboratories

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

The Agency acknowledges that through the PASA process it was determined that Road Machinery Co SA de CV had affiliations not identified in the original application. This was noted during the Agency's vetting and documented as an attachment to the PASA. Road Machinery Co SA de CV submitted for the record a letter confirming the relationship with a U.S.-domiciled motor carrier, Road Machinery, LLC. In addition, Road Machinery acknowledged an affiliation with Mitsui & Company USA, Inc. which holds a broker authority. During its vetting of the application and the PASA, FMCSA confirmed that Road Machinery Co SA de CV did not establish or use the affiliated companies to evade FMCSA regulation in continuing motor carrier operations, or for the purpose of avoiding or hiding previous non-compliance or safety problems.

Road Machinery Co SA de CV was issued a Certificate of Registration to operate wholly within the commercial zones and municipalities along the southern international border in 2010 and had a safety audit conducted on its operations in the United States on February 23, 2011. The company passed the safety audit but problems in its compliance were noted on the report.

FMCSA is aware that its data systems show that Road Machinery Co SA de CV had a safety suspension of its Certificate to operate within the commercial zones

and municipalities along the southern international border from October 27, 2011, to March 5, 2012. However, the Agency determined that, due to a FMCSA system problem, a ''Notice of Expedited Action'' was not, in fact, sent to Road Machinery Co SA de CV. Therefore, because the applicant was not notified and was not afforded the opportunity to submit a written response demonstrating immediate corrective action, the safety suspension was not enforced during roadside inspections. Road Machinery Co SA de CV was made aware of this issue on February 28, 2012, and Road Machinery Co SA de CV submitted a written response demonstrating its corrective action on March 2, 2012, that was accepted by the Agency and the suspension was removed.

During the PASA, the Agency found that Road Machinery Co SA de CV had one driver subject to controlled substance and alcohol testing while operating in the United States. Road Machinery Co SA de CV had pre-employment tested the driver and enrolled the driver in a third party random testing pool prior to the completion of the PASA and was in substantial compliance with the testing requirements of 49 CFR Parts 40 and 382. However, it was determined that, in 2011, Road Machinery Co SA de CV failed to have a controlled substance testing program for its commercial zone operations, as required. Road Machinery Co SA de CV's failure to test a driver prior to performing a safety sensitive function and failing to implement a random controlled substance and alcohol testing program in the previous year was noted as a deficiency on the PASA, but is not grounds to fail the PASA.

Deficiencies in Road Machinery Co. SA de CV's driver qualification file were identified during the PASA, as the file did not contain the driver's certification of violations and a complete history with previous employers.

In addition, on at least one occasion the motor carrier failed to ensure that drivers are not permitted to drive a vehicle without the cargo properly distributed and adequately secured. However, these issues, while noted as violations on the PASA, are not grounds for the motor carrier to fail the PASA.

Subsequent to the PASA, Road Machinery provided evidence of a valid controlled substance testing program and a corrective action plan to ensure that the company had rectified the deficiencies found in its drug and alcohol testing program and driver qualification records. Because the cargo securement violation was only noted one time, the Agency did not request corrective action in this area.

Based on Road Machinery's safety record and corrective action plan, FMCSA will proceed in issuing provisional operating authority for participation in the pilot program.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: November 1, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–26939 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0094; FMCSA-2013–0107]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from nine individuals for exemptions from the regulatory requirement that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. The Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. FMCSA grants exemptions that will allow these nine individuals to operate CMVs in interstate commerce for a 2-year period. The exemptions preempt State laws and regulations and may be renewed.

DATES: The exemptions are effective November 12, 2013. The exemptions expire on November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Division Chief, Physical Qualifications, Office of Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (73 FR 3316, January

17, 2008). This statement is also available at *http://Docketinfo.dot.gov.*

B. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period.

FMCSA grants nine individuals an exemption from the regulatory requirement in § 391.41(b)(8), to allow these individuals who take anti-seizure medication to operate CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s), the length of time elapsed since the individual's last seizure, and each individual's treatment regimen. In addition, the Agency reviewed each applicant's driving record found in the CDLIS,[1] for CDL holders, and interstate and intrastate inspections recorded in MCMIS.[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers covered by the exemptions granted here have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

In reaching the decision to grant these exemption requests, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency previously gathered evidence for potential changes to the regulation at 49 CFR 391.41(b)(8) by conducting a comprehensive review of scientific literature that was compiled into the ''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*'' (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened a panel of medical experts in the field of neurology (the MEP) on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure, and the 2007 *Evidence Report.* The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm,* under Seizure Disorders, and are in the docket for this notice.

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[3] The MEP recommendations are included in previously published dockets.

Epilepsy diagnosis. If there is an epilepsy diagnosis, the applicant should be seizure-free for 8 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a single unprovoked seizure (i.e., there is no known trigger for the seizure), the individual should be seizure-free for 4 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a single provoked seizure (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; and by alcohol or illicit drug withdrawal.
- *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes, or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the *Evidence Report* to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes relevant current medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

[3] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis.

C. Exemptions

Following individualized assessments of the exemption applications, including a review of detailed follow-up information requested from each applicant, FMCSA is granting exemptions from 49 CFR 391.41(b)(8) to nine individuals. Under current FMCSA regulations, all of the nine drivers receiving exemptions from 49 CFR 391.41(b)(8) would have been considered physically qualified to drive a CMV in interstate commerce except that they presently take or have recently stopped taking anti-seizure medication. For these nine drivers, the primary obstacle to medical qualification was the FMCSA Advisory Criteria for Medical Examiners, based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers,'' stating that a driver should be off anti-seizure medication in order to drive in interstate commerce. In fact, the Advisory Criteria have little if anything to do with the actual risk of a seizure and more to do with assumptions about individuals who are taking anti-seizure medication.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the nine drivers, some of whom currently drive a CMV in intrastate commerce. The Commercial Driver's License Information System (CDLIS) and the FMCSA Motor Carrier Management Information System (MCMIS) were searched for crash and violation data on the nine applicants. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency.

These exemptions are contingent on the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers.

FMCSA published a notice of receipt of application and requested public comment during a 30-day public comment period in a **Federal Register** notice for each of the applicants. A short summary of the applicants' qualifications and a discussion of the comments received follows this section. For applicants who were denied an exemption, a notice will be published at a later date.

D. Comments

Docket # FMCSA–2012–0094

On January 14, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 14 individuals. The comment period ended February 13, 2013. Eighteen commenters responded to the **Federal Register** Notice. A discussion of these comments and a decision was made on seven applicants in (78 FR 3079). FMCSA has determined that one of these applicants should be granted an exemption. The Agency will issue a decision on the other drivers at a later date.

Docket # FMCSA–2013–0107

On July 12, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on nine individuals. The comment period ended on August 12, 2013. Seven commenters responded to the **Federal Register** notice. All commenters support the idea of granting an exemption. Five commenters specifically support George Webb and two support Christopher Bird. FMCSA has determined that eight of these applicants should be granted an exemption. The Agency will issue a decision on the other driver at a later date.

Selene Anderson

Ms. Anderson is a 58 year-old driver in Tennessee. She suffered seizures as a child and has been seizure-free since 1968. She takes anti-seizure medication with the dosage and frequency remaining the same for more than two years. Her physician is supportive of Ms. Anderson receiving an exemption.

Christopher Bird

Mr. Bird is a 30 year-old driver in Ohio. He has a diagnosis of epilepsy and has remained seizure-free for over 15 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over five years. His physician is supportive of Mr. Bird receiving an exemption.

Fletcher Dortch

Mr. Dortch is a 58 year-old driver in Maryland. He had a single seizure in 2007. He takes anti-seizure medication with the dosage and frequency remaining the same for more than five years. His physician is supportive of Mr. Dortch receiving an exemption.

Victor Marquez

Mr. Marquez is a 23 year-old driver in the state of Idaho. He has had three seizures in his lifetime with the last one in March 2003. He takes anti-seizure medication with the dosage and frequency remaining the same for more than nine years. His physician is supportive of Mr. Marquez receiving an exemption.

Edward Nissenbaum

Mr. Nissenbaum is a 61 year-old driver in Pennsylvania. He had a seizure in 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician is supportive of Mr. Nissenbaum receiving an exemption.

Stanislav Spielvogel

Mr. Spielvogel is a 56 year-old driver in Connecticut. He has a diagnosis of epilepsy and has remained seizure-free for over 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. His physician is supportive of Mr. Spielvogel receiving an exemption.

Stephen Stawinsky

Mr. Stawinsky is a 54 year-old driver in Pennsylvania. He had a seizure in 1995 and has been seizure-free for over 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same since 2005. His physician is supportive of Mr. Stawinsky receiving an exemption.

Lyle Trimm

Mr. Trimm is a 55 year-old driver in New Jersey. He had a seizure in 2007 and has been seizure-free for six years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician is supportive of Mr. Trimm receiving an exemption.

George Webb

Mr. Webb is a 71 year-old driver in Massachusetts. He has a history of seizure disorder and has remained seizure-free for over 24 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician is supportive of Mr. Webb receiving an exemption.

E. Basis For Exemption

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption,

applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting the driver to driving in intrastate commerce.

Conclusion

The Agency is granting exemptions from the epilepsy standard, 49 CFR 391.41(b)(8), to nine individuals based on a thorough evaluation of each driver's qualifications, safety experience, and medical condition. Safety analysis of information relating to these nine applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. By granting the exemptions, the interstate CMV industry will gain nine highly trained and experienced drivers. In accordance with 49 U.S.C. 31315(b)(1), each exemption will be valid for 2 years, with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following nine drivers for a period of 2 years with annual medical certification required: Selene Anderson (TN); Christopher Bird (OH); Fletcher Dortch (MD); Victor Marquez (ID); Edward Nissenbaum (PA); Stanislav Spielvogel (CT); Stephen Stawinsky (PA); Lyle Trimm (NJ); and George Webb (MA) from the prohibition of CMV operations by persons with a clinical diagnosis of epilepsy or seizures. If the exemption is still in effect at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 1, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–26876 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 27, 2013. Comments must be received on or before December 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 23 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their

merits and decided to extend each exemption for a renewable two-year period. They are:

Anthony Brandano (MA)
Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Danny R. Gray (OK)
Glenn T. Hehner (KY)
Vladimir M. Kats (NC)
Alfred Keehn (AZ)
Martin D. Keough (NY)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
James A. Lenhart (WV)
Jerry J. Lord (PA)
Raymond P. Madron (MD)
Ronald S. Mallory (OK)
Eldon Miles (IN)
Norman V. Myers (WA)
Jack E. Potts, Jr. (PA)
Neal A. Richard (LA)
Benny R. Toothman (PA)
Rene R. Trachsel (OR)
Stanley W. Tyler, Jr. (NC)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 72 FR 39879; 72 FR 52422; 72 FR 62897; 74 FR 37295; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 57551; 74 FR 60021; 76 FR 75942). Each of these 23 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 12, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–

2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–26874 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0170]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 43 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0170 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 43 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Dennis S. Anderson

Mr. Anderson, age 45, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/250. Following an examination in 2013, his optometrist noted, ''Mr. Anderson has adapted to his condition and should be able to continue to safely operate a commercial motor vehicle.'' Mr. Anderson reported that he has driven straight trucks for 14 years, accumulating 254,800 miles, and tractor-trailer combinations for 14 years, accumulating 238,000 miles. He holds a Class A Commercial Driver's License (CDL) from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin J. Barbour

Mr. Barbour, 49, has had a central retinal vein occlusion in his left eye since 2005. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2013, his ophthalmologist noted, ''In my opinion has sufficient visual function to drive a commercial vehicle.'' Mr. Barbour reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.4 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Martin D. Bellcour

Mr. Bellcour, 51, has had a retinal detachment in his right eye since 1999. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion Mr. Bellcour has a stable field defect in the right eye which has existed since 1999…The patient should not have a problem operating a commercial vehicle with outside mirrors'' Mr. Bellcour reported that he has driven straight trucks for 13 years, accumulating 7,800 miles. He holds a Class BCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Walter A. Breeze

Mr. Breeze, 45, has had presumed ocular histoplasmosis in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2013, his optometrist noted, ''In my

medical opinion, Walter Breeze has sufficient vision to perform driving tasks to operate a commercial motor vehicle.'' Mr. Breeze reported that he has driven straight trucks for 27 years, accumulating 2.7 million miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph A. Burdey

Mr. Burdey, 56, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''I certify that Mr. Burdey has sufficient vision to perform the driving tasks requires [*sic*] to operate a commercial vehicle.'' Mr. Burdey reported that he has driven straight trucks for 36 years, accumulating 2 million miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald G. Carstensen

Mr. Carstensen, 52, has had a prosthetic left eye since 1995. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his ophthalmologist noted, ''As long as his visual field measurements meet your requirements, I do believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Carstensen reported that he has driven tractor-trailer combinations for 29 years, accumulating 1.8 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jamie D. Daniels

Mr. Daniels, 40, has had an aphakic left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2013, his optometrist noted, ''His visual condition is stable and he should be able to perform the driving tasks for commercial vehicles.'' Mr. Daniels reported that he has driven straight trucks for 3 years, accumulating 30,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. Esposito, Jr.

Mr. Esposito, 54, has corneal scarring in his left eye due to a traumatic incident in 1973. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2013, his optometrist noted, ''I certify that, in my medical opinion, this patient has sufficient vision to operate a commercial motor vehicle.'' Mr. Esposito reported that he has driven straight trucks for 16 years, accumulating 100,800 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Farnsley

Mr. Farnsley, 52, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion Mark has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Farnsley reported that he has driven straight trucks for 31 years, accumulating 310,000 miles, and tractor-trailer combinations for 30 years, accumulating 150,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Michael L. Fiamingo

Mr. Fiamingo, 59, has a macular hole in his left eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2013, his optometrist noted, ''In my medical opinion Michael has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fiamingo reported that he has driven straight trucks for 40 year, accumulating 400,000 miles, and tractor-trailer combinations for 35 years, accumulating 700,000. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenric J. Fields

Mr. Fields, 42, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2012, his optometrist noted, ''Kenric has amblyopia of the left eye; this should not affect his ability to drive a commercial vehicle.'' Mr. Fields reported that he has driven straight trucks for 10 years, accumulating 75,000 miles. He holds an operator's license from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chris L. Granby

Mr. Granby, 31, has had a stage IV macular hole in his left eye since 2000. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2013, his optometrist noted, ''In my medical opinion, I feel the central area of Chris's [*sic*] visual field loss of his left eye has no detrimental effect on his peripheral detection of merging traffic, oncoming vehicles at intersections, etc. The loss of acuity and field at the point of fixation is compensated for by his healthy right eye. As of this examination, I feel Mr. Granby has sufficient vision to operate a vehicle. I do however recommend that he be required to have a yearly dilated fundus evaluation. This is warranted by the medically accepted macular hole evaluation interval of one year, the very small risk of progression, and the added safety concern with commercial vehicle operation.'' Mr. Granby reported that he has driven straight trucks for 4 years, accumulating 140,000 miles, and tractor-trailer combinations for 5 years, accumulating 75,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 5 mph.

Dustin K. Heimbach

Mr. Heimbach, 27, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion, Dustin Heimbach has sufficient vision to operate a commercial vehicle.'' Mr. Heimbach reported that he has driven straight trucks for 4 years, accumulating 1.2 million miles, and tractor-trailer combinations for 4 months, accumulating 1500 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randall Hjelmtveit

Mr. Hjelmtveit, 60, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2013, his optometrist noted, ''In my opinion, Mr. Hjelmtveit can safely have a CDL and operate a motor vehicle as he has over the last 30+ years.'' Mr. Hjelmtveit reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.2 million miles. He

holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert W. Horner

Mr. Horner, 52, has complete loss of vision in his right eye due to a traumatic incident in 1979. The visual acuity in his right eye is no light perceptions, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Horner reported that he has driven straight trucks for 25 years, accumulating 1 million miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Abdelhamid S. Jaafreh

Mr. Jaafreh, 34, has complete loss of vision in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Mr. Jaafreh has permanent damage to OD due to an accident at age 17 . . . He can operate a commercial vehicle with proper caution for field of vision.'' Mr. Jaafreh reported that he has driven straight trucks for 3 years, accumulating 66,000 miles. He holds an operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonard R. Jackson

Mr. Jackson, 79, has had macular degeneration in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''It is our medical opinion that with a full visual field and a perfectly normal 20/20 visual acuity in the right eye that Mr. Jackson is able to operate a commercial vehicle without restriction.'' Mr. Jackson reported that he has driven straight trucks for 63 years, accumulating 756,000 miles. He holds a Class B CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy G. Kinney

Mr. Kinney, 47, has had anisometropic amblyopia in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''I feel Randy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kinney reported that he has driven straight trucks for 4 years, accumulating 2,400 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronnie R. Lockamy

Mr. Lockamy, 42, has had complete loss of vision in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Mr. Lockamy has had this visual deficiency in his right eye all his life. This deficiency is stable, and he appears to have sufficient visual skills to operate a commercial vehicle.'' Mr. Lockamy reported that he has driven straight trucks for 10 years, accumulating 8 million miles, and tractor-trailer combinations for 14 years, accumulating 3.9 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Hector Marquez

Mr. Marquez, 41, has a macular hole in his left eye due to a traumatic injury in 2008. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2013, his optometrist noted, ''It is in my professional opinion that Mr. Marquez can operate a commercial vehicle.'' Mr. Marquez reported that he has driven tractor-trailer combinations for 12 years, accumulating 2 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonard A. Martin

Mr. Martin, 51, has retinal damage in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted, ''Visual field testing revealed a full field of vision in the left eye . . . Mr. Martin is safe to drive a motor vehicle.'' Mr. Martin reported that he has driven straight trucks for 12 years, accumulating 240,000 miles, tractor-trailer combinations for 1.5 years, accumulating 15,000 miles, and buses for 3 years, accumulating 30,000 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis R. Martinez

Mr. Martinez, 56, has a retinal hole in his left eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''In my medical opinion Denis [*sic*] has sufficient vision to perform the tasks required to safely operate a commercial vehicle.'' Mr. Martinez reported that he has driven straight trucks for 8 years, accumulating 288,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey D. McGill

Mr. McGill, 57, has amblyopia in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my medical opinion Mr. McGill has sufficient vision to perform the driving tasks of a commercial vehicle.'' Mr. McGill reported that he has driven straight trucks for 35 years, accumulating 280,000 miles, and tractor-trailer combinations for 3 years, accumulating 6,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Fred A. Miller, Jr.

Mr. Miller, 58, has a prosthetic right eye due to a traumatic incident during childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''I believe he has sufficient vision required to operate a commercial vehicle effectively.'' Mr. Miller reported that he has driven straight trucks for 14 years, accumulating 364,000 miles. He holds an operator's license from California. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Joseph K. Parley

Mr. Parley, 64, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2013, his optometrist noted, ''Joseph has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Parley reported that he has driven tractor-trailer combinations for

40 years, accumulating 4 million miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Pearson

Mr. Pearson, 48, has had optic nerve staphyloma in his right eye since birth. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted that, in his opinion, Mr. Pearson does have sufficient vision to operate a commercial motor vehicle safely. Mr. Pearson reported that he has driven straight trucks for 3 years, accumulating 75,000 miles. He holds an operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Andres Regalado

Mr. Regalado, 36, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''In my opinion, Andres Regalado does have sufficient vision to perform driving tasks required to operate a commercial vehicle when combined with good defensive driving skills of turning his head before changing lanes and utilizing side mirrors.'' Mr. Regalado reported that he has driven tractor-trailer combinations for 3 years, accumulating 60,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Riland O. Richardson

Mr. Richardson, 35, has had a prosthetic left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his optometrist noted that, in his opinion, Mr. Richardson does have sufficient vision to operate a commercial motor vehicle safely. Mr. Richardson reported that he has driven tractor-trailer combinations for 11 years, accumulating 825,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thenon D. Ridley

Mr. Ridley, 38, has had longstanding peripheral retinal degeneration in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Although he does not have at least 70 degrees in the horizontal meridian of the right eye, since patient's condition is longstanding, has a history of driving commercial vehicles, and able to adapt monocularly to his surroundings, patient seems fit to continue to drive.'' Mr. Ridley reported that he has driven straight trucks for 4 years, accumulating 134,400 miles, and tractor-trailer combinations for 9 years, accumulating 518,400 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ryan R. Ross

Mr. Ross, 30, has complete loss of vision in his right eye due to a traumatic incident in 2008. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ross reported that he has driven straight trucks for 4 years, accumulating 160,000 miles, and tractor-trailer combinations for 1 year, accumulating 1,000 miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Troy M. Ruhlman

Mr. Ruhlman, 51, has a prosthetic right eye due to a traumatic incident prior to 1998. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2013, his optometrist noted, ''There is no reason that Mr. Ruhlman should have any visual problems while operating a commercial vehicle.'' Mr. Ruhlman reported that he has driven tractor-trailer combinations for 25 years, accumulating 625,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ricky E. Rumfield

Mr. Rumfield, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''My professional, medical opinion remains that Mr. Rumfield has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Rumfield reported that he has driven straight trucks for 2 days, accumulating 1,030 miles, and buses for 3.8 years, accumulating 91,200 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ermanno M. Santucci

Mr. Santucci, 35, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted that Mr. Santucci does not have any visual defects or field loss that would affect the safe operation of a commercial motor vehicle. Mr. Santucci reported that he has driven straight trucks for 4 years, accumulating 100,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis M. Schwartzentruber

Mr. Schwartzentruber, 56, has had wet macular degeneration in his left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2013, his ophthalmologist noted, ''Patient in my opinion would pass for Ohio driver's license and also intrastate commercial vehicle license with the above limitations being noted.'' Mr. Schwartzentruber reported that he has driven straight trucks for 5 years, accumulating 550,000 miles, and tractor-trailer combinations for 3 months, accumulating 3,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tigran Semerjyan

Mr. Semerjyan, 40, has an enucleated right eye due to a traumatic incident during childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted that Mr. Semerjyan does not have any visual defect or visual field loss that would affect the safe operation of a commercial motor vehicle. Mr. Semerjyan reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.2 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger H. Sick

Mr. Sick, 74, has had a amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2013, his optometrist noted, ''In my medical opinion Roger Sick definitely has the visual skills to allow him to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sick reported that he has driven straight trucks for 3 years, accumulating 120,000 miles, and tractor-trailer combinations for 52 years, accumulating 4.7 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Martina B. Talbott

Ms. Talbott, 52, has had amblyopia in her left eye since birth. The visual acuity in her right eye is 20/20, and in her left eye, 20/70. Following an examination in 2013, her optometrist noted, ''In conclusion, due to the visual deficiency this patient has in her left eye, when she has both eyes open, the patient is largely using only the right eye. This is demonstrated by her poor stereopsis, or depth perception. Therefore, this patient is just as visually competent to operate a commercial motor vehicle as a monocular patient.'' Ms. Talbott reported that she has driven tractor-trailer combinations for 4 years, accumulating 368,006 miles. She holds a Class A CDL from Iowa. Her driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; she failed to obey a traffic sign/signal.

Kirk A. Thelen

Mr. Thelen, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2013, his optometrist noted, ''I certify in my medical opinion that Mr. Thelen has sufficient vision to perform the driving test to operate a commercial vehicle.'' Mr. Thelen reported that he has driven tractor-trailer combinations for 31.5 years, accumulating 1.7 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nicholas J. Vance

Mr. Vance, 35, has complete loss of vision in his left eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his optometrist noted, ''My patient, Nicholas J. Vance, in my medical opinion has the required vision in one eye to legally obtain his commercial driver's license, which will allow him to operate a commercial vehicle.'' Mr. Vance reported that he has driven straight trucks for 2 years, accumulating 10,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 12 mph.

Hershel D. Volentine

Mr. Volentine, 53, has a prosthetic left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his ophthalmologist noted, ''In my medical opinion, the patient has excellent vision in the right eye with a mild prescription for glasses and should have no problems in operating a commercial vehicle.'' Mr. Volentine reported that he has driven straight trucks for 15 years, accumulating 300,000 miles, and buses for 1 year, accumulating 10,000 miles. He holds a chauffer's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary D. Vollersten

Mr. Vollersten, 70, has a prosthetic right eye due to a traumatic incident during childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted, ''He has sufficient vision to operate a commercial vehicle.'' Mr. Vollersten reported that he has driven straight trucks for 52 years, accumulating 780,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David R. Webb, Jr.

Mr. Webb, 48, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''His visual condition is stable and he should be able to perform the driving tasks for commercial vehicles.'' Mr. Webb reported that he has driven straight trucks for 15 years, accumulating 937,500 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley A. Willis

Mr. Willis, 48, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''As long as patient wears corrective lenses to operate a commerciasl [*sic*] motor vehicle he has sufficient vision to perform driving tasks.'' Mr. Willis reported that he has driven straight trucks for 7 years, accumulating 320,999 miles, and buses for 3 years, accumulating 97,998 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 12, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0170 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0170 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–26877 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0186]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 36 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective November 12, 2013. The exemptions expire on November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On September 16, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 36 individuals and requested comments from the public (78 FR 56988). The public comment period closed on October 16, 2013, and three comments were received.

FMCSA has evaluated the eligibility of the 36 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 36 applicants have had ITDM over a range of 1 to 30 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 16, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received three comments in this proceeding. The comments are considered and discussed below.

The three comments were from the Pennsylvania Department of Transportation, who is in favor of granting an exemption to Vincent Terrizzi, Sr., George J. Ehnot, and Andrew W. Sprester after reviewing their driving histories.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and

reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 36 exemption applications, FMCSA exempts Charles E. Anderson (MN), Ross D. Barker (UT), Phillip B. Blythe (IL), Jay H. Byers (IN), Ryan T. Byndas (AZ), Winfred G. Clemenson (WA), Chad P. Colligan (NY), Michael C. Crewse (IL), James D. Crosson, Jr. (MN), James de la Garza, Sr. (CA), Jerry W. Downey (OH), George J. Ehnot (PA), Bruce E. Feltenbarger (MI), Charles A. Fleming, Jr. (VA), Brian W. Hannah (UT), Michael P. Huck (MI), Van K. Jarrett (KY), Keith W. Lewis (MO), Richard G. McGee, Jr. (WV), Eugene M. Mikell (NH), Ronny J. Moreau (NH), James M. O'Rourke (MA), Joshua T. Paumer (MT), Kent F. Peters (KS), Vladimir B. Petkov (MO), Luther S. Pickell (KS), Robert Pulliam (AZ), Juanita Ringeisen (IN), Justin W. Robinson (IN), Freddie Antonio Velez Silvagnoli (MN), Richard A. Smith (WA), Andrew W. Sprester (PA), Vincent J. Terrizzi, Sr. (PA), Daniel C. Theis (FL), Richard A. White (TN), and Mark A. Winning (IL) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–27026 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23238; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2010–0082; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 22, 2013. Comments must be received on or before December 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2005–23238; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2010–0082; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001,

fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Donald G. Bostic (WV)
Anton Filic (TX)
Wesley V. Holland (NC)
Todd A. McBrain (OK)
Charles D. Oestreich (MN)
David M. Taylor (MO)
Bruce A. Cameron (ND)
Michael W. Gibbs (NC)
Frank E. Johnson, Jr. (FL)
Robert E. Morgan, Jr. (GA)
Victor C. Richert (OR)
James D. Zimmer (OH)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 5105; 71 FR 19600; 72 FR 39879; 72 FR 52419; 72 FR 58362; 72 FR 67344; 73 FR 52456; 74 FR 41971; 74 FR 53581; 74 FR 57553; 75 FR 25917; 75 FR 39727; 76 FR 32016; 76 FR 37169; 76 FR 49528; 76 FR 50318; 76 FR 54530; 76 FR 61143; 76 FR 64164; 76 FR 67248; 76 FR 70212; 76 FR 75940; 76 FR 79761). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 12, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2005–23238; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2010–0082; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would

like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2005–23238; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2010–0082; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Dated: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–26938 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–16241]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 6 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 31, 2013. Comments must be received on or before December 12, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–16241], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 6 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 6 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Martiniano L. Espinosa (FL)
James G. LaBair (MI)
Lonnie Lomax, Jr. (IL)
Eugene C. Murphy (FL)
John H. Voigts (AZ)
Daniel G. Wilson (IL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 6 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 66 FR 53826; 66 FR 66966; 67 FR 71610; 68 FR 61857; 68 FR 69434; 68 FR 75715; 70 FR 25878; 70 FR 74102; 71 FR 646; 72 FR 71993; 72 FR 71998; 74 FR 65846; 76 FR 78729). Each of these 6 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 12, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 6 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–16241 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–16241 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–27024 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0114]

National Emergency Medical Services Advisory Council (NEMSAC) and Federal Interagency Committee on Emergency Medical Services (FICEMS); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice—National Emergency Medical Services Advisory Council and Federal Interagency Committee on Emergency Medical Services.

SUMMARY: The NHTSA announces meetings of NEMSAC and FICEMS to be held consecutively in the Metropolitan Washington, DC, area. This notice announces the date, time, and location of the meetings, which will be open to the public, as well as opportunities for public input to the NEMSAC and FICEMS. The purpose of NEMSAC, a nationally recognized council of emergency medical services representatives and consumers, is to advise and consult with DOT and the FICEMS on matters relating to emergency medical services (EMS). The purpose of FICEMS is to ensure coordination among Federal agencies supporting EMS and 9–1–1 systems.

DATES: The NEMSAC meeting will be held on December 5, 2013, from 8 a.m. to 5:00 p.m. EST, and on December 6, 2013, from 8 a.m. to 12 p.m. EST. A public comment period will take place on December 5, 2013, between 2 p.m. and 2:30 p.m. EST and December 6, 2013, between 10 a.m. and 10:15 a.m. EST. Written comments for the NEMSAC from the public must be received no later than December 2, 2013.

The FICEMS meeting will be held on December 6, 2013, from 1 p.m. to 4 p.m.

EST. A public comment period will take place on December 6, 2013, between approximately 3:30 p.m. and 3:45 p.m. EST. Written comments for FICEMS from the public must be received no later than December 2, 2013.

ADDRESSES: The meetings will both be held at the Performance Institute on the third floor of 901 New York Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, U.S. Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, telephone 202–366–9966; email *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.). The NEMSAC is authorized under Section 31108 of the Moving Ahead with Progress in the 21st Century Act of 2012. The FICEMS is authorized under Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

Tentative Agenda of the National EMS Advisory Council Meeting

The tentative NEMSAC agenda includes the following:

Thursday, December 5, 2013 (8 a.m. to 5 p.m. EST)

(1) Opening Remarks
(2) Disclosure of Conflicts of Interests by Members
(3) Reports and Updates From the Departments of Transportation, Homeland Security, and Health & Human Services
(4) Presentation, Discussion and Possible Adoption of Reports and Recommendations From the following NEMSAC Workgroups:
  a. Patient Protection and Affordable Care Act
  b. Revision of the EMS Education Agenda for the Future
  c. EMS Agenda for the Future
  d. Safety
(5) Other Business of the Council
(6) Public Comment Period (2 p.m. to 2:30 p.m. EST)
(7) Workgroup Breakout Sessions (2:30 p.m. to 5 p.m. EST)

Friday, December 6, 2013 (8 a.m. to 12 p.m. EST)

(1) Unfinished Business/Continued Discussion From Previous Day
(2) Public Comment Period (10 a.m. to 10:15 a.m. EST)
(3) Next Steps and Adjourn

On Thursday, December 5, 2013, From 2:30 p.m. to 5 p.m. EST, the NEMSAC workgroups will meet in breakout sessions at the same location. These sessions are open for public attendance, but their agendas do not accommodate public comment.

Tentative Agenda of the Federal Interagency Committee on EMS Meeting

Friday, December 6, 2013 (1 p.m. to 4 p.m. EST)

(1) Welcome, Introductions, Opening Remarks
(2) Review and Approval of Executive Summary of July 8, 2013 Meeting
(3) National EMS Advisory Council (NEMSAC) Report
(4) The NIH Office of Emergency Care Research—An Overview
(5) Presentation and Discussion of the Final Draft FICEMS Strategic Plan
(6) Technical Working Group (TWG) Committee Reports
(7) Updates on Progress Responding to National Transportation Safety Board Recommendations
(8) Election of Chair and Vice-Chair for Calendar Year 2014
(9) Other FICEMS Business
(10) Public Comment Period (approximately 3:30 p.m. to 3:45 p.m. EST)
(11) Next Steps and Adjourn

Registration Information: These meetings will be open to the public; however, pre-registration is requested. Individuals wishing to attend must register online at *http://tinyurl.com/NEMSAC-FICEMS-2013* no later than December 2, 2013. For assistance with registration, please contact Noah Smith at *Noah.Smith@dot.gov* or 202–366–5030. There will not be a teleconference option for these meetings.

Public Comment: Members of the public are encouraged to comment directly to the NEMSAC and FICEMS during designated public comment periods. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. Written comments from members of the public will be distributed to NEMSAC or FICEMS members at the meeting and should reach the NHTSA Office of EMS no later than December 2, 2013. Written comments may be submitted by either one of the following methods: (1) You may submit comments by email: *nemsac@dot.gov* or *ficems@dot.gov* or (2) you may submit comments by fax: (202) 366–7149.

A final agenda as well as meeting materials will be available to the public online through *www.EMS.gov* on or before November 29, 2013.

Issued on: November 6, 2013.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2013–26945 Filed 11–8–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Survey of U.S. Ownership of Foreign Securities as of December 31, 2013

AGENCY: Office of the Assistant Secretary for International Affairs, Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice and in accordance with 31 CFR 129, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2013. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. The reporting form SHCA (2013) and instructions may be printed from the Internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx#shc*

Definition: Pursuant to 22 U.S.C. 3102 a United States person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The reporting panel is based upon the data submitted for the 2011 Benchmark survey and the June 2012 TIC report Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents (TIC SLT). Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and

short-term debt securities (including selected money market instruments).

How To Report: Completed reports can be submitted electronically or mailed to the Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or email: *SHC.help@ny.frb.org.* Inquiries can also be made to Dwight Wolkow at (202) 622–1276, email: *comments2TIC@do.treas.gov.*

When To Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 3, 2014.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 48 hours per respondent for end-investors and custodians that file Schedule 3 reports covering their securities entrusted to U.S. resident custodians, 145 hours per respondent for large end-investors filing Schedule 2 reports, and 700 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2013–26973 Filed 11–8–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Maximum Allowable Attorney Fees

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) Home Loan Guaranty program concerning the maximum attorney fees allowable in calculating the indebtedness used to determine the guaranty claim payable upon loan termination. The table in this notice contains the amounts the Secretary has determined to be reasonable and customary for all States, following an annual review of amounts allowed by other government-related home loan programs.

DATES: The new maximum attorney fees will be allowed for all loan terminations completed on or after December 12, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Trevayne, Assistant Director for Loan and Property Management (261), Loan Guaranty Service, Department of Veterans Affairs, Washington, DC 20420, (202) 632–8795 (Not a toll-free number).

SUPPLEMENTARY INFORMATION: The VA Home Loan Guaranty program authorized by Title 38, United States Code (U.S.C.), Chapter 37, offers a partial guaranty against loss to lenders who make home loans to Veterans. VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. Computation of guaranty claims is addressed in 38 CFR 36.4324, which states that one part of the indebtedness upon which the guaranty percentage is applied is the allowable expenses/advances as described in 38 CFR 36.4314. Paragraph (b)(5)(ii) of that section describes the procedures to be followed in determining what constitutes the reasonable and customary fees for legal services in the termination of a loan.

The Secretary annually reviews allowances for legal fees in connection with the termination of single-family housing loans, including foreclosure, deed-in-lieu of foreclosure, and bankruptcy-related services, issued by the Department of Housing and Urban Development (HUD), Fannie Mae, and Freddie Mac. Based on increases announced over the past year by these entities, the Secretary has deemed it necessary to publish in the **Federal Register** a table setting forth the revised amounts the Secretary now determines to be reasonable and customary. The table reflects the primary method for foreclosing in each State, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. This table will be available throughout the year at: *http://www.benefits.va.gov/homeloans/.*

The new VA table closely mirrors amounts and methods for foreclosure allowed by Fannie Mae. Unlike Fannie Mae, VA has determined that in Hawaii the preferred method of foreclosure should not yet be changed to include a second method. VA is aware that Hawaii has established a new non-judicial foreclosure procedure; however, VA believes this new method is not yet well-established enough to provide acceptable title to the real estate community. Thus, the judicial foreclosure procedure remains the preferred method. VA will continue to monitor the situation in Hawaii, and make necessary changes as conditions warrant.

Other jurisdictions that require special mention include Oregon, South Dakota, and Nebraska. VA continues to prefer the non-judicial method in Oregon and sees no need to allow the judicial method on a regular basis. However, in South Dakota, VA determined that the non-judicial procedure in South Dakota is not a preferred method of foreclosure. In the past, VA routinely allowed either the non-judicial or judicial method of foreclosure in Nebraska. At this time, VA is designating non-judicial as the preferred method of foreclosure in Nebraska, although special approval may be requested for a case where judicial foreclosure is deemed necessary.

There is no change to the amounts VA will allow for attorney fees for deeds-in-lieu of foreclosure or for bankruptcy relief. VA will continue to monitor these fees on an annual basis, as we are aware that other entities are conducting ongoing reviews of these fees.

The following table represents the Secretary's determination of the reasonable and customary cost of legal services for the preferred method of terminating VA loans in each jurisdiction under the provisions of 38 CFR 36.4314(b)(5)(ii). These amounts will be allowed for all loan terminations completed on or after December 12, 2013.

Jurisdiction	VA Non-Judicial foreclosure [1 2]	VA Judicial foreclosure [1 2]	Deed-in-Lieu of foreclosure
Alabama	$900	N/A	$350
Alaska	1200	N/A	350
Arizona	925	N/A	350
Arkansas	1050	N/A	350
California	1000	N/A	350
Colorado	1225	N/A	350
Connecticut	N/A	1700	350
Delaware	N/A	1350	350
District of Columbia	600	N/A	350
Florida	N/A	2250	350
Georgia	900	N/A	350
Guam	1200	N/A	350
Hawaii	N/A	2400	350
Idaho	1050	N/A	350
Illinois	N/A	1750	350
Indiana	N/A	1500	350
Iowa	850	1300	350
Kansas	N/A	1250	350
Kentucky	N/A	1700	350
Louisiana	N/A	1350	350
Maine	N/A	1750	350
Maryland	2100	N/A	350
Massachusetts	N/A	2000	350
Michigan	1000	N/A	350
Minnesota	1025	N/A	350
Mississippi	900	N/A	350
Missouri	950	N/A	350
Montana	1000	N/A	350
Nebraska	900	N/A	350
Nevada	1100	N/A	350
New Hampshire	1150	N/A	350
New Jersey	N/A	2425	350
New Mexico	N/A	1500	350
New York—Western Counties [3]	N/A	2000	350
New York—Eastern Counties	N/A	2400	350
North Carolina	1150	N/A	350
North Dakota	N/A	1250	350
Ohio	N/A	1700	350
Oklahoma	N/A	1450	350
Oregon	1000	N/A	350
Pennsylvania	N/A	1650	350
Puerto Rico	N/A	1500	350
Rhode Island	1300	N/A	350
South Carolina	N/A	1650	350
South Dakota	N/A	1250	350
Tennessee	900	N/A	350
Texas	900	N/A	350
Utah	925	N/A	350
Vermont	N/A	1700	350
Virgin Islands	N/A	1800	350
Virginia	925	N/A	350
Washington	1000	N/A	350
West Virginia	1000	N/A	350
Wisconsin	N/A	1500	350
Wyoming	1000	N/A	350

[1] When a foreclosure is stopped due to circumstances beyond the control of the holder or its attorney (including, but not limited to bankruptcy, VA-requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure, or relief under the Servicemembers Civil Relief Act) and then restarted, VA will allow a $350 restart fee in addition to the base foreclosure attorney fee. This fee recognizes the additional work required to resume the foreclosure action, while also accounting for the expectation that some work from the previous action may be utilized in starting the new action.

[2] VA will allow attorney fees of $650 (Chapter 7) or $850 (initial Chapter 13) for obtaining bankruptcy releases directly related to loan termination. For additional relief filed under either chapter, VA will allow an additional $250.

[3] Western Counties of New York for VA are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne, Wyoming, and Yates. The remaining counties are in Eastern New York.

Approved: November 4, 2013.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–26985 Filed 11–8–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 218 November 12, 2013

Part II

Securities and Exchange Commission

17 CFR Parts 200, 240 and 249
Registration of Municipal Advisors; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240 and 249

[Release No. 34–70462; File No. S7–45–10]

RIN 3235–AK86

Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') amended Section 15B of the Securities Exchange Act of 1934 (''Exchange Act'') to require municipal advisors, as defined below, to register with the Securities and Exchange Commission (''Commission'' or ''SEC''), effective October 1, 2010. To enable municipal advisors to temporarily satisfy this requirement, the Commission adopted an interim final temporary rule, Exchange Act Rule 15Ba2–6T, and form, Form MA–T, effective October 1, 2010. To enable municipal advisors to continue to register under the temporary registration regime until the applicable compliance date for permanent registration, the Commission is extending Rule 15Ba2–6T, in a separate release, to December 31, 2014. The Commission is today adopting new Rules 15Ba1–1 through 15Ba1–8, new Rule 15Bc4–1, and new Forms MA, MA–I, MA–W, and MA–NR under the Exchange Act. These rules and forms are designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, require the Commission to establish a registration regime for municipal advisors and impose certain record-keeping requirements on such advisors.

DATES: *Effective Date:* January 13, 2014, except that amendatory instruction 11 removing § 249.1300T is effective January 1, 2015.

Compliance Date: The applicable compliance dates are discussed in the section of the release titled ''V. Implementation and Compliance Dates''.

FOR FURTHER INFORMATION CONTACT:

Office of Municipal Securities: John Cross, Director, at (202) 551–5839; Jessica Kane, Senior Special Counsel to the Director, at (202) 551–3235; Rebecca Olsen, Attorney Fellow, at (202) 551–5540; or Mary Simpkins, Senior Special Counsel, at (202) 551–5683; at Office of Municipal Securities, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

Office of Market Supervision: Molly Kim, Senior Special Counsel, at (202) 551–5644; Ira Brandriss, Special Counsel, at (202) 551–5651; Brian Baltz, Special Counsel, at (202) 551–5762; Jennifer Dodd, Special Counsel, at (202) 551–5653; Derek James, Special Counsel, at (202) 551–5792; Yue Ding, Attorney-Adviser, at (202) 551–5842; or Eugene Hsia, Attorney-Adviser, at (202) 551–5709; at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adopting Rules 15Ba1–1 to 15Ba1–8 (17 CFR 240.15Ba1–1 to 240.15Ba1–8) and 15Bc4–1 (17 CFR 240.15Bc4–1) under the Exchange Act; Forms MA, MA–I, MA–W, and MA–NR (17 CFR 249.1300, 1310, 1320, and 1330); and Rules 30–3a (17 CFR 200.30–3a) and 19d (17 CFR 200.19d) under the Commission's Rules of Organization and Program Management. The Commission is amending Rules 30–18 (17 CFR 200.30–18) and 19c (17 CFR 200.19c) under the Commission's Rules of Organization and Program Management.

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I. Executive Summary

Section 975 of the Dodd-Frank Act creates a new class of regulated persons, ''municipal advisors,'' and requires these advisors to register with the Commission. This new registration requirement, which became effective on

October 1, 2010, makes it unlawful for any municipal advisor to provide certain advice to or on behalf of, or to solicit, municipal entities or certain other persons without registering with the Commission.[1] A person is deemed under the Exchange Act to have a statutory fiduciary duty to any municipal entity for whom such person acts as a municipal advisor.

The new registration requirements and regulatory standards are intended to mitigate some of the problems observed with the conduct of some municipal advisors, including ''pay to play'' practices, undisclosed conflicts of interest, advice rendered by financial advisors without adequate training or qualifications, and failure to place the duty of loyalty to their clients ahead of their own interests.[2] According to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' [3] Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' [4]

In September 2010, the Commission adopted, and subsequently extended, an interim final temporary rule establishing a temporary means for municipal advisors to satisfy the registration requirement.[5] As of March 31, 2013, there were approximately 1,130 Form MA–T registrants, including approximately 330 registrants that are also registered investment advisers and/or broker-dealers. In December 2010, the Commission proposed a permanent registration regime to govern municipal advisor registration (''Proposal'').[6] The Commission has considered comments received in connection with both the 2010 interim final temporary rules, as well as the Proposal, and is today establishing a permanent registration regime for municipal advisors and imposing certain record-keeping requirements on such advisors. Further, the Commission today, in a separate release, is extending the expiration date of the temporary registration regime to December 31, 2014.[7] This extension will enable municipal advisors that are required to register with the Commission on or after the Effective Date but before the applicable compliance date to continue to register under the temporary registration regime.

The statutory definition of a ''municipal advisor'' is broad and includes persons that may not have been considered to be municipal financial advisors prior to the enactment of the Dodd-Frank Act. Historically, municipal advisors have been largely unregulated.[8] The Commission believes that the information disclosed pursuant to the rules and forms established by the permanent registration regime for municipal advisors will enhance the Commission's oversight of municipal advisors and their activities in the municipal securities markets. The publicly-available online information provided pursuant to these rules and forms should also aid municipal entities and obligated persons in choosing municipal advisors and help provide greater transparency when engaging in transactions or investments with municipal advisors.

The Exchange Act defines the term ''municipal advisor'' to mean a person (who is not a municipal entity or an employee of a municipal entity) that: (1) Provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (2) undertakes a solicitation of a municipal entity.[9] The definition of municipal advisor includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that provide municipal advisory services, unless they are statutorily excluded.[10]

The statutory definition of ''municipal advisor'' explicitly excludes: (1) A broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act of 1933); (2) any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice; (3) any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps; (4) attorneys offering legal advice or providing services of a traditional legal nature; and (5) engineers providing engineering advice.[11]

The Exchange Act defines the term ''municipal financial product'' to mean municipal derivatives, guaranteed investment contracts, and investment strategies.[12] ''Investment strategies'' is defined to include plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.[13]

The Proposal reflected the Commission's preliminary interpretation of the new statutory requirements, based on its understanding at that time of Congressional objectives and intent in adopting Section 975 of the Dodd-Frank Act. The Commission requested comment generally on the Proposal and also requested comment on over 175 specific issues. The Commission received over 1,000 comment letters on the Proposal, representing a wide range of viewpoints, which are discussed throughout this release. Commenters included municipal advisors, municipal entities, broker-dealers, banks, accountants, lawyers, engineers, registered investment advisers, organizations representing industry participants, investors, the Municipal Securities Rulemaking Board, members of Congress, and others.

Commenters generally supported the goals of the Proposal, although many expressed concerns about its breadth and recommended that the Proposal be amended or clarified in certain respects. Major themes in the comments included: (1) Concerns about the proposed treatment of appointed board members and other public officials of municipal entities as advisors; (2)

[1] *See* 15 U.S.C. 78*o*–4(a)(1)(B).

[2] *See, e.g.,* Municipal Securities Rulemaking Board, Unregulated Municipal Market Participants—A Case for Reform, April 2009, *http://www.msrb.org/News-and-Events/Press-Releases/Press-Releases/~/media/Files/Special-Publications/MSRBReportonUnregulatedMarketParticipants_April09.ashx* (''MSRB Study'').

[3] *See* S. Rep. No. 111–176, at 38 (2010).

[4] *See id.*

[5] *See* Section II.C. below and Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (''Temporary Registration Rule Release'').

[6] *See* Section II.D. below and Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) (''Proposal'').

[7] *See* Rule 15Ba2–6T and Securities Exchange Act Release No. 70468 (September 23, 2013) (''Form MA–T Extension Release'').

[8] *See, e.g.,* MSRB Study, *supra* note 2.

[9] *See* 15 U.S.C. 78*o*–4(e)(4)(A).

[10] *See* 15 U.S.C. 78*o*–4(e)(4)(B).

[11] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[12] *See* 15 U.S.C. 78*o*–4(e)(5).

[13] *See* 15 U.S.C. 78*o*–4(e)(3).

concerns about the proposed application to advice on investments of all municipal funds (versus investments associated with proceeds of municipal securities); and (3) potential effects on securities activities of banks for which there are no statutory exclusions from the definition of ''municipal advisor.'' The Commission staff discussed many issues with other U.S. financial regulators, commenters, and interested market participants in devising a final rule that requires registration of parties engaging in municipal advisory activities without unnecessarily imposing additional regulation.

One theme reflected in the statutory exclusions to the definition of a municipal advisor and in the Commission's consideration of additional regulatory exemptions involves an approach that focuses and limits the scope of these exclusions and exemptions based on identified activities (''activities-based exemptions'') rather than on the basis of the status of particular categories of market participants (''status-based exemptions''). This approach aims to ensure that exemptions apply in targeted circumstances to appropriate identified activities. By comparison, a concern with status-based exemptions is that they could provide inappropriate competitive advantages to covered categories of market participants.[14]

In consideration of the views expressed, suggestions for alternatives, and other information provided by commenters, the Commission is adopting the rules with significant modifications from the Proposal to narrow the scope of the registration requirement, including through certain activity-based exemptions from the definition of municipal advisor, and to provide additional guidance to market participants about what constitutes municipal advice and who is required to register as a municipal advisor. Some of the more significant changes made in this adopting release are summarized as follows.

Broad Exemption for Public Officials and Employees of Municipal Entities and Obligated Persons

The Exchange Act excludes municipal entities and employees of municipal entities from the definition of municipal advisor.[15] The Proposal did not extend the exclusion for ''employees of a municipal entity'' to include appointed officials. The Commission received approximately 670 comment letters to the effect that the proposed exclusion for employees of municipal entities was unduly narrow and that it failed to provide sufficient coverage for appointed board members and other public officials associated with municipal entities. The final rule provides a broad exemption from municipal advisor registration for all employees, governing body members, and other officials of municipal entities and obligated persons, to the extent that they act within the scope of their employment or official capacity.[16] The Commission does not expect that the ordinary performance of the duties of an appointed member of a governing body of a municipal entity—such as voting, providing a statement or discussion of views, or asking questions at a public meeting—would cause that individual to be a municipal advisor with respect to the municipal entity on whose board he or she serves.

Limitation to Investments Related to Proceeds of Municipal Securities Instead of All Public Funds

The Exchange Act provides that the term '''investment strategies' *includes* plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments'' (emphasis added).[17] In the Proposal, the Commission proposed to interpret the ''investment strategies'' definition broadly to cover not only the statutorily-identified matters but also plans, programs, or pools of assets that invest any funds held by or on behalf of a municipal entity.

The Commission received approximately 60 comment letters to the effect that the Proposal interpreted the ''investment strategies'' definition too broadly to cover advice to municipal entities regarding plans or programs for the investment of all public funds of municipal entities (rather than investments more narrowly associated with proceeds of municipal securities and the recommendation of and brokerage of municipal escrow arrangements). The Commission has determined to adopt the statutory definition of ''investment strategies,'' but is also adopting an exemption for certain persons that will result in a narrower application of ''investment strategies'' than originally proposed, limiting such strategies to matters relating to the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments, in lieu of all public funds of municipal entities.[18] This more circumscribed approach to ''investment strategies'' has a narrowing effect throughout the municipal advisor registration regime (*e.g.,* many investment advisers and a significant portion of the bank activities identified by commenters will not be subject to municipal advisor registration).

New Tailored Exemption for Banks

The Exchange Act does not exclude banks from the definition of municipal advisor. The Commission received approximately 300 comment letters to the effect that the Proposal did not provide needed exemptions for so-called ''traditional banking'' activities. Most of these comments regarding the impact on banks related to the proposed broad interpretation of the ''investment strategies'' definition. Many commercial banks and banking associations asserted that the Commission's interpretation of ''investment strategies'' was overly broad and would potentially cover traditional banking products and services, such as deposit accounts, cash management products, and loans to municipalities. As a result, according to commenters, banks or bank employees that provide advice regarding such products and services could be considered municipal advisors, adding ''a new layer of regulation on bank products for no meaningful public purpose.''[19]

The narrowing of the application of ''investment strategies'' in the final rule is designed to address the main concerns raised by these commenters.[20] In addition, the final rule provides a new tailored exemption from the definition of municipal advisor for a bank providing advice with respect to the following: (1) Any investments that are held in a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank; (2) any extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account; (3) any funds held in a sweep account; or (4) any investment made by a bank acting in the capacity of an indenture trustee

[14] *See infra* Sections VIII.D.5.b. (discussing alternatives to the exclusions from the definition of municipal advisor) and VIII.D.6.b. (discussing alternatives to the exemptions from the definition of municipal advisor).

[15] *See* 15 U.S.C. 78*o*–4(e)(4)(A).

[16] *See infra* Section III.A.1.c.i.

[17] *See* 15 U.S.C. 78*o*–4(e)(3).

[18] *See infra* Section III.A.1.b.viii.

[19] *See infra* note 876 and accompanying text (discussing comments regarding an exemption for banks from the municipal advisor registration rules).

[20] *See infra* Section III.A.1.c.viii.

or similar capacity (*e.g.,* a bond indenture trustee, paying agent, or municipal escrow agent).

The final rule preserves the municipal advisor registration requirement for banks that engage in municipal advisory activities, such as banks that act as financial advisors to municipal entities in structuring issues of municipal securities. Also, the final rule preserves the municipal advisor registration requirement for banks that provide advice with respect to municipal derivatives.

Advice Standard in General

For purposes of the municipal advisor definition, the Dodd-Frank Act did not specifically define or otherwise provide a general standard to determine what constitutes ''advice'' to a municipal entity or obligated person. The Commission received comments requesting clarification of ''advice'' and suggesting general parameters for defining advice that distinguish between providing general information to a municipal entity and recommending a specific action to a municipal entity. While the Commission believes that the determination of whether a person provides advice to or on behalf of a municipal entity or obligated person depends on all the relevant facts and circumstances, the Commission also believes that additional guidance on the advice standard for purposes of the municipal advisor definition will provide greater clarity regarding the applicability of the municipal advisor registration requirement. Accordingly, the adopted rules provide that advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues).[21]

Exemption for Certain Swap Dealers

The Exchange Act does not exclude swap dealers from the definition of municipal advisor. The Commission received comments suggesting that regulation of swap dealers under the municipal advisor registration regime should be coordinated with other regulatory programs. The Commission recognizes that swap dealers are also subject to the provisions of Title VII of the Dodd-Frank Act,[22] which provide the Commodity Futures Trading Commission (''CFTC'') with authority to register and implement business conduct standards for swap dealers with respect to their interactions with municipal entities and obligated persons that are ''special entities,'' as discussed further below in Section III.A.1.c.vi. The final rules exempt any registered swap dealer to the extent that such dealer recommends a municipal derivative or a trading strategy that involves a municipal derivative, so long as such dealer or associated person is not ''acting as an advisor'' to the municipal entity or obligated person, applying the standards applicable to the parties to such transactions under the existing regulatory regime of the CFTC.[23]

Exemption When There Is an Independent Registered Municipal Advisor

Several commenters suggested that a person providing advice with respect to municipal financial products or the issuance of municipal securities should not be regulated as a municipal advisor if the municipal entity or obligated person is otherwise represented by a municipal advisor. The Commission believes that if a municipal entity or obligated person is represented by a registered municipal advisor, parties to the municipal securities transaction and others who are not registered municipal advisors should be able to provide advice to such municipal entity or obligated person, so long as the responsibilities of each of the parties are clear.

Accordingly, the final rules exempt persons providing advice with respect to municipal financial products or the issuance of municipal securities from the definition of municipal advisor so long as: (1) An independent registered municipal advisor is providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities, is registered pursuant to Section 15B of the Exchange Act and the rules and regulations thereunder, and is not, and within at least the past two years was not, associated with the person seeking to rely on this exemption; (2) such person receives from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor; and (3) such person provides written disclosure to the municipal entity or obligated person that such person is not a municipal advisor and, with respect to a municipal entity, is not subject to the statutory fiduciary duty applicable to municipal advisors under the Exchange Act, and such person provides a copy of such disclosure to the municipal entity's or the obligated person's independent registered municipal advisor.[24]

Exclusion of Individuals From Registration

In the Proposal, the Commission proposed to require registration of all individuals associated with municipal advisory firms who engage in municipal advisory activities, as contrasted with limiting registration to the municipal advisory firms themselves. For reasons further discussed in Sections III.A.2.a. and III.A.3. of this adopting release, the Commission is limiting the registration requirement to municipal advisory firms and sole proprietors.

II. Introduction

A. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[25] The Dodd-Frank Act was enacted, among other things, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[26] With Section 975 of Title IX of the Dodd-Frank Act, Congress amended Section 15B of the Exchange Act[27] to, among other things, make it unlawful for municipal advisors[28] to provide certain advice to, or solicit, municipal entities[29] or certain other persons without registering with the Commission.[30]

[21] *See infra* Section III.A.1.b.i.

[22] *See* Dodd-Frank Act sections 731 *et seq.,* 764 *et seq.*

[23] *See infra* Section III.A.1.c.vi. The Commission also received similar comments regarding security-based swap dealers. As discussed herein, although the Commission is not providing an exemption in the rules as adopted for security-based swap dealers, security-based swap dealers may be eligible for exemption pursuant to another exemption, such as when there is a separate registered municipal advisor, and the Commission may in the future consider whether to provide a comparable exemption by rule. *See id.*

[24] *See infra* Section III.A.1.c.iii.

[25] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[26] *See* Public Law 111–203 Preamble.

[27] 15 U.S.C. 78*o*–4.

[28] *See infra* Section III.A.1. (discussing the term ''municipal advisor'').

[29] *See infra* Section III.A.1.b.ii. (discussing the term ''municipal entity'').

[30] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

1. Overview of Municipal Securities Market

a. Municipal Advisors

As discussed in the Proposal,[31] until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated, and municipal advisors were generally not required to register with the Commission or any other federal, state, or self-regulatory entity with respect to their municipal advisory activities. As discussed below in this section and in the Proposal,[32] some entities that are now subject to registration as municipal advisors pursuant to Section 15B of the Exchange Act and rules or regulations promulgated thereunder currently are subject to regulation by various federal and state regulators in other capacities. These entities include brokers, dealers, municipal securities dealers, investment advisers, and banks. Such regulations, however, generally do not apply specifically to these entities' municipal advisory activities.

Municipal advisors, commonly referred to as ''financial advisors,'' [33] engage in municipal advisory activities in a variety of contexts. With respect to the issuance of municipal securities, municipal advisors (which may include entities registered as brokers, dealers, municipal securities dealers, or investment advisers acting as municipal advisors), among other things, may assist municipal entities in developing a financing plan, assist municipal entities in evaluating different financing options and structures, assist in the selection of other parties to the financing (such as bond counsel and underwriters), coordinate the rating process, ensure adequate disclosure, and/or evaluate and negotiate the financing terms.[34] According to the Municipal Securities Rulemaking Board (''MSRB''), approximately $315 billion (70%) [35] of the municipal debt issued in 2008 was issued with the participation of municipal advisors.[36] The MSRB also stated that participation by municipal advisory firms in the issuance of municipal securities is rising, noting a 63% participation rate in 2006, a 66% participation rate in 2007, and a 70% participation rate in 2008.[37] A study that looked at historical involvement by ''financial advisors'' identified participation rates of approximately 50% in the period from 1984 to 2002.[38]

As discussed in the Proposal,[39] municipal advisors may also engage in municipal advisory activities with respect to municipal financial products.[40] For example, as derivatives—which are municipal financial products—developed in the municipal securities market, some municipal advisory firms began marketing themselves as experts in derivatives. These municipal advisory firms are generally referred to as ''swap advisors.'' [41] Swap advisors may provide advice solely with respect to a municipal derivative transaction or may provide advice in other types of municipal advisory capacities.

Further, municipal advisors may provide advice to municipal entities concerning guaranteed investment contracts and investment strategies.[42] These advisory firms may assist in the investment of proceeds from bond offerings as well as manage other public monies. Such public monies include general and special funds of state and local governments, public pension plans, and other funds dedicated to public programs, such as public transportation, police and fire protection, public health, and public education. In addition, municipal advisors may help state and local governments find and evaluate other advisors that manage public funds and provide other types of services.[43]

Other persons that may be required to register as municipal advisors include those who solicit municipal entities on behalf of brokers, dealers, municipal securities dealers, municipal advisors, and investment advisers. Such solicitation activities are discussed herein.[44]

b. Municipal Entities and Municipal Financial Products

The municipal securities market consists of approximately 44,000 issuers,[45] a diverse group that includes states, their political subdivisions (such as cities, towns, counties, and school districts), and their instrumentalities, authorities, agencies, and special districts. These public bodies are governed by state and local laws, including state constitutions, statutes, city charters, and municipal codes.[46] Such constitutions, statutes, charters, and codes impose on municipal issuers requirements relating to governance, budgeting, accounting, and other financial matters.[47] The governing bodies of municipal issuers are as varied as the types of issuers, ranging from state governments, cities, towns, counties, and school districts, to authorities, agencies, and other special districts.[48]

Municipal securities are issued by government entities to pay for a variety of public projects, to obtain cash flow for other governmental needs, and to provide tax-exempt or taxable financing for non-governmental private projects by acting as a conduit on behalf of private organizations.[49] In 2011, there were over one million different municipal bonds outstanding, totaling $3.7 trillion in principal.[50] Also, there were 13,463 municipal issuances, totaling $355 billion of principal.[51] Further, in 2011, the average daily trading volume for the municipal bond market was $11.3 billion.[52]

Interests offered by college savings plans (''529 Savings Plans'') that comply with Section 529 of the Internal Revenue Code [53] are another type of

[31] *See* Proposal, 76 FR 825.

[32] *See id.*

[33] *See infra* note 36 (referring to municipal advisors as ''financial advisors'').

[34] *See* Jayaraman Vijayakumar and Kenneth N. Daniels, 2006, *The Role and Impact of Financial Advisors in the Market for Municipal Bonds* (''Vijayakumar and Daniels''), Journal of Financial Services Research, 30:43, at 46.

[35] *See* MSRB Study, *supra* note 2, at 1.

[36] *See id.* (referring to municipal advisors as ''financial advisors''). Approximately 43% of the $453 billion of municipal debt issued in 2008 (by par amount of bonds) (or 62% of the $315 billion of municipal debt issued with financial advisors) was issued with the assistance of ''financial advisors'' that were not part of dealer firms regulated by the MSRB. *See id.,* at 2.

[37] *See id.,* at 2.

[38] *See* Arthur Allen and Donna Dudney, May 2010, *Does the Quality of Financial Advice Affect Prices?* The Financial Review 45: 389 (''Allen and Dudney'').

[39] *See* Proposal, 76 FR 825.

[40] *See infra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

[41] *See* MSRB Study, *supra* note 35.

[42] *See infra* Sections III.A.1.b.vi. and III.A.1.b.viii. (discussing the terms ''guaranteed investment contracts'' and ''investment strategies,'' respectively).

[43] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) (''Political Contributions Final Rule'').

[44] *See infra* Section III.A.1.b.x.

[45] *See* Commission Report on the Municipal Securities Market, 1 (July 31, 2012), available at *http://sec.gov/news/studies/2012/munireport073112.pdf* (''2012 Report on the Municipal Securities Market'').

[46] *See* American Bar Association, Disclosure Roles of Counsel in State and Local Government Securities Offerings 1 (Third Edition, 2009) (''Disclosure Roles of Bond Counsel'').

[47] *See id.,* at 2.

[48] *See id.,* at 78.

[49] The Internal Revenue Code delineates the purposes for which tax-exempt municipal bonds may be issued for the benefit of organizations other than states and local governments, *i.e.,* conduit borrowers. *See* 26 U.S.C. 142–145, 1394.

[50] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 5. In 2011, there were fewer than 50,000 different corporate bonds, totaling $11.5 trillion in principal (this figure includes foreign bonds). *See id.* There were also $22.5 trillion of corporate equities outstanding. *See id.*

[51] *See id.,* at 6.

[52] *See id.,* at 21. Compare this to the corporate bond market, which in 2011 had an average daily trading volume of $20.6 billion. *See id.*

[53] *See* 26 U.S.C. 529.

municipal security. 529 Savings Plans involve offerings of interests in state tuition programs and qualified savings plans that are public instrumentalities of the particular state, and provide tax advantages designed to encourage saving for future college costs.[54] 529 Savings Plan assets have increased from approximately $9 billion in 2000 to approximately $190 billion in 2012, and the number of 529 Savings Plan accounts has increased from approximately 1.3 million in 2000 to approximately 11 million in 2012.[55]

A person that sells interests in 529 Savings Plans generally must be registered as a broker, dealer, or municipal securities dealer and comply with applicable MSRB rules.[56] 529 Savings Plans are also relevant in the context of municipal advisor regulation, because an issuance of interests in 529 Savings Plans is an issuance of municipal securities.[57] Further, 529 Savings Plans may engage in transactions involving municipal financial products and may also seek advice in connection with such products or issuances.[58] Moreover, third parties seeking to advise 529 Savings Plans may solicit such plans for that purpose.[59]

Public pension plans may also engage in transactions in municipal financial products and seek advice in connection with such transactions. Third parties may solicit these public pension plans on behalf of firms seeking to provide advice to these plans.[60] According to the 2011 Census Bureau survey, there were 3,418 state- and locally-administered pension systems in 2011.[61] As of the first quarter of 2013, public pension plans had over $3 trillion of assets and represented approximately 30 percent of all U.S. pension assets.[62]

In addition to public pension plans and 529 Savings Plans, state and local government agencies also maintain other pools of assets, including general funds and other special funds. Governmental entities generally invest such funds in a combination of individualized investments, investment agreements, and local government investment pools (''LGIPs'').[63]

Historically, the over-the-counter derivatives markets have been relatively opaque because of their privately negotiated, bilateral nature and the limited availability of transaction data such as prices and volumes.[64] Accordingly, there is currently no comprehensive data on how many municipal issuers are active in the $162 trillion interest-rate swap market,[65] although reported estimates of the size of the municipal derivatives market range from $100 billion to $300 billion annually in notional principal amount.[66] Further, estimates of the number of municipal issuers that have engaged in derivative transactions also vary. Some anecdotal evidence suggests a relatively wide use of municipal derivatives in recent years. For instance, a 2008 review of Pennsylvania Department of Community and Economic Development records indicated that 185 school districts, towns, and counties in Pennsylvania have entered into derivative transactions since 2003, when the state's law was explicitly changed to allow for such transactions.[67] Other estimates, however, have pointed to a less widespread use of derivatives among municipal issuers. For example, a 2007 study by Standard & Poor's identified 750 municipal issuers that engaged in interest rate swaps.[68] In addition, in October 2009, Moody's undertook a review of the state and local governments for which Moody's provides ratings and identified 500 entities with outstanding interest rate swaps.[69] Moody's also estimated that Pennsylvania issuers accounted for 22% of all municipal derivative transactions, suggesting that a broad participation in derivative transactions by municipal entities in Pennsylvania did not necessarily translate into a broad participation by municipal entities nationwide.[70] Since 2008, the use of derivatives by municipal entities has declined, and many municipal entities have terminated existing interest rate swaps.[71]

2. Historical Regulation of Municipal Securities and Municipal Advisors

a. Municipal Securities Market

As discussed in the Proposal,[72] the Securities Act of 1933 (''Securities

[54] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 8.

[55] *See* College Savings Plans Network 529 Report (March 2013), available at *http://www.collegesavings.org/includes/pdfs/March%202013%20529%20Report%20Final.pdf* and Investment Company Institute, 529 Plan Program Statistics, Fourth Quarter 2012, available at *http://www.ici.org/research/stats/529s/529s_12_q4.*

[56] *See, e.g.,* MSRB Notice 2002–19 (May 14, 2002) (Application of Fair Practice and Advertising Rules to Municipal Fund Securities).

[57] *See* MSRB, 529 Plan Basics, available at *http://emma.msrb.org/EducationCenter/FAQs.aspx?topic=PlanBasics* and MSRB, Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001), available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Definitional/Rule-D-12.aspx?tab=2#_4B905EF1-5F85-4D2E-B27C-6B94EF405F47* (citing Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to Diane G. Klinke, General Counsel, MSRB, dated February 26, 1999, in response to letter from Diane G. Klinke, General Counsel, MSRB, to Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, dated June 2, 1998).

[58] *See* Political Contributions Final Rule, *supra* note 43, at 41044–46.

[59] *See id.,* at 41019.

[60] *See id.*

[61] *See* U.S. Census Bureau, *Annual Survey of Public Pensions: State- and Locally-Administered Defined Benefit Data Summary Report: 2011* (August 2013), available at *http://www2.census.gov/govs/retire/2011summaryreport.pdf.*

[62] *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Table L.117 (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[63] According to a 2009 article, 45 states have LGIPs with assets totaling more than $250 billion. *See* Jeff Pentages, *Local Government Investment Pools and the Financial Crisis: Lessons Learned,* October 2009, Government Finance Review 25. As of the first quarter of 2013, state and local governments had approximately $2.1 trillion dollars in total financial assets. *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Table L.104 (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[64] The Dodd-Frank Act, however, will require more public reporting of derivative transactions in the future. For example, the CFTC has adopted rules to implement a framework for the real-time public reporting of swap transactions and pricing data for swap transactions. *See* 77 FR 1182 (January 9, 2012). Moreover, the Dodd-Frank Act requires the Commission to adopt, and the Commission has proposed, rules to provide for the reporting of security-based swaps information to registered security-based swap data repositories or to the Commission and the public dissemination of security-based swap transaction, volume, and pricing information. *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75208 (December 2, 2010).

[65] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 91.

[66] *See* MSRB Study, *supra* note 35, at 10.

[67] *See* Martin Z. Braun, *Deutsche Bank Swap Lures County as Budgets Crumble,* Bloomberg (Nov. 26, 2008), available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aUYLG7W1nGpM.*

[68] *See* Joe Mysak, *California Declares War on State Bond Short-Sellers,* Bloomberg (Apr. 27, 2010), available at *http://www.bloomberg.com/news/2010-04-28/california-declares-war-on-short-sellers-of-bonds-commentary-by-joe-mysak.html.*

[69] *See* Joe Mysak, *Swaps Nightmares Become Real for Amateur Financiers,* Bloomberg (Dec. 15, 2009), available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aVCDZ6c1PYC0.*

[70] *See id.*

[71] *See, e.g.,* William Selway, *Derivatives Sold to Governments Get Dodd-Frank Disclosure: One Year Later,* Bloomberg (Jul. 18, 2011), available at *http://www.bloomberg.com/news/2011-07-18/derivatives-sold-to-governments-get-dodd-frank-disclosure-one-year-later.html*; Michael McDonald, *Wall Street Collects $4 Billion From Taxpayers as Swaps Backfire,* Bloomberg (Nov. 10, 2010), available at *http://www.bloomberg.com/news/2010-11-10/wall-street-collects-4-billion-from-taxpayers-as-swaps-backfire.html*; Transcript of the U.S. Securities and Exchange Commission Birmingham Field Hearing on the State of the Municipal Securities Market, at 239–240 and 243.

[72] *See* Proposal, 76 FR 826.

Act'') [73] and the Exchange Act [74] were both enacted with exemptions for municipal securities, except for the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.[75] In the early 1970s, the municipal securities market was still relatively small.[76] Up until that time, the standard issue was usually a general obligation bond, with fairly standard features, and the typical participants were banks, underwriters, and bond counsel.[77]

In 1975, Congress granted new authority to regulate intermediaries in the market for municipal securities. As part of the Securities Acts Amendments of 1975 (''1975 Amendments''), Congress created a limited regulatory scheme for the municipal securities market at the federal level.[78] That scheme included mandatory registration with the Commission for brokers, dealers, and municipal securities dealers involved in effecting municipal securities transactions,[79] and gave the Commission broad rulemaking and enforcement authority over such persons.[80] In addition, the 1975 Amendments authorized the creation of the MSRB and granted it authority to promulgate rules concerning transactions in municipal securities by brokers, dealers, and municipal securities dealers. The 1975 Amendments, however, did not create a regulatory scheme for, or impose any new requirements on, municipal issuers. Rather, the 1975 Amendments expressly prohibited the Commission and the MSRB from requiring municipal securities issuers, either directly or indirectly, to file any application, report, or document with the Commission or the MSRB prior to any sale by the issuer.[81]

As noted above and in the Proposal, pursuant to the 1975 Amendments, unless an exception or exemption applies, all brokers, dealers, and municipal securities dealers that underwrite or trade municipal securities are required to register with the Commission.[82] All brokers, dealers, and municipal securities dealers that engage in municipal securities transactions also must register with the MSRB and comply with its rules.[83] Furthermore, unless it is a bank, each broker, dealer, and municipal securities dealer that engages in municipal securities transactions must be a member of FINRA.[84] FINRA is required to examine brokers, dealers, and municipal securities dealers for compliance with the Exchange Act, rules and regulations thereunder, and MSRB rules.[85] Bank municipal securities dealers are examined by their appropriate regulatory agencies.[86]

Since 1975, the municipal securities market has grown and evolved significantly to encompass a wide variety of bond structures [87] and credit enhancements. The variety of financing options has led municipal entities to increasingly rely on external advisors to assist them in deciding among the structural choices for their debt and to help them negotiate with a variety of specialized intermediaries.[88] For example, municipal bond insurance was first introduced in 1971.[89] The introduction of variable rate municipal bonds in the early 1980s increased the use of letter of credit-supported municipal bonds.[90] In 1988, auction rate securities were introduced into the municipal market.[91] In addition, derivative products have been utilized by municipal securities issuers beginning generally with interest rate swap transactions in the mid-1980s. The derivatives utilized since then have become more complex.[92]

b. Municipal Advisors

As discussed above and in the Proposal,[93] many market participants advise municipal entities about the issuance of municipal securities and municipal financial products. Historically, however, these participants have been largely unregulated with respect to their municipal advisory activities. In addition, Commission staff has taken the position that financial advisors that limit their advisory activities solely to advising municipal issuers as to the structuring of their

[73] 15 U.S.C. 77a *et seq.*

[74] 15 U.S.C. 78a *et seq.*

[75] *See, e.g.,* Securities Act Section 3(a)(2) (15 U.S.C. 77c(a)(2)); Securities Act Section 12(a)(2) (15 U.S.C. 77*l*(a)(2)); Exchange Act Section 3(a)(12) (15 U.S.C. 78c(a)(12)); Exchange Act Section 3(a)(29) (15 U.S.C. 78c(a)(29)).

[76] There were $235.4 billion of municipal bonds outstanding in 1975 after an issuance of $58 billion in that year. *See* The Bond Buyer's Municipal Finance Statistics, 1975 (June 1976). At the end of 1976, there were $323 billion of corporate bonds outstanding, which was about one third more than state and local government securities and about half as much as U.S. Treasury securities. *See* Federal Reserve Bank of New York, the Market for Corporate Bonds (Autumn 1977). As of the first quarter of 2013, there were approximately $3.7 trillion of municipal bonds outstanding, $13 trillion of corporate and foreign bonds outstanding, and $12 trillion of Treasury securities outstanding. *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Tables L.209, 211 and 212, (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[77] *See* Ann Judith Gellis, *Municipal Securities Market: Same Problems—No Solutions,* 21 Del. J. Corp. L. 427, 428 (1996).

[78] *See, e.g.,* Exchange Act Sections 15(c)(1), 15(c)(2), 15B(c)(1), 15B(c)(2), 17(a), 17(b), and 21(a)(1) (15 U.S.C. 78*o*(c)(1), 78*o*(c)(2), 78*o*–4(c)(1), 78*o*–4(c)(2), 78q(a), 78q(b), and 78u(a)(1)).

[79] The Exchange Act defines a ''municipal securities dealer'' as any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise. *See* 15 U.S.C. 78c(a)(30).

[80] *See supra* note 78. Enforcement activities regarding municipal securities dealers must be coordinated by the Commission, the Financial Industry Regulatory Authority (''FINRA''), and the appropriate bank regulatory agency. *See* Exchange Act Sections 15B(c)(6)(A), 15B(c)(6)(B), and 17(c) (15 U.S.C. 78*o*–4(c)(6)(A), 78*o*–4(c)(6)(B), 78q(c)).

[81] Section 15B(d)(1) of the Exchange Act (commonly known as the ''Tower Amendment'') provides that ''[n]either the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.'' 15 U.S.C. 78*o*–4(d)(1).

[82] *See* 15 U.S.C. 78*o*–4(a)–(b). *See also* Proposal, 76 FR 827.

[83] *See* 15 U.S.C. 78*o*–4(c)(1). *See also* MSRB, Registration Guidelines for Regulated Entities, available at *http://www.msrb.org/Rules-and-Interpretations/~/media/Files/User-Manuals/GuidelinesforRegistration.ashx.*

[84] *See* 15 U.S.C. 78*o*(b)(8) and 78*o*–4(a).

[85] *See* 15 U.S.C. 78*o*–4(c)(7).

[86] The term ''appropriate regulatory agency,'' when used with respect to a municipal securities dealer, is defined in Section 3(a)(34)(A) of the Exchange Act. 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers. *See* 15 U.S.C. 78q(b)(1).

[87] Although it is helpful to think of municipal securities as either (1) general obligation bonds backed by the ''full faith and credit,'' or an unlimited taxing power of the issuing entity, or (2) revenue bonds, these general categories mask a broad range of diversity and complexity in the underlying security for municipal bonds. *See* Gary Gray and Patrick Cusatis, Municipal Derivative Securities—Uses and Valuation 21 (1995) (discussion of revenue bonds). *See also* Disclosure of Bond Counsel, *supra* note 46, at 54–55 (discussion of conduit bonds).

[88] *See* Vijayakumar and Daniels, *supra* note 34, at 43–44.

[89] *See* Gray and Cusatis, *supra* note 87, at 30–31.

[90] *See id.* As the Commission noted in the Proposal, although the use of letters of credit and bond insurance has declined since 2008, these forms of credit enhancement remain an option for municipal entities to consider when issuing municipal securities. *See* 76 FR 827, note 48. *See also* 2012 Report on the Municipal Securities Market, *supra* note 45, at 10–11.

[91] *See* Gray and Cusatis, *supra* note 87, at 41.

[92] *See id.,* at 49. Municipal derivatives must often be structured in accordance with the provisions of the tax code and other laws that apply to the issuance of tax-exempt financings. *See* David L. Taub, *Understanding Municipal Derivatives,* August 2005, Government Finance Review 21. The most common use for derivatives in the municipal securities market is the use of interest rate swaps for new, anticipated, or outstanding debt. *See id.*

[93] *See* Proposal, 76 FR 827.

financings may not need to register as investment advisers.[94]

Approximately fifteen states, however, as well as a number of municipalities, have rules relating to the conduct of some municipal advisors (generally, financial advisors and swap advisors). For example, these governmental entities have enacted pay-to-play prohibitions that range from broad proscriptions relating to all state and local contracts to narrowly defined rules that apply only to specific situations.[95] Some state and local entities also require certain types of municipal advisors to disclose actual or apparent conflicts of interest.[96]

B. Dodd-Frank Act and the Need for Oversight

As discussed in more detail below and in the Proposal,[97] the Dodd-Frank Act amended the Exchange Act to require municipal advisors to register with the Commission.[98] In addition, the Exchange Act, as amended by the Dodd-Frank Act, grants the MSRB regulatory authority over municipal advisors [99] and imposes a fiduciary duty on municipal advisors when advising municipal entities.[100]

The Commission believes that regulation of municipal advisors is in the public interest and will improve the protection of municipal entities, including the protection of municipal entities in their capacities as investors, and those who invest in municipal securities. As noted above,[101] according to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' [102] Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' [103]

A number of actions brought by the Commission against municipal market participants also highlight the abuses in the municipal securities market. For example, the Commission brought a number of actions alleging payments by J.P. Morgan Securities Inc. (now J.P. Morgan Securities LLC) to local firms whose principals or employees were friends of public officials of Jefferson County, Alabama in connection with a $5 billion bond underwriting and interest rate swap agreement business.[104] In addition, the Commission has settled several actions against major financial institutions for their role in a series of complex, wide-ranging bid-rigging schemes involving derivatives utilized by municipalities and underlying obligors as reinvestment products.[105] Further, in August 2011, the Commission filed a civil injunctive action against Stifel, Nicolaus & Co., Inc. and its former Senior Vice President, David Noack, for allegedly violating federal securities laws in connection with a $200 million sale of highly leveraged and unsuitably risky derivatives to five Wisconsin school districts.[106] According to the complaint, Stifel and Noack misrepresented the risks of the investments and failed to disclose material facts to the school districts.

C. Interim Final Temporary Rule 15Ba2–6T and Form MA–T

The registration requirement for municipal advisors established by the Dodd-Frank Act became effective on October 1, 2010.[107] To enable municipal advisors to temporarily satisfy the registration requirement, and to make relevant information available to the public and municipal entities, the Commission adopted interim final temporary Rule 15Ba2–6T [108] on September 1, 2010.[109] Pursuant to Rule 15Ba2–6T, a municipal advisor may temporarily satisfy the statutory registration requirement by submitting certain information electronically

[94] *See* Division of Investment Management: Staff Legal Bulletin No. 11, Applicability of the Advisers Act to Financial Advisors of Municipal Securities Issuers (Sep. 19, 2000), available at *http://www.sec.gov/interps/legal/slbim11.htm* (''Staff Legal Bulletin No. 11'') (explaining staff's views as to the circumstances under which financial advisors (a) may be investment advisers, and (b) may give advice to issuers of municipal securities regarding the investment of offering proceeds without being deemed to be investment advisers).

[95] *See* MSRB Study, *supra* note 35, at 4.

[96] *See id.,* at 6.

[97] *See, generally,* Proposal, 76 FR 824.

[98] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[99] *See* 15 U.S.C. 78*o*–4(b).

[100] *See* 15 U.S.C. 78*o*–4(c). Specifically, Exchange Act Section 15B(c)(1) provides that: ''A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.'' 15 U.S.C. 78*o*–4(c)(1). The Commission notes that a number of commenters discussed the applicability of fiduciary duty to municipal advisors. This adopting release generally does not address those comments, as this release generally concerns the registration of municipal advisors. The Commission notes, however, that the fiduciary duty of a municipal advisor, as set forth in Exchange Act Section 15B(c)(1), extends only to its municipal entity clients. The Exchange Act does not impose a fiduciary duty with respect to advice to obligated persons. *See infra* note 202 and accompanying text (discussing the definition of the term ''obligated person'').

[101] *See supra* notes 3–4 and accompanying text.

[102] *See* S. Rep. No. 111–176, at 38 (2010).

[103] *See id.*

[104] The Commission had alleged that J.P. Morgan Securities engaged in an improper payment scheme in connection with obtaining municipal securities underwriting and interest swap agreement business from Jefferson County, Alabama. The Commission had alleged that J.P. Morgan Securities incorporated certain of the costs of these payments into higher swap interest rates that it charged the County, directly increasing the swap transaction costs to the County and its taxpayers. J.P. Morgan Securities was censured, paid a $25 million civil penalty, made a $50 million payment to the County, and forfeited more than $647 million in claimed termination fees under the swaps. *See In the Matter of J.P. Morgan Securities Inc.,* Securities Exchange Act Release No. 60928 (Nov. 4, 2009) (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order). *See also SEC* v. *Larry P. Langford, et al.,* Litigation Release No. 20545 (Apr. 30, 2008) and *SEC* v. *Charles E. LeCroy and Douglas W. MacFaddin,* Litigation Release No. 21280 (Nov. 4, 2009) (charging an Alabama local government official, a bond dealer and J.P. Morgan Securities employees with conducting undisclosed payment schemes in connection with awarding Jefferson County municipal bond and swap agreement business).

[105] Collectively, the five financial institutions, Banc of America Securities LLC, UBS Financial Services Inc., J.P. Morgan Securities LLC, Wachovia Bank, N.A., and GE Funding Capital Market Services, Inc., paid $205 million to settle the Commission actions, all of which was distributed to hundreds of harmed municipal entities or borrowers, located in 47 states, the District of Columbia, Guam, and Puerto Rico, as well as an additional $540 million to settle parallel proceedings by other federal and state authorities for their misconduct. *See In the Matter of Banc of America Securities,* Securities Exchange Act Release No. 63451 (Dec. 7, 2010); *SEC* v. *UBS Financial Services Inc.,* Civil Action No. 11–CV–2885 (D.N.J. May 4, 2011); *SEC* v. *J.P. Morgan Securities LLC.,* Civil Action No. 11–CV–3877 (D.N.J. Jul. 7, 2011); *SEC* v. *Wachovia Bank, N.A.,* Civil Action No. 2:11–cv–07135–WJM–MF (D.N.J. Dec. 8, 2011); *SEC* v. *GE Funding Capital Market Services, Inc.,* Civil Action No. 2:11–cv–07465–WJM–MF (D.N.J. Dec. 23, 2011).

[106] *See SEC* v. *Stifel, Nicolaus & Co., Inc. and David W. Noack,* Civil Action No. 2:11–cv–00755–AEG (E.D. Wisc. Aug. 10, 2011). The Commission also charged, and settled with, RBC Capital Markets, LLC for their involvement in these sales. According to the order instituting administrative and cease-and-desist proceedings, RBC negligently recommended and sold these investments, despite significant internal concerns about the suitability of the investments for municipalities like the school districts. Moreover, RBC's marketing materials failed to explain adequately the risks associated with the investments. *See In the Matter of RBC Capital Markets, LLC,* Securities Exchange Act Release No. 65404 (Sept. 27, 2011).

[107] *See* Section 975(i) of the Dodd-Frank Act.

[108] 17 CFR 240.15Ba2–6T.

[109] *See* Temporary Registration Rule Release, *supra* note 5.

through the Commission's public Web site on Form MA–T.[110]

Form MA–T requires a municipal advisor to indicate the purpose for which it is submitting the form (*i.e.,* initial application, amendment, or withdrawal), provide certain basic identifying and contact information concerning its business, indicate the nature of its activities, and supply information about its disciplinary history and the disciplinary history of its associated municipal advisor professionals.[111]

As originally adopted, the interim final temporary rule provided that, unless rescinded, a municipal advisor's temporary registration by means of Form MA–T would expire on the earlier of: (1) The date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule establishing a permanent registration regime; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) December 31, 2011.[112] The temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime, which, as discussed below, the Commission is adopting today. On December 21, 2011, the Commission extended the expiration date of the temporary registration regime to September 30, 2012, in order to continue to provide a method for municipal advisors to temporarily satisfy the statutory registration requirement.[113] On September 21, 2012, the Commission further extended the expiration date of the temporary registration regime to September 30, 2013.[114] Today, in a separate release, the Commission is extending the expiration date of the temporary registration regime to December 31, 2014.[115] This extension will enable municipal advisors that are required to register with the Commission on or after the Effective Date but before the applicable compliance date to continue to register under the temporary registration regime.

D. Proposal To Establish a Registration Regime for Municipal Advisors

In light of the requirements of Section 975 of the Dodd-Frank Act, and in anticipation of the expiration of Rule 15Ba2–6T, on December 20, 2010, the Commission proposed Rules 15Ba1–1 to 15Ba1–7 under the Exchange Act and Forms MA, MA–I, MA–W, and MA–NR to establish a permanent registration regime for all persons meeting the definition of municipal advisor, including those persons currently registered on Form MA–T.[116] The Proposal was published for comment in the **Federal Register** on January 6, 2011.[117]

In response to the Proposal, the Commission received over 1,000 unique comment letters from broker-dealers, investment advisers, individuals, banks, municipal entities, attorneys, engineers, and other market participants.[118] In general, commenters supported the Proposal's overarching goal to establish a permanent registration regime for municipal advisors. As discussed further below, however, many commenters recommended that the Proposal be modified or clarified in certain respects.

The Commission has carefully considered these comments and is adopting Rules 15Ba1–1 to 15Ba1–8 and 15Bc4–1 under the Exchange Act and Forms MA, MA–I, MA–W, and MA–NR, with revisions as appropriate. In discussing these rules and forms, the Commission highlights and addresses below commenters' main issues, concerns, and suggestions.

The Commission believes that the information required to be disclosed pursuant to the new rules and forms will enhance the Commission's oversight of municipal advisors and their activities in the municipal securities market. Moreover, the Commission believes the information provided pursuant to these rules and forms will aid municipal entities and obligated persons in choosing municipal advisors and engaging in transactions or investments with municipal advisors.

III. Discussion

Section 15B(a)(1) of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor[119] to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.[120] Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[121]

Consistent with the requirements of the Dodd-Frank Act, as discussed in detail below, the Commission is adopting new rules and forms that establish a Commission registration regime for municipal advisors, which the Commission believes is necessary and appropriate in the public interest and will improve the protection of municipal entities and investors in municipal securities.

A. Rules for the Registration of Municipal Advisors

1. Rule 15Ba1–1: Definition of ''Municipal Advisor'' and Related Terms

a. Statutory Definition of ''Municipal Advisor''

Section 15B(e)(4)(A) of the Exchange Act,[122] as amended by the Dodd-Frank Act, defines the term ''municipal advisor'' to mean a person (who is not a municipal entity[123] or an employee of

[110] 17 CFR 249.1300T. A municipal advisor that completes the temporary registration form and receives confirmation from the Commission that the form was filed is temporarily registered for purposes of Section 15B. As of March 31, 2013, there were approximately 1,130 Form MA–T registrants.

[111] *See* Temporary Registration Rule Release, *supra* note 5, for a full description of the requirements of Form MA–T.

[112] *See* Temporary Registration Rule Release, 75 FR 54471.

[113] *See* Securities Exchange Act Release No. 66020 (December 21, 2012), 76 FR 80733 (December 27, 2011).

[114] *See* Securities Exchange Act Release No. 67901 (September 21, 2012), 77 FR 59061 (September 26, 2012). As extended, all temporary municipal advisor registrations will expire on the earlier of: (1) The date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) on September 30, 2013. *See* 17 CFR 240.15Ba2–6T(e).

[115] *See* Rule 15Ba2–6T and Form MA–T Extension Release, *supra* note 7.

[116] *See* Proposal, 76 FR 824.

[117] *See id.*

[118] *See http://www.sec.gov/comments/s7-45-10/s74510.shtml.* The Commission has also considered the comment letters that were submitted in response to the publication of the Temporary Registration Rule Release. *See http://sec.gov/comments/s7-19-10/s71910.shtml* (comments received on the Temporary Registration Rule Release).

[119] *See infra* Section III.A.1. (discussing the term ''municipal advisor'').

[120] *See* 15 U.S.C. 78*o*–4(a)(1)(B). For a discussion of the terms ''municipal entity,'' ''obligated person,'' ''municipal financial products,'' and ''solicitation of a municipal entity or obligated person,'' *see infra* Section III.A.1.b.

[121] *See* 15 U.S.C. 78*o*–4(a)(2).

[122] 15 U.S.C. 78*o*–4(e)(4)(A).

[123] *See infra* Section III.A.1.b.ii. (discussing the term ''municipal entity'').

a municipal entity [124]) that (i) provides advice to or on behalf of a municipal entity or obligated person [125] with respect to municipal financial products [126] or the issuance of municipal securities,[127] including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) undertakes a solicitation of a municipal entity.[128] As discussed in the Proposal,[129] the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. Specifically, the definition of a municipal advisor includes ''financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors'' [130] that engage in municipal advisory activities.[131]

The statutory definition of municipal advisor includes distinct groups of professionals that offer different services and compete in distinct markets. As noted in the Proposal, the three principal types of municipal advisors are: (1) financial advisors, including, but not limited to, brokers, dealers, and municipal securities dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; [132] (2) investment advisers that advise municipal entities on the investment of public monies, including the proceeds of municipal securities; [133] and (3) third-party marketers and solicitors.

Relevant exclusions from the definition of a municipal advisor also limit the scope of the three types of municipal advisors. The statutory definition of municipal advisor explicitly excludes ''a broker, dealer, or municipal securities dealer serving as an underwriter . . ., attorneys offering legal advice or providing services that are of a traditional legal nature, [and] engineers providing engineering advice[.]'' [134] Further, the statutory definition of municipal advisor excludes ''any investment adviser registered under the Investment Advisers Act of 1940 [(''Investment Advisers Act'')], or persons associated with such investment advisers who are providing investment advice'' and ''any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps[.]'' [135] As discussed more fully below in Section III.A.1.c., the Commission also proposed Rule 15Ba1–1(d)(2), and is adopting with modifications as Rules 15Ba1–1(d)(2) and 15Ba1–1(d)(3) a definition of ''municipal advisor'' that interprets those exclusions and provides other activity-based (but not status-based) exemptions.

The Commission also noted in the Proposal that, in defining the term municipal advisor in Exchange Act Section 15B(e)(4), Congress did not distinguish between persons who are compensated for providing advice and those who are not. Accordingly, as explained in the Proposal, the Commission believes compensation for providing advice with respect to municipal financial products or the issuance of municipal securities should not factor into the determination of whether a person must register with the Commission as a municipal advisor.[136] However, as clarified in this release, whether or not a person would have to register as a municipal advisor in connection with solicitation of a municipal entity or obligated person would depend upon whether such person receives compensation (direct or indirect).[137]

b. Interpretation of the Term ''Municipal Advisor''; Definition of Related Terms

As noted above, Exchange Act Section 15B(e)(4) defines the term ''municipal advisor'' to mean, in part, a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or (ii) undertakes a solicitation of a municipal entity or obligated person.[138] The Commission discusses below the terms ''municipal entity,'' ''obligated person,'' ''municipal financial products,'' and ''solicitation of a municipal entity or obligated person'' as well as other terms relating to the definition of municipal advisor.[139] Rule 15Ba1–1(d), as proposed [140] and adopted, provides that the term ''municipal advisor'' has the same meaning as in Exchange Act Section 15B(e)(4),[141] and, as discussed in Section III.A.1.c., provides certain exclusions and exemptions. For the purposes of clarity, however, Rule 15Ba1–1(d) as adopted also includes several non-substantive and organizational changes. For example, it: (1) incorporates in Rule 15Ba1–1(d)(1) the language of the statutory definition, rather than cross referencing the statute; (2) sets forth in Rule 15Ba1–1(d)(2) the statutory exclusions from the definition, as interpreted by the Commission; and (3) sets forth in Rule 15Ba1–1(d)(3) certain exemptions.[142]

In certain of the rules and forms that the Commission is adopting with respect to the registration of municipal advisors, the Commission uses the term ''municipal advisory activities'' to refer to the activities that would generally require a person to register as a municipal advisor. In this regard, the Commission is adopting, substantially as proposed, a definition of the term ''municipal advisory activities'' with minor clarifying modifications. As

[124] *See infra* Section III.A.1.c.i. (discussing the Commission's interpretation of the exclusion for employees of a municipal entity from the definition of the term ''municipal advisor'' and a parallel exemption for employees of obligated persons).

[125] *See infra* Section III.A.1.b.iii. (discussing the term ''obligated person'').

[126] *See infra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

[127] *See infra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities'').

[128] *See infra* Section III.A.1.b.x. (discussing the term ''solicitation of a municipal entity or obligated person'').

[129] *See* Proposal, 76 FR 828.

[130] *See* 15 U.S.C. 78*o*–4(e)(4).

[131] *See infra* note 143 and accompanying text (discussing the definition of ''municipal advisory activities'').

[132] *See* Proposal, 76 FR 829. For clarity, the Commission notes that financial advisors as referred to herein also include swap advisors, including some that are registered with the CFTC or the SEC in other capacities, that provide advice to municipal entities on their use of municipal financial products.

[133] *See infra* Section III.A.1.b.iv. (discussing the term ''proceeds of municipal securities'').

[134] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[135] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[136] *See* Proposal, 76 FR 832, note 113 and accompanying text.

[137] *See infra* note 409 and accompanying text.

[138] *See* 15 U.S.C. 78*o*–4(e)(4). As noted in the Proposal, the Commission interprets the definition of ''municipal advisor'' to include the solicitation of a municipal entity or obligated person, because, as noted in the Proposal, the definition of municipal advisor under Exchange Act Section 15B(e)(4)(A) means, in part, a person that ''undertakes a solicitation of a municipal entity,'' and in defining the phrase ''solicitation of a municipal entity,'' Exchange Act Section 15B includes within that phrase, ''or obligated person.'' Also, Exchange Act Section 15B(a)(1)(B) includes solicitations of obligated persons. *See* Proposal, 76 FR 831, note 102 and accompanying text.

See also Rule 15Ba1–1(d)(1)(i), which makes clear in the definition of ''municipal advisor'' that the Commission interprets the term ''municipal advisor'' to include persons that undertake solicitation of a municipal entity *or* obligated person.

[139] The Commission discusses the statutory exclusion for ''an employee of a municipal entity,'' along with other exclusions and exemptions from the definition of ''municipal advisor,'' in Section III.A.1.c. below.

[140] *See* proposed Rule 15Ba1–1(d)(1).

[141] 15 U.S.C. 78*o*–4(e)(4).

[142] *See* Rule 15Ba1–1(d). To the extent the Commission's exemptions or interpretations of the exclusions differ substantively from the Proposal, those differences are discussed in detail below.

adopted, ''municipal advisory activities'' means ''(1) [p]roviding advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (2) [s]olicitation of a municipal entity or obligated person.'' [143] The Commission notes, for example, that advice to a municipal entity about whether to issue municipal securities would be ''municipal advisor activity.''

Additionally, as discussed more fully below, in response to comments received on the Proposal and to provide additional clarity, the Commission is adopting rule text to provide guidance on the term ''advice.'' The Commission also notes, as mentioned above and explained in more detail below, that the definitions of ''municipal advisor'' and related terms that it is adopting today include several non-substantive, clarifying changes designed to reorganize and simplify the rule, including using defined terms, where possible, and providing greater clarity as to which statutory standards are being incorporated into the Commission's rules, the Commission's interpretation of such standards, and any exemptions the Commission is providing with these rules.

i. Advice Standard in General

In the Proposal and as noted above, the Commission defined the term ''municipal advisory activities,'' which includes certain advice to or on behalf of a municipal entity or obligated person,[144] and addressed the scope of activities that would require a person to register as a municipal advisor. The Commission discussed the scope of such activities through its proposed interpretation of the definition of ''municipal advisor,'' which included guidance on the particular statutory exclusions and exemptions therefrom.[145]

In the Proposal, the Commission requested comment on its interpretation of the definition of ''municipal advisor'' and related terms, and particularly sought comment on whether any of its interpretations should be in any way modified or clarified.[146] The Commission also requested comment on whether its interpretation of certain exclusions from the definition of ''municipal advisor'' should be narrowed or expanded to exclude or include various activities.[147] More specifically, the Commission requested comment on whether it should exclude the following persons from the definition of municipal advisor: (1) An entity that provides to clients investment advice, such as research information and generic trade ideas or commentary that does not purport to meet the needs or objectives of specific clients, and is provided to a municipal entity as part of its ongoing ordinary communications; and (2) a broker-dealer that provides to a municipal entity a list of securities meeting specified criteria that are readily available in the marketplace, but without making a recommendation as to the merits of any investment particularized to the municipal entity's specific circumstances or investment objectives.[148]

In response to these requests for comment, commenters recommended additional guidance on the meaning and scope of the term ''advice'' both in general and, as addressed in more detail in subsequent sections on particular exclusions and exemptions, in the context of specific activities. A number of commenters requested that the Commission clarify the meaning of providing ''advice to a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities.'' [149] One commenter noted that ''the concept of 'advice' is central to the application

[143] In the Proposal, the Commission proposed to give ''municipal advisory activities'' the same meaning as the term ''municipal advisory services'' in Rule 15Ba2–6T (the temporary rule for the registration of municipal advisors). Thus, in proposed Rule 15Ba1–1(e), the Commission proposed to define ''municipal advisory activities'' to mean ''advice to or on behalf of a municipal entity (as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–4(e)(10)) with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or a solicitation of a municipal entity or obligated person.'' *See* Proposal, 76 FR 829, note 77 and proposed Rule 15Ba1–1(e).

While the Commission received a few comments that certain activities should not be ''municipal advisory activities,'' these comments were in the context of whether certain persons should be subject to registration as ''municipal advisors'' and are addressed below in the context of the various exemptions and exclusions from the definition of ''municipal advisor.'' *See, e.g.,* notes 780, 807, 835 and accompanying text (citing the Gilmore & Bell Letter, the Rose Letter, and the Brinckerhoff Letter, in the context of exclusions or exemptions for accountants, attorneys, and engineers, respectively). These comments are addressed in Section III.A.1.c.vii.

The Commission is adopting the definition of ''municipal advisory activities'' substantially as proposed, but with minor non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the definitions. Specifically, the Commission is defining ''municipal advisory activities'' to mean ''the following activities specified in section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*–4(e)(4)(A)) and paragraph (d)(1) of this section that, absent the availability of an exclusion under paragraph (d)(2) of this section or an exemption under paragraph (d)(3) of this section, would cause a person to be a municipal advisor: (1) [P]roviding advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (2) [s]olicitation of a municipal entity or obligated person.'' *See* Rule 15Ba1–1(e).

[144] *See* Proposal, 76 FR 829, note 77. *See also supra* note 143 and accompanying text (discussing the term ''municipal advisory activities'').

[145] *See, e.g.,* Proposal 76 FR 832, text accompanying note 113 (discussing whether compensation for providing advice factors into the determination of whether a person must register as a municipal advisor), 833, note 118 and accompanying text (discussing the provision of certain kinds of advice by investment advisers), 833 (discussing whether a commodity trading advisor would be required to register as a municipal advisor if the advisor provides certain kinds of advice), and 833–834 (discussing with respect to accountants, attorneys and engineers whether certain kinds of advice and activities are ''advice'' within the meaning of the Exchange Act or would otherwise cause such persons to meet the definition of ''municipal advisor'').

[146] *See* Proposal, 76 FR 835.

[147] *See id.,* at 836–838 (requesting comment on, among other things: whether there are other services or activities engaged in by accountants, engineers, attorneys or other professionals that should qualify such persons for exclusion from the definition of ''municipal advisor;'' and whether there are other specific types of persons that should be excluded and the circumstances under which they should be excluded).

[148] *See* Proposal, 76 FR 838.

[149] *See, e.g.,* letters from Raymond J. Dorado, Executive Vice President, Deputy General Counsel, Bank of New York Mellon Corporation, dated February 23, 2011 (''BNY Letter''); Wayne A. Abernathy, Executive Vice President, Financial Institutions Policy and Regulatory Affairs, American Bankers Association, Cecelia A. Calaby, Executive Director and General Counsel, ABA Securities Association, and Eli K. Peterson, Vice President and Regulatory Counsel, The Clearing House Association LLC, dated February 22, 2011 (''American Bankers Association Letter I''); Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, dated February 22, 2011 (''Financial Services Roundtable Letter''); John M. McNally, President, National Association of Bond Lawyers, dated February 25, 2011 (''NABL Letter''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 22, 2011 (''SIFMA Letter I''); Alexandra M. MacLennan, Chair, Disclosure Group, and D. Bruce Gabriel, Practice Group Leader, Public and Infrastructure Finance Group, Squire, Sanders & Dempsey (US) LLP, dated February 22, 2011 (''Squire Sanders & Dempsey Letter''); Adella M. Heard, Senior Vice President and Assistant General Counsel, First Tennessee Bank National Association, dated February 18, 2011 (''First Tennessee Bank Letter''); Dale E. Brown, President and Chief Executive Officer, Financial Services Institute, dated April 28, 2011 (''Financial Services Institute Letter''); Sandra K–H Werner, Chief Executive Officer, First National Bank and Trust, dated February 18, 2011 (''First National Bank and Trust Letter'').

of Section 975,'' [150] while another commenter stated that ''[a]bsent a clear understanding of the scope of 'advice,' there will be substantial uncertainty as to which communications with municipal entity clients would be deemed 'advice.''' [151] The Commission also received comments suggesting general parameters for defining advice. For example, one commenter suggested that the Commission ''distinguish between situations in which *information* is provided to a municipal entity or obligated person as opposed to a *recommendation* as to a specific course of action.'' [152] Similarly, another commenter suggested that ''advice'' is generally understood to contain a recommendation component as distinguished from the mere giving of factual, objectively-determinable information.[153]

Regarding the provision of general information, commenters made general and specific suggestions regarding the types of information that should not require registration as a municipal advisor. For example, one commenter suggested that the provision of general information should not be defined, in any instance, as municipal advisory activities that would give rise to a fiduciary duty.[154] More specifically, other commenters suggested that broker-dealers be permitted to provide general market, transactional or financial information,[155] attorneys be permitted to provide general educational information to clients and non-clients,[156] and insurance companies be permitted to provide certain general information of an educational nature regarding retirement plans without being required to register as a municipal advisor.[157] With respect to municipal derivatives, one commenter asked for clarification that the following activities do not constitute advice for purposes of the municipal advisor definition: (i) The provision of research, general market information, and product information that is not specific to a particular client and is provided to the bank's customers as part of its ordinary communications with clients or the public; and (ii) the provision of information describing product alternatives that may meet the needs of a client without giving a recommendation that the client engage in any specific transaction.[158]

Additionally, several commenters recommended that advice be defined in accordance with its commonly understood meaning—a recommendation to act.[159] One of these commenters further recommended that the Commission clarify that a communication constitutes advice only when ''it is provided with respect to and directly relates to an enumerated municipal financial product or the issuance of municipal securities, and it is a recommendation that is particularized to the needs and circumstances of the recipient such that, under the prevailing facts and circumstances, a municipal entity or obligated person would reasonably expect that it could rely and take action, without further input, based upon such communication.'' [160] Another commenter suggested that registration be required only if a communication constitutes a recommendation that the municipal entity take an action and the recommendation is particularized to the entity's needs and is distinct from normal sales efforts.[161]

The Commission agrees with commenters that clarifying guidance on what constitutes advice solely for the purposes of the municipal advisor definition will provide greater clarity regarding the applicability of the municipal advisor registration requirement. The Commission does not however believe that the term ''advice'' is susceptible to a bright-line definition. Instead, the Commission believes that ''advice'' can be construed broadly and that, therefore, the determination of whether a person provides advice to or on behalf of a municipal entity or an obligated person regarding municipal financial products or the issuance of municipal securities depends on all the relevant facts and circumstances.[162] Accordingly, to address comments, the Commission is adopting Rule 15Ba1–1(d)(1)(ii), which provides that advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.[163]

The Commission agrees with commenters that the provision of certain general information does not constitute advice for purposes of the municipal advisor definition. For example, the Commission believes that advice does not include provision of the following general information:

- Information of a factual nature without subjective assumptions, opinions, or views;
- Information that is not particularized to a specific municipal entity or type of municipal entity;
- Information that is widely disseminated for use by the public,

[150] BNY Letter.

[151] Financial Services Roundtable Letter.

[152] NABL Letter (emphasis in original).

[153] Letter from John J. Wagner, Kutak Rock, dated February 21, 2011 (''Kutak Rock Letter'').

[154] *See* letter from Anthony A. Kuznik, Vice President and General Counsel, Honeywell Building Solutions, Honeywell International Inc., dated February 22, 2011 (''Honeywell Letter'').

[155] *See* letter from Brad Winges, Head of Fixed Income Sales and Trading, Piper Jaffray & Co. and Rebecca S. Lawrence, Assistant General Counsel, Principal, Piper Jaffray & Co., dated March 18, 2011 (''Piper Jaffray Letter'').

[156] *See* letter from Sherman & Howard L.L.C., dated February 22, 2011 (''Sherman & Howard Letter'').

[157] *See* letter from Jeffrey W. Rubin, Chair of the Committee on Federal Regulation of Securities, Business Law Section, American Bar Association, dated March 1, 2011 (''ABA Letter'').

[158] *See* BNY Letter.

[159] *See, e.g.,* BNY Letter; American Bankers Association Letter I; and SIFMA Letter I. *See also* Kutak Rock Letter.

[160] SIFMA Letter I.

[161] *See* American Bankers Association Letter I.

[162] In contexts outside of the municipal advisor definition, whether certain activities constitute advice also is dependent on the facts and circumstances.

For example, in the context of broker-dealer regulation, Commission staff has described that, although not a bright-line test, ''[t]he more individually tailored the communication is to a particular customer or targeted group of customers, the more likely it will be viewed as a recommendation.'' Study on Investment Advisers and Broker-Dealers (January 2011), available at *http://www.sec.gov/news/studies/2011/913studyfinal.pdf* (''Study on Investment Advisers and Broker-Dealers'') at 124.

In the context of investment adviser regulation, the determination of whether a particular communication rises to the level of investment advice depends on the facts and circumstances and is construed broadly. For example, Commission staff has interpreted the definition of investment adviser to include persons who advise clients concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments. *See, e.g.,* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (October 8, 1987).

The Commission discusses below, with respect to its interpretation of the term ''municipal advisor'' and the various exclusions and exemptions therefrom, whether certain activities would be advice in the context of the municipal advisor registration regime.

[163] The Commission is providing this clarifying guidance regarding ''advice'' only with respect to municipal advisors and solely for purposes of the municipal advisor definition. The Commission further notes that, by establishing certain parameters for advice, Rule 15Ba1–1(d)(1)(ii) clarifies not only the type of information or communications that may constitute advice, but also the persons who may be subject to the municipal advisor definition in Section 15B(e)(4) of the Exchange Act (15 U.S.C. 78*o*–4(e)(4)). For example, the Commission believes that an individual performing by contract clerical or ministerial services for a municipal entity or obligated person as part of performing these services would generally not be providing advice, as defined in adopted Rule 15Ba1–1(d)(1)(ii). Accordingly, such person would not be required to register as a municipal advisor.

clients, or market participants other than municipal entities or obligated persons; or

- General information in the nature of educational materials.

The Commission believes that educational materials constitute general information if the content is limited to instructional or explanatory information, such as materials that describe the general nature of financial products or strategies, do not include past or projected performance figures (including annualized rate of return), do not include a recommendation to purchase or sell any product or utilize any particular strategy, and to the extent additional disclosure is available about a product (such as a prospectus), the materials contain information about how to obtain such additional information.[164]

Conversely, the definition of advice under Rule 15Ba1–1(d)(1)(ii), as adopted, does not exclude information that involves a recommendation[165] regarding municipal financial products or the issuance of municipal securities. Further and more precisely, the Commission believes that, for purposes of the municipal advisor definition, advice includes, without limitation, a recommendation that is particularized to the specific needs, objectives, or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, based on all the facts and circumstances. As discussed above and consistent with the FINRA approach to what constitutes a recommendation, for purposes of the municipal advisor definition, the Commission believes that the determination of whether a recommendation has been made is an objective rather than a subjective inquiry.[166] An important factor in this inquiry is whether, considering its content, context and manner of presentation, the information communicated to the municipal entity or obligated person reasonably would be viewed as a suggestion that the municipal entity or obligated person take action or refrain from taking action regarding municipal financial products or the issuance of municipal securities.[167]

While the determination of whether a person provides advice depends on all the relevant facts and circumstances, the more individually tailored the information to a specific municipal entity or obligated person or a targeted group of municipal entities or obligated persons that share common characteristics, such as school districts or hospitals, with respect to municipal financial products or the issuance of municipal securities, the more likely it will be a recommendation that constitutes advice under the municipal advisor definition, which would require registration as a municipal advisor, absent the application of an exemption or exclusion from registration.[168] For example, whether information describing municipal financial product alternatives constitutes advice under the municipal advisor definition generally depends on how individually tailored the information is to a particular municipal entity, obligated person, or targeted group of municipal entities or obligated persons that share common characteristics, as well as the content, context, and manner of presentation of the information communicated.

ii. Municipal Entity

Exchange Act Section 15B(e)(8) provides that the term ''municipal entity'' means ''any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.''[169] In the Proposal, the Commission proposed to clarify that, with respect to clause (B) of the definition of ''municipal entity,'' the definition includes, but is not limited to, public pension funds, LGIPs, and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans.[170]

In the Proposal, the Commission requested comment on whether the proposed interpretation of municipal entity for purposes of the proposed definition of municipal advisor is appropriate, and whether additional clarification is necessary.[171] The Commission received approximately 20 comment letters regarding the scope of the Commission's interpretation of the term ''municipal entity.'' Based on consideration of the comments received, as further discussed below, the Commission is making one change to its interpretation.

Several commenters suggested that the definition of ''municipal entity'' should be limited to issuers of municipal securities[172] because the

[164] The Commission has similarly interpreted ''educational materials'' in other contexts. *See, e.g.,* Securities Act Release No. 6426 (September 16, 1982), 47 FR 41950 (September 23, 1982) (adopting Rule 134a under the Securities Act to permit the preparation and dissemination of certain educational materials concerning options and options trading without deeming such materials to be a prospectus).

[165] Whether a ''recommendation'' has taken place is not susceptible to a bright line definition, but turns on the facts and circumstances of the particular situation. *See* Securities Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396, 42415 (July 18, 2011) (''Business Conduct Standards Proposal for Security-Based Swaps''). ''This is consistent with the FINRA approach to what constitutes a recommendation. In the context of the FINRA suitability standard, factors considered in determining whether a recommendation has taken place include whether the communication 'reasonably could be viewed as a 'call to action' ' and 'reasonably would influence an investor to trade a particular security or group of securities.' The more individually tailored the communication to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood that the communication may be viewed as a 'recommendation.' '' Business Conduct Standards Proposal for Security-Based Swaps, 76 FR 42415, note 133 and accompanying text (citing FINRA Notice to Members 01–23 (March 19, 2001), and Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 62718A (August 20, 2010), 75 FR 52562 (August 26, 2010)).

FINRA suitability guidance has long provided that the determination of whether a ''recommendation'' has been made is an objective rather subjective inquiry. *See* FINRA Notice to Members 01–23 (March 19, 2001). In guidance relating to FINRA rules 2090 and 2011, FINRA reiterated this prior guidance, stating that an important factor in this inquiry ''is whether—given its content, context and manner of presentation—a particular communication from a firm or associated person to a customer reasonably would be viewed as a suggestion that the customer take action or refrain from taking action regarding a security or investment strategy.'' *See* FINRA Regulatory Notice 11–02 (Know Your Customer and Suitability), January 2011, available at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122778.pdf.*

The MSRB has provided similar guidance for dealers in connection with MSRB Rule G–19. *See http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-19.aspx?tab=2.*

[166] *See supra* note 165. *See also Michael Frederick Siegel* v. *Securities and Exchange Commission,* 592 F.3d 147, 156 (D.C. Cir. 2010) (in sustaining the Commission's finding that Siegel, a broker, recommended an ''investment'' within the meaning of NASD rule 2310, the court held that the SEC properly considered the ''content, context and presentation'' of the communications and whether, as an ''objective matter,'' the communication could reasonably have been viewed as a ''call to action'' and reasonably would influence an investor to trade a particular security or group of securities).

[167] *See supra* note 165.

[168] *See supra* notes 162 and 165.

[169] 15 U.S.C. 78*o*–4(e)(8).

[170] *See infra* note 191 (defining 403(b) and 457 plans).

[171] *See* Proposal, 76 FR 835.

[172] *See* NABL Letter; letters from Hon. Kelly Schmidt, President, National Association of State

phrase ''any *other* issuer of municipal securities'' in Section 15B(e)(8)(C) would otherwise be unnecessary.[173] In connection with these comments, one commenter stated that the text and legislative history of the Dodd-Frank Act ''are devoid of any indication that its provisions addressing municipal securities were intended to grant the [Commission] general prudential authority over State and local fiscal matters.''[174] This commenter further stated that the ''Dodd-Frank Act references to municipal securities were intended to address securities (primarily municipal bonds) issued by 'municipal entities' to the class of nongovernmental investors that the [Commission] is charged with protecting.''[175] Another commenter, however, suggested that the definition, as proposed, should extend to public pension funds, LGIPs, other government asset pools, and investor-directed governmental plans only to the extent that they are political subdivisions of a state, or corporate instrumentalities of a state, that issue municipal securities in the public market.[176] This commenter also stated that LGIPs, tax-sheltered annuities, and deferred compensation plans should not be deemed to be municipal entities, because they do not issue securities in the public municipal securities market.[177] Finally, another commenter suggested that the definition of municipal entity should include obligated persons, because the definition includes issuers of municipal securities, and obligated persons can be issuers of municipal securities pursuant to other provisions of the federal securities laws.[178]

One commenter stated that, although Congress specifically referred to states, counties, cities, and other political subdivisions, Congress did not refer to their pension or retirement plans when it enacted Section 975 of the Dodd-Frank Act. This commenter further argued that governmental retirement plans are separate legal entities from the municipal entities and are not ordinarily funded by, or involved in, the types of transactions contemplated by Section 975 or the proposed rules.[179] Another commenter questioned whether a public retirement system would be a municipal entity, a municipal financial product, or both.[180]

Other commenters suggested that the definition of municipal entity should exclude public pension plans or participant-directed plans.[181] One commenter stated that these plans have nothing to do with raising funds for a municipal entity or investing proceeds from an offering of municipal securities.[182] This commenter also stated that once the funds are contributed to a governmental retirement plan, they are no longer the property or held for the benefit of the municipal entity that established the plan.[183] Further, this commenter stated that the definition of municipal entity should not include individual participants in a governmental retirement plan.[184]

One commenter stated that the Commission should clarify that municipal entity only includes entities that are controlled by, or established for the benefit and enjoyment of, a state or any of its constituent political subdivisions or municipal corporations.[185] This commenter noted that some public pension plans, ''sponsored or established'' by states or their political subdivisions or municipal corporations, are not controlled by the sponsoring governmental unit but are instead controlled by trustees with plenary authority.[186] This commenter also suggested that private pension funds, mutual funds, and insurance companies recognized under state law as such entities as a result of a filing with a state official and issuance of a certificate of formation should not be included within clause (B) of the definition of municipal entity as a ''plan, program or pool of assets sponsored or established by the State. . . .''[187]

Treasurers, dated February 16, 2011 (''National Association of State Treasurers Letter''); Gail Schubert, Chair, Alaska Retirement Management Board, dated February 18, 2011 (''Alaska Retirement Management Board Letter'').

[173] *See, e.g.,* NABL Letter; National Association of State Treasurers Letter; Alaska Retirement Management Board Letter.

[174] National Association of State Treasurers Letter. *See also* NABL Letter (stating that Section 975 was not intended to address advice to an entity based on a mere possibility that it would become an issuer of municipal securities in the public market place, and that it was not intended to address advice concerning a municipal entity's fiscal affairs generally, except to the extent that such affairs relate directly to its issuance or administration of municipal securities).

[175] National Association of State Treasurers Letter.

[176] *See* NABL Letter.

[177] *See id.*

[178] According to this commenter, ''municipal entity'' is defined under the Dodd-Frank Act to include ''any other issuer of municipal securities,'' and ''issuer of municipal securities'' is defined under Exchange Act Rule 15c2–12 to mean ''the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security.'' *See* letter from Chapman and Cutler, dated February 22, 2011 (''Chapman and Cutler Letter''). Further, this commenter stated that ''municipal securities'' is defined in the Exchange Act to include both governmental bonds and tax-exempt ''industrial development bonds.'' This commenter stated that, since the Commission has interpreted the term ''obligated person'' to have the same meaning as in Exchange Act Rule 15c2–12, conduit borrowers under tax exempt bond issues would be ''issuers of separate securities'' that are also ''issuers of municipal securities.'' As a result, the commenter suggested that obligated persons under tax-exempt bond issues are ''municipal entities.''

The Commission does not agree. Although the Commission believes that the definition of obligated person for purposes of municipal advisor registration should be consistent with the definition of obligated person for purposes of Rule 15c2–12, the Commission is not applying the definition of ''issuer of municipal securities'' in Rule 15c2–12 for purposes of interpreting the definition of ''municipal entity'' in Exchange Act Section 15B(e)(8). The Commission does not believe that the definition of ''municipal entity'' should be interpreted to include obligated persons, because the Dodd-Frank Act amended Exchange Act Section 15B to separately define ''municipal entity'' (15 U.S.C. 78*o*–4(e)(8)) and ''obligated person'' (15 U.S.C. 78*o*–4(e)(10)).

[179] *See* letter from Daniel J. Wintz, Fraser Stryker, dated February 21, 2011 (''Fraser Stryker Letter''). For example, this commenter stated that assets of plans qualified under Internal Revenue Code Section 401(a) must be held in trust for the benefit of employees and their beneficiaries, and qualified plan trusts maintained by governmental employers are prohibited from engaging in transactions such as self-dealing with the plan sponsor. The commenter also provided that 403(b) plans are typically funded with employee and employer contributions, which are used to purchase annuity contracts or are deposited in custodial accounts, the assets of which are invested in mutual funds. Finally, the commenter stated that 457 plans allow employees of political subdivisions to defer compensation. All amounts deferred under the plan, all property and rights purchased with the amounts, and all income attributable to such amounts, property, or rights, must be held in trust for the exclusive benefit of the participants and their beneficiaries. *See also* letter from Clifford E. Kirsch, Michael B. Koffler, and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated February 22, 2011 (''Committee of Annuity Insurers Letter I'').

[180] *See* letter from Richard K. Matta, Groom Law Group, on behalf of the State Board of Administration of Florida, dated February 28, 2011 (''State Board of Administration of Florida Letter''). This commenter expressed this concern, because it is unsure as to how the employee exclusion from the definition of municipal advisor would apply to public retirement systems.

[181] *See, e.g.,* Alaska Retirement Management Board Letter; Committee of Annuity Insurers Letter I; Fraser Stryker Letter.

[182] *See* Committee of Annuity Insurers Letter I. This commenter stated that, if the Commission were to modify the definition of ''municipal entity'' so it did not include 457 plans and 403(b) plans, its concerns regarding the impact of the proposed rules on separate accounts, broker-dealers and investment advisers for insurance contracts would be mooted. *See infra* notes 386 and 405 and accompanying text.

[183] *See* Committee of Annuity Insurers Letter I.

[184] *See id.* As such, this commenter asked the Commission to clarify that the municipal advisor registration regime does not apply to persons providing investment advice to individual plan participants or investment education provided to plan participants.

[185] *See* NABL Letter.

[186] *See id.*

[187] *See id.* The commenter expressed concern that the Commission's proposed interpretation that the definition of municipal entity includes ''participant-directed investment programs or pools'' could be interpreted to include private plans established by an entity chartered by a state.

The Commission has carefully evaluated comments received on its proposed definition of ''municipal entity'' and continues to believe that the definition of ''municipal entity'' should not be limited to issuers of municipal securities.[188] The Commission believes that the phrase ''any other issuer of municipal securities'' does not limit clauses (A) and (B) of the definition to entities that can issue municipal securities. Many of the plans, programs and pools of assets included in clause (B) of Section 15B(e)(8) do *not* issue municipal securities. Further, the definition of municipal entity does not otherwise limit itself to those entities that issue municipal securities. To limit the entities listed in clause (A) and (B) of Section 15B(e)(8) to issuers of municipal securities would also limit the definitions of ''municipal financial products'' (and therefore ''municipal derivatives'') and ''solicitation of a municipal entity'' to encompass only those entities that issue municipal securities. Under such a limited definition, advice with respect to municipal derivatives, for example, would not subject advisors to registration unless the municipal entity entering into a swap [189] was also an issuer of municipal securities. This limited definition would also allow third parties to solicit various public pension funds and LGIPs on behalf of brokers, dealers, investment advisers, and municipal advisors without registering as municipal advisors. The Commission believes that such entities should have the protections provided by municipal advisor registration.[190]

The Commission believes public employee retirement systems and public employee benefit plans or public pension plans (including participant-directed plans, 403(b), and 457 plans) [191] fall within the statutory definition of municipal entity. The Commission believes that each of these plans constitutes a ''plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof.'' [192]

Further, the Commission believes that such plans should be afforded the protection granted to municipal entities by the statute. The Commission notes that the solicitation of public pension plans [193] in connection with investment advisory services has been subject to multiple Commission enforcement actions. For example, in 2009, the Commission charged a former New York State official and top political advisor with allegedly defrauding the New York State Common Retirement Fund by causing the fund to invest billions of dollars with private equity funds and hedge fund managers who paid millions of dollars in the form of sham ''finder'' or ''placement agent'' fees.[194]

The Commission notes, however, that individual natural person participants in a public employee benefit plan do not fall within the definition of municipal entity, because such persons would not be a state, political subdivision of a state, or municipal corporate instrumentality. Similarly, private employee benefit plans, mutual funds, and insurance companies that are not sponsored or established by a state, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof, do not fall within the statutory definition of municipal entity.[195] Such funds and entities are not ''established or sponsored by'' a state merely because they file with a state official or are issued a certificate of formation by a state.

As noted above, three commenters [196] stated that funds contributed to a governmental plan are no longer the property of, or held for the benefit of or

[188] *See supra* notes 173–176 and accompanying text.

[189] Unless the context otherwise requires, for purposes of the discussion in this release, swap refers to swaps and security-based swaps.

[190] The Commission notes that Section 15B(b) of the Exchange Act, as amended by the Dodd-Frank Act, requires, among other things, that the MSRB adopt rules to effect the purposes of the Exchange Act with respect to, among other things, ''advice provided to or on behalf of municipal entities or obligated persons by . . . municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.'' *See* Section 15B(b)(2) of the Exchange Act. At a minimum, the rules of the MSRB, with respect to municipal advisors, must, among other things: ''(i) Prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients; (ii) provide continuing education requirements for municipal advisors; [and] (iii) provide professional standards.'' *See* Section 15B(b)(2)(L) of the Exchange Act.

[191] In this release, the Commission uses the term ''public employee benefit plan'' to refer to a ''pension plan'' that is a ''governmental plan'' (as such terms are described below). Such plans include ''participant-directed plans,'' ''403(b) plans,'' and ''457 plans'' (as such terms are described below), and may be plans, funds, or programs (also described below). The Commission also uses the term ''public employee retirement system.'' As described below, a public employee retirement system is a special purpose government, and therefore, a public employee pension plan or a public employee retirement system may itself be a municipal entity. The Commission uses the term ''private employee benefit plan'' to refer to a pension plan that is not a governmental plan.

The term ''governmental plan'' includes a plan established or maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. *See* Section 3(32) of ERISA, 29 U.S.C. 1002(32).

The term ''employee benefit plan'' or ''plan'' means an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. *See* Section 3(3) of ERISA, 29 U.S.C. 1002(3).

The terms ''employee pension benefit plan'' and ''pension plan'' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—(i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. *See* Section 3(2) of ERISA, 29 U.S.C. 1002(2).

Pursuant to the Governmental Accounting Standards Board (''GASB''), ''public employee retirement system'' means a special-purpose government that administers one or more pension plans. Public employee retirement systems also may administer other types of employee benefit plans, including postemployment healthcare plans and deferred compensation plans. *See* GASB Statement No. 28: Accounting and Financial Reporting for Pensions.

A ''participant-directed plan'' is a plan that provides for the allocation of investment responsibilities to participants or beneficiaries. *See* U.S. Department of Labor, Fact Sheet: Final Rule to Improve Transparency of Fees and Expenses to Workers in 401(k)–Type Retirement Plans (February 2012), available at *http://www.dol.gov/ebsa/pdf/fsparticipantfeerule.pdf.*

A ''403(b) plan'' is a tax-sheltered retirement plan, similar to a 401(k) plan, offered by public schools and certain 501(c)(3) tax-exempt organizations. *See* Internal Revenue Service, IRC 403(b) Tax-Sheltered Annuity Plans, available at *http://www.irs.gov/Retirement-Plans/IRC-403(b)-Tax-Sheltered-Annuity-Plans.*

A ''457 plan'' is a deferred compensation plan as described in IRC section 457, which is available for certain state and local governments and non-governmental entities tax exempt under IRC section 501. *See* Internal Revenue Service, IRC 457(b) Deferred Compensation Plans, available at *http://www.irs.gov/retirement/article/0,,id=172437,00.html.*

[192] 15 U.S.C. 78*o*–4(e)(8) (defining ''municipal entity'').

[193] *See infra* Section III.A.1.b.x. (discussing ''solicitation of a municipal entity or obligated person'').

[194] *See SEC* v. *Henry Morris,* Litigation Release No. 20963 (March 19, 2009).

As another example, the Commission charged the former CEO of the California Public Employees' Retirement System and his close personal friend with allegedly scheming to defraud an investment firm into paying $20 million in fees to the friend's placement agent firms. *See* SEC Charges Former CalPERS CEO and Friend With Falsifying Letters in $20 Million Placement Agent Fee Scheme, available at *http://www.sec.gov/news/press/2012/2012-73.htm.*

[195] *See supra* note 187 and accompanying text.

[196] *See* Fraser Stryker Letter and Committee of Annuity Insurers Letter I. *See also* NABL Letter (making a similar argument that the term ''municipal entity'' should only include entities that are controlled by or established for the benefit and enjoyment of a state or any of its political subdivisions or municipal corporations).

controlled by, the municipal entity that established the plan, and that such plans are not ordinarily funded by or involved in the types of transactions contemplated by Congress. These commenters argued that, as a result, these plans should be excluded from the definition of municipal entity. The Commission does not agree. Such a plan is ''sponsored or established'' by the municipal entity and, therefore, falls within the statutory definition of municipal entity.

One commenter suggested that the phrase ''any State, political subdivision of a State, or municipal corporate instrumentality of a State'' in the interpretation of the definition of ''municipal entity'' would be clearer if it were revised to read ''any State, political subdivision of a State, or municipal corporate instrumentality of a State *or of a political subdivision of a State*.'' [197] The commenter noted, for example, that a charter school may be organized as an ''instrumentality of a political subdivision of a State.''

Because states delegate powers to their political subdivisions and one of the powers that may be delegated to political subdivisions is the ability of political subdivisions to create corporate instrumentalities,[198] the Commission believes that a municipal entity organized as a municipal corporate instrumentality of a political subdivision of a state is properly considered a municipal corporate instrumentality of a state. Accordingly, the Commission is adopting Rule 15Ba1–1(g) to reflect such interpretation and define municipal entity to include municipal corporate instrumentalities of political subdivisions of states.[199]

iii. Obligated Person

Exchange Act Section 15B(e)(10) provides that the term ''obligated person'' means ''any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.'' [200] In the Proposal, in response to a commenter's request for clarification,[201] the Commission stated its belief that the definition of obligated person for purposes of the definition of municipal advisor should be consistent with the definition of obligated person for purposes of Rule 15c2–12.[202] The Commission therefore proposed to exempt from the definition of obligated person providers of municipal bond insurance, letters of credit, or other liquidity facilities.[203] In the Proposal, the Commission stated its belief that this interpretation would not conflict with the goals of the Dodd-Frank Act to provide further protections for certain entities that participate in borrowings in the municipal securities market and would help ensure uniformity among rules relating to such market, including uniformity relating to the definition of obligated persons.[204] The Commission noted that providers of municipal bond insurance, letters of credit, or other liquidity facilities are generally non-governmental providers of credit enhancements.[205] As providers of credit enhancements, these entities are not borrowing funds through a municipal entity. Therefore, the Commission stated in the Proposal its belief that they do not require the type of protection that should be provided to those who, in municipal securities transactions, borrow funds through municipal entities.

The Commission received approximately ten comment letters with regard to the definition of ''obligated person'' and the application of the proposed rules to such persons.

Definition of ''Obligated Person''

Generally, most commenters agreed that the definition of ''obligated person'' should be consistent with the definition of that term in Rule 15c2–12,[206] or otherwise expressed support for the proposed definition of obligated person.[207] Consequently, the Commission is adopting the definition substantially as proposed, but with modifications for general consistency with the application of the term in Rule 15c2–12 [208] and certain clarifying modifications to address concerns raised by commenters. Specifically, Rule 15Ba1–1(k) provides that obligated person ''has the same meaning as in section 15B(e)(10) of the Act (15 U.S.C. 78*o*–4(e)(10)); *provided, however,* the term *obligated person* shall not include: (1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities; (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (3) the federal government.''

The Commission believes that there is no reason to differentiate the definition of obligated person for purposes of municipal advisor registration from the definition of obligated person for other Exchange Act purposes. As discussed in the Proposal and herein, the Commission believes that such definition will provide further protections for certain entities that participate in borrowings in, and help ensure uniformity among rules relating to, the municipal securities market. The continued use of a consistent definition will also provide clearer guidance to market participants.

Although most commenters supported the proposed definition, some commenters asked for clarification. One commenter suggested that the definition should exclude persons who might otherwise be deemed to be an obligated person solely on the basis of a commitment to support payment of the underlying assets that secure such issue, other than a borrower, lessee, or installment purchaser who is contractually responsible for payments that exceed a specified and substantial materiality standard, or a guarantor of

[197] NABL Letter.

[198] *See, e.g.,* MCL 117.4o: *http://www.legislature.mi.gov/(S(p3jhrzzb5hbiew45wy2fmz45))/mileg.aspx?page=getobject&objectname=mcl-117-4o* (authorizing cities in the state of Michigan to form nonprofit corporations under that state's nonprofit corporation act if they are organized for valid public purposes).

[199] *See* Rule 15Ba1–1(g), which defines municipal entity to mean ''any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (1) [A]ny agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) [a]ny plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (3) [a]ny other issuer of municipal securities.''

[200] 15 U.S.C. 78*o*–4(e)(10). Obligated persons can include entities acting as conduit borrowers, such as private universities, non-profit hospitals, and private corporations.

[201] *See* Proposal, 76 FR 829, note 88 and accompanying text.

[202] Rule 15c2–12 defines the term ''obligated person'' to mean ''any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities).'' *See* 17 CFR 240.15c2–12(f)(10). ''Offering'' as used in this definition is defined in Rule 15c2–12(a). *See* 17 CFR 240.15c2–12(a). *See also* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

[203] *See* proposed Rule 15Ba1–1(i) and 17 CFR 240.15c2–12(f)(10).

[204] *See* Proposal, 76 FR 830.

[205] *See id.*

[206] *See, e.g.,* Kutak Rock Letter; NABL Letter. *See also* ABA Letter; BNY Letter.

[207] *See* letter from Michael G. Bartolotta, Chairman, MSRB, dated February 22, 2011 (''MSRB Letter I'').

[208] *See* Rule 15Ba1–1(k). *See also* supra note 202.

such a payment obligation, who is not otherwise excluded from the definition of obligated person.[209] One commenter specifically stated that guaranty agencies for loans under the Federal Family Education Loan Program (''FFELP'') should not be deemed obligated persons.[210] Another commenter stated that companies registered under the Exchange Act, the federal government and its instrumentalities, foreign governments and their instrumentalities, religious organizations, and entities already subject to substantial oversight and regulation, such as banks, credit unions, regulated investment companies, and insurance companies, should be exempt from the definition of obligated person.[211]

The Commission has carefully considered these comments. The Commission continues to believe that there is no reason to differentiate the definition of obligated person for purposes of municipal advisor registration from the definition of obligated person for purposes of Rule 15c2–12. The Commission, however, is modifying the rule text of Rule 15Ba1–1(k) to clarify that the definition of obligated person excludes persons whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement.

The continuing disclosure requirements of Rule 15c2–12 exclude certain obligated persons whose financial information or operating data is not material to the issuance of municipal securities.[212] Therefore, consistent with Rule 15c2–12, the Commission is clarifying that an entity whose financial information or operating data is not material to an issuance of municipal securities would not be an obligated person under Rule 15Ba1–1(k). Any advisor to such entity would not be required to register as a municipal advisor, because such person would not be a municipal advisor within the meaning of Rule 15Ba1–1(d).[213] In addition to promoting consistency, the Commission believes that the materiality standard for secondary market disclosure in Rule 15c2–12 also serves as an appropriate standard to identify those obligated persons that should have the protections afforded by Section 15B of the Exchange Act. Using a similar approach ensures uniformity, provides municipal market participants with existing guidance about how the rules should be applied, and limits the application of the definition to only those persons whose financial information or operating data is material to a municipal securities offering and for whom registration provides significant benefits to the municipal marketplace.

While the definition of obligated person in the Proposal excluded only providers of municipal bond insurance, letters of credit, or other liquidity facilities, the Commission understands that credit enhancement for municipal securities is not necessarily limited to those three categories and that many municipal securities may be credit enhanced indirectly. Prior guidance from Commission staff provides that ''[e]ntities that insure or guarantee performance of assets that have been pledged to secure the repayment of the municipal obligation may fall within the definition of 'obligated person' . . . unless such insurance or guarantee has been obtained prior to and not in contemplation of any offering of municipal securities, the insurance or guarantee relates only to the individual pledged assets, and the insurance or guarantee exists independent of the existence of a municipal obligation.''[214] Consistent with this prior guidance from Commission staff, the Commission is adopting a definition of ''obligated person'' for purposes of Rule 15Ba1–1(k), which provides that the ultimate determination as to whether an insurer or guarantor is an obligated person under Rule 15c2–12 depends on the relationship to the financing itself, which is a factual analysis.[215] Similarly, a determination of whether a guarantor or insurer falls within the exclusion from the definition of obligated person for the purposes of the municipal advisor registration regime also depends on the particular facts and circumstances.[216]

In addition, the Commission notes that although the federal government and its instrumentalities, as providers of credit enhancement, could fall within the definition of obligated person under Rule 15c2–12, the federal government does not require the type of protection that should be applicable generally to those who borrow funds through municipal entities in municipal securities transactions.[217] Accordingly, for purposes of the municipal advisor registration regime, the Commission is interpreting the definition of obligated person to exclude the federal government. Therefore, advisors to the federal government and its instrumentalities providing credit enhancements in connection with issuances of municipal securities are not required to register as municipal advisors.

Another commenter stated that buyers of municipal securities rely on the letter of credit and the credit rating of the lender issuing the bonds rather than the ''ultimate borrower,'' and the security or collateral provided by a borrower goes to the lender or letter of credit issuer,

[209] *See* NABL Letter. The commenter stated that the interpretive guidance with respect to Rule 15c2–12 leaves open the possibility that some persons who are not directly committed to support payment of a municipal securities issue may nonetheless be deemed to be obligated persons by reason of their commitment to support payment of the underlying assets securing the issue, based upon a factual analysis of their relationship to the issue. *See id. See also* letter from Brett E. Lief, President, National Council of Higher Education Loan Programs, dated February 16, 2011 (''National Council of Higher Education Loan Programs Letter''). Another commenter stated that, according to the proposed rules, while some of its members would fall within the definition of obligated person in each of its capital market financings, under the materiality standard of Rule 15c2–12 under the Exchange Act, the commenter only designates as obligated persons those members participating in the projects being financed that have a significant percentage of the financial obligation that supports the debt service on the commenter's bonds. *See* letter from Robert W. Trippe, Senior Vice President and Chief Financial Officer, American Municipal Power, Inc., dated February 21, 2011 (''American Municipal Power Letter'').

[210] *See* National Council of Higher Education Loan Programs Letter.

[211] *See* Kutak Rock Letter.

[212] For example, Rule 15c2–12 requires a written agreement or contract to provide ongoing information (1) with respect to any obligated person for whom financial information or operating data is presented in the final official statement or (2) for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that in the case of pooled obligations the undertaking shall specify such objective criteria. *See* Rule 15c2–12(b)(5)(i)(A). The issuer and the other participants determine at the time of preparation of the official statement which obligated persons are material to the offering. *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590, 59596 (November 17, 1994).

[213] A person advising a guarantor that is a municipal entity (such as a state credit enhancer) must separately determine whether its advice to that municipal entity would trigger the municipal advisor registration requirement.

[214] Response to Question 9 in letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission to John S. Overdorff, Chair, Securities Law and Disclosure Committee, NABL, dated September 19, 1995.

[215] *See id.*

[216] *See id.*

[217] The federal government, as a credit enhancer, would not be borrowing any funds through a municipal entity, and would therefore be in a position similar to that of providers of municipal bond insurance, letters of credit, or other liquidity facilities that are excluded from the definition of ''obligated person'' in Rule 15c2–12. In addition—unlike for the definition of special entity—Congress did not include the federal government in the definition of municipal entity. *See infra* note 275 (noting differences in the two definitions).

not bondholders.[218] The commenter stated that the real borrower-lender relationship is between the borrower and the bank issuing the letter of credit.[219] This commenter noted that these and other factors distance conduit borrowers [220] from direct obligations to bondholders, but they nonetheless would be obligated persons under the Proposal.

The Commission understands this commenter to be suggesting that such conduit borrowers should not be considered obligated persons, such that their advisors would not have to register as municipal advisors. The Commission, however, has taken the position that, regardless of whether an obligated person obtains a letter of credit from a bank to guarantee the payment of municipal securities, an obligated person has an obligation to investors.[221] The Commission has long been of the view that the presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.[222] Thus, an advisor to an obligated person that has obtained a letter of credit from a bank to guarantee the payment of municipal securities should not be treated differently from an advisor to an obligated person that has not obtained such credit enhancements, and would therefore have to register as a municipal advisor.[223]

Application of Rules to Advisors to Obligated Persons

One commenter suggested generally that the proposed rules should be more strictly applied to advisors dealing with municipal entities than to advisors dealing with obligated persons. The commenter asserted that there is less public interest in regulating advice to private entities, and such regulation is better handled outside of municipal markets regulation.[224] As stated above, obligated persons assume the same role as municipal entities in an issuance of municipal securities, because obligated persons are committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities. Further, defaults by private entity obligated persons with respect to municipal securities can have negative consequences for municipal entities.[225] Section 15B of Exchange Act (as amended by the Dodd-Frank Act), moreover, provides for the protection of both municipal entities and obligated persons.[226] Accordingly, the Commission believes that the municipal advisor registration regime should generally apply in the same manner to advisors of obligated persons as to advisors of municipal entities.[227]

As described more fully below, however, the Commission is providing an exemption from the definition of municipal advisor for persons providing advice with respect to certain ''investment strategies,'' which will narrow the range of activities that would cause an advisor to an obligated person to meet the definition of municipal advisor.[228] Also as described more fully below, the Commission is limiting the scope of its definition of the term ''municipal derivative'' and its interpretation of the term ''solicitation of a municipal entity or obligated person'' as each applies to obligated persons, such that an obligated person must be acting in its capacity as such and the relevant activity is in connection with municipal securities (or, in the case of a solicitation, municipal financial products).[229]

When does a person become an obligated person?

One commenter asked when a client would become an obligated person.[230] Specifically, the commenter asked whether it would be rendering advice as a municipal advisor if it was engaged to consider a client's options regarding conventional versus conduit financing, but the client subsequently chose not to engage in conduit financing.[231] In addition, the commenter asked whether only registered municipal advisors can solicit clients that are eligible to use conduit financing.[232] Lastly, the same commenter asked whether a financial advisor would be required to register as a municipal advisor if a client is examining its debt alternatives, among which is conduit financing.[233]

Whether a financial advisor that advises clients about conduit financing or other financing options would be required to register as a municipal advisor would depend on the facts and circumstances. A person will not be a municipal advisor to an obligated person until the obligated person has begun the process of applying to, or negotiating with, a municipal entity to issue conduit bonds on behalf of the obligated person. Activity that never results in solicitation of or actual contact with a municipal entity does not have a sufficient nexus to municipal financial products or the issuance of municipal securities to require registration as municipal advisor. Merely advising a client on debt financing alternatives that include conduit financing is not a municipal advisory activity, because the client would not be sufficiently close to being an obligated person with respect to an issuance of municipal securities.[234] If a

[218] *See* letter from Andrew S. Rose, dated April 10, 2011 (''Rose Letter'').

[219] *See id.*

[220] Many commenters used the term ''conduit borrower'' in their letters. Although the term ''conduit borrower'' and ''obligated person'' do not have identical meanings, for purposes of this release, the Commission is treating the comments regarding ''conduit borrowers'' as applying to ''obligated persons.''

[221] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, note 89 (July 10, 1989). *See also* Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33107 (June 10, 2010) (stating: ''As noted in [Securities Exchange Act Release No. 60332 (July 17, 2009), 74 FR 36831 (July 24, 2009)], the Commission believes that information regarding conduit borrowers is material to investors in credit enhanced offerings and therefore should be included in the official statements'').

[222] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 28812 (July 10, 1989).

[223] The text of Rule 15Ba1–1(k) has also been clarified to provide that the definition of obligated person excludes persons whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement.

[224] *See* letter from Kendra York, Public Finance Director, State of Indiana, dated February 22, 2011 (''State of Indiana Letter''). This commenter stated that it is unrealistic to expect board members, attorneys, and accountants of obligated persons to be aware that their activities would be subject to Commission regulation. The commenter stated that it seems more appropriate to regulate improvident and risky usage of derivatives by unsophisticated borrowers by focusing on suitability rules applicable to the providers of these services, rather than focusing on their use in the municipal market.

[225] According to a Standard and Poor's study of municipal bond defaults in the 1990s, bonds for the three major types of conduit bond issues (healthcare, multi-family housing, and industrial development) accounted for more than 70% of defaulted principal. More recent reports have also indicated that non-governmental conduit borrowers account for more than 70% of municipal bond defaults. For example, a 2011 report stated that the largest share of modern era defaults consists of industrial development revenue bonds, followed by bonds supporting healthcare and housing. The report states that these three sectors accounted for 67% of all defaulting issues during the period of 1980 to 2011. *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 24.

[226] *See* 15 U.S.C. 78*o*–4(b)(2)(C).

[227] The Commission notes, however, that the Exchange Act, as amended by the Dodd-Frank Act, imposes a fiduciary duty on municipal advisors when advising municipal entities. *See* 15 U.S.C. 78*o*–4(c)(1). The statute does not impose a fiduciary duty with respect to advice to obligated persons. *See also supra* note 100.

[228] *See infra* Section III.A.1.b.viii.

[229] *See infra* note 236 and accompanying text.

[230] *See* letter from Jonathan Roberts, Principal, Roberts Consulting, LLC, dated February 18, 2011 (''Roberts Consulting Letter'').

[231] *See id.*

[232] *See id.*

[233] *See id.*

[234] Conversely, providing advice to a client who is a municipal entity regarding debt financing alternatives would constitute a municipal advisory activity.

client is only considering conduit financing, the client is not an obligated person. However, if the client applies to, or negotiates with, the municipal entity to issue conduit bonds, the person advising the conduit borrower would be required to be registered as a municipal advisor, regardless of whether or not the financing successfully closes.

One commenter argued that a person that is an obligated person does not remain an obligated person indefinitely and is not an obligated person with respect to unrelated matters.[235] The Commission agrees and has limited the scope of the rules as applied to advice concerning municipal financial products used by, and third-party solicitations of, obligated persons as described herein.[236]

The same commenter also argued that a person should not be deemed an obligated person if it is not the initial obligor, but rather comes to support the payment of obligations on municipal securities after the offering, through an assumption or other arrangement, and asked the Commission to clarify that any relationship between an obligated person and its advisor will only be considered a municipal advisory relationship to the extent that it directly involves a transaction in which the person is an obligated person.[237] The Commission does not agree. It is the Commission's view that such a person would be an obligated person if the municipal securities remain outstanding after the substitution of the obligated person, and such a person is an obligated person for purposes of Rule 15c2–12. The obligated person's responsibilities and need for protection would be similar regardless of whether it was an initial obligor or a subsequent obligor. The Commission notes that, as discussed, a person is only a municipal advisor to an obligated person if it provides advice to, or on behalf of, the obligated person ''with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues'' or that meets the definition for ''solicitation'' of such obligated person.[238] The Commission also notes that Exchange Act Section 15B(e)(10) defines obligated person to mean, among other things, ''any person . . . who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.'' [239]

Charter Schools

In the Proposal, the Commission noted that a charter school would generally fall under the definition of municipal entity, but may, in certain circumstances, fall under the definition of obligated person.[240] With respect to municipal financial products or the issuance of municipal securities, the Commission asked in what circumstances should charter schools be considered municipal entities or obligated persons.[241] Further, the Commission asked how the treatment of charter schools under different state laws affects their classification as municipal entities or obligated persons.[242]

One commenter stated that charter schools that have bonds issued on their behalf by a local financing governmental entity are classic examples of obligated persons.[243] This commenter suggested that, if a charter school receives tax money from a state or school district, the school should be treated as a municipal entity.[244] Otherwise, the school should be treated as an obligated person.[245] Another commenter stated that a charter school should be considered a municipal entity if it is organized as a political subdivision of a state or an instrumentality of a political subdivision of a state.[246] This commenter stated that, in other circumstances when providing for payment of municipal securities, a charter school should be considered an obligated person.[247]

As stated in the Proposal, the Commission continues to believe that charter schools are generally municipal entities, because they are public schools and derive their charter from a political subdivision of a state. While charter schools generally receive a portion of their funds from the state, they may also raise funds through conduit borrowing, and may pledge funds other than state money for the payment on the conduit borrowing. Thus, a charter school is an obligated person under Section 15B(e)(10) and Rule 15Ba1–1(k) when it engages in conduit borrowing using and/or pledging solely monies derived from sources other than the state or political subdivision of a state.[248] A municipal entity that is an obligated person on bonds issued by another municipal entity is still a municipal entity for purposes of this rule, and advisors to such municipal entities are subject to a statutory fiduciary duty.[249]

iv. Municipal Financial Products

Exchange Act Section 15B(e)(5) defines ''municipal financial product'' to mean ''municipal derivatives, guaranteed investment contracts, and investment strategies.'' [250] The Commission proposed to incorporate into the rule the statutory definition of municipal financial product.[251] The Commission received approximately ten comment letters regarding the proposed definition. The issues raised by these commenters are discussed below in the ''Municipal Derivatives,'' ''Guaranteed Investment Contracts,'' and ''Investment Strategies'' sections. The Commission is adopting the definition of ''municipal financial product'' as proposed.[252]

[235] *See* SIFMA Letter I.

[236] *See infra* Section III.A.1.b.v. (discussing the definition of ''municipal derivatives'' and its scope with respect to obligated persons) and Section III.A.1.b.x. (discussing the definition of ''solicitation of a municipal entity or obligated person'' and its scope with respect to obligated persons).

[237] *See* SIFMA Letter I. Further, another commenter stated that if an entity related to a borrower agrees to guarantee, or be jointly obligated, on a borrowing, it should be treated as the primary borrower and not as a municipal advisor. *See* letter from Kasey Kesselring, President, South Lake County Hospital District, dated February 16, 2011 (''South Lake County Hospital Letter''). The Commission notes that such an entity is not acting as an advisor to its affiliated borrower merely by agreeing to guarantee or be jointly obligated on a borrowing.

[238] *See* 15 U.S.C. 78*o*–4(e)(4).

[239] *See* 15 U.S.C. 78*o*–4(e)(10).

[240] 15 U.S.C. 78*o*–4(e)(8). *See also infra* note 241.

[241] *See* Proposal, 76 FR 835.

In the Proposal, the Commission clarified, in response to a commenter, that charter schools are considered to be public schools and generally derive their charter from a political subdivision of a state (for example, local school boards, state universities, community colleges, or state boards of education) and, therefore, would fall under the definition of municipal entity. *See id.,* at 829, notes 83–85 and accompanying text.

Charter schools, or persons that operate charter schools, such as charter school management organizations that are organized as non-profit corporations, may issue municipal securities through a municipal entity for capital needs, such as facilities that are not provided for by state funding. In that instance, the charter school, or charter school management organization, would be an obligated person with respect to the issuance of municipal securities and any related municipal financial products. *See id.,* at 829, note 85.

[242] *See id.,* at 835.

[243] *See* Kutak Rock Letter.

[244] *See id.*

[245] *See id.*

[246] *See* NABL Letter.

[247] *See id.*

[248] *See also supra* note 241 and accompanying text (recognizing that a charter school may be an obligated person).

[249] *See* 15 U.S.C. 78*o*–4(c).

[250] 15 U.S.C. 78*o*–4(e)(5).

[251] *See* proposed Rule 15Ba1–1(g) (providing that ''municipal financial product'' has the same meaning as in Section 15B(e)(5) of the Exchange Act).

[252] *See* Rule 15Ba1–1(i).

v. Municipal Derivatives

As discussed in the Proposal, Exchange Act Section 15B does not define the term ''municipal derivatives.'' Accordingly, the Commission proposed Rule 15Ba1–1(f) to define the term to mean any swap [253] or security-based swap [254] to which a municipal entity is a counterparty or to which an obligated person, acting in its capacity as an obligated person, is a counterparty.[255] Thus, as stated in the Proposal, the Commission included in the definition of municipal derivatives the definitions of ''swap'' and ''security-based swap,'' as those terms are defined by statute (and any rules and regulations thereunder). In the Proposal, the Commission asked whether the proposed definition of municipal derivatives should be modified or clarified in any way.[256]

One commenter stated that the proposed definition of municipal derivatives is too broad, because it encompasses too many types of advisory entities and transactions and the definition goes beyond securities.[257] The commenter expressed concern that a person must register as a municipal advisor regardless of the type of swap advice contemplated or the relationship between the municipal entity and the person seeking to offer the advice.[258]

Another commenter stated that there is no statutory basis or legislative history for the proposed expansion of the industry's common usage of the term ''municipal derivatives,'' which is limited to derivatives of a municipal security.[259] The commenter stated that the proposed definition would mean that any public plan (if not exempted from the definition of municipal entity) using swaps in the management of its overall portfolio would be dealing in municipal financial products, merely by virtue of being a counterparty to the swap.[260]

Additionally, one commenter stated that many municipal entities enter into commodity hedging transactions in connection with their operations to avoid mid-year operating budget disruptions and rate hikes. Accordingly, this commenter asked the Commission to confirm that hedging transactions by municipal entities related to their operations (rather than municipal securities) do not constitute municipal derivatives.[261]

One commenter asked the Commission to clarify how a person engaging in a transaction or assignment with respect to a municipal derivative would determine that the person it is advising is ''an obligated person, acting in its capacity as an obligated person.'' [262] The commenter stated that the Commission should clarify that a person (presumably acting as a dealer or counterparty) must have actual knowledge that the counterparty is an obligated person acting as such and have actual knowledge that the municipal derivative implicates or is related to the underlying transactions or funds that make such person an obligated person.[263] Further, the commenter stated that a person should not need to affirmatively inquire as to the counterparty's or the funds' status.[264]

Another commenter suggested narrowing the definition of municipal derivatives to only include debt-related derivatives entered into (a) by a municipal entity in connection with an issue of municipal securities or (b) by an obligated person as a pledged security or a source of payment for municipal securities.[265] This commenter also stated that the phrase ''in its capacity as an obligated person'' is not sufficiently tailored, because it would include any derivative entered into by the obligated person to hedge a conduit borrowing, not merely those that ''by contract or other arrangement . . . support the payment'' of municipal securities.[266] In addition, this commenter stated that, given the use of the term ''*municipal* financial product,'' Congress did not intend to regulate transactions with non-municipal entities that do not affect municipal entities or investors, simply because they result from a municipal securities transaction.[267]

In contrast, one commenter agreed with the Commission that municipal derivatives includes both swaps and security-based swaps to which a municipal entity or obligated person is a counterparty, but stated that this definition is too narrow.[268] This commenter stated that, because the term ''municipal derivatives'' (rather than the term ''swap'') was used in the definition of municipal financial products, Congress intended to ''provide flexibility to address problems that may arise in the future in connection with the use of other existing or yet-to-be-developed forms of derivatives by municipal entities.'' [269]

The Commission has carefully considered these comments and is adopting the definition of municipal derivatives substantially as proposed. The Commission, however, is clarifying herein the scope of application of the definition to obligated persons, in response to issues raised by commenters.[270] Specifically, the Commission is adopting Rule 15Ba1–1(f), which now provides that the term ''municipal derivatives'' means ''any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and section 3(a)(69) of the Act (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which: (1) [a] Municipal entity is a counterparty; or (2) [a]n obligated person, acting in such capacity, is a counterparty.'' [271]

[253] As proposed and adopted, the definition specifies that ''swap'' is as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Exchange Act (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder.

[254] As proposed and adopted, the definition specifies that ''security-based swap'' is as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder.

[255] *See* proposed Rule 15Ba1–1(f).

[256] *See* Proposal, 76 FR 836.

[257] *See* David J. Tudor, President and CEO, ACES Power Marketing LLC, dated March 2, 2011 (''ACES Power Marketing Letter'').

[258] *See id.*

[259] *See* letter from Robert V. Newman, Executive Director, Utah Retirement Systems, dated February 22, 2011 (''Utah Retirement System Letter'').

[260] *See id.*

[261] *See* NABL Letter.

[262] *See* SIFMA Letter I.

[263] *See id.*

[264] *See id.*

[265] *See* NABL Letter. This commenter stated that by narrowing the definition of municipal derivatives accordingly, ''swaps that are entered into by a municipal entity to hedge the interest rate on variable rate securities, or to hedge the value of municipal securities to be issued in the future, as well as swaps that are part of a structured municipal securities financing (*e.g.,* a structured student loan or mortgage revenue bond issue) would be covered, but derivatives that are unrelated to municipal securities issues (*e.g.,* swaps to hedge bank loans or fuel costs) or are entered into by a conduit borrower and [not] pledged as security or a source of payment for, the municipal securities issue would be excluded.''

[266] *See id.*

[267] *See id.*

[268] *See* MSRB Letter I.

[269] *See id. See also infra* note 271 (discussion of the definition of swap and security-based swap, which includes flexibility to address yet-to-be developed forms of derivatives).

The Commission also notes that on July 18, 2012, it adopted rules jointly with the CFTC to, among other things, further define the terms swap, security-based swap, and security-based swap agreement. *See* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

[270] *See* Rule 15Ba1–1(f).

[271] *See id.* The Commission notes that the definitions of swap and security-based swap are quite broad and that Section 712(d) of the Dodd-Frank Act gives the Commission and CFTC joint

Continued

As proposed and adopted, with respect to municipal entities, the Commission has determined not to qualify the definition of municipal derivatives as being limited to those entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities. Municipal entities seeking advice with respect to municipal derivative transactions (including commodity hedging transactions in connection with their operations, which fall within the definition of municipal derivatives) are subject to risks, regardless of whether the municipal derivatives are entered into in connection with or pledged as security or a source of payment for existing or contemplated municipal securities, and should have the protections provided by municipal advisor registration.[272]

As proposed and adopted, with respect to obligated persons, the coverage of the registration requirement is limited to advice relating to derivatives entered into by an obligated person in its capacity as an obligated person with respect to municipal securities. Thus, with respect to obligated persons, municipal derivatives include those derivatives entered into by obligated persons in connection with, or pledged as security or a source of payment for, existing municipal securities or municipal securities to be issued in the future.[273] By contrast, advice with respect to other types of derivative transactions entered into by obligated persons outside of their capacity as obligated persons will not trigger the municipal advisor registration requirement. For example, a person advising a nonprofit hospital to hedge an interest rate swap entered into in connection with a variable rate conduit borrowing (by such hospital) would be a municipal advisor. However, a person would not be required to register as a municipal advisor if it is advising an airline company that is an obligated person with respect to airport revenue bonds about whether the airline company should hedge its exposure on aviation fuel costs with a derivatives transaction that is unrelated to any particular issuance of municipal securities and that is outside of its capacity as an obligated person. The Commission believes that this clarification with respect to obligated persons addresses the concerns of commenters regarding scope of the advisors' responsibilities to conduit borrowers and the ability to identify situations where advising obligated persons triggers a registration requirement.

The Commission notes that the Exchange Act and the Commodity Exchange Act, as amended by the Dodd-Frank Act, provide heightened protection to special entities, in connection with swaps and security-based swaps. The Commission interprets the term special entity to generally include municipal entities, because the definition of municipal entity is substantially similar to the definition of special entity in the Exchange Act and the Commodity Exchange Act.[274] The heightened protection afforded by the Acts to special entities applies to all swaps and security-based swaps, irrespective of whether the swaps and security-based swaps are entered into in connection with or pledged as security or a source of payment for existing or contemplated securities.[275] Accordingly, the Commission's determination not to qualify its interpretation of the term ''municipal derivatives'' with respect to municipal entities is designed to provide a level of protection to such entities with respect to swaps and security-based swaps that is consistent with the protection afforded to special entities and the Commission's interpretation of that term with respect to obligated persons is intended to reflect the scope of the role of obligated persons with respect to municipal securities.

authority to further define such terms. Under the Commodity Exchange Act, as amended by the Dodd-Frank Act, the term ''swap'' is defined to mean, in part, any agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap. *See* 7 U.S.C. 1a(47). In addition, under the Exchange Act, as amended by the Dodd-Frank Act, the term ''security-based swap'' incorporates the definition of ''swap'' under the Commodity Exchange Act. *See* 15 U.S.C. 78c(a)(68).

[272] *See supra* note 190 and accompanying text.

[273] The Commission believes it is appropriate to refer to ''existing or contemplated'' municipal securities because an obligated person could enter into a swap or security-based swap before or after an issuance of municipal securities (*e.g.,* a forward-starting interest rate swap as part of a synthetic advanced refunding). *See also supra* note 265 (discussing the comment in the NABL Letter that the definition of municipal derivatives should be narrowed in a way that would still cover, among other things, swaps entered into to hedge the value of municipal securities to be issued in the future).

[274] The Commission notes that there are some differences between the statutory definitions of municipal entity and special entity. In particular, the statutory definitions of special entity do not explicitly include authorities, instrumentalities or corporate instrumentalities of a state. The definition of municipal entity includes plans, programs, or pools of assets established by a state, political subdivision, or municipal corporate instrumentality (or any agency, authority, or instrumentality thereof), and therefore includes 529 Savings Plans and LGIPs, while the statutory definitions of special entity do not explicitly include such entities. Also, the statutory definitions of special entity include governmental plans as defined by ERISA. The Commission notes that the CFTC, in adopting rules to implement business conduct standards for swap dealers, included in the definition of ''special entity'' (for purposes of Commodity Exchange Act Section 4s): ''A State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or a corporation of or established by a State or political subdivision of a State.'' *See* Standards for Swap Dealers and Major Swap Participants with Counterparties (January 11, 2012), 77 FR 9734 (February 17, 2012) (adopting rules proposed by the CFTC prescribing external business conduct standards for swap dealers and major swap participants) (''Business Conduct Standards for Swaps'').

The CFTC's final rules state that all State and municipal special entities are municipal entities. *See* Business Conduct Standards for Swaps, 77 FR 9739.

[275] As discussed herein, with Title IX of the Dodd-Frank Act, Congress provided certain protections for municipal entities and obligated persons with respect to their interaction with certain advisors, including persons providing advice with respect to, among other things, municipal derivatives.

Moreover, with Section 764 of Title VII of the Dodd-Frank Act, by adding new Section 15F to the Exchange Act, Congress provided certain protections for special entities with respect to their interaction with security-based swap dealers and major security-based swap participants. *See* Pub. L. 111–203, 124 Stat. 1376, 1789–1792, section 764(a) (adding Exchange Act Section 15F).

Among other things, Section 15F(h)(4) of the Exchange Act establishes that a security-based swap dealer that ''acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity'' and ''shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination'' that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity . . . .'' Section 15F(h)(5) requires that security-based swap entities that offer to, or enter into a security-based swap with, a special entity comply with any duty established by the Commission that requires a security-based swap entity to have a ''reasonable basis'' for believing that the special entity has an ''independent representative'' that meets certain criteria and undertakes a duty to act in the ''best interests'' of the special entity. *See* Pub. L. 111–203, 124 Stat. 1376, 1791 (to be codified at 15 U.S.C. 78*o*–10(h)(5)). This provision is intended to operate together with the municipal advisor regulatory scheme, which would apply to such an ''independent representative'' unless the representative is an employee of the municipal entity. Similarly, Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act by adding Section 4s, which contains language parallel to Section 15F of the Exchange Act that applies to swap dealers and major swap participants. *See* Pub. L. 111–203, 124 Stat. 1376, 1789–1792, section 731 (adding Commodity Exchange Act Section 4s).

The term ''special entity'' is defined to include a ''State, State agency, city, county, municipality, or other political subdivision of a State.'' This definition is consistent with, but not identical to, the statutory definition of ''municipal entity'' in Section 15B(e)(8). (''[T]he term 'municipal entity' means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority or instrumentality thereof; and (C) any other issuer of municipal securities[.]'').

vi. Guaranteed Investment Contracts

Section 15B(e)(2) of the Exchange Act, as amended by the Dodd-Frank Act, defines ''guaranteed investment contract'' to include ''any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on two or more future dates, such as a forward supply contract.'' [276] In the Proposal, the Commission proposed to include the statutory definition of guaranteed investment contract in Rule 15Ba1–1(a).[277]

The Commission received one comment supporting the proposed definition.[278] Another commenter, however, suggested that the definition does not include all guaranteed investment contracts entered into by municipal entities.[279] Instead, this commenter stated that the statutory definition of guaranteed investment contracts refers only to those contracts related to issues of bonds and similar municipal securities.[280] Another commenter stated that it is ''cognizant of special issues arising in the investment of bond proceeds in guaranteed investment contracts, particularly in the tax area, but [is] unclear how the situation is improved . . . . by additional regulation of [guaranteed investment contract] providers by the SEC.'' [281]

The Commission has carefully considered these comments and is adopting a definition of guaranteed investment contract substantially as proposed but with changes designed to respond to commenters.[282] Specifically, the Commission is interpreting the statutory definition of guaranteed investment contract so that it ''has the same meaning as in section 15B(e)(2) of the Act (15 U.S.C. 78*o*–4(e)(2)); *provided, however,* that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.'' [283]

For the same reasons that the Commission is narrowing the application of the term investment strategies as discussed further herein,[284] the Commission is persuaded by commenters that, at this time, it is appropriate to apply the definition of guaranteed investment contract more narrowly. Guaranteed investment contracts are investment products,[285] and this more limited interpretation is consistent with the approach the Commission is adopting with respect to the application of ''investment strategies,'' which will be limited to plans or programs for the investment of proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments.[286] A municipal entity could invest any funds held by or on behalf of such municipal entity, as opposed to just proceeds of municipal securities, in a guaranteed investment contract. Under the rule as adopted, a provider of a guaranteed investment contract is generally not a municipal advisor as long as such provider does not engage in municipal advisory activities, such as providing advice to the municipal entity or obligated person about the purchase of a guaranteed investment contract that relates to investments of proceeds of municipal securities or municipal escrow investments.[287] The Commission, therefore, believes it is in the public interest and consistent with the purposes of Section 15B to interpret the definition of guaranteed investment contract as described herein.

vii. Issuance of Municipal Securities

Section 15B(e)(4)(A) of the Exchange Act provides in relevant part that a municipal advisor includes a person that provides advice to or on behalf of a municipal entity or obligated person with respect to the ''issuance of municipal securities,'' including advice with respect to ''the structure, timing, terms, and other similar matters'' concerning such issues. Section 3(a)(29) of the Exchange Act defines the term ''municipal securities.'' [288] The broad statutory language in Section 15B(e)(4)(A) of the Exchange Act regarding advice on ''the structure, timing, terms and other similar matters'' concerning such issues suggests that advice on a broad range of activities potentially may be included within advice with respect to the issuance of municipal securities.

The scope of the concept of an ''issuance of municipal securities'' is particularly relevant to the ''advice'' aspect of the municipal advisor definition, as discussed previously herein,[289] because a person's provision of advice to a municipal entity or obligated person only results in municipal advisor status if the subject of that advice involves either the ''issuance of municipal securities'' or ''municipal financial products.'' [290] Several commenters recommended that the Commission provide guidance on the extent to which activities would be

[276] 15 U.S.C. 78*o*–4(e)(2).

[277] *See* proposed rule 15Ba1–1(a).

[278] *See* MSRB Letter. This commenter did not suggest any changes to the proposed definition.

[279] *See* NABL Letter.

[280] *See id.*

[281] *See* State of Indiana Letter.

[282] *See* Rule 15Ba1–1(a).

[283] *See id.*

[284] *See* Section III.A.1.viii.

[285] The Commission notes that, by comparison, swaps and security-based swaps are not investment products, but instead are often used to hedge the risk from other financial transactions. Also, the Commission notes that the protections established by the Dodd-Frank Act with respect to swap and security-based swap transactions discussed above, are not applicable to guaranteed investment contracts or other investment strategies. *See supra* note 275 and accompanying text.

[286] *See infra* Section III.A.1.b.viii. (discussing the term ''investment strategies'' and the exemption in Rule 15Ba1–1(d)(3)(vii)).

[287] The Commission also notes that it has brought several enforcement actions involving investment of proceeds in guaranteed investment contracts. *See, e.g., In the Matter of Banc of America Securities, now known as Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger,* AP File No. 3–14153, Securities Exchange Act Release No. 63451 (December 7, 2010) (Banc of America Securities LLC agreed to settle Commission charges of securities fraud for allegedly engaging in improper practices in connection with the bidding of reinvestment instruments used by municipal entities) (''Banc of America Settlement''); *Securities and Exchange Commission* v. *UBS Financial Services Inc.,* Civil Action No. 11–CV–2885 (D.N.J. May 4, 2011) (UBS agreed to settle Commission charges of securities fraud for allegedly fraudulently rigging over 100 municipal bond reinvestment transactions) (''UBS Settlement''); *Securities and Exchange Commission* v. *J.P. Morgan Securities LLC.,* Civil Action No. 11–CV–3877 (D.N.J. July 7, 2011) (J.P. Morgan agreed to settle Commission charges of allegedly fraudulently rigging at least 93 municipal bond reinvestment transactions) (''JP Morgan Settlement''); *Securities and Exchange Commission* v. *Wachovia Bank N.A, now known as Wells Fargo bank, N.A., successor by merger.,* Civil Action No. 2:11–cv–07135–WJM–MF (D.N.J. December 8, 2011) (Wachovia Bank N.A. agreed to settle Commission charges of allegedly fraudulently rigging at least 58 municipal bond reinvestment transactions) (''Wachovia Settlement''); and *Securities and Exchange Commission* v. *GE Funding Capital Market Services, Inc.,* Civil Action No. 2:11–cv–07465–WJM–MF (D.N.J. December 23, 2011). The reinvestment transactions in these cases involved the reinvestment of municipal bond proceeds in reinvestment instruments, including guaranteed investment contracts, forward purchase contracts, and repurchase agreements.

[288] Specifically, Section 3(a)(29) of the Exchange Act defines the term ''municipal securities'' to mean ''securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs 4(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.'' *See* 15 U.S.C. 78c(a)(29) (emphasis added). Section 3(a)(10) of the Exchange Act defines the term ''security.'' *See* 15 U.S.C. 78c(a)(10).

[289] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[290] *See supra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

considered ''advice with respect to the *issuance of municipal securities.*'' [291] One commenter suggested that the municipal advisor registration provision in Section 975 of the Dodd-Frank Act is intended to cover advice on certain listed activities within broad categories, including certain ''strategic services,'' ''transaction-related services, and ''post-issuance related services.'' [292] One commenter recommended that such advice should be construed broadly, from a timing perspective, to include ''any advice provided in connection with a municipal securities issue . . . at any point during the pre-issuance planning process as well as throughout the life of the issuance through final payment of principal and interest on the securities (by reason of maturity, earlier redemption, or otherwise, or for such longer period due to delayed payment such as the case of a payment default). . . .'' [293] Another commenter recommended that such advice should not extend to advice after the closing of a specific bond issue.[294]

The Commission generally agrees that activities covered by the subject of the ''issuance of municipal securities'' should be construed broadly as a matter of statutory construction and policy to ensure appropriate protection of municipal entities with respect to advice received relating in some way to the issuance of municipal securities and to limit the potential for circumvention of the municipal advisor registration provision. As discussed previously herein, however, the determination of whether any particular activity constitutes ''advice'' in the first instance for purposes of the municipal advisor definition depends on all the facts and circumstances.[295] The Commission also agrees that ''advice with respect to the issuance of municipal securities'' should be construed broadly from a timing perspective to include advice throughout the life of an issuance of municipal securities, from the pre-issuance planning stage for a debt transaction involving the issuance of municipal securities to the repayment stage for those municipal securities. This interpretation would afford municipal entities and investors with the protections of the municipal advisor registration provision during a time frame that may involve advice on significant matters affecting issues of municipal securities. In this regard, municipal issuers may make significant decisions affecting the structure, timing, terms, or other similar matters concerning an issue of municipal securities early in the planning stages of a transaction and may make significant decisions affecting ongoing compliance, repayment, or refinancing throughout the term of an outstanding bond issue.

In addition, the scope of the concept of the issuance of municipal securities also is particularly relevant to the statutory exclusion to the municipal advisor definition for broker-dealers serving as underwriters, because the underwriting function involves certain activities that relate to the issuance of municipal securities. The exclusion for underwriters from the definition of municipal advisor is limited to activities that are within the scope of an underwriting of a particular issuance of municipal securities. For purposes of the underwriting exclusion to the municipal advisor definition, the function of serving as underwriter on a particular issuance of municipal securities is more circumscribed and encompasses services on a particular transaction during a narrower time frame than the overall focus of the municipal advisor definition with respect to advice on the issuance of municipal securities (which involves a broader focus and longer time frame), as discussed further herein.[296]

viii. Investment Strategies

Exchange Act Section 15B(e)(3) provides that the term ''investment strategies'' ''includes'' plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.[297] The Commission proposed to interpret the term to mean that it includes, without limitation, the investment of the proceeds of municipal securities and plans, programs, or pools of assets that invest any other funds held by, or on behalf of, a municipal entity.[298] As such, under the proposed interpretation of the statutory definition, any person that provides advice with respect to such funds would have to register as a municipal advisor unless the person was covered by an exclusion or exemption.[299]

Plans or Programs for the Investment of the Proceeds of Municipal Securities

In the Proposal, the Commission asked whether its interpretation of the term ''investment strategies'' should be modified or clarified in any way.[300] Specifically, the Commission asked whether it should exclude plans, programs, or pools of assets that invest funds that are not proceeds of the issuance of municipal securities.[301] The Commission also asked how it would determine when funds should no longer be considered ''proceeds of municipal securities'' if it were to limit investment strategies to ''plans or programs for the investment of the proceeds of municipal securities (other than municipal derivatives and guaranteed investment contracts) or the recommendation of or brokerage of municipal escrow investments.'' [302]

Commenters generally opposed the proposed interpretation of investment strategies. Many commenters stated that the proposed interpretation was too broad, because it covers any fund held by a municipal entity, regardless of its source.[303] Some commenters asserted that the proposed interpretation is contrary to the language and intent of the Dodd-Frank Act [304] and suggested

[291] *See, e.g.,* MSRB Letter I and NAIPFA Letter I.

[292] *See* MSRB Letter II. Other commenters discussed whether the types of covered activities described by the MSRB should be narrower or broader in the context of the underwriter exclusion. *See* NAIPFA Letter II and Baum Letter.

[293] *See* MSRB Letter I.

[294] *See* NAIPFA Letter I.

[295] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[296] *See generally infra* Section III.A.1.c.iv. (discussing the underwriter exclusion). The time frame for the underwriter role generally begins upon the municipal issuer's engagement of the underwriter for a particular issuance of municipal securities and ends at the end of the underwriting period for that issuance. *See infra* notes 589–591 and accompanying text.

[297] 15 U.S.C. 78*o*–4(e)(3).

[298] *See* Proposal, 76 FR 830.

[299] *See id.*

[300] *See id.,* at 835.

[301] *See id.*

[302] *See id.*

[303] *See, e.g.,* letter from Representative Kenny Marchant, dated March 11, 2011 (''Marchant Letter''); SIFMA Letter I; NABL Letter; American Bankers Association Letter I; letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated February 22, 2011 (''Bond Dealers of America Letter''). *See also* letters from Representative Todd Russell Platts, dated April 7, 2011 (''Platts Letter''); Representatives Peter Welch, Thomas Petri and Bill Shuster, dated April 5, 2011 (''Welch Letter''); John Walsh, Acting Comptroller of the Currency, Office of the Comptroller of the Currency, dated May 24, 2011 (''OCC Letter''); Senator Tim Johnson, dated June 9, 2011 (''Johnson Letter''); Brian H. Graff, Craig P. Hoffman, Ilene H. Ferenczy, Judy A. Miller, Mark Dunbar, and James Paul, American Society of Pension Professionals & Actuaries and the National Tax Sheltered Accounts Association, dated April 15, 2011 (''American Society of Pension Professionals Letter''); Brian D. McCoubrey, President and Chief Executive Office, The Savings Bank, dated February 17, 2011 (''Savings Bank Letter''); Celeste Embrey, Assistant General Counsel, Texas Bankers Association, dated February 21, 2011 (''Texas Bankers Association Letter''). *See also infra* Section III.A.1.c.viii. (discussing an exclusion from the definition of ''municipal advisor'' for banks).

[304] *See, e.g.,* Marchant Letter; SIFMA Letter I; NABL Letter; Kutak Rock Letter; letter from Michael B. Koffler, Sutherland Asbill & Brennan LLP on behalf of Massachusetts Life Insurance Company,

that the definition be restricted so that it applies only to the statutorily-identified categories of investments of proceeds of municipal securities and recommendation of and brokerage of municipal escrow investments.[305] One commenter stated that the ''expanded definition'' of investment strategies is not required or even implied by the Dodd-Frank Act and would subject a ''vast swath of activity—which was not intended to be, and need not be, further regulated—to additional regulation.'' [306]

On the other hand, one commenter agreed with the Commission that the use of the word ''includes'' in the statutory definition of investment strategies suggests that the term is not limited to plans or programs for the investment of the proceeds of municipal securities.[307] This commenter stated its belief, however, that Congress intended the definition to be limited to investment activities that relate to the securities and securities-like vehicles of a municipal entity, rather than all investment activities of municipal entities.[308]

In a similar vein, commenters suggested that the definition should encompass only plans or programs for investments in financial instruments, as opposed to investments in, for example, infrastructure, real estate, social welfare, and other non-financial investments.[309] Another commenter stated that, with respect to the funds held by or on behalf of a municipal entity, whether a person is providing advice regarding the ''investment of'' those funds, not other expenditure or use of the funds for non-investment purposes, is the determining factor for deciding that a person is a municipal advisor.[310]

One commenter stated that a ''plan or program,'' as used in the statutory definition of investment strategies, is a series of investment related actions that would be generally akin to a financial plan, not merely advice incidental to a particular trade or investment.[311] Another commenter urged the Commission to limit investment strategies to advice articulated as a part of the investment plan for the proceeds of a municipal securities offering at or before the time the proceeds are received.[312]

Some commenters asserted that public pension plans, participant directed investment programs or plans such as 529 Savings Plans and 403(b) and 457 plans were not intended to be regulated under the Exchange Act or the Dodd-Frank Act and should not be covered under the definition of investment strategies.[313] According to these commenters, the Dodd-Frank Act was intended to regulate those who provide advice regarding the issuance of municipal bonds and the investment of offering proceeds.[314] Therefore, these commenters argue, all governmental retirement plans should be excluded from the definition of investment strategies. Alternatively, one commenter suggested that, at the very least, governmental retirement and savings plans that are funded exclusively through the contribution of the employees as participants should be excluded.[315] Another commenter stated that the phrase ''plans or programs for the investment of proceeds of municipal securities'' implies that the purpose of the plan or program is to invest proceeds of municipal securities, whereas the purpose of public pension plans is to provide retirement benefits.[316] Another commenter suggested that municipal securities regulation was originally intended to regulate the issuance of investment instruments by a municipal entity under which the municipal entity is required to pay the investor in accordance with the terms of the investment.[317] The commenter stated that state employee pension plans, 529 Savings Plans, and assets invested by the state are not investment instruments issued by the state to investors.[318] As such, the commenter stated that they were never intended to be, nor should they now be, regulated under the Exchange Act or the Dodd-Frank Act.[319]

On the other hand, one commenter stated that the term ''investment strategies'' should include any type of investment strategy or advice relating to the investment of funds of investors or other vested persons held in any plan, program, or pool of assets sponsored or established by a state, political subdivision, or municipal corporate instrumentality, or any agency, authority, or instrumentality thereof, such as those created in connection with municipal fund securities, including but not limited to 529 Savings Plans and state and local government investment pools.[320] This commenter further stated that public defined contribution pension plans should also fall within the definition, because these plans share many of the same potential impacts on third-party beneficiaries and

Nationwide Life Insurance Company and The Prudential Insurance Company of America, dated February 22, 2011 (''Insurance Companies Letter''). *See also* Platts Letter; Welch Letter; Johnson Letter; American Society of Pension Professionals Letter. Other than referring to statutory language, none of these letters offered other evidence of such intent.

[305] *See, e.g.,* SIFMA Letter I; NABL Letter; ABA Letter; Bond Dealers of America Letter; letter from Karrie McMillan, General Counsel, Investment Company Institute, dated February 22, 2011 (''ICI Letter''). *See also* Marchant Letter and Platts Letter.

[306] SIFMA Letter I. *See also* NABL Letter.

[307] *See* MSRB Letter.

[308] *See id.*

[309] *See* NABL Letter. *See also* SIFMA Letter I (stating that ''the [Commission] should clarify that the term [investment strategies], in any case, does not include local government investment pools, purchases of real estate or expenditures for, among others, infrastructure, equipment and personnel, which often are described as 'infrastructure investments' '').

[310] *See* SIFMA Letter I.

[311] *See* SIFMA Letter I. *See also* American Bankers Association Letter I (stating that the term ''investment strategy'' by definition ''contemplates a series of steps to reach a particular investment goal'') and Financial Services Institute Letter.

[312] *See* James S. Keller, Chief Regulatory Counsel, The PNC Financial Services Group, Inc., dated February 22, 2011 (''PNC Financial Services Letter'').

[313] *See, e.g.,* Utah Retirement Systems Letter; letter from Jeffrey W. States, State Investment Officer, Nebraska Investment Council, dated February 15, 2011 (''Nebraska Investment Council Letter''); letter from Lisa Tate, Vice President, Litigation & Associate General Counsel, dated February 22, 2011 (''ACLI Letter''); letter from Gary A. Sanders, Vice President—Securities & State Government Relations, National Association of Insurance and Financial Advisors, dated June 13, 2011 (''National Association of Insurance and Financial Advisors Letter''); letter from Ethan E. Kra, Vice President, Pension Practice Council and William R. Hallmark, Chair, Public Plans Subcommittee, American Academy of Actuaries, dated June 15, 2011 (''American Academy of Actuaries Letter'').

[314] *See* American Society of Pension Professionals Letter; American Academy of Actuaries Letter; Fraser Stryker Letter.

One commenter stated that governmental retirement plans should not be considered investment strategies unless the employer funds such plans with proceeds from the issuance of pension obligation bonds. *See* Fraser Stryker Letter.

[315] *See* American Society of Pension Professionals Letter.

[316] *See* American Academy of Actuaries Letter.

[317] *See* Nebraska Investment Council Letter.

[318] *See id.*

[319] *See id.* This commenter pointed out that the terms ''securities'' and ''municipal securities'' were not changed by the Dodd-Frank Act. As such, this commenter stated that, ''[w]ith respect to the grant of authority to the [Commission] over the 'issuance of municipal securities,' there has been no change under the Dodd-Frank Act to justify the expansion of the [Commission's] authority.'' Further, the commenter noted that the statutory definition of investment strategies indicates that plans and programs that are intended to be covered must relate to the proceeds of municipal securities. The commenter argued that the definition of municipal entity was not intended to expand the types of assets regulated by the Commission and stated that ''[t]he underlying notion that the [Commission] is still regulating 'municipal securities' should not be disregarded without a clear Congressional mandate, which must necessarily include a change to the definition of 'municipal security.' '' Additionally, this commenter stated that, since government plans are specifically exempt from ERISA, ''[t]he proposed rule seems to be an end-run around ERISA, now subjecting the fiduciaries of these state plans to federal oversight without a Congressional directive to do so.'' *But see infra* note 320 and accompanying text (discussing the MSRB Letter, which argues that some 529 Savings Plans are municipal fund securities).

[320] *See* MSRB Letter.

are generally exempt from the protections afforded by ERISA to private pension funds.[321]

The same commenter stated that funds should cease to be subject to the definition of investment strategies once their investment is no longer governed by legal documents or covenants governing the use of such funds.[322] Similarly, another commenter stated that proceeds should mean proceeds raised in securities offerings, until they are used for the purposes described in the use of proceeds section in the offering document, or otherwise commingled with the general funds of the municipal entity.[323] Additionally, one commenter suggested that ''proceeds'' should not extend to ''replacement proceeds'' such as pledge funds.[324]

The Commission has carefully considered the issues raised by commenters on the Proposal. As noted above, Exchange Act Section 15B(e)(3) defines investment strategies to include plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.[325] In response to comments on the proposed definition of ''investment strategies,'' the Commission is adopting Rule 15Ba1–1(b), which defines ''investment strategies'' as having ''the same meaning as in section 15B(e)(3) of the Act (15 U.S.C. 78*o*–4(e)(3)), and includes plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.'' [326]

While the Commission continues to believe that the term ''includes'' is not limiting,[327] the Commission is adopting a definition of ''investment strategies'' that, as compared to the definition in the Proposal, focuses more narrowly on the statutorily-identified categories of ''proceeds of municipal securities'' and ''municipal escrow investments.'' In this regard, the Commission is adopting Rule 15Ba1–1(d)(3)(vii), which will effectively narrow the focus of the term ''investment strategies'' to investments of proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments. Specifically, Rule 15Ba1–1(d)(3)(vii), as adopted, exempts from the definition of municipal advisor any person that provides advice to a municipal entity or obligated person with respect to municipal financial products to the extent that such person provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

Pursuant to Section 15B(a)(4) of the Exchange Act, the Commission may exempt any class of municipal advisors from any provision of Section 15B or the rules and regulations thereunder, if it finds that such an exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B.[328] The Commission believes that providing the exemption described above is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act. The exemption tailors protection of municipal entities to those activities related to the investment of the proceeds of municipal securities and related municipal escrow investments, which are the specific categories of activities that Congress identified in the statutory definition of the term ''investment strategies'' and that the Commission believes have the most direct nexus to municipal securities and the protection of investors and municipal issuers in furtherance of the purposes of Section 15B.

In the Proposal, the Commission asked how it should determine when funds should no longer be considered proceeds of municipal securities, if it were to limit investment strategies to proceeds of municipal securities or the recommendation of or brokerage of municipal escrow investments.[329] While the Exchange Act does not define the term ''proceeds of municipal securities,'' the Federal tax laws provide a longstanding, known definition of ''proceeds'' of tax-exempt bonds issued by State and local governments, including related definitions of various types of proceeds (including ''gross proceeds,'' ''sale proceeds,'' ''investment proceeds,'' and ''transferred proceeds'') under Section 148 of the Internal Revenue Code of 1986, as amended,[330] and Section 1.148–1 through 1.148–11 of the Regulations [331] for the purpose of the arbitrage [332] investment restrictions applicable to investments of proceeds of tax-exempt municipal securities. The arbitrage rules apply as long as the tax-exempt municipal securities are outstanding, and non-compliance with the arbitrage rules can result in the loss of the tax-exempt status of the interest on the municipal securities retroactively to the date of issuance. The Commission believes that the well-developed concept of proceeds of tax-exempt

[321] *See id.*

[322] *See id.* This commenter stated that professionals advising on, or executing investments of, public funds that are not subject to specific restrictions or covenants, other than municipal derivatives or guaranteed investment contracts, would instead be subject to existing applicable investment adviser, broker-dealer, or bank regulations governing such transactions.

[323] *See* ABA Letter.

[324] *See* NABL Letter.

[325] The application of the term ''municipal financial products'' to ''municipal derivatives'' and ''guaranteed investment contracts'' is discussed above. *See supra* Sections II.A.1.b.v. and vi., respectively. The term ''municipal escrow investments'' is described in more detail below in this Section III.A.1.b.viii.

[326] While the definition of ''investment strategies'' in Rule 15Ba1–1(b), as adopted, is consistent with the definition of ''investment strategies'' in Section 15B(e)(3) of the Act, this definition, as adopted, clarifies the Commission's interpretation that investment strategies specifically excludes municipal derivatives and guaranteed investment contracts, as these products are expressly included in the definition of municipal financial product, as defined by Section 15B(e)(5) of the Act and Rule 15Ba1–1(i), as adopted. This interpretation is consistent with the Commission's interpretation in the Proposal. *See* Proposal, 76 FR 830–831.

[327] Section 15B(e)(3) of the Exchange Act uses the word ''including'' as expanding or illustrative, not as exclusive or limiting.

[328] *See* 15 U.S.C. 78*o*–4(a)(4).

[329] *See* Proposal, 76 FR 835.

[330] 26 U.S.C. 148.

[331] 26 CFR 148.1–148.11.

[332] Arbitrage, in the municipal securities context, is the profit earned by the municipal entity from borrowing funds in the tax-exempt market and investing them in the taxable market. The arbitrage rules have two main branches. The yield restriction branch of the rules generally limit the yield permitted on investments of proceeds of tax-exempt municipal securities to a yield that is not materially higher than the yield on the municipal securities; provided, however, specific exceptions permit unrestricted investment during certain temporary periods. The second branch of the arbitrage rules, the rebate branch, requires that any arbitrage that the municipal entity earns, including during a temporary period, must be rebated to the federal government, unless one of the several specific exceptions to the rebate requirement applies to the issue of municipal securities. Any issue of tax-exempt municipal securities can be subject to yield restriction, rebate, or both. The arbitrage rules and the various exceptions are important factors in the structuring of any tax-exempt issue of municipal securities. Under the arbitrage rules, gross proceeds include amounts covered by the following interrelated definitions. Sale proceeds are the gross cash amount paid by the purchasers for the securities at the initial sale of the issue. Investment proceeds are the amounts received from investing the proceeds of the issue. If proceeds of a refunding issue are used to pay off a prior issue, any remaining proceeds of the prior issue become, for tax purposes, transferred proceeds of the refunding issue. Proceeds, then, are sales proceeds plus investment proceeds plus transferred proceeds. Replacement proceeds are amounts that may be used to pay debt service. Gross proceeds are defined as proceeds plus replacement proceeds. *See* Frederic L. Ballard, Jr., *ABCs of Arbitrage: Tax Rules for Investment of Bond Proceeds by Municipalities* (Section of State and Local Government Law, American Bar Association, 2007) (''Ballard, *ABCs of Arbitrage''*).

municipal securities under the arbitrage rules is well-known to issuers and to the professional participants in the municipal marketplace.

Some commenters that discussed ''proceeds of municipal securities'' did so by reference to Federal tax regulations and terms defined therein.[333] Because the arbitrage rules governing the investment of bond proceeds are central to an issue of tax-exempt municipal securities and well-known in the municipal market, the Commission has determined to define proceeds of municipal securities in a similar manner and to apply the term to tax-exempt municipal securities and also to taxable [334] municipal securities. Therefore, for purposes of the application of the definition of investment strategies and in response to comments raised on this issue,[335] the Commission is adopting Rule 15Ba1–1(m)(1), which defines ''proceeds of municipal securities'' as (i) monies derived by a municipal entity from the sale of municipal securities, (ii) investment income derived from the investment or reinvestment of such monies, (iii) any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds, and pledged funds created for such purpose,[336] and (iv) the investment income derived from the investment or reinvestment of monies in such funds.[337] Further, consistent with the general definition of proceeds under the arbitrage rules, Rule 15Ba1–1(m)(1) also provides that when such monies are spent to carry out the authorized purposes of municipal securities, they cease to be proceeds of municipal securities.

Rule 15Ba1–1(m), however, establishes an exception from the definition of proceeds of municipal securities. The exception provides that, solely for purposes of Rule 15Ba1–1(m), monies derived from a municipal security issued by an education trust established by a State under Section 529(b) of the Internal Revenue Code are not proceeds of municipal securities.[338] Although interests in 529 Savings Plans may be municipal fund securities, and therefore municipal securities, monies derived from a municipal security issued by an education trust established under Section 529(b) come from individuals making investments for the purpose of prepaying or accumulating savings for higher education costs, and do not come from municipal entities. Because these monies are derived from individuals primarily for the benefit of these individuals and not municipal entities, the Commission does not believe persons engaged in activities with respect to these monies are appropriately governed by this registration regime.[339]

Rule 15Ba1–1(m) also states that in determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person has a reasonable basis for such reliance.[340] This exemption is discussed in more detail below.

The Commission notes that the exemption from the definition of ''municipal advisor'' in Rule 15Ba1–1(d)(3)(vii) does not permit a person to avoid registering as a municipal advisor by stating that its advice is isolated or incidental and thus not within the meaning of ''plan or program'' in the definition of investment strategies. The Commission is not persuaded by commenters who have stated that ''plan or program'' means a series of investment decisions [341] and does not agree that this would be an appropriate interpretation of the statute. Any advice or recommendation with respect to the investment of proceeds not otherwise subject to an exclusion or exemption [342] would be a municipal advisory activity, even if such advice or recommendation is not part of a series of investment-related actions or articulated as part of the investment plan for the proceeds at or before the time the proceeds are received.[343] For example, advice or a recommendation with respect to a single trade or investment not otherwise subject to an exemption would be a municipal advisory activity, and the person providing such advice would not be exempt from the definition of municipal advisor pursuant to Rule 15Ba1–1(d)(3)(vii).

Commingling of Proceeds of Municipal Securities With Other Funds and Proceeds Determinations Generally

In the Proposal, the Commission provided that commingled proceeds, regardless of when they lose their character as proceeds, would still constitute ''funds held by or on behalf of a municipal entity,'' but asked whether that interpretation was too broad.[344] Additionally, the Commission asked what obligations parties other than a municipal entity should have in determining whether funds held by or on behalf of the municipal entity are proceeds of municipal securities.[345]

The Commission received a number of comments in response to these questions. One commenter stated ''[t]he Commission's proposed definition effectively reads out the statutory requirement to trace assets to the

[333] *See, e.g.,* NABL Letter. In addition, as discussed below, some commenters suggested that a municipal entity should have the responsibility for tracking and characterizing proceeds because it is already required to do so under certain tax laws, implying that the definition of proceeds of municipal securities should be consistent with such definition under tax laws. *See infra* notes 361–362 and accompanying text.

[334] Municipal issuers sometimes issue small amounts of taxable bonds in combination with tax-exempt bonds in the same offerings to finance costs that are ineligible for tax-exempt bond financing. The most significant recent type of taxable municipal securities was the temporary stimulus ''Build America Bond'' program, with respect to which approximately $181 billion were issued in 2009–2010 and the arbitrage rules on bond proceeds notably applied directly to those taxable municipal securities due to a Federal subsidy. The taxable bond sector of the municipal securities market represents a relatively small portion of the overall municipal securities market. For example, less than 9% of new issues in the municipal securities market in 2012 were taxable bonds, according to Thomson-Reuters data.

[335] *See supra* note 333 and accompanying text.

[336] Such applicable legal documents include, for example, the indentures, ordinances, or resolutions of the issuer of the municipal securities, and the resolutions, leases, loan agreements, or other agreements of an obligated person.

[337] *See* Rule 15Ba1–1(m)(1). *See also supra* notes 330–331 and accompanying text (discussing Federal tax laws and regulations related to the definition of proceeds).

[338] *See* Rule 15Ba1–1(m)(2). *See also supra* notes 313–319 (discussing comments regarding the inclusion of certain plans under ''investment strategies'').

[339] Because monies in accounts of 529 Savings Plans are not included in the definition of proceeds of municipal securities for purposes of Rule 15Ba1–1(m), persons providing advice with respect to the investment of monies in 529 Savings Plans will not be required to register as municipal advisors based on this prong of the municipal advisor definition to the extent their municipal advisory activities are limited to such advice. *See* note 338 and accompanying text. However, a person that advises a municipal entity with respect to how to structure a 529 Savings Plan may be required to register as a municipal advisor. Interests in 529 Savings Plans are municipal securities, and such a person would be engaging in municipal advisory activities to the extent he or she provides advice with respect to the structure, timing, terms, or other similar matters concerning such an issuance unless an exclusion or exemption applies.

[340] *See* Rule 15Ba1–1(m)(3).

[341] *See supra* notes 311–312 and accompanying text.

[342] *See, e.g., infra* Section III.A.1.c.iv. (discussing an exemption for broker-dealers serving as underwriters).

[343] *See supra* notes 311–312 and accompanying text.

[344] *See* Proposal, 76 FR 836.

[345] *See id.,* at 835.

proceeds of municipal securities[,]'' and ''[t]hus, an adviser providing advice to a municipal entity with respect to any plan, program or pool of assets—even if the plan, program or pool of assets did not consist of the proceeds of municipal securities (such as, for example, 529 Savings Plans and public pension plans)—would be required to register with the Commission if no exclusion is available.'' [346] Some commenters stated that once the proceeds of a municipal offering are commingled with other funds, they lose their character as proceeds.[347] Commenters also stated that subsequent investments of proceeds are not proceeds of municipal securities, unless the subsequent investment is part of the plan or program that was developed at the time of, and in connection with, the initial investment.[348]

One commenter stated that a person should not be considered to be providing advice with respect to an investment strategy if he reasonably believes that the relevant funds are not from an account specifically for the proceeds of municipal securities issuances, unless the municipal entity or obligated person communicated otherwise.[349] This commenter also stated that, depending on the Commission's interpretation of investment strategies, the adviser should only be considered a municipal advisor if the funds invested are proceeds of municipal securities, the adviser is aware of this fact, and there is no evidence of a sham.[350] Another commenter further suggested that a municipal entity should have the responsibility for tracking and characterizing municipal proceeds.[351] This commenter suggested that advisors should be entitled to reasonably rely on the municipal entity's representation since it is already required to track proceeds under certain state and Federal tax laws.[352]

One commenter stated that, in the context of obligated persons, only the investment of the proceeds of municipal securities, and not all monies of the obligated person, could be considered proceeds of municipal securities, even if the proceeds may be commingled with other monies for investment purposes.[353] Further, another commenter urged the Commission to exclude investments of bond proceeds for the accounts of obligated persons when the investment is not pledged as security for a municipal securities issue.[354] On the other hand, a different commenter stated that in no event should the definition of investment strategies apply to engagements with obligated persons, because obligated persons' funds are not held in plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity.[355]

As discussed above, in response to comments, the Commission is adopting a definition of ''proceeds of municipal securities'' for purposes of the term ''investment strategies,'' which is consistent with Federal tax laws and regulations related to the definition of proceeds. This definition provides that when monies are spent to carry out the authorized purposes of the municipal securities, they cease to be proceeds of municipal securities.[356] Under this definition and except as otherwise noted below, the mere fact that proceeds are commingled with other funds generally does not cause such monies to lose their character as proceeds. However, once the proceeds are spent to carry out an authorized purpose of the issuance of municipal securities, and the applicable legal documents or any other agreement pertaining to the investment of proceeds of municipal securities are no longer in effect, such funds will no longer constitute proceeds of municipal securities.

The Commission does not agree with those commenters who argued that once the proceeds of a municipal offering are commingled with other funds, they lose their character as proceeds.[357] The adopted definition of ''proceeds of municipal securities'' and the treatment of commingled proceeds are familiar concepts to market participants because they are consistent with Federal tax laws and regulations related to the definition of proceeds. The Commission believes this treatment of commingled proceeds will help to ensure that municipal advisors are registered and regulated as such until commingled proceeds are spent to carry out the authorized purposes of the municipal securities. Further, as discussed above, to assist a person in determining whether or not funds to be invested constitute proceeds of municipal securities, such person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[358] As noted below, municipal entities and obligated persons generally already track investments and ultimate expenditures of proceeds of tax-exempt municipal securities for authorized purposes in order to comply with certain state and tax Federal laws and governing legal documents pertaining to the investment of proceeds of municipal securities.[359]

With respect to the tracing of proceeds after commingling, Federal tax arbitrage rules provide that if amounts of proceeds constituting investment earnings (excluding those of municipal escrow investments) on certain tax-exempt municipal securities (particularly governmental bonds and certain governmentally-owned private activity bonds) are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the municipal issuer and the amounts are reasonably expected to

[346] *See* ICI Letter. *See also* American Bankers Association Letter I and American Society of Pension Professionals Letter (stating that the Proposal indicated that the expansive definition of ''investment strategies'' avoids the need to trace the investment of proceeds of municipal securities commingled with other public funds and that this ''regulatory shortcut'' exceeds the authority granted under the Dodd-Frank Act).

[347] *See, e.g.,* SIFMA Letter I; NABL Letter; letter from Catherine McClellan, Legal & Regulatory Affairs, SunTrust Banks, Inc., dated February 22, 2011 (''SunTrust Letter''); and Financial Services Roundtable Letter.

[348] *See* SIFMA Letter I. *See also* American Bankers Association Letter I.

[349] *See* SIFMA Letter I. *See also* BNY Letter (stating that ''the Commission should clarify that a person would not be considered to provide advice that triggers municipal advisor status if the person reasonably believes that the funds for the financial activity on which the person is advising are from an account of the municipal entity or obligated person other than an account specifically for the proceeds of municipal securities or escrow funds that contains [sic] funds from multiple sources other than the initial proceeds of a municipal security'').

[350] *See* SIFMA Letter I.

[351] *See* Kutak Rock Letter. *See also* Financial Services Roundtable Letter.

[352] *See* Kutak Rock Letter (stating that commingled proceeds are required by federal tax laws (applicable to tax-exempt bonds) and state laws to be traced for use and investment purposes). Another commenter suggested that municipal entities, and not their municipal advisors, should have the responsibility for identifying any assets in accounts maintained at banks or broker-dealers that should be deemed proceeds. *See* Financial Services Roundtable Letter.

[353] *See* Kutak Rock Letter.

[354] *See* NABL Letter. This commenter argued that, ''[s]ince only a small portion of an obligated person's investible assets may represent unspent proceeds of a municipal securities issue, and since it would not be apparent to investment advisors whether private entities are obligated persons unless the Commission limits municipal financial products to those pledged as security for a municipal securities issue, any more expansive reading of the term would impose an impossible diligence burden on corporate investment advisors.'' *Id.*

[355] *See* SIFMA Letter I.

[356] *See* Rule 15Ba1–1(m)(1).

[357] *See supra* note 347 and accompanying text.

[358] *See* Rule 15Ba1–1(m)(3).

[359] *See infra* note 361 and accompanying text.

be spent for governmental purposes within six months from the date of the commingling, those proceeds are treated as spent at the time of commingling.[360] This Federal tax arbitrage rule mainly benefits general purpose municipal entities (*e.g.,* States, cities, and counties) with respect to very short-term investment practices involving their general fund accounts. The Commission likewise considers proceeds as spent at the time of such commingling in the context of municipal advisors because, as noted above, arbitrage rules governing the investment of bond proceeds are central to an issue of tax exempt municipal securities and are well-known in the municipal market. Because the approach the Commission is taking today is consistent with Federal tax arbitrage rules, it should be consistent with the current practice of municipal entities and obligated persons related to tracing proceeds of municipal securities. Further, because such proceeds are reasonably expected to be spent for governmental purposes within six months from the date of commingling, the Commission believes these proceeds involve shorter term investments and therefore are subject to lower risk. As a result, they raise less concern.

The Commission believes that any person that does not satisfy the conditions for an exclusion or exemption from the definition of municipal advisor should know whether the person it is advising is a municipal entity or obligated person and whether the relevant funds constitute proceeds of municipal securities. As commenters stated, municipal entities and obligated persons generally already track investments and ultimate expenditures of proceeds of tax-exempt municipal securities for authorized purposes in order to comply with certain state and Federal tax laws and governing legal documents pertaining to the investment of proceeds of municipal securities.[361] Thus, with respect to the tracing of proceeds of municipal securities to investments and expenditures for authorized purposes, the Commission does not believe that the municipal advisor registration regime will impose any significant additional burden on municipal entities, obligated persons, or municipal advisors.[362]

Reasonable Reliance on Representations for Proceeds Determinations

As set forth in Rule 15Ba1–1(m)(3), in determining whether or not relevant funds constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided the person has a reasonable basis for such reliance.[363] Under Rule 15Ba1–1(m)(3), a person need not obtain a separate written representation each time an investment is made, and can instead rely on a prior written representation if the person has a reasonable basis for reliance. The Commission believes that a determination of whether or not a person has a reasonable basis to rely on a written representation requires reasonable diligence, based on all the facts and circumstances, including review of the written representation and other relevant information reasonably available to the person. For example, a person should not ignore information [364] in the person's possession as a result of which such person would know that the representation is inaccurate. In such a circumstance, the person seeking to rely on the representation should make further inquiry to verify the accuracy of the representation in order to show a reasonable basis for the reliance. However, a person relying on a written representation generally need not independently verify all the information underlying the representation. Depending on the particular facts and circumstances, however, a person seeking to rely on such representations should take into account other information, including, but not limited to, information that is reasonably available to such person either as a result of the person's relationship with the municipal entity or obligated person or that is provided by other parties to the relevant transaction.[365]

Municipal Escrow Investments

Section 15B(e)(3) of the Exchange Act provides that the term investment strategies includes, in part, ''the recommendation of and brokerage of municipal escrow investments.'' [366] However, Section 15B(e) of the Exchange Act does not define the term ''municipal escrow investments.''

Several commenters discussed the term ''municipal escrow investments'' as used in the context of investment strategies and some asked for further Commission guidance on the meaning of this term.[367] For example, one commenter stated that Congress intended the term to be limited to accounts holding the proceeds of municipal securities pending deployment.[368] Another commenter stated that municipal escrow investments means investments deposited in an escrow account to ''defease'' [369] municipal securities.[370] Another commenter stated that municipal escrow investments are

[360] *See* Treas. Reg. § 1.148–6(d)(6).

[361] *See* Kutak Rock Letter. *See also* Financial Services Roundtable Letter.

[362] *See, e.g.,* Kutak Rock Letter (noting that ''[a]dvisors should be entitled to reasonably rely on a municipal entity's tracking and characterization of the proceeds of municipal securities, as they are already entitled to do so under state and federal tax laws'').

[363] *See* Rule 15Ba1–1(m)(3).

[364] For example, such person may have acquired other information as a result of its interaction with the municipal entity or obligated person, either in connection with the transaction with respect to which it received the written representation or otherwise.

[365] The Commission notes that it has in other contexts expressed similar views on whether a person's reliance on information is reasonable. For example, under Regulation R, a bank or a broker-dealer satisfies its customer eligibility requirements if the bank or broker-dealer ''has a reasonable basis to believe that the customer'' is an institutional customer or high net worth customer before the time specified in the rule. *See* 17 CFR 247.701. When adopting Regulation R, the Commission stated that a bank or broker-dealer would have a ''reasonable basis to believe'' if it obtains a signed acknowledgment that the customer met the applicable standards, unless it had information that would cause it to believe that the information provided by the customer was or was likely to be false. *See* Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks, Securities Exchange Act Release No. 56501 (September 28, 2007), 72 FR 56514 (October 3, 2007).

[366] 15 U.S.C. 78*o*–4(e)(3).

[367] *See, e.g.,* ABA Letter and SIFMA Letter I.

[368] *See* letter from Charles W. Cary, Jr., Chief Investment Officer, Division of Investment Services, Employees' Retirement System of Georgia and Teachers Retirement System of Georgia, dated February 21, 2011 (''Teachers Retirement System Letter'').

[369] The MSRB provides the following definition for ''defeasance'' or ''defeased''—''Termination of certain of the rights and interests of the bondholders and of their lien on the pledged revenues or other security in accordance with the terms of the bond contract for an issue of securities. This is sometimes referred to as a 'legal defeasance.' Defeasance usually occurs in connection with the refunding of an outstanding issue after provision has been made for future payment of all obligations related to the outstanding bonds, sometimes from funds provided by the issuance of a new series of bonds. In some cases, particularly where the bond contract does not provide a procedure for termination of these rights, interests and lien other than through payment of all outstanding debt in full, funds deposited for future payment of the debt may make the pledged revenues available for other purposes without effecting a legal defeasance. This is sometimes referred to as an 'economic defeasance' or 'financial defeasance.' If for some reason the funds deposited in an economic or financial defeasance prove insufficient to make future payment of the outstanding debt, the issuer would continue to be legally obligated to make payment on such debt from the pledged revenues.'' *See* definition of ''Defeasance'' or ''Defeased'' in Glossary of Municipal Securities Terms, MSRB (3d ed. 2013), available at *http://msrb.org/glossary.aspx* (''MSRB Glossary'').

[370] *See* Kutak Rock Letter.

investments of funds in a segregated escrow account established by the municipal entity or obligated person to hold funds that have been allocated for satisfying a specific and identified obligation of the municipal entity or obligated person and maintained by an escrow agent for the municipal entity or obligated person.[371] One commenter stated that the Commission should recognize that the term ''municipal escrow investments'' has a different and narrower meaning than ''proceeds of municipal securities'' and is limited to investments held in an escrow account.[372] This commenter also suggested that the Commission should clarify that merely providing brokerage of municipal escrow investments does not make a person a municipal advisor.[373]

The Commission has carefully considered the issues raised by commenters on the Proposal and has determined to provide a definition for ''municipal escrow investments.'' [374] For purposes of the definition of investment strategies, the Commission is defining ''municipal escrow investments'' as proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.[375] Because it is a separate component of the statutory definition of investment strategies, the Commission agrees with the comments that ''municipal escrow investments'' does not necessarily have the same meaning as ''proceeds.'' [376] At the same time, however, municipal escrow investments generally are funded with proceeds raised from the issuance of municipal securities in refunding or refinancing transactions to be used to provide for repayment of prior outstanding issues of municipal securities and these escrows also may include certain other funds, such as an issuer's cash contribution derived from revenues.[377] In addition, municipal escrow investments may be funded in part from equity-type funds which may be viewed as equity or as a broad category of proceeds as a result of their escrow pledge to secure the outstanding municipal securities to be refinanced and their attendant close nexus to those municipal securities.[378] The definition of municipal escrow investments provided herein, consistent with Rule 15Ba1–1(d)(3)(vii), protects funds that are used for payment of the municipal securities issue, whether or not they are derived from the sale of municipal securities.

The Commission believes that this definition of municipal escrow investments is appropriate in order to protect both investors in municipal securities and municipal entities for reasons discussed further below. These municipal escrow investments typically involve investments of significant amounts of proceeds of municipal securities for long periods of time linked to call restrictions or maturities of refunded debt. These features make municipal escrow investments particularly vulnerable to abuse, and in fact significant investment pricing abuses have occurred in the area of municipal escrow investments in the past and the potential for future pricing abuses continues to exist in this area.[379] In one particularly notable historic example, pricing abuses involving municipal escrow investments were the subject of a major joint enforcement initiative involving the Commission, the Internal Revenue Service, and the U.S. Attorney for the Southern District of New York that affected a large number of major broker-dealers with respect to artificially high prices on U.S. Treasury securities charged by such dealers in sales of such securities to municipal entities to fund municipal escrow investments.[380]

The Commission notes that a person merely providing brokerage of municipal escrow investments would not be a municipal advisor if such person does not provide advice with respect to such investments.[381] The purchase and sale of escrow investments upon the direction of an obligated person or its financial advisor without rendering advice is merely a provision of brokerage services and does not render such person a municipal advisor. It is the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal escrow investments that renders a person a municipal advisor.[382]

Also, consistent with the definition of proceeds of municipal securities that the Commission is adopting, the Commission is including a written representation component in the definition of municipal escrow investments. Accordingly, Rule 15Ba1–1(h)(2) states that, in determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of Rule 15Ba1–1(h), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[383] As with the written representation component under the definition of proceeds of municipal securities, under Rule 15Ba1–1(h), a person need not obtain a separate written representation each time an investment is made, and can instead rely on a prior written representation if the person has a reasonable basis for reliance. For this purpose, the same standard and principles apply in determining whether a person has a reasonable basis for such reliance as discussed previously with respect to reliance on representations regarding proceeds determinations.[384]

Other Comments on the Scope of the Proposed Interpretation of ''Investment Strategies''

In addition to responses to specific requests for comment, the Commission received a number of other comments regarding its proposed interpretation of the statutory definition of investment

[371] *See* SIFMA Letter I.

[372] *See* ABA Letter.

[373] *See id.* Rather, the commenter asserted that providing advice with respect to the recommendation of, and brokerage of, municipal escrow investments makes a person a municipal advisor.

[374] *See* Rule 15Ba1–1(h).

[375] *See* Rule 15Ba1–1(h)(1).

[376] *See* Rule 15Ba1–1(m) (defining proceeds of municipal securities).

[377] *See, e.g.,* Ballard, *ABCs of Arbitrage* at 169 (''A refunding escrow is any fund that contains proceeds of a refunding issue for use in paying principal or interest on a prior issue. Normally, an issuer will contribute either revenues or unspent prior issue proceeds to a refunding escrow in addition to proceeds of the refunding issue.). *See also* Treas. Reg. § 1.148–1(b), which defines a ''refunding escrow'' generally to mean ''one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues.'')

[378] *See* Treas. Reg. § 1.148–1(b) (definitions of ''proceeds'' and ''replacement proceeds,'' respectively).

[379] *See generally* Robert A. Fippinger, *The Securities Law of Public Finance* (3rd Ed. 2012) at § 14:12 entitled ''Markup Fraud: Yield Burning.''

[380] *See* SEC Press Release No. 2000–45 (April 6, 2000), in which the SEC announced a global settlement with 17 broker-dealers with respect to pricing abuses in municipal escrow investments. The artificial pricing practices are known as ''yield-burning'' and this settlement is known as the ''global yield-burning settlement.''

[381] *See infra* Section III.A.1.c.iv. at notes 642–645 and accompanying text (discussing that certain routine selling activities would not constitute municipal advisory activities).

[382] *See also infra* notes 637–641 and accompanying text (discussing when advice given by a broker-dealer is considered to be ''solely incidental'' to the conduct of his business as a broker or dealer).

[383] *See* Rule 15Ba1–1(h)(2).

[384] *See supra* notes 364–365 and accompanying text.

strategies. For example, one commenter requested that the Commission clarify that the term ''investment strategies'' does not include separate accounts supporting insurance contracts or their underlying investment vehicles.[385] The commenter reasoned that the funds invested in such insurance contracts are not proceeds of municipal securities, but are employer and employee contributions.[386] Another commenter argued that the term ''municipal financial product'' should not include ''an insurance product tailored to a municipal entity,'' because ''such products . . . are already quite well regulated.'' [387]

The Commission agrees that employee contributions are not proceeds of municipal securities because these funds are derived from salary deduction arrangements with individual employees and not from the issuance of a municipal security. Therefore, a person providing advice with respect to such contributions would be exempt from the definition of municipal advisor to the extent their municipal advisory activities are limited to such advice. Whether a person providing advice with respect to employer contributions will be exempt, however, will depend upon whether such funds are proceeds of municipal securities. In general, public pension plans do not include proceeds of municipal securities because proceeds of tax-exempt municipal securities generally cannot be spent to fund investments for pension liabilities.[388] Further, the Commission agrees that a person providing advice with respect to other insurance products tailored to a municipal entity would not be engaged in municipal advisory activities if the insurance products do not involve the investment of proceeds of municipal securities because the final rules narrow the focus of the term ''investment strategies'' to those involving investments of proceeds of municipal securities and municipal escrow investments with a new exemption in Rule 15Ba1–1(d)(3)(vii).

ix. Pooled Investment Vehicles

As discussed above, the Commission proposed to interpret the statutory definition of the term ''investment strategies'' to include ''pools of assets that invest funds held by or on behalf of a municipal entity.'' [389] Further, as part of the discussion of the term ''investment strategies,'' the Commission noted in the Proposal that, to the extent a person is providing advice to certain pooled investment vehicles in which a municipal entity has invested funds along with other investors, such pooled investment vehicles would not be considered funds ''held by or on behalf of a municipal entity.'' [390] Consequently, a person providing advice to such vehicle would not have to register as a municipal advisor. However, the Commission noted that, to the extent that the pooled investment vehicle is a LGIP, the pooled investment vehicle would be considered to be funds ''held by or on behalf of'' a municipal entity and a person providing advice with respect to a LGIP would have to register as a municipal advisor, absent eligibility for some other exclusion or exemption.[391]

The Commission requested comment on whether it should modify or clarify its proposed interpretation of the circumstances under which a pooled investment vehicle would be considered to involve funds ''held by or on behalf of a municipal entity,'' including whether the proposed interpretation should no longer apply if municipal entities are not considered to be the ''primary investors'' in the pooled investment vehicle or if funds of municipal entities exceed a certain threshold in the pooled investment vehicle.[392] The Commission received several comment letters addressing the interpretation.

One commenter supported the Commission's proposed interpretation, without further request for modification.[393] Two commenters opposed any approach to determine municipal advisory status based on whether municipal entities were the ''primary investors'' in the pooled vehicle, citing the difficulty of making such a determination on an ongoing basis.[394] Another commenter urged the Commission to reiterate that an adviser to a pooled investment vehicle in which a municipal entity or obligated person invests is not a municipal advisor by virtue of providing advice to such a vehicle, and that purchasing an interest in a vehicle does not create an advisory engagement between the investor and the vehicle's adviser.[395] This commenter suggested that, ''so long as there is at least one *bona fide* investor that is not a municipal entity or obligated person, the adviser to the vehicle should not be a municipal advisor.'' [396] The commenter also stated that not exempting advisors to pooled vehicles would particularly limit investment choices for public pension funds.[397]

[385] *See* Committee of Annuity Insurers Letter I.

[386] *See id.* The commenter explained that variable annuity contracts issued by its members are supported by insurance company separate accounts. Insurance company separate accounts could be limited to insurance contracts issued only to governmental retirement plans. The commenter noted that, if the Commission adopts its proposal to define municipal entity as including 457 plans and 403(b) plans, these insurance company separate accounts could then be viewed as pooled investment vehicles limited to municipal entity investors (*i.e.,* 457 plans and 403(b) plans). The commenter noted that the definition of investment strategies could be read to imply that an insurance company separate account, whose assets are limited to contributions from insurance contracts held by governmental retirement plans, is an investment strategy. The commenter stated that it has found no indication in the legislative history that Congress intended this result. The commenter noted that the funds invested in these insurance contracts are not proceeds of municipal securities, but rather employer and employee contributions. In the case of employee contributions from salary deduction arrangements, such salary funds are equity funds of the employees upon receipt, regardless of the source of those salaries, and thus are not proceeds of municipal securities.

[387] *See* Kutak Rock Letter.

[388] *See* 26 U.S.C. 148(a)(2) and Treas. Reg. § 1.148–1(e) (investment property definition).

[389] *See supra* Section III.A.1.b.viii. *See also* proposed Rule 15Ba1–1(b).

[390] *See* Proposal, 76 FR 830.

[391] *See id.,* at note 98.

[392] *See id.,* at 835.

[393] *See* American Bankers Association Letter I. This commenter urged the Commission to reiterate its position in the final rules and clarify that the interpretation applies to collective investment funds. A collective investment fund (''CIF'') is a bank-administered trust that holds commingled assets that meet specific criteria established by 12 CFR 9.18. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. CIFs allow banks to avoid costly purchases of small lot investments for their smaller fiduciary accounts. *See* Office of the Comptroller of the Currency, Collective Investment Funds, available at *http://www.occ.treas.gov/topics/capital-markets/asset-management/collective-investment-funds/index-collective-investment-funds.html. The Commission notes that a CIF would have to contain no proceeds of municipal securities or fall within an exclusion or exemption to not require municipal advisor registration. See infra Section III.A.1.c.viii. (discussing the bank exemption).*

[394] *See* letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, dated February 22, 2011 (''MFA Letter'') (stating that ''imposing such an artificial threshold would create uncertainty for private fund managers, require burdensome, ongoing monitoring of the level of municipal entity investments, and limit or even prevent municipal entities from investing in private funds''). *See also* Kutak Rock Letter (suggesting that terminology involving the concept of ''municipal entities are the primary investors'' not be utilized, because ''it is too difficult to determine just what 'primary' means[,]'' and that too many difficult questions regarding an objective, numbers-based approach used to determine primary investorship would arise).

[395] *See* SIFMA Letter I.

[396] *Id.*

[397] *See id.* Specifically, the commenter stated that absent the suggested exemptions, fewer pooled investment vehicles would be offered to municipal entities (particularly public pension plans) and obligated persons, which would disserve municipal entities and obligated persons by limiting their access to important vehicles for the long-term investment of their funds. The commenter also stated that local government investment pools are

Continued

The Commission has carefully considered these comments and is not adopting its proposed interpretation of when a pooled investment vehicle will be considered to be funds held by or on behalf of a municipal entity. It is also not adopting an interpretation that would tie the determination of whether a person providing advice to a pooled investment vehicle is a municipal advisor, to whether municipal entities are the primary investors in the pooled investment vehicle. Instead, consistent with the narrowed approach that the Commission is adopting for ''investment strategies,'' the Commission is interpreting a pooled investment vehicle to be an investment strategy, and an advisor to such a pool to be a municipal advisor, when the pooled investment vehicle contains proceeds of an issuance of municipal securities, regardless of whether all funds invested in the vehicle are funds of municipal entities.[398] In such a case, an advisor to such a pooled investment vehicle will be required to register as a municipal advisor, unless an exclusion or exemption applies.

The Commission recognizes commenters' concerns that requiring advisors to pooled investment vehicles that include funds of municipal entities to register as municipal advisors could have the effect of limiting investment choices for municipal entities, including investment choices for public pension funds. As noted above, however, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[399] Contrary to the construction under the proposed definition of ''investment strategies,''[400] under the definition of ''investment strategies'' as adopted and the exemption in Rule 15Ba1–1(d)(3)(vii), whether or not the funds invested in a pooled investment vehicle are considered to be ''funds held by or on behalf of a municipal entity'' does not determine whether a person providing advice to such a vehicle is required to register as a municipal advisor. Rather, under the rule as adopted, the determination of whether a person providing advice to a pooled investment vehicle is required to register as a municipal advisor depends upon the narrower inquiry of whether the funds in the pooled investment vehicle constitute ''proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.''[401] Also, the Commission notes that many advisors to pooled investment vehicles will be registered investment advisers or employees of municipal entities. Therefore, many advisors would or could be either exempted or excluded from registration as municipal advisors.[402] Moreover, the Commission believes that this approach to pooled investment vehicles appropriately focuses protection on those activities related to investment of the proceeds of municipal securities and related escrow investments, with respect to which there has been significant enforcement activity.[403]

One commenter expressed concern that pooled investment vehicles whose investors are limited to one or more municipal entities (*e.g.,* a government retirement pension plan) would be considered investment strategies under the Proposal.[404] This commenter suggested that the term ''investment strategies'' should not include insurance company's separate accounts supporting variable annuity contracts (and their underlying investment vehicles) offered to or held by municipal entities, even if the assets of the separate account are limited only to contributions from municipal entities.[405]

To the extent that an insurance company's separate accounts supporting variable annuity contracts offered to or held by municipal entities do not include ''proceeds of municipal securities,'' persons providing advice with respect to such accounts would not be required to register as municipal advisors because they would be exempt with respect to such municipal advisory activity.[406] Specifically, the Commission notes that, as a result of the exemption in Rule 15Ba1–1(d)(3)(vii) adopted today, a person providing advice with respect to investment strategies that are not ''plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments'' will be exempt from the definition of municipal advisor with respect to such activities. Further, the definition of ''proceeds of municipal securities'' is limited to the monies derived by a municipal entity from the sale of municipal securities, investment income derived from such monies, and other monies of a municipal entity (or obligated person) held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the debt service on the municipal securities, and investment income from the investment or reinvestment of such funds.[407] If, however, such separate accounts supporting variable annuity contracts offered to or held by municipal entities *do* include ''proceeds of municipal securities,'' advice with respect to such accounts would not be eligible for the exemption in Rule 15Ba1–1(d)(3)(vii) and such activity could be municipal advisory activity triggering the registration requirement.

x. Solicitation of a Municipal Entity or Obligated Person

The definition of municipal advisor in Exchange Act Section 15B(e)(4) includes a person that undertakes a solicitation of a municipal entity or obligated person on behalf of specified persons.[408] Exchange Act Section 15B(e)(9) provides that the term ''solicitation of a municipal entity or obligated person''

often the only available option for the short-term investment of operating funds and are subject to state laws, which often include a fiduciary duty. The commenter stated that the Proposal likely would reduce the number of local government investment pool options available to municipalities.

[398] *See* Rule 15Ba1–1(d)(1) (defining ''municipal advisor'') and Rule 15Ba1–1(b) (defining ''investment strategies'' as including the statutorily identified items: ''plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments'').

[399] *See supra* Section III.A.1.b.viii. (discussing the exemption as it relates to the application of the statutory definition of ''investment strategies'').

[400] *See supra* note 389 and accompanying text.

[401] *See* Rule 15Ba1–1(b).

[402] *See infra* Sections III.A.1.c.v. and III.A.1.c.i. (discussing, respectively, the exclusion for registered investment advisers and their associated persons and an exemption for employees of municipal entities and obligated persons).

[403] *See supra* note 287.

[404] *See* Committee of Annuity Insurers Letter I.

[405] *See id.*

[406] *See* Rule 15Ba1–1(d)(3)(vii).

[407] *See supra* Section III.A.1.b.viii. (discussing the exemption pursuant to Rule 15Ba1–1(d)(3)(vii), and the terms ''investment strategies'' and ''proceeds of municipal securities'').

[408] *See* 15 U.S.C. 78*o*–4(e)(4)(A)(ii). The Commission notes that the definition of municipal advisor under Section 15B(e)(4)(A) means, in part, a person that ''undertakes a solicitation of a municipal entity.'' Also, Section 15B(a)(1)(B), which establishes the registration requirement, specifically refers to solicitations of obligated persons. Notwithstanding the omission of the term ''obligated person'' in the definition of municipal advisor, the Commission interprets the definition of municipal advisor to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person for the reasons discussed above. *See supra* note 138 and accompanying text.

See also supra note 178 (citing Chapman and Cutler Letter and discussing that an obligated person does not become a municipal entity by virtue of issuing securities with respect to which it is an obligated person).

means ''a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.'' [409]

In connection with the statutory definition, the Commission discussed in the Proposal its interpretation of ''solicitation of a municipal entity or obligated person'' and stated in the Proposal that, unless an exclusion applies, any third-party solicitor that seeks business on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser from a municipal entity must register as a municipal advisor.[410] The Commission noted that the determination of whether a solicitation of a municipal entity requires registration is not based on the number, or size, of investments that are solicited.[411] The Commission also specifically stated that the exclusion from the definition of municipal advisor for a broker-dealer serving as an underwriter would not apply to a broker-dealer acting as a placement agent for a private equity fund that solicits a municipal entity or obligated person to invest in the fund.[412]

The Commission received approximately 14 comment letters regarding the definition of ''solicitation of a municipal entity or obligated person.'' As discussed in more detail below, a number of commenters requested further clarification regarding the statutory definition of, and the Commission's proposed interpretations of, that term. The Commission has carefully considered issues raised by commenters on its proposed interpretation and is adopting a rule [413] to define ''solicitation of a municipal entity or obligated person.'' The Commission's interpretation of ''solicitation of a municipal entity or obligated person'' in Rule 15Ba1–1(n) is substantially the same as its proposed interpretation, and includes certain clarifications discussed below designed to address commenters' concerns.[414] In addition, the Commission notes that, both in its proposed interpretation and adopted rule, a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, soliciting on its own behalf, as explained below [415]—or an affiliate of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser soliciting on behalf of such entity—would not fall within the definition of ''solicitation of a municipal entity or obligated person.'' Accordingly, such person would not need to register as a municipal advisor.

Mailings, Advertisements, and Other General Information

Commenters stated that the Commission should explicitly exclude certain activities from the definition of solicitation of a municipal entity or obligated person. For example, one commenter recommended that ''generic 'mass mailing' solicitations, or institutional advertising'' should not be considered solicitation under the proposed rules, especially if such mass mailings are not targeted to a small group of particular municipal entities or obligated persons.[416] This commenter noted that the same argument would apply with respect to newspaper or periodical ads, brochures, TV, radio, or Internet ads.[417]

The Commission agrees with commenters that advertisements [418] or solicitations do not trigger an obligation for a third-party to register as a municipal advisor, provided such activity is undertaken by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser on behalf of itself as opposed to on behalf of a third party. Accordingly, the Commission is adopting Rule 15Ba1–1(n) with a clarification to address advertising and the scope of the rule with respect to solicitation of obligated persons.[419] Specifically, Rule 15Ba1–1(n), as adopted, clarifies that ''solicitation of a municipal entity or obligated person'' does not include ''advertising by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser.'' [420]

Assistance With Requests for Proposals

It is a relatively common industry practice for municipal entities to request that a financial advisor, bond counsel, or other market professional assist in the review of requests for proposals (''RFP'') for underwriter, financial advisory, or

[409] 15 U.S.C. 78*o*–4(e)(9).

The Commission notes that Rule 15Ba1–1(n) (which, as adopted, provides that the term ''solicitation of a municipal entity or obligated person'' has the same meaning as Section 15B(e)(9) of the Exchange Act, with certain exemptions) is only applicable with respect to whether or not a person meets the definition of municipal advisor and therefore will be required to register with the Commission (unless an exemption or exclusion applies). The Commission is not otherwise altering its interpretation of ''solicitation'' as used in other contexts.

As the Commission has explained, the Commission generally views solicitation, in the context of broker-dealers, as including any affirmative effort intended to induce transactional business. *See* Registration Requirements for Foreign Broker-Dealers, Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017–18 (July 18, 1989) (explaining that solicitation includes, among other things, calls encouraging use of a party to effect transactions).

[410] *See* Proposal, 76 FR 831. Thus, as stated in the Proposal, a third-party solicitor seeking business on behalf of an investment adviser from a municipal pension fund or LGIP would be required to register as a municipal advisor.

In addition, depending on the facts and circumstances, the third-party solicitor may also need to register as a broker-dealer pursuant to Section 15(a) of the Exchange Act. *See* 15 U.S.C. 78*o*(a)(1). *See also supra* note 409 (discussing solicitation in the context of broker-dealer regulation).

[411] *See* Proposal, 76 FR 831. As discussed in the Proposal, a solicitation of a single investment of any amount from a municipal entity would require the person soliciting the municipal entity to register as a municipal advisor.

[412] *See id.,* at 832, note 108 and accompanying text.

The Commission also noted that including such activities within the scope of municipal advisory activities is consistent with the Exchange Act. *See id.* (citing Exchange Act Sections 15B(e)(4)(A) and (B) (including placement agents and solicitors that undertake a solicitation of a municipal entity in the definition of municipal advisor); S. Rep. No. 176 at 148, 111th Cong., 2d. Sess. 148 (2010) (noting that Section 975 would not prohibit solicitation of a municipal entity, but would subject solicitors to the registration requirement and MSRB regulation); and letter from Senator Christopher J. Dodd, U.S. Senate Committee on Banking, Housing and Urban Affairs, to Elizabeth M. Murphy, Secretary, Commission, dated February 2, 2010).

[413] *See* Rule 15Ba1–1(n).

[414] *See id. See* notes 419–420 and 446–447, and accompanying text (discussing Rule 15Ba1–1(n)).

[415] *See* text accompanying *infra* note 418.

[416] *See* Kutak Rock Letter.

[417] *See id.*

[418] *See, e.g.,* FINRA Rule 2210(a)(5) (defining a ''retail communication'' as meaning ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period'').

[419] *See* Rule 15Ba1–1(n).

[420] *Id.*

The Commission notes, however, that while such communications would not trigger the requirement to register as a municipal adviser under the solicitation prong of the definition of ''municipal adviser,'' depending on the facts and circumstances, including the content of such communications, such activity may be considered to be advice for purposes of the registration requirement. *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

investment advisory services.[421] A person assisting a municipal entity or obligated person in selecting a broker-dealer, investment adviser, or financial advisor as part of an RFP process established by the municipal entity or obligated person would not be considered to be undertaking a solicitation for purposes of the definition of municipal advisor in Rule 15Ba1–1(d)(1), because such person would not be soliciting ''on behalf of'' such broker-dealer, investment adviser, or financial advisor.[422] Such person could, however, be engaging in other municipal advisory activities with respect to assistance in the selection process.[423]

Endorsement of Financial Products and Services by Associations

The Commission received approximately nine comment letters from various associations that endorse third parties offering products and services to the associations' members (''endorsement arrangements'').[424] According to commenters, in these endorsement arrangements, the third parties, which typically include investment advisers, broker-dealers, and mutual fund companies, compensate the associations or their for-profit subsidiaries through a royalty arrangement or through a marketing or sponsorship fee, depending on the association's level of involvement in providing information to its members.[425] The commenters expressed concern that the associations' compensated endorsement of investment advisory, municipal advisory, or broker-dealer businesses to their members, some of whom are municipal entities, could potentially be interpreted as solicitation of a municipal entity or obligated person.[426] Many of these commenters believed that the Proposal did not provide sufficient guidance about the statutory definition of ''solicitation.'' The statutory definition of solicitation includes ''direct or indirect communication with a municipal entity or obligated person,'' thus creating uncertainty regarding the possible inclusion of such endorsements.[427] One commenter noted that investment advisory, municipal advisory, or broker-dealer businesses that are endorsed by associations are not directed specifically at municipal entities, but rather are prepared and circulated without regard to whether the audience may include municipal entities.[428]

Two commenters recommended that the definition of solicitation exempt ''advertisement, endorsement, sponsorship, and similar services offered by persons who are not municipal advisors, brokers, dealers, municipal securities dealers, or similar persons engaged in the financial advisory service industry.''[429] One stated that compliance with the registration rules would create a significant administrative burden and would not create any material public benefits.[430] The other commenter requested that the Commission clarify the meaning of ''indirect communication'' within the definition of solicitation.[431] Similarly, other commenters stated that the Commission should exempt national and state associations representing state and local governments from municipal advisor registration.[432] These commenters argued that their staffs do not directly contact public employees or offer advice to public agencies or public employees.[433]

At this time, the Commission is not providing a general exemption for national and state associations that engage in endorsement arrangements. An organization that receives compensation for endorsing a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser is soliciting a municipal entity or obligated person within the meaning of the statute. However, the Commission notes that its interpretation in Rule 15Ba1–1(n) with respect to excluding advertising from ''solicitation of a municipal entity or obligated person'' may apply to some of these associations. For example, if an association's ''endorsement'' qualifies as ''advertising'' by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, pursuant to Rule 15Ba1–1(n), it would not be required to register as a municipal advisor. Such a determination, however, would be based on the particular facts and circumstances.

The Commission does not believe at this time that it is appropriate to provide a blanket exemption to associations that are not able to take advantage of Rule 15Ba1–1(n), because these associations are being directly or indirectly compensated for recommending a broker, dealer, municipal advisor, or investment adviser to municipal entities or obligated persons. In addition, these associations may, in certain cases, be compensated in direct relation to the number of municipal entities that engage the endorsed product or service provider.

[421] For example, one commenter expressed concern that an investment adviser providing advice to a client regarding the selection or retention of another investment manager could constitute a solicitation of a municipal entity or obligated person under Section 15B(e)(9) of the Exchange Act. *See infra* note 705 and accompanying text.

[422] *See* Rule 15Ba1–1(n) (defining solicitation of a municipal entity or obligated person).

[423] *See infra* note 556 and accompanying text. *See also infra* Section III.A.1.c.ii. (discussing generally responses to RFPs and municipal advisor registration). Moreover, such activity may constitute investment advice under the Investment Advisers Act. *See, e.g., SEC* v. *Bolla,* 401 F.Supp.2d 43 (D.D.C. 2005), *aff'd in relevant part, SEC* v. *Washington Investment Network,* 475 F.3d 392 (D.C. Cir. 2007) (person selecting investment advisers for clients meets the Investment Advisers Act's definition of ''investment adviser'').

[424] *See, e.g.,* letters from James D. Campbell, CAE, Executive Director, Virginia Association of Counties, dated June 22, 2011 (''Virginia Association of Counties Letter''); Jeff Spartz, Executive Director, Association of Minnesota Counties, dated June 24, 2011 (''Association of Minnesota Counties Letter''); Robert Hay, Jr., Manager, Public Policy, ASAE Center for Association Leadership, dated July 8, 2011 (''ASAE Center for Association Leadership Letter''); Steven R. Michaud, President, Maine Hospital Association, dated July 14, 2011 (''Maine Hospital Association Letter''); Anthony Burke, President and CEO, AHA Solutions, Inc., dated July 18, 2011 (''AHA Solutions Letter''); Paul McIntosh, Executive Director, California State Association of Counties, dated July 29, 2011 (''California State Association of Counties Letter'').

[425] *See, e.g.,* ASAE Center for Association Leadership Letter.

[426] *See* ASAE Center for Association Leadership Letter and Maine Hospital Association Letter.

[427] *See* ASAE Center for Association Leadership Letter; Maine Hospital Association Letter; AHA Solutions Letter.

[428] *See* ASAE Center for Association Leadership Letter.

[429] *See* Maine Hospital Association Letter; AHA Solutions Letter.

[430] *See* Maine Hospital Association Letter.

[431] *See* AHA Solutions Letter.

[432] *See* Virginia Association of Counties Letter and California State Association of Counties Letter.

[433] *See* Virginia Association of Counties Letter and California State Association of Counties Letter.

These commenters stated that they do not directly or indirectly engage in the offer or sale of particular products or services to government employees, do not make any product or investment recommendations to existing or prospective clients, give any investment advice on their own behalf or on behalf of any third party supplier, or accept any clients on behalf of any third party supplier. These commenters also stated that the cost of registration and compliance, along with unknown consequences of state required registration due to the rules promulgated by the Commission, would unfairly disadvantage associations representing public agencies.

One of the commenters stated that such associations should receive an exemption in order to offer their membership access to value-added education and services through publicly solicited contracts. The commenter noted that associations representing non-governmental organizations are not required to register under the proposed rule and yet are able to endorse programs for their memberships that meet their standards of approval. *See* Virginia Association of Counties Letter.

Uncompensated Recommendations

Some commenters stated that the Exchange Act and the Proposal are unclear about when uncompensated recommendations might be deemed to be solicitations for purposes of the rule.[434] Several commenters stated that uncompensated recommendations should not be considered to be solicitations because the statutory text only refers to ''direct or indirect compensation.'' [435] One commenter stated further that, if uncompensated recommendations are interpreted to be solicitations, it ''will chill significantly the provision of information to municipal entities. . . .'' [436] Other commenters suggested that the solicitation prong should not apply if the municipal entity or obligated person requests an introduction.[437]

The Commission notes that an introduction is not necessarily a solicitation. Moreover, whether an introduction is a solicitation does not depend on whether a municipal entity or obligated person requests an introduction or the introduction is provided without request. Rather, for purposes of Rule 15Ba1–1(n), the solicitation determination is based on whether the person providing the introduction receives direct or indirect compensation for providing the introduction.[438] For example, a person could respond to a request from a municipal entity with a particular recommendation and then subsequently receive payment from the recommended entity. In this example, the solicitation would trigger the registration requirement.

The statutory definition of ''solicitation of a municipal entity or obligated person'' provides that the solicitation must be performed for ''direct or indirect compensation.'' [439] Thus, persons that are not compensated for soliciting a municipal entity or obligated person would not be required to register as municipal advisors. The Commission notes, however, that Commission staff has broadly construed the term ''direct or indirect compensation'' in other contexts.[440] In addition, as noted in the Proposal, other regulatory agencies have interpreted indirect compensation to include non-monetary compensation.[441]

Solicitation of Obligated Persons

Exchange Act Section 15B(e)(9) provides, in part, that the term ''solicitation of a municipal entity or obligated person'' is ''for the purpose of obtaining or retaining an engagement . . . of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products . . . .'' [442] One commenter asked the Commission to clarify that the meaning of ''municipal financial products'' with respect to the ''solicitation of an obligated person'' includes municipal derivatives, guaranteed investment contracts, and investment strategies of the municipal entity only, and not of the obligated person.[443] The commenter stated that obligated persons may include large entities with numerous and varied funds and investments, many of which may have nothing to do with the transactions pursuant to which they have become obligated persons.[444] In addition, the commenter stated that if the municipal advisor definition includes persons who advise obligated persons or solicit obligated persons with respect to the funds, securities, or investment strategies of the obligated person, ''the reach of the registration requirement would expand in potentially unpredictable ways.'' [445]

The Commission agrees with the comment that solicitation with respect to an obligated person applies only when an obligated person is acting in its capacity as an obligated person.[446] The Commission is, therefore, adopting Rule 15Ba1–1(n), which clarifies that, in the case of solicitation of an obligated person, the definition of ''solicitation of a municipal entity or obligated person'' does not include solicitation of an obligated person ''if such obligated person is not acting in the capacity of an obligated person or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to municipal financial products.'' [447]

As discussed above, with respect to the definition of obligated person, the Commission believes that the municipal advisor registration regime should apply in the same manner to advisors of obligated persons as to advisors of municipal entities.[448] The Commission further notes that, because they are committed by contract or other arrangement to support the payment of all or part of the obligations on municipal securities, obligated persons serve the same role as municipal entities with regard to municipal securities.[449] Therefore, pursuant to the Commission's clarification in Rule 15Ba1–1(n), a person soliciting an obligated person with respect to the issuance of municipal securities or municipal financial products will not meet the definition of municipal advisor as a result of such activity unless the obligated person is acting in its capacity as such.[450]

One commenter asked when a person should know whether he or she is soliciting an obligated person. Specifically, with respect to the application of the proposed rules to persons who undertake a solicitation of an obligated person, the commenter stated that a person should be considered to have engaged in such activities only when it has actual knowledge that it is (a) soliciting an obligated person, acting in its capacity as an obligated person, and (b) engaging in solicitation with respect to the issuance of municipal securities or proceeds of municipal securities.[451] Further, this commenter stated that a person must be rendering services with

[434] *See, e.g.,* letters from Joy A. Howard, Principal, WM Financial Strategies, dated February 21, 2011 (''Joy Howard WM Financial Strategies Letter''); John Dotson, Vice President and General Counsel, Chevron Energy Solutions, dated February 22, 2011 (''Chevron Letter''); Amy Natterson Kroll and W. Hardy Calcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated February 22, 2011 (''NAESCO Letter''); State of Indiana Letter.

[435] *See* Chevron Letter; NAESCO Letter.

[436] *See* NAESCO Letter.

[437] *See, e.g.,* letter from Deron S. Kintner, Executive Director, Indianapolis Local Public Improvement Bond Bank, dated February 22, 2011 (''Indianapolis Local Public Improvement Bond Bank Letter'') (stating that a person who solicits advice from individuals should be free to solicit advice and recommendations without having to either engage those individuals and compensate them or subject them to fiduciary duties).

[438] *See* Rule 15Ba1–1(n) and 15 U.S.C. 78*o*–4(e)(9) (which defines ''solicitation of a municipal entity or obligated person'' as ''a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation'' made on behalf of certain specified entities).

[439] *See* 15 U.S.C. 78*o*–4(e)(9).

[440] For example, under the Investment Advisers Act, Commission staff has taken the position that compensation generally includes the receipt of any economic benefit, whether in the form of an advisory fee, some other fee relating to services rendered, a commission, or some combination of the foregoing. *See* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (October 8, 1987).

[441] *See* Proposal, 76 FR 832, note 113.

[442] 15 U.S.C. 78*o*–4(e)(9).

[443] *See* ABA Letter.

[444] *See id.*

[445] *Id.*

[446] The Commission also discusses above when a person is an ''obligated person.'' *See supra* Section III.A.1.b.iii.

[447] *See* Rule 15Ba1–1(n). The solicitation could require the solicitor to register with the Commission as a broker-dealer. *See generally* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 18, 1989) (discussing solicitation).

[448] *See supra* note 227 and accompanying text.

[449] *See supra* Section III.A.1.b.iii.

[450] *See id.*

[451] *See* SIFMA Letter I.

respect to the types of activities or instruments that make a person a municipal advisor.[452] Lastly, the commenter suggested that a person need not affirmatively inquire as to the potential obligated person's status or the funds' status.[453]

The Commission believes that the commenter's suggestion, if adopted, would allow the municipal advisor registration regime to be too easily circumvented. An advisor could always argue that it did not have ''actual knowledge'' that it was soliciting an obligated person and therefore is not subject to regulation. The Commission instead believes that a person that is soliciting an obligated person should make a reasonable inquiry to a person in a position to know as to whether it is soliciting for services related to the issuance of municipal securities or municipal financial products, and whether the person being solicited is an obligated person. For example, a person may rely on the written representation of the obligated person, unless such person has information that would cause a reasonable person to question the accuracy of the representation.[454] In such a case, a person could not ignore the information and would need to make further reasonable inquiry to verify the accuracy of the representation.[455]

Other Exclusions and Exemptions From the Definition of ''Solicitation of a Municipal Entity or Obligated Person''

Some commenters stated that the Commission should explicitly exclude certain entities from the solicitation definition altogether. For example, several commenters stated that placement agents for pooled investment vehicles should not be considered solicitors.[456] Another commenter recommended that an investment adviser's employees who solicit municipal entities as part of their regular responsibilities should not be considered solicitors.[457] The Commission has carefully considered issues raised by commenters and has determined not to provide specific exemptions from the definition of ''solicitation of a municipal entity or obligated person.''[458]

Section 15B(e)(4)(A) of the Exchange Act states that the definition of municipal advisor includes a person that undertakes a solicitation of a municipal entity.[459] Section 15B(e)(4)(B) of the Exchange Act states that the definition of municipal advisor includes a number of listed types of market participants (specifically financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors) if such persons otherwise meet the definition of a municipal advisor under Exchange Act Section 15B(e)(4)(A). In relevant part, Exchange Act Section 15B(e)(4)(A)(ii) provides that a municipal advisor includes a person that, on behalf of certain types of third-parties, undertakes a solicitation of a municipal entity to engage such parties to perform certain specified activities.[460] In the case of placement agents, the Commission agrees with commenters that a placement agent for a pooled investment vehicle that is not a municipal entity (*e.g.,* a hedge fund or mutual fund) and that ''solicits'' a municipal entity to invest in the fund does not, with respect to such activity, meet the statutory definition of the term ''solicitation of a municipal entity or obligated person'' in Exchange Act Section 15B(e)(9). Such a placement agent does not meet the statutory definition of the term because it is not soliciting on behalf of a third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser to obtain or retain an engagement by a municipal entity or obligated person of such third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser. Whether the placement agent otherwise meets the definition of ''municipal advisor'' with respect to any activity related to or in connection with its ''solicitation'' activity (that does not, as discussed above, meet the statutory definition of solicitation in Exchange Act Section 15B(e)(9)) would depend on the facts and circumstances.[461] By contrast, a placement agent that undertakes a solicitation of a municipal entity for the purpose of obtaining an engagement by the municipal entity of an unaffiliated investment adviser to provide investment advisory services to the municipal entity is a municipal advisor because it is soliciting on behalf of an unaffiliated adviser to provide investment advisory services.[462] The Commission also agrees with commenters that employees of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that solicit municipal entities as part of their regular duties on behalf of their employer or an affiliate of such employer are not municipal advisors, if they are acting within the scope of their employment. Specifically, as provided in Exchange Act Section 15B(e)(9), the term ''solicitation of a municipal entity or obligated person'' means, in part, ''a direct or indirect communication with a municipal entity or obligated person made by a person . . . on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation . . . .''[463] As such, the term applies only to third-party solicitors, and not to an entity acting on its own behalf or on behalf of its affiliate. Employees acting in their capacity as such on behalf of their

[452] *See id.*

[453] *See id.*

[454] See Rule 15Ba1–1(m). Also, a person would only be a municipal advisor as a result of soliciting an obligated person when such obligated person is acting in the capacity of an obligated person. *See supra* note 446 and accompanying text.

[455] *See also supra* Section III.A.1.b.viii. at note 363 and accompanying text (discussing the requirement to know when advice relates to the proceeds of municipal securities).

[456] *See, e.g.,* SIFMA Letter I (stating that Section 975 of the Dodd-Frank Act does not define ''solicitation'' to include solicitation of a municipal entity or obligated person by a placement agent for a pooled investment vehicle, such as a private equity fund, hedge fund, LGIP, or mutual fund, all of which involve the sale of securities by registered broker-dealers); ICI Letter (stating that a ''placement agent soliciting a municipal entity to invest in a pooled investment vehicle acts on behalf of the pooled investment vehicle only, not on behalf of the adviser to the vehicle nor on behalf of any of the other four enumerated categories of persons contained in the definition'').

[457] *See* letter from Monique S. Botkin, Assistant General Counsel, Investment Adviser Association, dated February 22, 2011 (''IAA Letter'') (stating that ''[i]t would be illogical and contravene the statutory intent of the Dodd-Frank Act for such an exclusion to apply to an affiliate of an investment adviser and its employees soliciting on behalf of its affiliated adviser, but not for the same analysis to apply to an investment adviser and its own employees soliciting on their employer's behalf'').

[458] *See infra* note 465 and accompanying text.

[459] *See* Exchange Act Section 15B(e)(9). *See also* Rule 15Ba1–1(n).

[460] *See supra* note 409 and accompanying text (setting forth the definition of ''solicitation of a municipal entity or obligated person'').

[461] *See infra* notes 625–629 and accompanying text (discussing when a placement agent may be a municipal advisor and when it may, or may not, qualify for the exclusion for underwriters).

[462] With respect to solicitations on behalf of investment advisers, the relevant portion of the definition of a ''solicitation of a municipal entity or obligated person'' in Exchange Act Section 15B(e) limits the scope of covered solicitations to those involving solicitations for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person ''of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.'' *See also* S. Rep. No. 111–176 at 148 (2010) (''Rather than effectively prohibiting such third-party solicitation for investment advisory services, this section would provide that activities of a municipal advisor, broker, dealer, or municipal securities dealer to solicit a municipal entity to engage an unrelated investment adviser to provide investment advisory services to a municipal entity . . . would be subject to regulation by the MSRB.'')

[463] 15 U.S.C. 78*o*–4(e)(9).

employer are acting as the agent of their employer and, consequently, are not third-party solicitors that fall within the definition of municipal advisor as a result of their solicitation activity.

Pursuant to Rule 15Ba1–1(d)(3)(viii) and consistent with the exemption from the definition of municipal advisor under Rule 15Ba1–1(d)(3)(vii) for a person that provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments,[464] the Commission is exempting from the definition of municipal advisor under Rule 15Ba1–1(d)(1) any person that undertakes a ''solicitation of a municipal entity or obligated person'' (as defined in Rule 15Ba1–1(n) (17 CFR 240.15Ba1–1(n)) for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products that are investment strategies, to the extent that such investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[465] As with respect to the exemption in Rule 15Ba1–1(d)(3)(vii), the Commission believes that the exemption in Rule 15Ba1–1(d)(3)(viii) is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, because the exemption tailors protection of municipal entities to those activities related to the investment of the proceeds of municipal securities and related escrow investments.[466]

Marketing of Insurance Contracts

One commenter stated that solicitation should not include the marketing of insurance contracts by broker-dealers to retirement plans established by municipal entities.[467] The Commission agrees that the marketing of insurance contracts by broker-dealers is not solicitation for purposes of the municipal advisor definition if it is not performed on behalf of a third-party broker, dealer, investment adviser, municipal securities dealer, or municipal advisor. As described above, the definition of ''solicitation of a municipal entity or obligated person'' only applies to third-party solicitations on behalf of these specific kinds of entities.[468]

c. Exclusions and Exemptions From the Definition of ''Municipal Advisor''

In addition to the exemption described above for persons providing advice or soliciting engagements with respect to certain financial products, the Commission discusses below its interpretations of certain statutory exclusions, as well as specific activities-based exemptions it is granting from the definition of ''municipal advisor.'' [469] Also, the Commission discusses below exemptions of general applicability to the extent a person is responding to an RFP or a request for qualifications (''RFQ'') or to the extent a municipal entity or obligated person is otherwise represented by a registered municipal advisor, subject to certain conditions.

i. Public Officials and Employees of Municipal Entities and Obligated Persons

Exchange Act Section 15B(e)(4)(A) provides that the term ''municipal advisor'' excludes employees of a municipal entity.[470] As noted in the Proposal, one commenter suggested that the Commission clarify that this exclusion would include any person serving as an appointed or elected member of the governing body of a municipal entity, such as a board member, county commissioner or city councilman.[471] This commenter stated that, because these persons are not technically ''employees'' of the municipal entity (but rather ''unpaid volunteers''), they would not fall within the exclusion from the definition of municipal advisor for ''employees of a municipal entity.'' [472]

The Commission stated in the Proposal that the exclusion from the definition of municipal advisor for ''employees of a municipal entity'' should include any person serving as an elected member of the municipal entity's governing body to the extent that the person is acting within the scope of his or her role as an elected member. The Commission also stated that ''employees of a municipal entity'' should include a governing body's appointed members to the extent such appointed members are *ex officio* members by virtue of holding an elective office.[473] The Commission stated its concern that appointed members are not directly accountable for their performance to the citizens of the municipal entity.[474]

In the Proposal, the Commission requested comment on: (1) Whether there are any persons who engage in uncompensated municipal advisory activities, or municipal advisory activities for indirect compensation, that the Commission should exclude from the definition of municipal advisor; (2) whether ''employees of a municipal entity'' should include elected members of a governing body of a municipal entity, and appointed members of a municipal entity's governing body to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office, is appropriate; and (3) whether there are other persons associated with a municipal entity who might not be ''employees'' of a municipal entity but that the Commission should exclude from the definition of municipal advisor.[475]

The Commission received over 600 comment letters on its interpretation of ''employee of a municipal entity.'' Commenters represented a wide array of individuals and entities, including representatives of: city and state governments; [476] city and state retirement systems; [477] state university

[464] *See supra* Section III.A.1.b.viii.

[465] *See* Rule 15Ba1–1(d)(3)(viii).

[466] *See* note 328 and accompanying text.

[467] *See* Committee of Annuity Insurers Letter I.

[468] *See supra* note 463 and accompanying text. *See also* Rule 15Ba1–1(n).

[469] For the exclusions and exemptions that were discussed in the Proposal and that the Commission is adopting today, the Commission has made minor, non-substantive changes to provide greater clarity and consistency throughout the rules related to exclusions and exemptions.

[470] 15 U.S.C. 78*o*–4(e)(4)(A).

[471] *See* Proposal, 76 FR 834, n.140 and accompanying text (citing letter from John P. Wagner, Kutak Rock LLP, to Elizabeth M. Murphy, Secretary, Commission, dated September 28, 2010).

[472] *See id. See also* 15 U.S.C. 78*o*–4(e)(4)(A).

[473] This would include persons appointed to fill the remainder of the term for an elective office.

[474] *See* Proposal, 76 FR 834.

[475] *See* Proposal, 76 FR 837.

[476] *See, e.g.,* letter from Stevan Gorcester, Association of Washington Cities, dated February 22, 2011; letter from William G. Dressel, Jr., Executive Director, New Jersey League of Municipalities, dated January 27, 2011; letter from Ken Miller, Oklahoma State Treasurer, dated February 7, 2011; letter from Steve Ritter, Assistant Finance Director, City of Huntsville, Texas, dated January 10, 2011; letter from Jim D. Dunaway, City Manager, City of Taylor, Texas, dated January 13, 2011; letter from Jacqueline M. Kovilaritch, Assistant City Attorney, City of St. Petersburg, Florida, dated January 19, 2011 (''City of St. Petersburg Letter''); letter from Judith Hetherly, Mayor, City of Lampasas, Texas, dated January 20, 2011; letter from Gary Herbert, Governor, State of Utah, Salt Lake City, Utah, dated February 17, 2011; and National Association of State Treasurers Letter.

[477] *See, e.g.,* Utah Retirement Systems Letter; letter from R. Dean Kenderdine, Executive Director and Secretary to the Board, Maryland State Retirement and Pension System, dated February 17, 2011; letter from Ann Fuelberg, Executive Director, Employees Retirement System of Texas, dated February 18, 2011; letter from Anthony B. Ross, Chairperson and Stephen C. Edmonds, Executive Director, City of Austin Employees Retirement System, dated February 18, 2011; and Alaska Retirement Management Board Letter.

systems;[478] state housing, development, and port authorities;[479] city transit authorities;[480] special districts (such as healthcare, water, sanitation, and other districts);[481] public utility boards and associations;[482] airports, and airport authorities and commissions;[483] and individual volunteer or appointed board members.[484]

The comments dealt predominantly with the Commission's proposed view that ''employees of a municipal entity'' should include elected members of a municipal entity's governing body, and appointed members, to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office. Many commenters asserted that the Commission's proposed interpretation of municipal advisor is overly broad or overreaching and should exclude all members of a municipal entity's governing board.

The majority of commenters stated, in particular, that appointed board members should not be treated differently from elected board members or officials and disagreed with the Commission's statement that appointed board members are not directly accountable. Many of the commenters asserted that state and local laws applicable to officials of a municipal entity do not distinguish between appointed or elected members and that all members are subject to the same legal obligations, including fiduciary duties, codes of conduct, open meeting laws, and conflicts of interest and ethics laws.[485] For example, commenters asserted that appointed officials of municipal non-profit corporations, trusts, and pension funds have a duty to act in the interests of the corporation, trust, or the fund.[486] Many commenters also asserted that appointed board members are accountable to the elected officials that appointed them or for whom they work.[487] Many also noted that appointed board members may be removed for cause[488] and are subject to civil suit.[489] Others observed that appointed board members are more accountable than elected officials.[490]

Additionally, many commenters asserted that board members are the decision and policy makers who receive advice from third parties who are paid for providing services and that board members themselves are not

[478] *See, e.g.,* letter from Frank T. Brogan, Chancellor, State University System of Florida, dated February 21, 2011; letter from Calvin J. Anthony, Chairman, Oklahoma State University/Agricultural and Mechanical Colleges Board of Regents, dated January 7, 2011 (''Oklahoma State University/Agricultural and Mechanical Colleges Board of Regents Letter''); letter from Francisco G. Cigarroa, M.D., Chancellor, The University of Texas System, dated February 7, 2011; letter from Michael D. McKinney, Chancellor, The Texas A&M University System and Kent Hance, Chancellor, Texas Tech University System, dated February 14, 2011; letter from Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011; letter from Dr. Brian McCall, Chancellor of the Texas State University System, dated February 17, 2011; and letter from Peter J. Taylor, Executive Vice President—Chief Financial Officer, The Regents of the University of California, dated February 18, 2011 (''UCLA Regents Letter'').

[479] *See, e.g.,* letter from Rebecca L. Peace, Chief Counsel, Pennsylvania Housing Finance Agency, Jayne B. Blake, Chief Counsel, Pennsylvania Infrastructure Investment Authority, Stephen M. Drizos, Executive Director, Pennsylvania Economic Development Financing Authority, Carol A. Longwell, Deputy Chief Counsel, Pennsylvania Economic Development Financing Authority, and Doreen A. McCall, Chief Counsel, Pennsylvania Turnpike Commission, dated February 15, 2011 (''Pennsylvania Housing Finance Agency Letter''); and letter from Tracy V. Drake, Chairman, Ohio Council of Port Authorities and CEO, Columbiana County Port Authority, dated February 4, 2011.

[480] *See, e.g.,* letter from Carol B. Keefe, General Counsel, Washington Metropolitan Area Transit Authority, Washington, District of Columbia, dated February 14, 2011; and letter from David Levinger, Chief Financial Officer, Dallas Area Rapid Transit, dated February 22, 2011.

[481] *See, e.g.,* letter from John ''Chip'' Taylor, Executive Director, Colorado Counties Inc., Sam Mamet, Executive Director, Colorado Municipal League, and Ann Terry, Executive Director, Special District Association of Colorado, dated January 26, 2011; letter from Kathleen Durham, Chairman, South Broward Hospital District, dated February 8, 2011; letter from James F. Heekin, Counsel, Citrus County Hospital Board, Southeast Volusia Hospital District, West Orange Healthcare District, February 14, 2011; letter from Walt Sears, Jr., General Manager, Northeast Texas Municipal Water District, dated January 24, 2011; and letter from Robert M. Ball, A. A. E., Executive Director, Lee County Port Authority, dated February 18, 2011; and letter from Edward G. Henifin, General Manager and Steven G. deMik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011.

[482] *See, e.g.,* letter from David Modisette, California Municipal Utilities Association, dated February 22, 2011; letter from John S. Bruciak, Brownsville Public Utilities Board, dated February 18, 2011; letter from David H. Wright, City of Riverside, dated February 23, 2011; and letter from Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel and Diane Moody, Director, Statistical Analysis, American Public Power Association, dated February 22, 2011 (''American Public Power Association Letter'').

[483] *See, e.g.,* letter from Jeffery P. Fegan, Chief Executive Officer, Dallas/Fort Worth International Airport, dated January14, 2011, letter from Phillip N. Brown, A.A.E., Executive Director, Greater Orlando Aviation Authority, dated February 8, 2011; letter from Emily Neuberger, Senior Vice President & General Counsel, Wayne County Airport Authority, Michigan, dated February 14, 2011 (''Wayne County Airport Authority Letter''); letter from Elaine Roberts, President & CEO, Columbus Regional Airport Authority, dated February 16, 2011; letter from Thomas W. Anderson, General Counsel, Metropolitan Airports Commission, dated February 17, 2011; and letter from Breton K. Lobner, General Counsel, San Diego County Regional Airport Authority, dated February 22, 2011.

[484] *See, e.g.,* letter from Richard R. Vosburg, Chartered Financial Analyst, Germantown, Tennessee, dated January 24, 2011 (''Vosburg Letter''); and letter from William Dalton, dated February 28, 2011 (''Dalton Letter'').

[485] *See, e.g.,* Darrell Buchbinder, The Port Authority of New York and New Jersey, dated February 18, 2011; National Association of State Treasurers Letter; Letter from Martin R. Hopper, General Manager, M–S–R Public Power Agency, dated February 18, 2011 (''M–S–R-Power Agency Letter''); letter from Meredith J. Jones, NYCEDC, dated February 18, 2011 (''NYCEDC Letter''); and UCLA Regents Letter; letter from Laura King, Minnesota State Colleges and Universities, dated February 22, 2011.

Many of these commenters also explained that certain municipal entity governing boards are established or operating pursuant to state or local statute. *See id. See also* letter from JoAnn E. Levin, Chief Solicitor, City of Baltimore, dated February 3, 2011; and letter from Mark Page, Director of Management and Budget, The City of New York, dated February 22, 2011 (''NYC Management and Budget Letter'').

[486] *See, e.g.,* letter from Acting Governor Earl Ray Tomblin, Chairman of the Board; Glen B. Gainer, Auditor of the State of West Virginia and Roger Hunter, Chairman of the Investment Committee, and Guy Bucci, Chairman of the Legal Committee, West Virginia Investment Management Board, dated February 22, 2011; and letter from Joanne Handy, President and CEO, Aging Services of California, dated February 22, 2011; letter from Charles R. Noll, President, Pennsylvania Local Government Investment Trust, dated February 18, 2011 (''Pennsylvania Local Government Investment Trust Letter''); letter from Keith Bozarth, Executive Director, State of Wisconsin Investment Board, dated February 22, 2011; and letter from Peter H. Mixon, California Public Employees' Retirement System, dated February 22, 2011 (''CALPERS Letter'').

[487] *See, e.g.,* letter from John Murphy, Executive Director, National Association of Local Housing Finance Agencies, dated January 27, 2011; NYC Management and Budget Letter; and letter from Bob A. Newmark, Housing Finance Authority, dated February 11, 2011.

[488] *See, e.g.,* letter from Gottlieb Fisher PLLC, on behalf of the Boards of Trustees for King County Rural Library District, Fort Vancouver Intercounty Rural Library District, Pierce County Rural Library District LaConner Rural Partial-County Library District, Sno-Isle Intercounty Rural Library District, Spokane County Rural Library District, Walla Walla County Rural Library District, and Whitman County Rural Library District, dated February 11, 2011 (''Gottlieb Fisher Letter''); letter from Linda Beaver, Nebraska Educational Finance Authority, dated February 16, 2011 (''Nebraska Educational Finance Authority Letter''); Alaska Retirement Management Board Letter; Robert W. Barnes, Idaho Falls Redevelopment Agency, dated February 18, 2011; and letter from Jeffrey W. Letwin, Esq., Partner, Schnader Harrison Segal Lewis LLP, Pittsburgh, Pennsylvania, dated February 8, 2011.

[489] *See, e.g.,* letter from Jeffrey W. Letwin, Esq., Partner, Schnader Harrison Segal Lewis LLP, Pittsburgh, Pennsylvania, dated February 8, 2011; letter from Gary Kimball, President, Specialized Public Finance, Inc., dated February 22, 2011 (''Specialized Public Finance Letter''); letter from Gary Parsons, General Manager, Texas Municipal Power Agency, dated February 22, 2011 (''Texas Municipal Power Agency Letter''); and letter from John W. Rubottom, General Counsel, Lower Colorado River Authority, dated February 15, 2011.

[490] *See, e.g.,* letter from Bill Lockyer, Treasurer, State of California, dated February 22, 2011 (''California State Treasurer's Office Letter''); Texas Municipal Power Agency Letter; letter from John D. Clark, III, Executive Director/CEO, Indianapolis Airport Authority, dated February 22, 2011; and letter from Victor Vandergriff, Chairman, North Texas Tollway Authority, dated February 11, 2011.

''advisors.'' [491] Many commenters asserted that members of governing boards are the intended beneficiaries of the proposed regulation.[492] Further, some commenters asserted that the Proposal would usurp state laws governing duties and responsibilities of appointed board members of municipal entities.[493] Many commenters also stated that, in its current form, the Proposal would deter much needed citizen volunteers from serving on governing boards of municipal entities or would chill the deliberative process of such boards. These commenters reasoned that volunteers would fear that their participation in votes on, or discussions of, financial matters will be deemed ''advice'' that would subject them to registration.[494]

Commenters also stated that the Proposal is unclear with respect to whether: (1) Appointed, rather than elected, officials (such as city controllers, managers, and commissioners) would be ''employees;'' [495] (2) the employee of one municipal entity (such as an employee of a municipal entity that is the sponsor of a pension plan) would be covered by the exclusion when serving as an appointed member of the board of another municipal entity (such as on the board of the sponsored pension plan) or otherwise performing services for other related municipal entities; [496] and (3) board members that were ''elected,'' but were not elected by the citizens of the municipal entity, would be considered ''employees of a municipal entity.'' [497] Some commenters stated that designees of board members should also be covered by the exclusion.[498] One commenter suggested that ''employees and board members of a municipal entity should be excluded [from the definition of municipal advisor] to the extent they provide advice to an obligated person (and acting in the purview of their duties).'' [499]

Many commenters also stated that boards of municipal entities are legally inseparable from the municipal entity.[500] One commenter stated that if the governing body of a municipal entity, as a whole, is not a part of the ''municipal entity,'' then any third party soliciting or providing advice to the governing body with respect to municipal financial products or the issuance of municipal securities would not be subject to the registration requirements.[501]

Additionally, some commenters asserted that the Proposal would restrict municipal entities from soliciting advice from citizens, and would subject to the registration requirements members of the general public submitting written comments or giving oral statements to the board of a municipal entity.[502] Another commenter stated that the Proposal would require registration of a former board member, if the Chairman of the current board contacts that former board member with questions about a prior issuance.[503]

After considering the comments, the Commission has determined to exempt from the definition of municipal advisor, pursuant to its authority under Section 15B(a)(4), all members of a municipal entity's governing body, its advisory boards and its committees, as well as persons serving in a similar official capacity with respect to the municipal entity, to the extent they are acting within the scope of their official capacity, regardless of whether such members or officials are employees of the municipal entity. Specifically, Rule 15Ba1–1(d)(3)(ii) exempts from the definition of municipal advisor ''[a]ny

[491] *See, e.g.,* letter from Michael D. Nosler, General Counsel and Assistant Attorney General, Colorado State University System, dated February 21, 2011; letter from Barbara J. Thompson, Executive Director, National Council of State Housing Agencies, dated February 22, 2011; letter from Luther Strange, Attorney General, State of Alabama, dated February 22, 2011; CALPERS Letter; letter from Ronnie G. Jung, Executive Director, Teacher Retirement System of Texas, dated February 22, 2011; Stephanie L. Hamlett, Executive Director, Virginia Resources Authority, dated February 22, 2011; and Dalton Letter.

[492] *See, e.g.,* letter from David R. Fine, City Attorney, Denver, dated February 9, 2011 (''Denver Letter''); letter from James F. Zay, Chairman, Du Page Water Commission, dated February 11, 2011; letter from Angela I. Carmon, City Attorney, City of Winston-Salem, North Carolina, dated February 14, 2011; letter from David J. Kincaid, City Manager, City of Safford, Arizona, dated February 14, 2011 (''City of Safford Letter''); and letter from Donald Dicklich, County Auditor-Treasurer, Duluth, Minnesota, dated February 16, 2011.

[493] *See, e.g.,* letter from Steven J. Baumgardt, Finance Director, City of Tolleson, Arizona, dated March 3, 2011 (''City of Tolleson Letter''); letter from Joe Pizzillo, Vice Mayor, City of Goodyear, Arizona, dated February 14, 2011 (''City of Goodyear Letter''); letter from Patricia Branya, Director, Miami-Dade County, dated February 14, 2011; and letter from Elwood G. ''Woody'' Farber, President, New Mexico Educational Assistance Foundation, dated February 15, 2011. One commenter questioned whether, if an appointed member of a governing body is deemed a municipal advisor, the federal fiduciary obligations to the municipal entity override state and local law provisions for exculpation, indemnification, and other protections of board members. *See* NABL Letter.

[494] *See, e.g.,* City of Tolleson Letter; City of Goodyear Letter; letter from Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011; letter from Edward G. Henifin, General Manager and Steven G. deMik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011; letter from Scott Jordan, Executive Office for Administration and Finance, dated February 22, 2011; letter from Granger Vinall, Chairman of the Board of Directors and Kevin J. Burns, Chief Executive Officer, UA Healthcare, Inc., dated February 22, 2011; and letter from Ronald H. Paydo, President, Medina County Port Authority, dated February 18, 2011.

[495] *See, e.g.,* Cynthia M. Davenport, Attorney at Law, Flynn & Davenport, LLC, Troy, Missouri, dated January 18, 2011; City of St. Petersburg Letter; Denver Letter; and City of Safford Letter.

[496] *See, e.g.,* letter from Michael Hairston, EFRC, dated February 22, 2011; NYC Management and Budget Letter; M–S–R-Power Agency Letter (explaining that the M–S–R Public Power Agency uses the services of employees of its member municipal entities to sit on standing committees of the agency and to fulfill the duties of offices of the agency; and commenting that employees of its members that are seconded to the agency should have the same exemption when they perform services for the agency as when the employees are acting within the scope of their employment responsibilities providing services for the benefit of the member entity); letter from Hawkins Delafield & Wood LLP, dated February 16, 2011 (commenting that ''an employee of municipal entity A who provides services to, but is not an employee of, municipal entity B, should be exempt under Section 15B(e)(4)(A) if both entities operate for the benefit of the same governmental unit, whether at the state, county, or municipal level''); letter from Susan Combs, Texas Comptroller of Public Accounts, dated February 22, 2011 (describing that employees of Texas's Office of the Comptroller may provide advice to other municipal entities within the state in connection with their duties to the Office of the Comptroller); and letter from Amadeo Saenz, Texas Department of Transportation, dated February 22, 2011 (commenting that employees of the Texas Department of Transportation that are appointed to the non-profit entity that issues bonds on behalf of the Texas Transportation Commission should be excluded because they are employees assuming a decision-making responsibility based on the duties of their employment).

One commenter also stated that the Proposal is unclear, in the case of a non-profit entity formed for the benefit of a municipal entity, whether employees of the municipal entity that sit on the board of such non-profit would be excluded from the definition of ''municipal advisor'' as ''employees'' of the municipal entity. *See, e.g.,* letter from Angela I. Carmon, City Attorney on behalf of North Carolina Municipal Leasing Corporation, dated February 22, 2011.

The term ''municipal entity'' means, in part, ''any State, political subdivision of a State, or corporate instrumentality.'' *See* Rule 15Ba1–1(g). The Commission notes that such employees would be ''employees of a municipal entity,'' and therefore excluded from the definition of municipal advisor, to the extent the non-profit entity is itself a municipal entity (*e.g.,* if the non-profit entity is a corporate instrumentality of a State).

[497] *See, e.g.,* Pennsylvania Local Government Investment Trust Letter.

[498] *See, e.g.,* NYC Management and Budget Letter; and letter from Tim Kenny, Nebraska Investment Finance Authority, dated February 22, 2011.

[499] Kutak Rock Letter. This commenter was concerned that otherwise, the municipal entity and obligated person would not be able to coordinate with respect to a financing for the obligated person.

[500] *See, e.g.,* Utah Retirement Systems Letter; Nebraska Educational Finance Authority Letter; State of Indiana Letter; NABL Letter; and letter from Gregory W. Smith, General Counsel/Chief Operating Officer, Colorado Public Employees' Retirement Association, dated February 22, 2011.

[501] *See* Utah Retirement Systems Letter.

[502] *See, e.g.,* letter from Annise D. Parker, Mayor, City of Houston, Texas, dated February 22, 2011; Squire Sanders & Dempsey Letter.

[503] *See* Indianapolis Local Public Improvement Bond Bank Letter.

person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person [504] to the extent that such person is acting within the scope of such person's official capacity'' [505] and ''any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.'' [506]

The Commission agrees with commenters that like employees, a municipal entity's officials, as well as members of a municipal entity's governing body and other officials serving in a similar capacity (including members of advisory boards and committees), whether or not employed by a municipal entity, typically act on behalf of the municipal entity. The Commission also believes that if a local government official or appointed board member of a municipal entity, in the scope of his or her duties to that municipal entity, provides advice to another municipal entity, such advice would not require the person to register as a municipal advisor because such person would be acting within the scope of his or her duties to the municipal entity. Rule 15Ba1–1(d)(3)(ii) also clarifies the Commission's interpretation of the statutory exclusion from the definition of ''municipal advisor'' for employees of municipal entities by providing that such employees are exempt ''to the extent that such person is acting within the scope of such person's employment.'' [507] Consequently, as described above with respect to governing board members and officials, an employee of one municipal entity that provides advice, within the scope of his or her employment as such, to another municipal entity or obligated person would be exempt from the definition of ''municipal advisor.''

The exemption in Rule 15Ba1–1(d)(3)(ii) would extend to all designees of public officials or members of a municipal entity's governing body, to the extent such designation is made pursuant to existing rules of the municipal entity for designating or delegating authority. The Commission believes that under such scenario, the designee would be serving ''in a similar official capacity'' [508] as the person for whom they are acting. Further, the Commission notes that the exemption from registration includes members of advisory boards [509] and committees,[510] acting within the scope of their capacity as such [511] because, as with respect to members of the governing body or other government officials, when acting within the scope of their official capacity such persons are acting on behalf of the municipal entity.

The Commission does not intend to impede the deliberative process that municipal entities engage in with their citizens. Accordingly, the registration requirement for municipal advisors does not apply to persons who comment on municipal financial products or the issuance of municipal securities by making use of public comment forums provided by municipal entities or other public forums. Additionally, responding to factual questions about a past issuance by a former board member would not constitute municipal advisory activities, because providing such information in response to questions under such circumstances is factual and therefore does not constitute advice with respect to such issuance.[512]

The Commission agrees with commenters that individuals who engage in deliberative and decision-making functions with respect to municipal financial products or the issuance of municipal securities as part of their duties as members of a governing body should not have to register as municipal advisors. Such individuals represent the municipal entity that is the intended recipient of the protections of the municipal advisor registration regime, and the Commission does not consider such deliberative and decision-making functions to be advice. Additionally, board members and other officials (appointed and elected alike, as well as their duly appointed designees) may be subject to state and local law, including fiduciary duties and ethics laws, and the statutory qualifications for such members' board positions may be significant to the mission of the municipal entity. Accordingly, the Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors,[513] would provide a significant additional benefit. The Commission agrees with commenters that whether a public official or other member of a governing body of a municipal entity is appointed or elected is not the sole factor in determining whether such individual is accountable to the municipal entity he or she serves. Board members, officials, and employees would be required to register, however, if they are engaged by other municipal entities or obligated persons to provide services as compensated advisors in addition to their normal duties as an employee, official, or board member of the municipal entity.[514]

For the reasons described above, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity to the extent that such person is acting within the scope of such person's official capacity.[515] Accordingly, such persons are not required to register as municipal advisors.

Employees and Officials of Obligated Persons

Section 15B(e)(4) of the Exchange Act excludes from the definition of municipal advisor persons who are employees of a municipal entity, but does not extend such exclusion to employees of obligated persons. In the

[504] Comments regarding the treatment of such governing persons and employees of obligated persons, and how this exemption addresses such comments, are separately discussed further below.

[505] Rule 15Ba1–1(d)(3)(ii)(A).

[506] Rule 15Ba1–1(d)(3)(ii)(B).

[507] *See* Rule 15Ba1–1(d)(3)(ii).

[508] *See id.*

[509] Commenters provided some examples of advisory board composition and activities. *See, e.g.,* Combs Letter (describing that the ''Comptroller's Investment Advisory Board,'' which advises the state's trust company which in turn manages state funds, is unlike an investment adviser in that it doesn't assist with the selection of specific investments or investment professionals; that it provides general guidance but has no control over what purchases and sales are made with state funds; and that although the board members have no fiduciary duty, they also have no decisionmaking power); and letter from Gregg Abbott, State of Texas, dated February 22, 2011 (''State of Texas Letter'') (noting that distinguishing between governing boards and advisory boards is unworkable as some advisory boards are subcommittees of governing boards, some are made up of a combination of governing board members and other citizen volunteers, and some have no governing board members).

[510] Some municipal entity boards also have committees that may or may not be comprised of members of the board. *See, e.g.,* letter from Jerome Cochrane, University of Pittsburgh, dated February 22, 2011 (certain committees of the boards of certain Pennsylvania State universities include ''non-voting committee members, representing members of the public, alumni, faculty, staff and student bodies'').

[511] The Commission notes that the exemption for advisory board and committee members includes volunteer members of such boards and committees.

[512] *See supra* Section III.A.1.b.1. (discussing the advice standard in general).

[513] Section 15B(c)(1) of the Exchange Act (as amended by the Dodd-Frank Act) imposes a fiduciary duty on municipal advisors when advising municipal entities. *See* Proposal, 76 FR 827, note 60 and accompanying text.

[514] *Compare with supra* note 507 and accompanying text.

[515] *See* Rule 15Ba1–1(d)(3)(ii)(A).

Proposal, the Commission asked whether employees of obligated persons should be excluded, to the extent they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial products or the issuance of municipal securities.[516] In addition, the Commission asked whether there are types of persons, other than employees of obligated persons, who should be excluded from the definition of municipal advisor.[517] In response, the Commission received several comments.

Some commenters stated that employees, officers, and directors of obligated persons should be excluded from the definition of municipal advisor when they provide advice to the obligated person with respect to municipal financial products or the issuance of municipal securities.[518] More specifically, some commenters stated that board members of obligated persons acting within the scope of their duties do not give ''advice'' and that it is the obligation of board members to communicate with fellow board members and staff.[519] For example, one commenter stated that municipal advisors typically have multiple clients, hold themselves out as advisors, and generally do not exercise decision making authority for the municipal entity or obligated person.[520] On the other hand, according to this commenter, directors and employees of obligated persons act on behalf of and in the interest of entities with which they are affiliated and do not hold themselves out as advisors.[521] They act for obligated persons in connection with municipal offerings only as part of their responsibilities to the obligated person.[522] Other commenters stated that members of governing boards of obligated persons are already subject to state and federal laws, such as laws governing non-profit entities, conflict of interest laws, ethics laws, and open meeting laws.[523] Commenters also made similar statements with respect to employees of obligated persons.[524] Further, some commenters stated that officers, directors, and employees of obligated persons are no different from those of municipal entities,[525] and an obligated person can only act through its board and employees.[526] One commenter suggested, however, that individual board members and employees should not be exempt from registration if they are engaged to provide services for a nonprofit organization as compensated advisors.[527]

Several commenters stated that the MSRB Study,[528] the legislative history of the Dodd-Frank Act, and the Proposal indicate that the term ''municipal advisor'' is meant to capture professionals that offer advisory services in a financial marketplace.[529] One commenter stated that for decades, in regulating the market for financial advice, Congress and the Commission have expressly declined to regulate internal advice provided by employee to employer.[530] The commenter stated that a departure from this established practice should not be inferred, absent a clear indication from Congress, and nothing in the language or history of the Dodd-Frank Act signals that Congress intended to affect a fundamental shift in policy.[531]

Some commenters stated that the proposed rules would make it difficult for obligated persons to recruit and retain board members and employees,[532] discourage officers and board members from engaging in matters that are traditionally within their purview,[533] and disrupt the process of borrowing and operations of borrowers and issuers.[534] Other commenters stated that the proposed rules could substantially increase the cost of financing[535] and could cause a potential borrower to forego projects using the economic development options offered by states and avoid the issuance of municipal bonds.[536]

As discussed above, one commenter suggested that ''employees and board members of a municipal entity should be excluded from regulation to the extent they provide advice to an obligated person (and acting in the

[516] *See* Proposal, 76 FR 837.

[517] *See id.*

[518] *See, e.g.,* NABL Letter; ABA Letter; letter from Duncan Gallagher, EVP and Chief Financial Officer, Allina Health System, dated February 22, 2011 (''Allina Health System Letter''; letter from Jeffrey S. Bromme, Senior Vice President and Chief Legal Officer and C. Robert Foltz, Associate Chief Legal Officer—Treasury, Adventist Health System Sunbelt Healthcare Corporation, dated February 11, 2011 (''Adventist Health System Letter'').

[519] *See, e.g.,* letter from Charles A. Samuels, Mintz Levin Cohn Ferris Glovsky & Popeo, P.C., on behalf of the National Association of Health & Educational Facilities Finance Authorities, dated February 17, 2011 (''National Association of Health & Educational Facilities Finance Authorities Letter''). *See also* Allina Health System Letter; Chapman and Cutler Letter; letter from Latham & Watkins, dated February 22, 2011 (''Latham & Watkins Letter''); and letter from David W. Lowden, Chair, the Committee on Non-Profit Organizations, Association of the Bar of the City of New York, dated February 14, 2011 (''New York City Bar Letter'').

[520] *See* Latham & Watkins Letter.

[521] *See id.*

[522] *See id.*

[523] *See, e.g.,* Kutak Rock Letter; National Association of Health & Educational Facilities Finance Authorities Letter; Latham & Watkins Letter; letter from Susan Ellen Wagner, Executive Director, Healthcare Trustees of New York State, dated February 16, 2011 (''Healthcare Trustees of New York State Letter''); William C. Daroff, Vice President for Public Policy & Director of the Washington Office, Jewish Federations of North America, dated February 25, 2011 (''Jewish Federations of North America Letter'').

[524] *See, e.g.,* National Association of Health & Educational Facilities Finance Authorities Letter; Latham & Watkins Letter; New York City Bar Letter; and letter from Corinne Johnson, Executive Director, Colorado Health Facilities Authority, Cris White, Executive Director, Colorado Housing and Finance Authority, Jo Ann Soker, Executive Director, Colorado Educational and Cultural Facilities Authority, dated February 18, 2011 (''Colorado Health Facilities Letter'').

[525] *See, e.g.,* South Lake County Hospital District Letter. *See also* Latham & Watkins Letter.

[526] *See, e.g.,* Squire Sanders & Dempsey Letter. *See also* Latham & Watkins Letter; MSRB Letter.

[527] *See* New York City Bar Letter.

[528] In April 2009, the MSRB issued a study titled ''Unregulated Municipal Market Participants: A Case for Reform,'' in which the MSRB advocated for the regulation of intermediaries in the municipal securities market (such as swap advisors and financial advisors). This study was referenced by the Commission in the Proposal. *See* Proposal, 76 FR 825, n.8.

[529] *See, e.g.,* letters from Michael B. Koffler and James K. Hasson, Jr., Sutherland Asbill & Brennan LLP on behalf of Universities, dated February 22, 2011 (''Universities Letter''); Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011 (''Association of Governing Boards of Universities and Colleges Letter'') (stating that board members and employees of obligated persons are not discussed in the preamble and cost estimates of the Proposal). *See also* letters from Molly Corbett Broad, President, American Council on Education, dated February 22, 2011 (''American Council on Education Letter''); Daniel G. Kirch, M.D., President and CEO, Association of American Medical Colleges, dated February 16, 2011 (''Association of American Medical Colleges Letter'').

[530] *See* American Council on Education Letter (providing as an example in support of their statement that existing registration requirements, such as those under the Investment Advisers Act, cover firms and persons in the business of providing advice, and that the requirements do not regulate employment relationships). *See also* Association of Governing Boards of Universities and Colleges Letter (noting that Commission staff has taken the position, in the context of a No-Action Letter under the Investment Advisers Act, that internal relationships are unlike the commercial relationships between an investment adviser and its clients that the Investment Advisers Act was intended to regulate).

[531] *See* American Council on Education Letter.

[532] *See, e.g.,* letter from Richard L. Clarke, DHA, FHFMA, President and CEO, Healthcare Financial Management Association, dated February 22, 2011 (''Healthcare Financial Management Association Letter''); Latham & Watkins Letter; and New York City Bar Letter.

[533] *See, e.g.,* Association of American Medical Colleges Letter; and New York City Bar Letter.

[534] *See, e.g.,* National Association of Health & Educational Facilities Finance Authorities Letter.

[535] *See, e.g.,* letter from Christopher B. Meister, Executive Director, Illinois Finance Authority, dated February 22, 2011 (''Illinois Finance Authority Letter''). *See also* SIFMA Letter I.

[536] *See, e.g.,* State of Indiana Letter; National Association of State Treasurers Letter; and New York City Bar Letter.

purview of their duties).'' [537] Likewise, employees and board members of an obligated person should be excluded from regulation to the extent they provide advice to a municipal entity.[538] On the other hand, another commenter stated that employees, officers, and directors of an obligated person should be exempt to the extent they provide advice solely to the obligated person and not to a municipal entity.[539] One other commenter stated that when an obligated person solicits conduit issuers to issue bonds on behalf of the obligated person, such solicitation should not require the obligated person or its board members or employees to register as municipal advisors.[540]

After considering the comments, the Commission agrees with commenters that board members, officers, and employees of obligated persons should be treated in the same manner as board members, officers, and employees of municipal entities and is using its statutory authority to provide an exemption for such persons that is parallel to the exemption with respect to municipal entities described above.[541] The Commission believes that this exemption is appropriate, because such individuals, when acting in the scope of their duty to the obligated person, are accountable to the obligated person. Further, board members, officers, and employees of obligated persons serve similar functions as board members, officers, and employees of municipal entities. Consequently, the Commission is exempting from the definition of municipal advisor any employee of an obligated person acting within the scope of such person's employment, as well as any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, an obligated person to the extent they are acting within the scope of their duties.[542] The Commission believes that, like municipal entities, obligated persons and persons who perform decision-making functions for, or otherwise act on behalf of, obligated persons, when fulfilling their duty to the obligated person, are also the intended beneficiaries of the protections afforded by the municipal advisor registration requirement. As with respect to municipal entities, board members, officials, and employees of obligated persons would be required to register, however, if they are engaged by other municipal entities or obligated persons to provide services as compensated advisors in addition to their normal duties as an employee, official, or board member of the obligated person.[543]

For the reasons described above, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt any: (1) Person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, an obligated person to the extent that such person is acting within the scope of such person's official capacity; and (2) employee of an obligated person to the extent that such person is acting within the scope of such person's employment.[544] Accordingly, such persons are not required to register as municipal advisors.

With regard to the application of the rules to employees or governing body members of an obligated person who solicit conduit issuers to issue bonds on behalf of the obligated person, the Commission notes that these persons are not acting as advisors.[545] Instead, they act as principals seeking an issuance of municipal securities by a municipal entity on behalf of the obligated person pursuant to an arm's-length loan (or similar) agreement under which the obligated person will be required to pay debt service and other costs upon bond issuance. The Commission notes that these individuals would not be required to register as municipal advisors, because they are not advising a municipal entity with respect to the issuance of municipal securities or soliciting a municipal entity on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser for the purpose of obtaining or retaining an engagement for such person. However, an employee, governing board member or other official of an obligated person could still be deemed to be engaged in municipal advisory activities (which include solicitation activities) if his or her recommendations cannot be properly characterized as negotiations of the terms by which the obligated person is agreeing to engage in the borrowing through the municipal entity.[546]

Regardless of an individual's title as a member of a governing body, an employee, or other official (appointed or elected) of a municipal entity or obligated person, the Commission notes that the exemptions described above do not apply to the extent such individual acts outside of the scope of authority of his or her position.[547]

ii. Responses to Requests for Proposals or Requests for Qualifications

In the Proposal, the Commission requested comment about banks that respond to municipal entities' RFPs regarding investment products offered, such as money market mutual funds or other exempt securities.[548] The Commission received a number of comments regarding responses to RFPs or RFQs by banks and other entities.[549]

Several commenters stated that responses to RFPs and RFQs should not require a person to register as a municipal advisor. For example, one commenter suggested that, with respect to municipal derivatives, responding to RFPs or RFQs from a municipal entity or obligated person does not constitute ''advice.'' [550] Similarly, another commenter stated generally that certain

[537] *See supra* note 499 and accompanying text.

[538] *See* Kutak Rock Letter.

[539] *See* ABA Letter.

[540] *See* NABL Letter. *See also* letter from James E. Potvin, Chair and Robert W. Giroux, Executive Director, Vermont Educational and Health Buildings Financing Agency, dated February 22, 2011 (''Vermont Educational and Health Buildings Financing Agency Letter''); and National Association of State Treasurers Letter; letter from Paul Goldstein, Vice President of Finance, Treasury/Accounting and Chief Financial Officer, Orlando Health, Inc., dated February 18, 2011 (''Orlando Health Letter''). Some commenters stated generally that obligated persons should not be required to register as municipal advisors. *See, e.g.,* Latham & Watkins Letter.

[541] *See* Rule 15Ba1–1(d)(3)(ii); and *supra* notes 504–505 and accompanying text.

[542] *See* Rule 15Ba1–1(d)(3)(ii). *See also* notes 504 and 506 and accompanying text.

[543] As described above, a local government official or appointed board member of a municipal entity would not be required to register as a municipal advisor if he or she provides advice, in the scope of his or her duties to that municipal entity employer, to another municipal entity. *See supra* notes and 496 and 507 accompanying text. In contrast, if such a person is engaged and compensated outside the scope of such duties, he or she would not be eligible for the exemption and would be required to register.

[544] *See* Rule 15Ba1–1(d)(3)(ii).

[545] *See supra* note 540 and accompanying text.

[546] *See supra* Section III.A.b.i. (discussing the advice standard in general) and Section III.A.b.x. (discussing solicitation of a municipal entity or obligated person).

[547] The exemption only applies ''to the extent such person is acting within the scope of such person's official capacity'' or ''employment,'' as applicable. *See* Rule 15Ba1–1(d)(3)(ii).

[548] *See* Proposal, 76 FR 837.

[549] *See also supra* notes 421–423 and accompanying text (discussing RFPs and RFQs in the context of the solicitation prong, including whether a market professional's activities assisting a municipal entity or obligated person in their selection of another market professional as part of an RFP process constitute municipal advisory activities); and *infra* Section III.A.1.c.vii. (discussing the treatment of responses by attorneys to RFPs from municipal entities and obligated persons).

[550] *See* BNY Letter.

activities should be expressly excluded from the definition of ''advice,'' including responding to RFPs or RFQs and providing terms on which a financial institution would be prepared to enter into a transaction or purchase securities issued by a municipal entity.[551] This commenter also stated that bid documents submitted in response to a municipal entity's request for private financing proposals should not constitute advice.[552] Another commenter concurred that responses to RFPs should not be treated as advice.[553]

The Commission has carefully considered the issues raised by commenters on the Proposal and agrees that responses to RFPs or RFQs alone do not constitute municipal advisory activities.[554] Therefore, the Commission is adopting Rule 15Ba1–1(d)(3)(iv), which exempts from the definition of municipal advisor ''[a]ny person providing a response in writing or orally to a request for proposals or qualifications from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities; *provided however,* that such person does not receive separate direct or indirect compensation for advice provided as part of such response.'' [555]

Responses to RFPs or RFQs are provided at the request of, and established by, a municipal entity or obligated person as part of a competitive process. Therefore, it is reasonable to believe that the municipal entity or obligated person would understand that service providers respond to RFPs and RFQs in order to obtain business and would not rely on such responses as it would on advice from its advisor. Further, persons who respond to RFPs or RFQs are likely to be already regulated entities, such as registered municipal advisors, brokers, dealers, or investment advisers. Accordingly, their responses may be subject to fair dealing, suitability, or other standards. Moreover, if a person is selected by a municipal entity or obligated person as a result of an RFP or RFQ, such person could be required to register as a municipal advisor for its subsequent activities.

For the same reasons discussed above for other RFPs, the exemption pursuant to Rule 15Ba1–1(d)(3)(iv) also includes responses to so-called ''mini-RFPs'' that might only be distributed to service providers that have been pre-screened or pre-qualified by the municipal entity or obligated person. For the exemption to apply, a person providing advice in response to an RFP or RFQ may not be separately compensated for advice given as part of the RFP or RFQ process. Further, the compensation such person receives, if hired as a result of the RFP or RFQ, is not direct or indirect compensation for the advice provided as part of the RFP or RFQ. However, assisting with the preparation of an RFP or RFQ on behalf of a municipal entity or obligated person, or assisting in the selection of a broker-dealer, investment adviser, or financial advisor as part of an RFP process, could constitute municipal advisory activity. Specifically, in assisting in the preparation of an RFP or RFQ, a person could provide advice with respect to the parameters of such RFP or RFQ, such as the potential use of municipal financial products or the issuance of municipal securities. Further, in assisting in the selection of a broker-dealer, investment adviser, or municipal advisor as part of an RFP process, a person could provide advice with respect to the responses to the RFP, including responses related to the use of municipal financial products or the issuance of municipal securities.[556]

For the foregoing reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) [557] to exempt persons responding to RFPs and RFQs from the definition of municipal advisor, subject to the limitations described above.

iii. Municipal Entity or Obligated Person Represented by an Independent Municipal Advisor

In the Proposal, the Commission sought comment on whether it should provide other exclusions from the definition of municipal advisor.[558] Several commenters suggested that a person providing advice with respect to municipal financial products or the issuance of municipal securities should not be regulated as a municipal advisor if the municipal entity or obligated person is otherwise represented by a municipal advisor with respect to the transaction.[559] One commenter argued that the Commission should provide that a person will not be regulated as a municipal advisor to a municipal entity or obligated person if such municipal entity or obligated person is or will be represented by an ''independent advisor'' that is a registered municipal advisor (or that is eligible for an exception) and any relevant documentation states that: (1) The person is not acting as an ''advisor;'' and (2) the municipal entity or obligated person is not relying on any advisory communications from such person.[560] According to another commenter, ''when a municipality has engaged an independent financial advisor in connection with a proposed transaction, unaffiliated counterparties or potential counterparties to the transaction should not be deemed to be providing advice to the municipality as it has already elected an entity to fulfill that role.'' [561] Another commenter stated that, in most cases where a bank is ''providing a municipal derivative or other bank products and services to a municipal entity or obligated person, a third party

[551] *See* Letter from Nick Butcher, Senior Managing Director, Macquarie Capital Advisors, dated February 22, 2011 (''Macquarie Letter'').

[552] *See* Macquarie Letter.

[553] *See* OCC Letter. This commenter stated, among other things, that banks respond to RFPs on a competitive basis, and many municipalities are required by statute to issue RFPs to banks for their operating accounts. *See id.*

[554] For a discussion of RFPs and RFQs in the context of the solicitation prong, *see supra* notes 421–423 and accompanying text.

[555] The Commission notes that FINRA applies a similar approach in connection with the application of its suitability rule to broker-dealers. *See* FINRA Rule 2111. In a recent Regulatory Notice, FINRA explained that, where a registered representative makes a recommendation to purchase a security to a *potential investor,* the suitability rule would apply to the recommendation if that individual executes the transaction through the broker-dealer with which the registered representative is associated or the broker-dealer receives or will receive, directly or indirectly, compensation as a result of the recommended transaction. *See* FINRA Regulatory Notice 12–55. For purposes of the municipal advisor registration rules, if a person is selected as a result of an RFP or RFQ, any applicable law or rule (*e.g.,* fair dealing, suitability, fiduciary duty) will apply to that person's activities in the role for which the person was selected.

[556] A person assisting a municipal entity or obligated person in selecting a broker-dealer, investment adviser, or financial advisor as part of an RFP process established by the municipal entity or obligated person would not, however, be considered to be undertaking a solicitation for purposes of the definition of municipal advisor in Rule 15Ba1–1(d)(1), because such person would not be soliciting ''on behalf of'' such broker-dealer, investment adviser, or financial advisor. *See supra* Section III.A.1.b.x. (discussing generally solicitation of a municipal entity or obligated person). *See also* Rule 15Ba1–1(n) (defining solicitation of a municipal entity or obligated person).

[557] Pursuant to Section 15B of the Exchange Act, the Commission may exempt any class of municipal advisors from any provision of Section 15B or the rules and regulations thereunder, if it ''finds that such exemption is consistent with the public interest, the protection of investors, and the purpose of [Section 15B].'' *See* 15 U.S.C. 78*o*–4(a)(4).

[558] *See* Proposal, 76 FR 838.

[559] *See, e.g.,* SIFMA Letter I; letter from Adella M. Heard, Senior Vice President and Assistant General Counsel, First Tennessee Bank National Association, dated February 18, 2011 (''First Tennessee Bank National Association Letter''); BNY Letter.

[560] *See* SIFMA Letter I.

[561] *See* First Tennessee Bank National Association Letter.

advisor is providing advice on the transaction to the municipal entity or obligated person.'' [562] This commenter suggested that the existence of such a third party relationship should be viewed as evidence that the municipal entity or obligated person is not relying on the bank for advice.[563]

The Commission has carefully considered these comments and is adopting Rule 15Ba1–1(d)(3)(vi), which exempts from the municipal advisor definition any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that the following requirements are met.[564] First, an independent registered municipal advisor must be providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities as the person seeking to rely on Rule 15Ba1–1(d)(3)(vi).[565] For purposes of Rule 15Ba1–1(d)(3)(vi), the term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated [566] with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi). The Commission believes that a two year cooling-off period represents an appropriate period of time to help remove any actual or perceived influence over a municipal advisor's ability to exercise independent judgment when engaging in municipal advisory activities.[567] Second, a person seeking to rely on this exemption must receive from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor, and such person has a reasonable basis for relying on the representation.[568] Third, such person must provide the required disclosures to the municipal entity or obligated person, and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor. With respect to a municipal entity, such person must disclose in writing to the municipal entity that, by obtaining such representation from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Exchange Act with respect to the municipal financial product or issuance of municipal securities.[569] With respect to an obligated person, such person must disclose in writing to the obligated person that, by obtaining such representation from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[570] The rule also requires that each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities.[571] The level and timing of disclosure required may vary according to the issuer's knowledge or experience.[572]

The requirement that a copy of the disclosure be provided to the independent registered municipal advisor is not intended to alter the nature of the duty owed by the municipal advisor to its municipal entity or obligated person client or the nature of such municipal advisor's engagement.

The Commission believes that exempting persons advising a municipal entity or obligated person from the definition of municipal advisor when the municipal entity or obligated person is represented by an independent registered municipal advisor is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act. The Commission believes that Rule 15Ba1–1(d)(3)(vi) will allow parties to a municipal securities transaction and others who are not registered municipal advisors to share advice with municipal entities and obligated persons so long as the municipal entity or obligated person is represented by an independent registered municipal advisor. A municipal entity represented by an independent registered municipal advisor will have the benefits associated with the regulation of municipal advisors. Such benefits include, but are not limited to, standards of conduct, training, and testing for municipal

[562] *See* BNY Letter.

[563] *See* BNY Letter.

[564] *See* Rule 15Ba1–1(d)(3)(vi).

[565] *See* Rule 15Ba1–1(d)(3)(vi)(A).

[566] For purposes of the definition of ''independent registered municipal advisor'' in Rule 15Ba1–1(d)(3)(vi), the criteria for association set forth in Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)) will apply. *See* Rule 15Ba1–1(d)(3)(vi)(A).

[567] A two-year period is also used to determine whether an individual is a ''public representative'' for purposes of MSRB Board membership. Specifically, for purposes of determining whether an individual is a public representative, the MSRB defined the term ''no material business relationship'' to mean that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual does not have a relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. *See* Securities Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806, 61808 (October 6, 2010) (SR–MSRB–2010–08). Further, Rule 206(4)–5(a)(1) under the Investment Advisers Act prohibits investment advisers from receiving compensation for providing advice to a ''government entity'' within two years after a ''contribution'' to an ''official'' of the government entity has been made by the investment adviser or by any of its ''covered associates.'' *See* 17 CFR 275.206(4)–5(a)(1). In adopting this rule, the Commission stated that the two-year time out is intended to discourage advisers from participating in pay-to-play practices by requiring a cooling off period during which the effects of a political contribution on the selection process can be expected to dissipate. *See* Political Contributions Final Rule, 75 FR 41026.

[568] *See* Rule 15Ba1–1(d)(3)(vi)(B). The same standards and principles apply in determining whether a person has a reasonable basis for reliance as discussed previously with respect to reliance on representations regarding proceeds determinations. *See supra* notes 364–365 and accompanying text.

[569] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[570] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2).

[571] *See* Rule 15Ba1–1(d)(3)(vi)(C)(3). The CFTC's business conduct standards for swap dealers and major swap participants contain similar standards for disclosure to counterparties. Specifically, CFTC Rule 23.431(a) states that: ''At a reasonably sufficient time prior to entering into a swap, a swap dealer or major swap participant shall disclose to any counterparty to the swap (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) material information concerning the swap in a manner reasonably designed to allow the counterparty to assess [risks, characteristics, and conflicts of interest related to the swap.]'' 17 CFR 23.431(a).

[572] The Commission believes that some municipal advisors are already familiar with this disclosure level and timing standard. *See* Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities (August 2, 2012), available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2* (stating that ''[t]he level of disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing, in each case based on the reasonable belief of the underwriter''); MSRB Notice 2013–08 (March 25, 2013) MSRB Answers Frequently Asked Questions (FAQS) Regarding an Underwriter's Disclosure Obligations to State and Local Government Issuer Under Rule G–17, available at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-08.aspx* (referencing the requirement under the Interpretive Notice Concerning the Application of MSRB Rule G–17 that the arm's length nature of the relationship be provided ''At the earliest stages of the relationship, generally at or before a response to a request for proposals or promotional materials are delivered to an issuer.'').

advisors that may be required by the Commission or the MSRB, other requirements unique to municipal advisors that may be imposed by the MSRB,[573] and fiduciary duty. While independent registered municipal advisors do not owe a fiduciary duty to obligated persons, the Commission notes that they have a duty to deal fairly with obligated persons under MSRB Rule G–17.[574] Also, as noted by commenters, the engagement by a municipal entity or obligated person of an independent registered municipal advisor indicates that the municipal entity or obligated person intends to rely on the advice of that advisor. Rule 15Ba1–1(d)(3)(vi) requires that this intention be further evidenced by a written representation that the municipal entity or obligated person will rely on the advice of an independent registered municipal advisor. Further, Rule 15Ba1–1(d)(3)(vi) requires the person receiving such representation to have a reasonable basis for relying on the representation.

So long as a municipal entity or obligated person is represented by and relies on an independent registered municipal advisor, the Commission believes it is appropriate to allow municipal entities and obligated persons to receive as much advice and information as possible from a variety of sources, even if the providers of such advice are not subject to a fiduciary duty. The Commission does not seek to curtail the receipt of important advice and information so long as the municipal entities and obligated persons are represented by and rely on independent registered municipal advisors who are subject to a fiduciary or other duties and who can help the municipal entities and obligated persons evaluate the advice and identify potential conflicts of interest. Further, the requirement that a person seeking to rely on this rule provide a copy of the disclosures under Rule 15Ba1–1(d)(3)(vi)(C) to the independent registered municipal advisor will help timely inform the independent registered municipal advisor that the municipal entity or obligated person is receiving advice from a person seeking to rely on Rule 15Ba1–1(d)(3)(vi).

In addition, certain persons that may engage in municipal advisory activities could also be counterparties to a municipal entity or obligated person, such as swap dealers and security-based swap dealers. The requirement for such persons to register as municipal advisors could be inconsistent with their roles as counterparties to the municipal entity or obligated person. While the Commission is separately providing certain exemptions for counterparties of municipal entities and obligated persons,[575] such persons may also consider whether they can rely on this exemption.

iv. Broker, Dealer, or Municipal Securities Dealer Serving as an Underwriter

Exchange Act Section 15B(e)(4)(C) provides that the term ''municipal advisor'' does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act) (the ''underwriter exclusion'').[576] In the Proposal, the Commission proposed to interpret this statutory underwriter exclusion to apply solely to a broker, dealer, or municipal securities dealer serving as an underwriter in connection with the issuance of municipal securities.[577] Further, the Commission proposed that this exclusion would not apply when such persons are acting in a capacity other than as an underwriter, and that, for example, this exclusion would not apply to advice with respect to the investment of bond proceeds or municipal derivatives.[578]

In the Proposal, the Commission requested comment on whether its interpretation of the statutory exclusion from the definition of municipal advisor for a broker, dealer, or municipal securities dealer serving as an underwriter was appropriate.[579] The Commission received approximately 20 comment letters addressing the scope of this underwriter exclusion. Most commenters suggested that this exclusion should cover broker-dealer activities already subject to regulation,[580] and some commenters suggested that it should cover broker-dealer activities that are solely incidental to underwriting an issuance of municipal securities.[581] By contrast, other commenters supported a more limited scope for the underwriter exclusion, stating, for example, that ''[u]nless the Commission recognizes and implements in an appropriate manner the narrow character of the underwriter definition referenced in the Dodd-Frank Act, the Commission will be diminishing otherwise important protections for municipal entities and obligated persons provided in that Act.'' [582] Another commenter suggested that the Commission clarify that an underwriter is not permitted to provide ''advice'' with respect to the structure, timing, or terms of the bond issue it seeks to purchase and distribute.[583]

The Commission has carefully considered comments submitted about the underwriter exclusion in the Proposal, as discussed further below, and is adopting its proposed interpretation of the statutory underwriter exclusion, with modifications and clarifications designed to address commenters' concerns. Specifically, Rule 15Ba1–1(d)(2)(i) provides that the term ''municipal advisor'' shall not include a ''broker, dealer, or municipal securities dealer serving as an underwriter of a particular issuance of municipal securities to the extent that the broker, dealer, or municipal securities dealer engages in activities that are within the scope of an underwriting of such issuance of municipal securities.''

Under the Commission's modified interpretation of the underwriter exclusion, if a broker, dealer, or municipal securities dealer is serving as an underwriter of a particular issuance of municipal securities, the underwriter exclusion would include advice provided by that underwriter within the scope of underwriting and would generally include advice with respect to the structure, timing, terms, and other similar matters concerning that issuance of municipal securities.

[573] *See supra* note 190.

[574] *See* MSRB Rule G–17.

[575] *See, e.g., infra* Section III.A.1.c.vi. (discussing an exemption for swap dealers).

[576] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[577] *See* Proposal, 76 FR 832 and proposed Rule 15Ba1–1(d)(2)(ii). *See also* Temporary Registration Rule Release, 75 FR 54467, note 19. In the Proposal, the Commission stated its belief that Congress excluded from the definition of municipal advisor a broker, dealer, or municipal securities dealer acting as an underwriter on behalf of a municipal entity or obligated person in connection with the issuance of municipal securities because such activity is already subject to MSRB rules. *See* Proposal, 76 FR 832, note 107.

[578] *See* Proposal, 76 FR 832.

[579] *See id.,* at 836.

[580] *See, e.g.,* letter from JoAnn Bourne, Senior Executive Vice President, Global Treasury Management, Union Bank, N.A., dated February 18, 2011 (''Union Bank Letter'') (stating the belief that, while the Dodd-Frank Act only provided an exclusion for brokers and dealers when they are serving as underwriters, Congress did not intend to impose an additional level of regulation on broker-dealers when they are providing advice that is already subject to regulation); SIFMA Letter I; and letter from Noreen Roche-Carter, Chair, Tax & Finance Task Force, Large Public Power Council, dated February 22, 2011 (''Large Public Power Council Letter'') (stating that ''[b]y limiting that exemption to instances where the broker-dealer is acting as an underwriter, we are concerned this will limit the types of services provided to our members by broker-dealers compared to what has traditionally been provided to our members'').

[581] *See infra* note 637 and accompanying text.

[582] *See, e.g.,* letter from Robert Doty, AGFS, dated February 22, 2011 (''Doty Letter I'').

[583] *See* letter from Colette-Irwin Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated February 22, 2011 (''NAIPFA Letter'').

It is important to note that the following advice would be outside the scope of an underwriting for purposes of this exclusion: (1) Advice on investment strategies; (2) advice on municipal derivatives; and (3) advice otherwise identified by the Commission to be outside the scope of an underwriting.[584] Such advice generally is not within the scope of serving as an underwriter on an issuance of municipal securities and can raise issues that implicate the policy objectives of municipal advisor registration. For example, municipal entities suffered significant losses in the financial crisis related to advice on complex municipal derivatives,[585] and advice on investments,[586] such as refunding escrow investments provided by underwriters [587] and investments involving fraud in investment bidding procedures,[588] has been the subject of significant enforcement activity. In other circumstances, such advice may create conflicts of interest for an underwriter, such as when the advice addresses whether to issue debt or whether to conduct a competitive sale instead of a negotiated underwriting. In addition, as discussed further below, the underwriter exclusion does not include all activities that may be solely incidental to an underwriting, such as advice on investment strategies or advice on municipal derivatives, because these activities are not within the scope of an underwriting and are activities for which municipal entities and obligated persons require the protections afforded by municipal advisors.

Although, as noted above, ''issuance of municipal securities'' should be construed broadly,[589] the Commission believes that, in order for a person to be ''serving as an underwriter'' [590] with respect to an issuance of municipal securities, there must be a relationship to a particular transaction.[591] For example, a contractual engagement by a municipal entity of a broker-dealer to serve as underwriter on a specific planned transaction for the issuance of municipal securities would constitute the requisite engagement on a particular issuance of municipal securities. By contrast, an engagement by a municipal entity of a broker-dealer to serve as underwriter for some period of time or to serve as a member of an underwriting ''pool'' without specifying the broker-dealer's assignment expressly to serve as underwriter on one or more particular planned transactions would not constitute serving as an underwriter on a particular issuance of municipal securities. Further, an underwriter providing advice with respect to related transactions or tranches on which it is not engaged would be acting within the scope of the underwriter exclusion only if such advice is also related to the tranche or transaction on which the underwriter is engaged. For example, an underwriter may give advice about the timing of a sale of a related transaction on which it is not engaged by noting that shifting the timing of such sale will have a positive impact on market demand for the transaction on which it is engaged. Such advice would fall within the underwriter exclusion because such advice concerns the timing of the particular issuance of municipal securities for which it is acting as underwriter and is not regarded by the Commission as being outside the scope of an underwriting.

The Commission recognizes, however, that a municipal entity issuer may wish to request advice on an issuance of municipal securities from a broker-dealer serving as a member of its underwriting ''pool'' that does not yet have a specific assignment or from a broker-dealer engaged on related transactions or tranches. In such circumstances, the broker-dealer could respond within the requirements of one of the other exemptions of general applicability discussed above. For example, if the municipal entity issuer was seeking the advice in response to a ''mini-RFP'' sent to members of the underwriting pool, the broker-dealer could respond and provide advice within the limitations of the exemption for responses to RFPs and RFQs.[592] In addition, if the municipal entity is represented by an independent registered municipal advisor with respect to such issuance of municipal securities, the broker-dealer could respond and provide advice if the requirements of the exemption available when a municipal entity is otherwise represented by an independent registered municipal advisor with respect to the same aspects of the issuance of municipal securities were satisfied.[593] Finally, depending on the nature of the requested information and the response, it might be considered a communication or effort to win business that is not municipal advisory activity.[594]

In response to commenters that suggested that underwriters should not be permitted to provide ''advice'' with respect to the structure, timing and terms of the bond issue it seeks to purchase and distribute,[595] the Commission points out that, subsequent to the Proposal, the MSRB provided additional interpretive guidance under MSRB Rule G–17, which requires that brokers, dealers, and municipal securities dealers acting as underwriters make certain disclosures to municipal issuers about the roles of underwriters in negotiated sales of municipal securities, including disclosures about their duty of fair dealing with a municipal issuer (but not a fiduciary duty to a municipal issuer) and their actual or potential, material conflicts of interest. The Commission continues to believe that allowing underwriters to give advice within the scope of an underwriting with respect to the structure, timing, terms, and other similar matters concerning an issuance is consistent with the aim of improving the quality of advice that municipal entities and obligated persons receive, because these Rule G–17 disclosure requirements should assist them in clarifying the duties of underwriters to municipal issuers, identifying conflicts of interest, and appropriately evaluating the advice they receive from underwriters with that informed perspective.[596]

The Commission continues to believe that a broker, dealer, or municipal securities dealer engaging in municipal advisory activities outside the scope of underwriting a particular issuance of municipal securities should be subject to municipal advisor registration, absent the availability of another exemption or exclusion. With respect to the treatment of advice on municipal derivatives as

[584] *See infra* note 612 and accompanying text.

[585] *See supra* note 3 and accompanying text.

[586] *See supra* note 106 and accompanying text.

[587] *See supra* note 380 and accompanying text.

[588] *See supra* note 287 and accompanying text.

[589] *See supra* Section III.A.1.b.vii (discussing the term ''issuance of municipal securities'').

[590] *See* Rule 15Ba1–1(d)(2)(i).

[591] *See, e.g., In re Laser Arms Corp. Sec. Litig.,* 794 F.Supp. 475, 484 (S.D.N.Y. 1989) (citing L. LOSS, THE FUNDAMENTALS OF SECURITIES REGULATION 278 (1983)). As set forth in Section 2(11) of the Securities Act, the definition of a statutory underwriter turns on the relationship of the party and the offering. Professor Loss has observed that ''[t]he term 'underwriter' is defined not with reference to the particular person's general business but on the basis of his *relationship to the particular offering.''*

[592] *See supra* Section III.A.1.c.ii.

[593] See supra Section III.A.1.c.iii.

[594] *See infra* notes 615–618 and accompanying text.

[595] *See, e.g.,* NAIPFA Letter.

[596] *See* MSRB Notice 2012–25 (May 7, 2012) (Securities and Exchange Commission Approves Interpretive Notice on the Duties of Underwriters to State and Local Government Issuers). In response to comments on this Rule G–17 interpretive guidance, the MSRB also indicated that it would continue to study whether to impose a suitability standard on the types of financial products (including types of bond structures) that may be sold to municipal entities. *See* letter from Margaret Henry, General Counsel, Market Regulation, MSRB, dated February 13, 2012, available at *http://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-24.pdf.*

outside the underwriter exclusion, the Commission notes that one purpose of the municipal advisor provision in the Dodd-Frank Act was to address concerns about advice to municipalities on complex municipal derivatives in which municipalities suffered significant losses in the financial crisis.[597]

Several commenters requested additional guidance from the Commission regarding the types of activities that would fall within the Commission's interpretation of the statutory underwriter exclusion for activity within the scope of an underwriting of an issuance of municipal securities. For example, one commenter stated that the exclusion should clearly extend to a full range of activities ''closely related'' to the underwriting.[598] Another commenter asserted that certain municipal advisory activities and, in particular, certain ''transaction-related services'' provided by underwriters are integral to fulfilling the function of an underwriter in a professional manner but did not specify which activities were integral.[599] A few commenters stated that the Proposal did not provide sufficient guidance regarding the scope of the underwriter exclusion and requested further clarification.[600]

Set forth below are non-exclusive examples of activities that the Commission considers to be within or outside the scope of the underwriter exclusion to the municipal advisor definition, respectively.

Examples of Activities Within the Scope of Serving as an Underwriter of a Particular Issuance Municipal Securities for Purposes of the Underwriter Exclusion

The Commission agrees with those commenters[601] that stated that it is not possible to provide an exhaustive list of all activities that would be considered to be within the scope of an underwriting. As a general matter, the Commission considers activities that are integral to the purchase and distribution of a particular issuance of municipal securities on which a broker, dealer, or municipal securities dealer is engaged to serve in the capacity as underwriter to be within the scope of the underwriter exclusion. The Commission also considers activities that are integral to fulfilling the role of an underwriter, such as the obligations of underwriters under the antifraud provisions of the federal securities laws and obligations of underwriters under MSRB rules, to be within the scope of an underwriting.[602]

The Commission considers the following activities, identified by commenters,[603] to be within the scope of the underwriting exclusion:[604] (1) advice regarding the structure, timing, terms, and other similar matters concerning a particular issuance of municipal securities (except as otherwise provided herein with respect to advice on investment strategies, municipal derivatives, or other activities identified by the Commission as outside the scope of an underwriting); (2) preparation of rating strategies and presentations related to the issuance being underwritten; (3) preparations for and assistance with investor ''road shows'' and investor discussions related to the issuance being underwritten; (4) advice regarding retail order periods and institutional marketing if the municipal entity has determined to engage in a negotiated sale; (5) assistance in the preparation of the preliminary and final official statements for the municipal securities; (6) assistance with the closing of the issuance of municipal securities, including negotiation and discussion with respect to all documents, certificates, and opinions needed for such closing; (7) coordination with respect to obtaining CUSIP numbers and the registration of the issue of municipal securities with the book-entry only system of the Depository Trust Company; (8) preparation of post-sale reports for such municipal securities; and (9) structuring of refunding escrow cash flow requirements necessary to provide for the refunding and defeasance of an issue of municipal securities (provided, however, that the recommendation of and brokerage of particular municipal escrow investments is outside the scope of the underwriting exclusion).

Examples of Activities Outside the Scope of Serving as an Underwriter of a Particular Issuance of Municipal Securities for Purposes of the Underwriter Exclusion

Several commenters[605] also requested clarification as to whether certain strategic, transaction-related, and post-issuance activities would be considered acting within the scope of the underwriter exclusion. The Commission notes that an underwriter providing certain advice outside the scope of the underwriter exclusion would not be required to be registered as a municipal advisor in order to provide that advice if: (a) the advice does not relate to a municipal financial product[606] or the issuance of municipal securities,[607] (b) the advice is given in response to a request for proposal[608] or is otherwise permitted when seeking to obtain

[597] *See* S. Rep. No. 111–176, at 38 (2010).

[598] *See* SIFMA Letter I. This commenter recommended that covered activities for the underwriter exclusion should include: (1) Advice regarding the issuance of municipal securities, municipal financial products, or any other securities in the context of an underwriting; (2) advice on the advisability of a municipal derivative (including entering into a new derivative or amending or terminating an existing derivative) in connection with an underwriting; (3) advice in the capacity of a member of the municipal entity or obligated person's underwriting pool, even if not in the context of a particular deal, or other services after the closing of an issuance of municipal securities but which relate to the issuance for which the underwriter acted as an underwriter; (4) communications and analyses that are part of an effort or presentation to obtain business from the municipal entity or obligated person, or otherwise part of seeking to serve as an underwriter on future transactions; (5) assistance on related transactions and related tranches of the offering; and (6) service as a dealer-manager on a related tender or exchange offer for outstanding securities.

[599] *See* letter from Alan Polsky, Chair, MSRB, dated November 9, 2011 (''MSRB Letter II'') (including a listing of transaction-related services of which, according to the commenter, some may be appropriately performed by a broker-dealer as part of an underwriting). *See also* letter from Robert K. Dalton, Vice Chairman, George K. Baum & Company, dated December 20, 2011 (the ''Baum Letter'') (noting that in the text of their November 9, 2011 letter the MSRB noted that not only transaction-related services are integral to an underwriting). *But see* NAIPFA Letter and letter from Colette Irwin-Knott, President, NAIPFA, dated November 30, 2011 (''NAIPFA Letter II'') (stating its belief that certain of such transaction-related services listed in the MSRB's letter are not so ''integrally related'' to an underwriter's duties to warrant exclusion from regulation as a municipal advisor).

[600] *See, e.g.,* letter from Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc., dated February 22, 2011 (''BMO Capital Markets Letter'') (stating that the Commission has made no attempt to clarify the myriad of confusing issues it has raised with respect to the exclusion for underwriters); Joy Howard WM Financial Strategies Letter (stating that ''it is unclear what trigger event would create an underwriting relationship as opposed to a municipal advisory relationship''); Bond Dealers of America Letter (noting that the underwriter exclusion is not clearly defined).

[601] *See, e.g.,* MSRB Letter II.

[602] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 2811–28812 (July 10, 1989); Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33123–33125 (June 10, 2010); *See also* MSRB Rules G–17 and G–19.

[603] *See, e.g.,* MSRB Letter II; NAIPFA Letter; NAIPFA Letter II; SIFMA Letter I; and Baum Letter.

[604] This list of activities includes examples of activities that the Commission considers to be within the scope of an underwriting; the list does not purport to cover all possible activities qualifying for the underwriter exclusion.

[605] *See, e.g.,* NAIPFA Letter.

[606] *See supra* Section III.A.1.b.iv. (discussing the definition of ''municipal financial products'').

[607] *See supra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities'').

[608] *See supra* Section III.A.1.c.ii. (discussing the exemption for responses to RFPs and RFQs).

business,[609] or (c) the advice is given when the municipal entity has engaged an independent registered municipal advisor.[610]

The Commission considers the following activities, identified by commenters,[611] to be outside the scope of the underwriter exclusion:[612] (1) advice on investment strategies; (2) advice on municipal derivatives (including derivative valuation services); (3) advice on what method of sale (competitive sale[613] or negotiated sale[614]) a municipal entity should use for an issuance of municipal securities; (4) advice on whether a governing body of a municipal entity or obligated person should approve or authorize an issuance of municipal securities; (5) advice on a bond election campaign; (6) advice that is not specific to a particular issuance of municipal securities on which a person is serving as underwriter and that involves analysis or strategic services with respect to overall financing options, debt capacity constraints, debt portfolio impacts, analysis of effects of debt or expenditures under various economic assumptions, or other impacts of funding or financing capital projects or working capital; (7) assisting issuers with competitive sales, including bid verification, true interest cost (TIC) calculations and reconciliations, verifications of bidding platform calculations, and preparation of notices of sale; (8) preparation of financial feasibility analyses with respect to new projects; (9) budget planning and analyses and budget implementation issues with respect to debt issuance and collateral budgetary impacts; (10) advice on an overall rating strategy that is not related to a particular issuance of municipal securities on which a person is serving as an underwriter, including advice and actions taken on behalf of a municipal entity or obligated person between financing transactions; (11) advice on overall financial controls that are not related to a particular issuance of municipal securities on which a person is serving as an underwriter; or (12) advice regarding the terms of requests for proposals or requests for qualification for the selection of underwriters or other professionals for a project financing and advice regarding review of responses to such requests, including matters regarding compensation of such underwriters or other professionals.

The Commission believes the above-listed activities are not within the scope of the underwriter exclusion because the activities are either not specific to a particular issuance of municipal securities for which a broker, dealer or municipal securities dealer could be serving as an underwriter or the activities are not integral to fulfilling the role of an underwriter.

Communications or Efforts to Win Business

A few commenters asked whether communications and analyses that are part of an effort to win business would be considered municipal advisory activity.[615] The Commission notes that not all communications with a municipal entity or obligated person constitute municipal advisory activities. If the person has identified himself or herself as seeking to obtain business, such as serving as an underwriter on future transactions, whether such communications and analyses constitute municipal advisory activities or the provision of general information (as discussed further above[616]) will depend on the specific facts and circumstances. For example, pursuant to the Commission's interpretation of the treatment of the provision of general information, the Commission believes that a broker-dealer who provides information to a municipal entity regarding its underwriting capabilities and experience or general market or financial information that might indicate favorable conditions to issue or refinance debt likely would not be treated as engaging in municipal advisory activity.

On the other hand, for purposes of this rule and in response to comments,[617] the Commission does not consider advice rendered by a broker-dealer in its capacity as a member of an ''underwriting pool'' for a municipal entity or obligated person (and in the absence of a designation of that broker-dealer to serve as underwriter on the particular issuance of municipal securities on which the advice is given) to be advice within the scope of the underwriting exclusion. An underwriting pool generally includes a group of underwriters selected by a municipal entity pursuant to an RFP or other process[618] from which the municipal entity may select one or more firms to underwrite a specific transaction. As noted above, a broker-dealer that is merely a part of an underwriting pool is not engaged to underwrite any particular issuance, and therefore, is not acting as an underwriter. As described above, however, depending on the particular facts and circumstances, the broker-dealer's activities as part of an underwriting pool may be within the requirements of one of the exemptions of general applicability,[619] may be considered to be an effort to obtain underwriting business on its own behalf, or may be otherwise exempt, which would not require municipal advisor registration.

Post-Offering Services

Commenters asked whether post-offering work performed by an underwriter would qualify for the underwriter exclusion or whether it would constitute municipal advisory activity requiring registration.[620] For purposes of this rule, the Commission considers post-offering work performed by an underwriter to be municipal advisory activity unless it is a request for information or services that would have been provided as part of the underwriting (such as resending cash flow and other similar information related to the offering) or is required for an underwriter to fulfill its regulatory

[609] *See infra* notes 615 and 616 and accompanying text (discussing communications or efforts to win business).

[610] *See supra* Section III.A.1.c.iii. (discussing the exemption when the municipal entity or obligated person is represented by an independent municipal advisor).

[611] *See, e.g.,* MSRB Letter II; NAIPFA Letter; NAIPFA Letter II; SIFMA Letter I; and Baum Letter.

[612] For broker-dealers serving as underwriters for a particular issuance of municipal securities, these activities would *not* be excluded from the definition of municipal advisor because they are *not* within the scope of an underwriting of such issuance of municipal securities. This list of activities includes examples of activities that the Commission considers to be outside the scope of the underwriter exclusion; the list does not purport to cover all possible activities not qualifying for the underwriter exclusion.

[613] Competitive sale is a method of sale chosen by an issuer, requesting underwriters to submit a firm offer to purchase a new issue of municipal securities. The issuer awards the municipal securities to the ''winning'' underwriter or syndicate presenting a bid complying with the terms of a Notice of Sale that provides the lowest interest rate cost according to stipulated criteria set forth in the Notice of Sale. *See* definition of ''Competitive Sale'' in MSRB Glossary.

[614] Negotiated sale is the sale of a new issue of municipal securities by an issuer directly to an underwriter or underwriting syndicate selected by the issuer. *See* definition of ''Negotiated Sale'' in MSRB Glossary.

[615] *See* SIFMA Letter I. *See also* letter from Nathan R. Howard, Esq., Municipal Advisor, WM Financial Strategies, dated February 22, 2011 (''Nathan R. Howard WM Financial Strategies Letter'') (stating that when the services provided by a broker-dealer are merely informational non-municipal advisory services, the broker-dealer should be excluded from the definition of municipal advisor).

[616] *See supra* Section III.A.1.b.i. (discussing, among other things, the provision of general information).

[617] *See* SIFMA Letter I.

[618] *See infra* Section III.A.1.c.ii.

[619] *See supra* notes 592 and 593 and accompanying text.

[620] *See, e.g.,* SIFMA Letter I.

obligations as underwriter.[621] If an issuance has closed and the underwriting period[622] has terminated, the broker-dealer cannot be considered to be acting as an underwriter with respect to the issuance of municipal securities. Therefore, any advice or recommendation with respect to the issuance of municipal securities or a municipal financial product given after the termination of the underwriting period generally would be municipal advisory activities. Accordingly, broker-dealers should consider whether particular post-offering work they provide would constitute advice with respect to the issuance of municipal securities or a municipal financial product.

The Commission notes that assisting a municipal entity or obligated person with filing annual financial information, audited financial statements, or material event notices, as required by Rule 15c2–12,[623] after an issuance has closed and after the underwriting period has terminated, would generally be outside the scope of the underwriting exclusion. A determination as to whether or not these activities would constitute advice would be based on all the facts and circumstances.[624]

Broker-Dealers Acting as Placement Agents, Dealer-Managers, and Remarketing Agents

A few commenters emphasized the similarity between private placement agents and underwriters, and suggested that private placement agents should be included in the underwriter exclusion.[625] One commenter stated that a private placement agent offering securities of a municipal entity or obligated person in a private placement under the Securities Act, even if the agent is not serving as an underwriter within the strict meaning of Section 2(a)(11) of the Securities Act, serves almost exactly the same role underwriters play in assisting issuers.[626] This commenter also noted that ''[a]ny uncertainty with respect to a private placement agent's role can be adequately clarified to municipal issuers or obligors through mandatory disclosures.''[627]

The Commission believes that any registered broker-dealer who participates in a particular issuance of municipal securities, whether the broker-dealer is acting as agent (such as in a best-efforts offering) or is acting as principal (such as in a firm commitment offering) would not have to register as a municipal advisor if facts and circumstances indicate that the registered broker-dealer is performing municipal advisory activities that otherwise would be considered within the scope of the underwriting of a particular issuance of municipal securities as discussed above.[628] Registered broker-dealers are subject to regulation under the Exchange Act, regardless of whether they act as principal or agent in a municipal securities offering. The Commission does not believe that the underwriter exclusion should be limited to a particular type of underwriting or particular type of offering.[629] Therefore, if a registered broker-dealer, acting as a placement agent, performs municipal advisory activities that otherwise would be considered within the scope of the underwriting of a particular issuance of municipal securities as discussed above, the broker-dealer would not have to register as a municipal advisor.

In addition, the Commission has determined that a broker-dealer acting as a dealer-manager for a tender offer, without more,[630] would not be municipal advisory activity because tender offers typically involve only the purchase of municipal securities and the purchase is not itself an advisory activity. Similarly, a broker-dealer acting as a dealer-manager for an exchange offer would generally involve only two transactions—the purchase of one security in the tender offer and the underwriting of a particular issuance of municipal securities in exchange for such tendered securities. Since the purchase itself is not advisory activity and the underwriting of the new issue of municipal securities would be excluded under the underwriter exclusion, neither component of the exchange offer would be considered municipal advisory activity.[631]

A few commenters also suggested that remarketing agents should be included in the underwriter exclusion.[632] Generally, the Commission also would not consider a remarketing agent[633] acting only in its capacity as a remarketing agent to be a municipal advisor because the mere remarketing of bonds likely would not constitute an issuance of municipal securities. If, however, the remarketing constitutes a primary offering,[634] then the

[621] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 28805, 2811–28812 (July 10, 1989); Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33123–33125 (June 10, 2010); *See also* MSRB Rules G–17; G–19 and G–32.

[622] For purposes of MSRB rules and Exchange Act Rule 15c2–12, the underwriting period is the period in connection with a primary offering of municipal securities ending on the later of the closing of the underwriting or the sale of the last of the securities by the syndicate. *See* definition of ''Underwriting Period'' in MSRB Glossary.

[623] 17 CFR 240.15c2–12.

[624] *See supra* Section III.A.1.b.i (discussing the advice standard in general).

[625] *See* SIFMA Letter I; Chapman & Cutler Letter (concurring with SIFMA that the duties of placement agents with respect to the sale and pricing of municipal securities are similar to the duties of underwriters); Piper Jaffray Letter.

[626] *See* Piper Jaffray Letter.

[627] *See id.*

[628] A registered broker-dealer acting as a placement agent in the issuance of non-municipal securities, however, would not be able to rely on the underwriter exclusion and, based on the facts and circumstances, might be engaged in solicitation activity. *See supra* note 462 and accompanying text (discussing when a placement agent for an investment adviser to a pooled-investment vehicle would be considered a third-party solicitor that falls within the definition of municipal advisor). In addition, a placement agent may have other duties, including a fiduciary duty to its client, that arise as a matter of common law or another statutory or regulatory regime.

[629] Whether or not a particular offering would be a distribution for purposes of Section 2(a)(11) of the Securities Act is a facts and circumstances determination. Whether there is a ''distribution'' does not affect the role of a registered broker-dealer in a municipal securities offering for purposes of this underwriter exclusion.

[630] However, if, for example, the registered broker-dealer provides advice as to the benefits of a tender offer in comparison to the alternative of issuing refunding bonds, then, depending on the facts and circumstances, they might be engaged in municipal advisory activity outside the scope of an underwriting.

[631] Any advice or recommendations to undertake such a tender or exchange offer, or regarding the timing or terms of such tender or exchange offer, would have to be evaluated in the context of that issuance or the issuance of other securities to determine if the advice was advice with respect to the structure, timing, terms, or other similar matters concerning an issuance being underwritten, and thus within the underwriter exclusion.

[632] *See* SIFMA Letter I (stating that activities in which a remarketing agent engages when it resells an issuance in the secondary market are similar to those of an underwriter of a primary issuance by a municipal entity or obligated person); Chapman & Cutler Letter (concurring with SIFMA that the duties of remarketing agents with respect to the sale and pricing of municipal securities are similar to the duties of underwriters).

[633] A remarketing agent is a municipal securities dealer responsible for reselling to investors securities (such as variable rate demand obligations and other tender option bonds) that have been tendered for purchase by their owner. The remarketing agent also typically is responsible for resetting the interest rate for a variable rate issue and may act as tender agent. *See* definition of ''Remarketing Agent'' in MSRB Glossary.

[634] Whether a remarketing is a ''primary offering'' of the municipal securities and whether the remarketing agent is an underwriter for purposes of the Securities Act of 1933 will depend on, among other matters, the level of issuer involvement in the remarketing. Whether a particular remarketing is a primary offering by the issuer of the securities requires an evaluation of relevant provisions of the governing documents, the relationship of the issuer to the other parties involved in the remarketing transaction, and other facts and circumstances pertaining to such remarketing, particularly with respect to the extent of issuer involvement. *See, e.g.,* Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33103 (June 10, 2010).

Continued

remarketing agent would need to evaluate its activities to determine if an exemption or exclusion from registration (such as the underwriter exclusion) applies. A primary offering is an issuance of municipal securities for purposes of the municipal advisor registration regime.[635] Similarly, if the activities of a remarketing agent include providing advice (such as advice with respect to the investment of proceeds) beyond merely determining a remarketing price for bonds that have already been issued and that are not being reoffered, the remarketing agent would need to evaluate its activities to determine if an exception to registration (such as the investment adviser exclusion) applies.

Solely Incidental Services

Many commenters recommended that the municipal advisor registration rules include an exclusion for broker-dealers that is similar in scope to the broker-dealer exclusion under Section 202(a)(11)(C) of the Investment Advisers Act.[636] Specifically, these commenters stated that the Commission should exclude from registration broker-dealers that provide advice that is solely incidental to a transaction.[637] These commenters generally noted that broker-dealers are already regulated by the Commission and should not be subject to additional or duplicative regulation.[638]

The Commission is not adopting an exemption from the definition of municipal advisor for a broker-dealer that engages in municipal advisory activities that are solely incidental to the conduct of its business as a broker-dealer because the Commission believes that it has otherwise addressed commenters' concerns regarding duplicative regulation. As discussed above, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments.[639] As discussed below, based on the application of the adopted rules, broker-dealers that sell securities to municipal entities and obligated persons would generally not be engaging in municipal advisory activity.[640] The application of the adopted rules limits the range of municipal financial products to which duplicative regulation could apply. As noted above, the Commission believes that registered broker-dealers that engage in municipal advisory activities by advising on the investment of proceeds of municipal securities or municipal escrow investments should not be exempt from municipal advisor registration.[641]

Broker-Dealers Selling Securities to Municipal Entities and Obligated Persons

Several commenters suggested that, based on the Proposal, the Commission appears to conclude that ''a broker-dealer that sells a security to a municipal entity where it is not serving as an underwriter'' is engaged in municipal advisory activity, because advice is integral to the sale of securities.[642] That is not the conclusion of the Commission. The municipal advisor registration requirement does not apply in the absence of advice (or solicitation). As noted above, for purposes of the municipal advisor definition, ''advice'' includes, without limitation, a recommendation that is particularized to the needs and circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, based on all the facts and circumstances.[643] Thus, a broker-dealer that effects a transaction that it has not recommended will not be a ''municipal advisor'' with respect to such activity.[644] However, the sale of a security to a municipal entity or obligated person constitutes a municipal advisory activity if: (1) the monies used to purchase such security are proceeds of municipal securities;[645] and (2) in executing such transaction, the broker-dealer also recommends the investment or otherwise offers advice to the municipal entity or obligated person about which securities to purchase or sell.

Another commenter urged the Commission to exclude broker-dealers affiliated with life insurance companies from municipal advisor registration,

Although not applicable in determining whether an offering is a primary offering for purposes of the Securities Act of 1933, the Commission also notes that for purposes of Rule 15c2–12, a ''primary offering'' is defined to mean ''an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities'' that meets certain specified conditions. *See* 17 CFR 240.15c2–12(f)(7). *See also* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

[635] *See supra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities''). The Commission notes that, although it is likely in such a circumstance for the underwriter exemption to apply, if the agent is engaging in municipal advisory activity that is outside of the scope of underwriting activity and no other exemption or exclusion applies, such agent would be required to register as a municipal advisor.

[636] Section 202(a)(11)(C) of the Investment Advisers Act excludes from the definition of ''investment adviser'' a broker or dealer ''whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer who receives no special compensation therefor.'' 15 U.S.C. 80b–2(a)(11)(C).

[637] *See, e.g.,* Union Bank Letter (stating that advice supplied that is ''solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor'' (Section 202(a)(11) of the Investment Advisers Act) should be excluded from the definition of ''advice''); SIFMA Letter I (stating that ''broker-dealers providing advice that is solely incidental to a transaction should be excluded from the definition of municipal advisor for the same reason that registered investment advisers are excluded (in some instances): they are already regulated''); Financial Services Institute Letter (stating that broker-dealers should be treated as in the Investment Advisers Act, *i.e.,* where a municipal entity enters into an ordinary brokerage transaction, any incidental advice provided in the scope of that relationship should not require the broker-dealer to register as a municipal advisor).

[638] *See, e.g.,* Union Bank Letter (stating that Congress did not intend for broker-dealers and registered investment advisers that already engage in regulated activities for their municipal clients to be subject to the additional layer of regulation that would accompany municipal advisor registration); ICI Letter (noting that broker-dealers that are underwriters are already subject to MSRB Rule G–37 and are also regulated by the Commission as broker-dealers); SIFMA Letter I.

[639] *See supra* note 327 and accompanying text and Rule 15Ba1–1(d)(3)(vii).

[640] *See infra* note 644 and accompanying text.

[641] *See supra* Section III.A.1.b.viii. (discussing the Commission's views on why advice with respect to the investment of proceeds of municipal securities should be subject to municipal advisor registration notwithstanding the existence of other regulatory regimes). *See also infra* Section III.A.1.c.v. (discussing, among other things, the Commission's position that registered investment advisers engaging in municipal advisory activities are only excluded from registration to the extent their activities are investment advice). Likewise, the Commission believes that broker-dealers that engage in municipal advisory activities that are outside of the scope of the underwriting of a particular issuance of municipal securities should be regulated and registered as municipal advisors.

[642] *See* Insurance Companies Letter (stating that the Commission appears to conclude that every time a broker-dealer sells a security to a municipal entity where it is not serving as an underwriter, it must register as a municipal advisor, and that such an approach seems inconsistent with Congressional intent due to pre-existing broker-dealer regulation). *See also* ICI Letter (stating that the Commission proposed that the broker-dealer exclusion means that a broker, dealer or municipal securities dealer would be eligible for the exclusion only when acting in its capacity as an underwriter; and suggesting that the broker-dealer exclusion should include brokers, dealers, and municipal securities dealers who engage in additional activities while serving as underwriters to municipal entities or obligated persons); and Large Public Power Council Letter (expressing concern that the Commission is limiting the broker-dealer exemption to situations in which the broker-dealer is acting as an underwriter).

[643] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[644] *See supra* note 162 (discussing the term ''advice'' in contexts outside of the municipal advisor definition).

[645] *See supra* notes 330–343 and accompanying text (discussing the definition of ''proceeds of municipal securities'').

because such ''limited service'' broker-dealers are substantively different from ''full service'' broker-dealers.[646] The Commission notes that broker-dealers affiliated with insurance companies are only required to register as municipal advisors to the extent their activities constitute advice to (or solicitation of) a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities. The mere fact that a broker-dealer is affiliated with a life insurance company and may not sell as wide a range of securities as other broker-dealers is not determinative as to whether such broker-dealer must register as a municipal advisor. As noted in the paragraph above, such broker-dealers may sell securities to a municipal entity without triggering municipal advisor registration.

Broker-Dealers Providing Advice to Individual Plan Participants in a Public Employee Benefit Plan

One commenter expressed concern that broker-dealers that provide investment advice (such as asset allocation) to individual plan participants in the context of a 403(b) retirement plan or a similar defined contribution plan might trigger municipal advisor registration. This commenter recommended that such broker-dealers be specifically excluded from registration.[647]

The definition of municipal advisor states that a municipal advisor is a person that provides advice ''to or on behalf of a municipal entity or obligated person.'' As described above, advice related to investment strategies that would require registration is limited to advice with respect to ''the investment of proceeds of municipal securities . . . and the recommendation of and brokerage of municipal escrow investments.'' [648] Thus, the provision of investment advice to individual plan participants in a public employee benefit plan is not a municipal advisory activity, as long as the individual plan participant is not a municipal entity.[649]

v. Registered Investment Advisers

Exchange Act Section 15B(e)(4)(C) excludes from the definition of municipal advisor ''any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice.'' [650] The Commission proposed in Rule 15Ba1–1(d)(2)(ii) to interpret the statutory exclusion for registered investment advisers from the definition of municipal advisor.[651] Specifically, the Commission proposed that the term ''municipal advisor'' shall not include ''[a]n investment adviser registered under the Investment Advisers Act of 1940 . . . or a person associated with such registered investment adviser, unless the registered investment adviser or person associated with the investment adviser engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940.'' [652]

In the Proposal, the Commission stated that a registered investment adviser or an associated person of a registered investment adviser would fall within the definition of municipal advisor and be required to register with the Commission as a municipal advisor if the adviser or associated person engages in any municipal advisory activities (including solicitation) that would not be investment advice subject to the Investment Advisers Act.[653] In the Proposal, the Commission stated its belief that this interpretation is in furtherance of the goals of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities.[654]

As discussed further below, the Commission received several comments in response to its proposed interpretation of the statutory exclusion relating to investment advisers. After careful consideration, to address commenters' concerns, the Commission is modifying proposed Rule 15Ba1–1(d)(2)(ii) to provide certain clarifications. Specifically, Rule 15Ba1–1(d)(2)(ii), as adopted, provides that the definition of municipal advisor excludes ''[a]ny investment adviser registered under the Investment Advisers Act of 1940 . . . or any person associated with such registered investment adviser to the extent that such registered investment adviser or such person is providing investment advice in such capacity.'' Moreover, the Commission clarifies in Rule 15Ba1–1(d)(2)(ii) that ''investment advice,'' solely for purposes of this rule, ''does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person.'' [655]

Interpretation of the Statutory Language

Several commenters stated that the Commission's proposed interpretation is contrary to the plain meaning of the statute and exceeds its intended scope.[656] One commenter stated that the statute excludes ''any'' registered investment adviser—without limitation.[657] Similarly, another commenter stated that the phrase ''who are providing investment advice'' refers only to the immediately previous phrase, ''persons associated with such investment advisers''—not to ''such registered advisers'' themselves.[658] As such, this commenter also encouraged the Commission to interpret the exclusion for investment advisers to apply to all registered investment advisers, not just those who are providing investment advice.[659] Yet another commenter stated that the statute's exclusion of investment advisers ''who are providing investment advice'' cannot be interpreted to only exclude advisers providing ''investment advice'' subject to the Investment Advisers Act, because not all ''investment advice'' requires registration under the Investment Advisers Act (*e.g.,* advice with respect to instruments that are not securities).[660] This commenter stated that the Commission's interpretation would mean that ''[a Commission]-registered investment adviser would be excepted from municipal advisor registration for only some, but not all, of its investment activities.'' [661] The commenter described the Commission's

[646] *See* ACLI Letter (stating that the range of products offered by these limited purpose broker-dealers is typically narrow and focuses upon the distribution of variable insurance contracts and mutual funds; and that such broker-dealers primarily elicit orders from variable contract and mutual fund purchasers).

[647] *See* letter from Adym W. Rygmyr, Associate General Counsel, TIAA–CREF Individual & Institutional Services, LLC, dated February 22, 2011 (''TIAA–CREF Letter'').

[648] Rule 15Ba1–1(b) and Rule 15Ba1–1(d)(3)(vii).

[649] *See supra* Section III.A.1.b.viii. (distinguishing individual contributions from municipal entity contributions to 529 Savings Plans and public retirement plans, among other plans).

[650] 15 U.S.C. 78*o*–4(e)(4)(C).

[651] *See* proposed Rule 15Ba1–1(d)(2)(ii).

[652] *See id. See also* Temporary Registration Rule Release, 75 FR 54467.

[653] *See* Proposal, 76 FR 833.

[654] *See id.*

[655] *See* Rule 15Ba1–1(d)(2)(ii).

[656] *See, e.g.,* IAA Letter; ICI Letter; SIFMA Letter I; and letter from Heidi Stam, Managing Director and General Counsel, The Vanguard Group, Inc., dated February 22, 2011 (''Vanguard Letter'').

[657] *See* Vanguard Letter. *See also* ICI Letter.

[658] *See* ICI Letter. *See also* IAA Letter.

[659] *See* ICI Letter.

[660] *See* SIFMA Letter I. *See also* text accompanying *infra* notes 682 and 683.

[661] SIFMA Letter I.

interpretation as ''without an apparent reason or policy justification.'' [662]

In commenting that registered investment advisers should be excluded broadly from municipal advisor registration, one commenter stated that the municipal advisor registration requirement established by the Dodd-Frank Act was ''primarily aimed at registering unregulated persons.'' [663] Registered investment advisers, in the view of some commenters, are ''already subject to the fiduciary duties and comprehensive registration and disclosure requirements mandated by the Investment Advisers Act.'' [664] The proposal would therefore subject them to ''duplicative and overlapping regulation.''[665]

Some commenters stated that the Commission's proposed interpretation of the exclusion ''interjects ambiguity'' on how to determine whether registered investment advisers must also register as municipal advisors.[666] These commenters stated that the Commission's interpretation would create ''widespread uncertainty'' [667] among investment advisers regarding whether certain of their activities are subject to regulation as municipal advisory activities. One commenter stated that the uncertainty would be compounded by the lack of a definition concerning the kind of investment advice that would exempt a registered investment adviser from the municipal advisor registration requirement.[668]

One commenter requested that the Commission include a non-exclusive interpretation that ''any advice provided by a registered investment adviser pursuant to a written agreement with a municipal entity to whom the adviser owes a fiduciary duty as an investment adviser constitutes the rendering of investment advice.'' [669] The requested interpretation would thereby exempt the investment adviser from registration as a municipal advisor.[670]

As stated above, the Commission is adopting a revised Rule 15Ba1–1(d)(2)(ii). Under the rule the Commission is adopting today, a registered investment adviser could provide advice concerning the investment of proceeds in securities without registering as a municipal advisor because it would be ''providing investment advice'' in its capacity as a registered investment adviser. Further, if the advice is provided pursuant to an advisory agreement that extends to investments in both securities and non-security financial instruments, such advice would still be excluded, because investment advice provided pursuant to the advisory agreement would be investment advice for purposes of Rule 15Ba1–1(d)(2)(ii).[671]

However, the Commission notes that, solely for purposes of the municipal advisor registration rules, pursuant to Rule 15Ba1–1(d)(2)(ii), ''investment advice'' does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person. Notwithstanding that these activities may constitute advice under the Investment Advisers Act, the Commission believes that this approach is appropriate given that Section 15B(e) of the Exchange Act expressly designates these activities as requiring municipal advisor registration.[672] Accordingly, a registered investment adviser that provides these types of advice to municipal entities or obligated persons would need to register as a municipal advisor.

The Commission interprets the statutory language, which provides an exclusion for registered investment advisers and associated persons ''who are providing investment advice,'' as evidence that Congress did not intend to grant a blanket exemption from municipal advisor registration for all registered investment advisers and their associated persons regardless of the activities in which they are engaged. The Commission believes the phrase ''who are providing investment advice'' limits the exclusion. Under this interpretation, if an associated person or a registered investment adviser engages in municipal advisory activities that do not constitute ''investment advice'' for purposes of Rule 15Ba1–1(d)(2)(ii), both the registered investment adviser and the associated person of such adviser engaging in the municipal advisory activities would be ''municipal advisors'' unless eligible for another exclusion or exemption.[673]

The Commission further notes that the municipal advisor registration and regulatory regime relates to issues that are unique to municipal advisory activities—particularly the advice concerning utilization of municipal derivatives, whether and how to issue municipal securities, and the structure, timing, and terms of issuances of municipal securities and other similar matters. The registration of registered investment advisers as municipal advisors, to the extent they engage in these activities, whether or not already subject to the Investment Advisers Act, is necessary to provide the benefits associated with the regulation of persons who engage in municipal advisory activities. Such benefits include, but are not limited to, standards of conduct, training, and testing for municipal advisors that may be required by the Commission or the MSRB, and other requirements unique to municipal advisors that may be imposed by the MSRB.[674]

The Commission believes that the clarifications described above address the comments that the Commission's interpretation introduces ''ambiguity'' and will lead to ''widespread uncertainty'' among registered investment advisers. In particular, permitting a Commission-registered investment adviser to rely on the exclusion when providing any advice under an investment advisory agreement that is subject to the Investment Advisers Act, as long as such advice is not specifically excluded from the definition of ''investment advice'' under Rule 15Ba1–1(d)(2)(ii), will allow registered investment advisers to achieve greater certainty about the scope of the exclusion at the time they enter into an advisory

[662] *Id.*

[663] *See* Vanguard Letter.

[664] *Id. See also* MFA Letter.

[665] *See* Vanguard Letter.

[666] *See, e.g.,* Vanguard Letter.

[667] MFA Letter.

[668] *See* Vanguard Letter.

[669] *Id.*

[670] *See id.*

[671] As discussed below, solely for purposes of the municipal advisor registration rules, ''investment advice'' does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person, even if such activities are under an advisory agreement. Also, investment advice provided pursuant to the advisory agreement would be subject to the anti-fraud provisions of the Investment Advisers Act. *See* 15 U.S.C. 80b–6(1) and 80b–6(2). The Supreme Court has construed Investment Advisers Act Sections 206(1) and (2) as establishing a fiduciary standard for investment advisers that imposes the ''affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to 'employ reasonable care to avoid misleading'' ' their clients. *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963).

[672] *See* 15 U.S.C. 78*o*–4(e)(4). The Commission notes that this interpretation of the term investment advice relates solely to whether a registered investment adviser, or an associated person of such adviser, would need to register as a municipal advisor.

[673] Consequently, both the registered investment adviser and the associated person would be required to register, unless the associated person meets the requirements of the exemption from registration in Rule 15Bc4–1 discussed below. *See infra* Section III.A.7.

[674] *See supra* note 190.

agreement.[675] If an investment adviser firm engages in a municipal advisory activity that is not within the registered investment adviser exclusion, such as advice concerning the issuance of municipal securities or the utilization of swaps by municipalities, the mere fact that the firm is registered under the Investment Advisers Act would not exempt that firm from registration as a municipal advisor.[676]

As discussed above in Section III.A.1.b.viii., the Commission is narrowing the application of the term ''investment strategies'' from all plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity to plans or programs for the investment of the proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments. Accordingly, the municipal advisor registration regime, as adopted, will provide appropriate protection for advice with respect to proceeds of municipal securities while mitigating many of the commenters' concerns with respect to funds of municipal entities other than proceeds of municipal securities. Moreover, because advice provided to fewer types of plans, programs, or pools of assets would require municipal advisor registration, the Commission's exemption for persons providing advice with respect to certain investment strategies will result in fewer registered investment advisers having to register as municipal advisors compared to Rule 15Ba1–1(b) as originally proposed.[677] For example, under the narrow scope of investment strategies, investment advisers who provide advice to public employee benefit plans, participant-directed investment plans such as 529, 403(b) or 457 plans that do not include proceeds of municipal securities would not be required to register as municipal advisors.

As noted above, one commenter suggested that any advice pursuant to a written agreement between an investment adviser and a municipal entity to whom the adviser owes a fiduciary duty should be considered investment advice and thus exclude the adviser from registration as a municipal advisor.[678] In the Commission's view, this approach fails to recognize that the regulatory regime for municipal advisors set forth in the Dodd-Frank Act includes more than a fiduciary duty.[679] Accordingly, unless an exclusion or exemption applies, a municipal advisor must register with the Commission and comply with the applicable MSRB rules.[680]

Ancillary or Additional Advisory Services Provided by Investment Advisers

Several commenters urged the Commission to carve out from the definition of municipal advisor certain investment advisers that provide various specific kinds of advice to municipal entities. For example, some commenters noted that a registered investment adviser may provide clients with services ancillary to its investment advice in ''the normal course of its advisory services.'' [681] Such ancillary service includes advice regarding investments other than securities (*e.g.,* bank deposits, currencies, real estate, futures, and forward contracts),[682] research, and reports.[683] One commenter stated that such services may not subject the adviser providing such services to the Investment Advisers Act but would require the provider to register as a municipal advisor. According to the commenter, an adviser would have to ''segregate its activities into those that are exempt and those which require registration as a municipal advisor and follow potentially conflicting rules.'' [684]

Another commenter stated that managers at investment adviser firms ''would need to regularly monitor each service they provide to municipal entities,'' which would be ''burdensome for a private fund manager or other investment manager'' and ''would divert resources from the performance of [their] core advisory services.'' [685] The commenter stated that the proposed rules could also cause some managers to ''choose to reduce the types of services they provide,'' which could ''harm fund managers and their municipal entity clients.'' [686]

Another commenter suggested an exemption for a ''particularized recommendation regarding the structuring or issuance of municipal securities'' when such advice is provided in the context of the investment adviser providing investment advisory services.[687] For example, according to this commenter, an investment adviser would be exempt if it recommends changes to the terms of a municipal entity's proposed bond offering so that the municipal entity can pay a lower interest rate on the securities and invest the proceeds in less risky investment vehicles.[688]

The Commission carefully considered the comments received, including comments regarding the burden for firm managers to monitor each service provided by the firm to determine whether it would require municipal advisor registration. The Commission, however, is not exempting from the definition of municipal advisor a registered investment adviser that engages in municipal advisory activities that are ''in the ordinary course of'' investment advice or ''ancillary'' to such investment advice. The determination of whether a particular activity is ''in the ordinary course of'' or ''ancillary'' is very much based on facts and circumstances. Thus, the Commission is concerned that such a standard could be easily circumvented and could create a pretext for abuse.[689]

The Commission interprets the registered investment adviser exclusion to include any advice provided pursuant to an advisory agreement. However, Rule 15Ba1–1(d)(2)(ii) excludes from ''investment advice'' advice concerning: (1) Whether and how to issue municipal securities; (2) the structure, timing, and terms of issuances of municipal securities and other similar matters; and (3) municipal derivatives. Additionally, the registered investment adviser exclusion does not cover solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1–1(n). The Commission does not believe that it is necessary to adopt most

[675] *See also* Ancillary or Additional Advisory Services Provided by Investment Advisers section below.

[676] The Commission acknowledges commenters' concerns that there will be overlapping requirements for registered investment advisers that engage in municipal advisory activities, just as there are for investment advisers that engage in broker-dealer activities. The Commission notes that it is permitting investment advisers that have already filed a Form ADV with the Commission to incorporate by reference in their Form MA certain information that they have already supplied in Form ADV. *See infra* Sections II.A.2.

[677] *See supra* Section III.A.1.b.viii. (discussing the term ''investment strategies'' and the exemption pursuant to Rule 15Ba1–1(d)(3)(vii)).

[678] *See supra* notes 669–670 and accompanying text (discussing the Vanguard Letter).

[679] *See* 15 U.S.C. 78*o*–4(c)(1). As noted above, benefits associated with the regulation of municipal advisors also include, but are not limited to, the application of standards of conduct, training, and testing for municipal advisors that may be required by the Commission or the MSRB, and other requirements unique to municipal advisors that may be imposed by the MSRB. *See supra* note 190.

[680] *See, e.g.,* MSRB Rule G–17 (Conduct of Municipal Securities and Municipal Advisory Activities).

[681] *See, e.g.,* MFA Letter.

[682] *See, e.g.,* MFA Letter and ICI Letter. *See also* SIFMA Letter I and American Bankers Association Letter I.

[683] *See, e.g.,* MFA Letter.

[684] American Bankers Association Letter I.

[685] *See* MFA Letter.

[686] *Id.*

[687] SIFMA Letter I.

[688] *See id.*

[689] *See supra* Section III.A.1.c.iv. (discussing broker-dealers selling securities and solely incidental services).

of the interpretations or carve-outs from the municipal advisor definition that commenters suggested because it anticipates that most of these additional services would be covered by advisory agreements. For example, as discussed above, a registered investment adviser that advises a municipal entity to invest the proceeds of an issuance of municipal securities in an asset class other than securities will not be required to register as a municipal advisor, if that advice is provided pursuant to an advisory agreement between the registered investment adviser and the municipal entity. Similarly, if ancillary services are provided pursuant to an advisory agreement and these services are not of the type specifically excluded from ''investment advice'' under Rule 15Ba1–1(d)(2)(ii), the investment adviser exclusion would apply. The Commission believes that its interpretation of the investment adviser exclusion should mitigate commenters' concerns regarding segregating activities into those that are exempt and those that are not and following potentially conflicting rules.[690] The Commission also believes that its interpretation should mitigate commenters' concerns regarding the burden for a firm to monitor its activities [691] because a firm would only need to monitor for the specific types of activities that are excluded from ''investment advice'' under Rule 15Ba1–1(d)(2)(ii) and the activities that are not covered by advisory agreements.

The Commission is also not adopting a commenter's suggestion to create a specific exemption for ''a particularized recommendation regarding the structuring or issuance of municipal securities.'' [692] The Commission believes that an adviser offering advice regarding the issuance of municipal securities, including advice with respect to the structuring, timing, terms, and other similar matters, clearly is a municipal advisor because the statutory definition of municipal advisor expressly includes such activities.

Affiliates of Investment Advisers Providing Municipal Advisory Services

As discussed above, Exchange Act Section 15B(e)(4)(A)(ii) includes in the definition of municipal advisor a person that ''undertakes a solicitation of a municipal entity.'' [693] Section 15B(e)(9), however, excludes a person that controls, is controlled by, or is under common control with a registered investment adviser [694] from the requirement to register as a municipal advisor when it solicits municipal entities or obligated persons on behalf of the affiliated investment adviser.[695] Thus, an affiliate of a registered investment adviser may engage in such solicitation without registering as a municipal advisor. Neither the statute nor the rules, as proposed, otherwise exclude an affiliate of a registered investment adviser from the definition of municipal advisor.

One commenter stated that registered investment advisers ''often assign or delegate management of a portion of their client's assets to an affiliated entity . . . when they seek specialized expertise for particular regions, strategies, or products.'' [696] The commenter stated that such affiliated entities ''are typically part of the same organization as the registered adviser and are subject to the same or similar compliance and management structures.'' [697] Further, they are usually ''organized as separate legal entities rather than branch offices'' for ''tax or other purposes.'' [698] The commenter stated that, because the registered investment advisers themselves are exempt from registration as municipal advisors when they provide investment advice, it would be incongruous to require their affiliates to register as municipal advisors.[699] The commenter further stated that registration would ''simply add costs to the industry and regulators without additional public policy benefits.'' [700]

The Commission disagrees that there should be a general exemption for affiliates of registered investment advisers that engage in municipal advisory activities. The Commission notes that Congress explicitly exempted affiliates from the solicitation prong of the municipal advisor definition, but not from the prong relating to advisory and other activities. Accordingly, the Commission believes that the statute does not contemplate exempting affiliates from municipal advisor registration, except when an affiliate specifically solicits business for its affiliated entity.

Further, as discussed below, the Commission does not believe that any additional exemption is necessary or appropriate. In the case of solicitations, the Commission notes that, although the statute excludes solicitation by an affiliate from the definition of municipal advisor,[701] the Commission would still have regulatory authority over the entity on whose behalf the affiliate is soliciting, as a municipal advisor, if it engages in municipal advisory activities. If the entity is also a registered investment adviser and falls under the investment adviser exclusion in Rule 15Ba1–1(d)(2)(ii), the Commission would continue to have regulatory authority over that entity as a registered investment adviser. In a case where an affiliate of a registered investment adviser is engaged in municipal advisory activities as a municipal advisor, however, the Commission would not necessarily have regulatory authority outside of the municipal advisor registration regime. Also, as discussed more fully above, the Commission's exemption for persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of escrow investments [702] should reduce the likelihood that specialized expertise from affiliates, such as foreign affiliates, will require registration.

Investment Adviser Solicitations and Referrals

Some commenters requested clarification on the exclusion for investment advisers from the solicitation prong of the municipal advisor definition. One commenter requested that the Commission confirm that the exclusion for investment advisers applies to the investment adviser and its employees ''who may solicit municipal entities as part of their regular responsibilities to market the adviser's investment advisory services or who may incidentally discuss the adviser's advisory services with municipal entities.'' [703]

The Commission agrees with this comment and notes that a registered investment adviser that solicits on its own behalf does not fall within the ''solicitation'' prong of the municipal advisor definition. Exchange Act Section 15B(e)(9) provides that the term ''solicitation of a municipal entity or obligated person'' means a

[690] *See supra* note 684 and accompanying text.

[691] *See supra* notes 685–686 and accompanying text.

[692] *See supra* notes 687–688 and accompanying text.

[693] 15 U.S.C. 78*o*–4(e)(4)(A)(ii).

[694] For purposes of this discussion, the term ''affiliate of a registered investment adviser'' means such a person.

[695] *See* 15 U.S.C. 78*o*–4(e)(9).

[696] *See* MFA Letter.

[697] *Id.*

[698] *Id.*

[699] *Id.*

[700] *Id.*

[701] *See* 15 U.S.C. 78*o*–4(e)(9) (defining ''solicitation of a municipal entity or obligated person'').

[702] *See supra* Section III.A.1.b.viii. (discussing the Commission's application of the term ''investment strategies'').

[703] *See* IAA Letter.

communication ''on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation.'' [704] Thus, Section 15B(e)(9) permits a registered investment adviser and its employees, who market the adviser's investment advisory services, to solicit municipal entities or obligated persons, including discussing the adviser's advisory services, without triggering regulatory obligations, to the extent such solicitation is on behalf of the registered investment adviser. As discussed above, the same is true for affiliates of registered investment advisers.

One commenter expressed concern that an investment adviser providing advice to a client regarding the selection or retention of another investment manager could constitute a solicitation of a municipal entity or obligated person under Section 15B(e)(9) of the Exchange Act.[705] The Commission confirms that a registered investment adviser will not be required to register as a municipal advisor in this scenario, unless it receives direct or indirect compensation and acts on behalf of the recommended investment adviser. Absent such facts, the registered investment adviser is not soliciting on behalf of another broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, and thus would not be engaging in solicitation requiring municipal advisor registration.[706]

State-Registered Investment Advisers

As a result of changes in the threshold for registration as an investment adviser with the Commission,[707] certain entities are not required to register as investment advisers under the Investment Advisers Act and instead are subject to state registration requirements.[708] In the Proposal, the Commission sought comment on whether state-registered investment advisers should be exempt from the municipal advisor definition to the extent they are providing advice that otherwise would be subject to the Investment Advisers Act, but for the operation of a prohibition on, or exemption from, Commission registration.[709]

Several commenters supported an exemption for state-registered investment advisers.[710] One commenter, for example, stated that ''Congress has recognized the efficacy of state regulation of investment advisers.'' [711] Therefore, ''the Commission should similarly recognize the efficacy of state regulation of investment advisers, particularly since the provision of advice to municipal entities is a matter of special interest to state authorities.'' [712] Another commenter stated that state-registered investment advisers are already subject to significant regulation by state regulators, including fiduciary obligations with respect to investment management activities. Consequently, the commenter stated that ''imposing an additional layer of regulation on these persons would not provide an appreciable regulatory benefit or increase the protection of municipal entities or obligated persons.'' [713]

After considering the commenters' views, the Commission is not adopting an exemption for state-registered investment advisers at this time. The Commission notes that the statutory definition of municipal advisor excludes only federally-registered investment advisers. The Commission also notes that state regulation of investment advisers is not always similar to regulation under the Investment Advisers Act. For example, state-registered investment advisers are not subject to the Commission's pay-to-play rule.[714] Furthermore, because the Commission is limiting the kinds of advice with respect to ''investment strategies'' that would require a person to register as a municipal advisor,[715] the Commission believes that fewer state-registered investment advisers will be required to register as municipal advisors than as originally proposed.[716]

Exempt Reporting Advisers

Finally, the Commission is not adopting the suggestion of one commenter to exempt the category of ''Exempt Reporting Advisers'' from registration as municipal advisors.[717] The commenter stated that the Exempt Reporting Advisers exemption from registration under the Investment Advisers Act indicates that policy makers have determined that ''such investment advisers are not of the type that must register with the [Commission] and be subject to Commission oversight as a registered investment adviser.'' [718] The commenter stated that it would be ''consistent with these policy determinations to similarly exempt these advisers from the definition of municipal advisor in connection with providing investment advice to a municipal entity.'' [719]

The Commission does not agree. The Commission believes that, if Exempt Reporting Advisers engage in municipal advisory activities, consistent with the protection of municipal entities and obligated persons, and consistent with the policy objectives of Congress and this rulemaking, they should not be exempt from the municipal advisor registration requirement based on status. Specifically, while Congress determined that Exempt Reporting Advisers do not need to be registered in connection with their investment advisory activities, that does not suggest that Exempt Reporting Advisers should similarly be exempt from regulation as municipal advisors. Therefore, Exempt Reporting Advisers who are exempt from registration as investment advisers must register as municipal advisors if they engage in municipal advisory activities, unless they qualify for an exclusion or exemption. However, as discussed above, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not

[704] 15 U.S.C. 78*o*–4(e)(9).

[705] *See* Insurance Companies Letter.

[706] However, such advice may be considered investment advice under the Investment Advisers Act. *See supra* note 423.

[707] *See* 15 U.S.C. 80b–3a(a).

[708] *See* Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (implementing the statutory shift to the states the responsibility for oversight of investment advisers that have between $25 million and $100 million of assets under management). Approximately 2,400 Commission-registered investment advisers withdrew their registrations and registered with state securities authorities in 2012 and 2013.

[709] *See* Proposal, 76 FR 836.

[710] *See, e.g.,* ABA Letter; MFA Letter; SIFMA Letter I; letter from Rex A. Staples, General Counsel, North American Securities Administrators Association, Inc., dated March 15, 2011 (''NASAA Letter'').

[711] ABA Letter.

[712] *Id.*

[713] SIFMA Letter I.

[714] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) (''Political Contributions Final Rule'').

[715] *See supra* Section III.A.1.b.viii.

[716] For example, under the exemption pursuant to Rule 15Ba1–1(d)(3)(vii), state-registered investment advisers who provide advice to public employee benefit plans (including participant directed plans or plans such as 529 Savings Plans, 403(b) plans, and 457 plans) that do not include proceeds of municipal securities would not be required to register as municipal advisors.

[717] *See* MFA Letter (citing Investment Advisers Act Release No. 3111 (November 19, 2010), 75 FR 77190 (December 10, 2010) (Proposed Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets Under Management, and Foreign Private Advisers)). The Commission subsequently adopted the exemption from registration under the Investment Advisers Act for Exempt Reporting Advisers. *See* Investment Advisers Act Release No. 3222 (June 22, 2011), 76 FR 39646 (July 6, 2011) (Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers).

[718] MFA Letter.

[719] *Id.*

plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[720] Accordingly, the Commission believes that fewer Exempt Reporting Advisers will be required to register as municipal advisors than as originally proposed. For example, under the narrow scope of investment strategies, Exempt Reporting Advisers who provide advice to private funds that do not include proceeds of municipal securities would not be required to register as municipal advisors.

vi. Registered Commodity Trading Advisors; Swap Dealers

Exchange Act Section 15B(e)(4)(C) excludes from the definition of municipal advisor any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps. In the Proposal, the Commission interpreted the statutory exclusion for registered commodity trading advisors and their associated persons to apply only to such persons when they are providing advice related to swaps, as that term is defined in Section 1a(47) of the Commodity Exchange Act and Section 3(a)(69) of the Exchange Act,[721] and any rules and regulations promulgated thereunder.[722] As proposed in Rule 15Ba1–1(d)(2)(iii), a commodity trading advisor, or an associated person of a commodity trading advisor, would be required to register with the Commission as a municipal advisor if the commodity trading advisor, or an associated person of the commodity trading advisor, engages in any municipal advisory activities that are not advice related to swaps.[723] Further, a commodity trading advisor would be required to register with the Commission if the advisor provides advice with respect to swaps on behalf of a municipal entity or obligated person, but is not registered as a commodity trading advisor under the Commodity Exchange Act or is not a person associated with a registered commodity trading advisor providing advice related to swaps.[724]

The Commission requested comment on, and received several comments regarding, its interpretation of the exclusion for commodity trading advisors.[725] One commenter agreed that the exclusion should only be available when the registered commodity trading advisor is providing advice related to swaps.[726] This commenter believed that Congress intended a single comprehensive municipal advisor regulatory structure to govern advice to municipal entities, particularly in, but not necessarily limited to, the context of a municipal securities offering.[727]

Another commenter expressed concern that the Commission's proposed interpretation of the exclusion could have the unintended consequence of requiring commodity trading advisors to register as municipal advisors if, ''in connection with providing advice about swaps, [a commodity trading advisor] provide[s] clients or prospective clients with research or advice about instruments other than swaps.'' [728] The commenter expressed concern that a registered commodity trading advisor would need to register as a municipal advisor if these ancillary services fall within the scope of municipal advisory activities and are not deemed to be the type of advice described in the exclusion. According to the commenter, the types of ancillary services that a commodity trading advisor may provide to a municipal entity would be subject to ''regular oversight by the [Commission] and CFTC.'' [729] In addition, the commenter stated that the rules would create widespread uncertainty among registered commodity trading advisors regarding whether the services they perform would require registration as municipal advisors.[730] According to the commenter, in order to comply with the proposed rules, managers would need to regularly monitor each service they provide to municipal entities, determine which of the services are municipal advisory activities, and further determine which of the services, if any, may not be deemed to be advice related to swaps.[731]

Another commenter urged the Commission to ''honor a waiver, no-action letters or other remedy from the CFTC regarding the requirement to register as a commodity trading advisor.'' [732] The same commenter stated that ''the CFTC has established a 'private advisor' limited exemption from commodity trading advisor registration.'' [733] Under this exemption, a person does not have to register as a commodity trading advisor if it has not provided commodity trading advice to more than fifteen persons during the preceding twelve months and does not hold itself out to the public as a commodity trading advisor.[734] The commenter suggested that the Commission should implement a similar exemption for purposes of determining when a person must register as a municipal advisor.[735] In addition, the commenter stated that creating an exemption for providing advice to a *de minimis* number of entities would help distinguish between entities whose principal business is to be a municipal advisor and others.[736]

This commenter also expressed concern that a person must register, regardless of the type of swap advice that may be contemplated and irrespective of the relationship between the municipal entity and the person seeking to offer advice.[737] The commenter urged the Commission to consider exclusions based on both: (1) The types of swaps (specifically, limiting municipal derivatives to securities-based swaps); and (2) the types of relationships between the municipal entity and the person who is providing the advice (specifically, providing an exclusion where the advisor acts as an agent and fiduciary of the municipal entity).

Exclusion for Commodity Trading Advisors

The Commission is adopting the interpretation of the statutory exclusion for commodity trading advisors substantially as proposed, with some modifications to provide additional clarity on the scope of advice that

[720] *See supra* Section III.A.1.b.viii.

[721] 7 U.S.C. 1a(47) and 15 U.S.C. 78c(a)(69). Consistent with the statutory exclusion, the Commission's proposed interpretation of the statutory exclusion would not apply when such persons are providing advice with respect to security-based swaps.

[722] *See* Proposal, 76 FR 833. *See also* Temporary Registration Rule Release, 75 FR 54467.

[723] *See* Proposal, 76 FR 833. As an example, the Commission noted that if an advisor is providing advice to a municipal entity with respect to engaging in a swap transaction and provides advice to the municipal entity with respect to the structure of a municipal securities offering, the advisor would have to register with the Commission as a municipal advisor and would be subject to regulation by the MSRB as a municipal advisor. *See id.*

[724] *See id.*

[725] *See id.,* at 837.

[726] *See* MSRB Letter.

[727] *See id.*

[728] MFA Letter.

[729] *Id.* According to the commenter, such ancillary services include providing clients or prospective clients with research or advice about instruments other than swaps in connection with providing advice about swaps.

The Commission notes that providing certain general information to clients or prospective clients, such as research and general information about products, would not be municipal advisory activity. *See supra* Section III.A.1.b.i.

[730] *See* MFA Letter.

[731] *See id.*

[732] ACES Power Marketing Letter.

[733] *See id.* (citing Section 4m(1) of the Commodity Exchange Act).

[734] *See id.*

[735] *See id.*

[736] *See id.*

[737] *See id.*

would be excluded, in response to commenters' concerns. As adopted, Rule 15Ba1–1(d)(2)(iii) provides that the term ''municipal advisor'' shall not include any commodity trading advisor registered under the Commodity Exchange Act or person associated with a registered commodity trading advisor,[738] to the extent that such registered commodity trading advisor or such person is providing advice that is related to swaps (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Exchange Act (15 U.S.C. 78c(a)(69)), and any rules and regulations thereunder).[739] The final rule reflects minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions. Accordingly, the exclusion from the municipal advisor definition will not be available to a registered commodity trading advisor, or an associated person of a registered commodity trading advisor, to the extent it engages in municipal advisory activities that are not providing advice related to swaps.[740] As noted in the Proposal, while a registered commodity trading advisor generally could provide advice related to swaps without registering as a municipal advisor, a commodity trading advisor that is not a registered commodity trading advisor would be required to register as a municipal advisor if it provides advice related to swaps to a municipal entity.[741] Similarly, as noted in the Proposal, if a registered commodity trading advisor provides advice with respect to an issuance of municipal securities or any municipal financial product other than the swap, the advisor must register as a municipal advisor.[742]

The Commission is not exempting from municipal advisor registration persons that have received no-action letters from the CFTC or are otherwise exempt from registration as commodity trading advisors.[743] For example, a person may be exempted from registration as a commodity trading advisor precisely because it engages in the types of activities that are more akin to activities in which municipal advisors engage. Thus, the Commission does not believe that a blanket exemption is appropriate at this time. The Commission notes, however, that such entities could apply for no-action or exemptive relief.[744]

The Commission is also not adopting an exemption for services provided by a commodity trading advisor that are solely incidental or ancillary to the commodity trading advisor's advice related to swaps.[745] To the extent the commodity trading advisor is providing general information, however, such activities would not be municipal advisory activities that would subject the advisor to registration as a municipal advisor.[746]

Swap Dealers

Section 15B(e)(4)(C) of the Exchange Act does not include an exclusion from the definition of municipal advisor for swap dealers or security-based swap dealers. In its Proposal, the Commission requested comment generally as to whether there are exclusions from the definition of ''municipal advisor,'' other than those proposed, that the Commission should consider.[747]

Some commenters suggested that the exclusion should be extended to swap dealers and security-based swap dealers because, otherwise, registration as a municipal advisor would be duplicative.[748] One such commenter noted that Sections 731 and 764 of the Dodd-Frank Act have provisions requiring registration by swap dealers and security-based swap dealers with the CFTC and the Commission, respectively, and provisions specifically covering such dealers' activities when acting as advisors to ''special entities,'' which include state and local governments.[749] Another commenter stated that persons that will be considered municipal advisors will often be engaged in business activities other than providing advice to or on behalf of a municipal entity or obligated person.[750] The commenter expressed concern that regulated persons, such as swap dealers, that may also provide advice to a municipal entity or obligated person in connection with their business as swap dealers, may be required to register as municipal advisors.[751] The commenter stated that it would be best to avoid dual or multiple regulations by exempting any advice that is related to, or given in connection with, another regulated activity. The commenter also provided that, in the alternative, the Commission should coordinate the definition of ''advice'' with that of other regulatory regimes.[752]

In its Business Conduct Standards for Swaps, the CFTC adopted certain standards for swap dealers in their dealings with counterparties to swap transactions, as well as for any swap dealer that acts an advisor to a special entity.[753] The CFTC's adopted standards also include a safe harbor from the heightened protections that would otherwise apply when a swap dealer acts as an advisor to a special entity, if:

[738] The Commission notes that Section 15B(e)(4)(C) excludes from the definition of municipal advisor ''any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps.'' The Commission believes it is reasonable to interpret this exclusion to apply to registered commodity trading advisors and persons associated with a registered commodity trading advisor, as opposed to persons associated with any registered or unregistered commodity trading advisor. The Commission notes that a commenter also suggested this change. *See* MSRB Letter.

[739] *See* Rule 15Ba1–1(d)(2)(iii).

[740] The Commission notes, however, that to the extent a registered commodity trading advisor registers as a municipal advisor, its associated persons that are natural person municipal advisors would be exempt from registration if he or she is an associated person of an advisor that is registered with the Commission pursuant to Section 15B(a)(2) of the Act and the rules and regulations thereunder and engages in municipal advisory activities solely on behalf of a registered municipal advisor. *See supra* Section III.A.7. (discussing Rule 15Bc4–1).

[741] *See* Proposal, 76 FR 833.

[742] *See id.* The commodity trading advisor must also consider whether its activities constitute ''solicitation of a municipal entity or obligated person.'' *See supra* Section III.A.1.b.x. (discussing solicitation of a municipal entity or obligated person).

[743] *See supra* notes 732–735 and accompanying text (discussing comments related to CFTC no action letters and exemptions related to commodity trading advisor registration).

[744] Exchange Act Section 15B(a)(4) provides that the Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any municipal advisor or class of municipal advisors from any provision of Section 15B or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B. *See* 15 U.S.C. 78*o*–4(a)(4). When requesting exemptive relief pursuant to Section 15B(a)(4), a person may follow the procedures for requesting exemptive relief pursuant to Section 36 of the Exchange Act, as set forth in Rule 0–12 under the Exchange Act. *See* 17 CFR 240.0–12.

[745] *See supra* notes 728–729 and accompanying text.

[746] *See supra* Section III.A.1.b.i. (providing guidance on ''advice'' and discussing the provision of general information).

[747] *See* Proposal, 76 FR 838.

[748] *See, e.g.,* Kutak Rock Letter; SIFMA Letter I.

[749] *See* Kutak Rock Letter. This commenter suggested that the Proposal should be harmonized with other provisions of the Dodd-Frank Act specifically addressing swap practices.

[750] *See* SIFMA Letter I. The commenter stated that a swap dealer that provides advice in connection with its other business activity may be subject to CFTC regulation and, absent an exemption, would become subject to additional regulation as a municipal advisor. *See id.*

[751] *See id.*

[752] *See id.* In this context, this commenter cited as an example the proposed CFTC business conduct standards for swaps.

[753] CFTC Rule 23.440(c)(1) provides that a swap dealer that acts as an advisor to a special entity has ''a duty to make a reasonable determination that any swap or trading strategy involving a swap recommended by the swap dealer is in the best interests of the Special Entity [as defined in CFTC Rule 23.401(c)].''

such swap dealer does not express an opinion as to whether the special entity should enter into a recommended swap or trading strategy involving a swap that is tailored to the particular needs or characteristics of the special entity; the special entity represents in writing that it will not rely on recommendations provided by the swap dealer, and will rely on advice from an independent representative; and the swap dealer discloses to the special entity that it is not undertaking to act in the best interests of the special entity as otherwise required under the CFTC's standards.[754] Consistent with this approach and for the reasons described below, the Commission believes that it is appropriate to provide an exemption for certain swap dealers.

Specifically, to address commenters' concerns, the Commission is exempting any swap dealer registered under the Commodity Exchange Act or associated person of the swap dealer recommending a municipal derivative or a trading strategy that involves a municipal derivative, so long as the registered swap dealer or associated person is not ''acting as an advisor'' to the municipal entity or obligated person with respect to the municipal derivative or trading strategy pursuant to Section 4s(h)(4) of the Commodity Exchange Act and the rules and regulations thereunder.[755] For purposes of determining whether a swap dealer is ''acting as an advisor'' under Rule 15Ba1–1(d)(3)(v), the municipal entity or obligated person involved in the transaction will be treated as a ''special entity'' [756] under Section 4s(h)(2) of the Commodity Exchange Act and the rules and regulations thereunder (regardless of whether such municipal entity or obligated person is otherwise a ''special entity'').[757]

The Commission believes an exemption for swap dealers is appropriate because, as discussed below, the exemption will apply the standards that are applicable under the CFTC's existing regulatory regime. As under such regime, the exemption will also preserve consistent and comparable protections for municipal entities and obligated persons. For example, for the exemption for registered swap dealers to apply, a municipal entity or obligated person must have an independent representative who is subject to a duty to act in the best interests of its client.[758] The Commission notes that independent representatives would likely be commodity trading advisors, municipal advisors, investment advisers, or ERISA fiduciaries [759] that are also subject to, or may become subject to,[760] a fiduciary duty to their clients.[761] Moreover, regardless of whether a municipal entity or obligated person is a special entity, the swap dealer will need to comply with any applicable suitability standards and disclosure requirements, which should offer another measure of protection for municipal entities and obligated persons in addition to those noted above. Further, in the context of interactions between swap dealers and municipal entities and obligated persons, the exemptions will incorporate the standards provided by the CFTC's Business Conduct Standards for Swaps, which include a requirement that the swap dealer disclose that it is not undertaking to act in the best interest of the special entity.[762] Therefore, municipal entities and certain obligated persons may already be familiar with the notion that exempt swap dealers are not undertaking to act in their best interest when recommending a swap or a trading strategy involving a swap and could more appropriately evaluate such recommendation. In addition, the Commission believes the standards provided by the CFTC's Business Conduct Standards for Swaps are appropriate for the swap dealer exemption from the definition of municipal advisor, because they will help provide clarity about: (1) when a swap dealer must register as a municipal advisor; and (2) its relationship with municipal entities and obligated persons.

For these reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt swap dealers from the definition of municipal advisor, subject to the limitations described above, and therefore not require such dealers to register as municipal advisors.

The Commission is not adopting, at this time, an exemption for security-based swap dealers. As a general matter, the Commission understands that municipal entities currently do not typically enter into security-based swap transactions.[763] The Commission also notes security-based swap dealers may, to the extent they would otherwise meet the definition of ''municipal advisor,'' qualify for a different exemption, such as the exemption in Rule 15Ba1–1(d)(3)(vi) when the municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. Further, the Commission notes that such entities could apply for no-action or exemptive relief.[764] When the Commission considers adopting external business conduct rules for security-based swap dealers, the Commission may also consider amending the municipal advisor definition to include an exemption for security-based swap dealers that is similar to the exemption for swap dealers.[765]

vii. Accountants, Attorneys, Engineers and Other Professionals

The definition of municipal advisor in Exchange Act Section 15B(e)(4) excludes attorneys offering legal advice or providing services of a traditional legal nature and engineers providing engineering advice.[766] As discussed more fully below, the Commission proposed interpretations of the attorney and engineer exclusions and also

[754] *See* Business Conduct Standards for Swaps, *supra* note 275. *See also* CFTC Rule 23.440 (17 CFR 23.440).

[755] *See* Rule 15Ba1–1(d)(3)(v)(A).

[756] Special entity is defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and the rules and regulations thereunder. *See* 17 CFR 23.401(c) (defining ''special entity,'' for purposes of business conduct requirements for swap dealers and major swap participants) and *supra* note 275 (discussing the protections provided by the Dodd-Frank Act for special entities with respect to derivative transactions).

[757] *See* Rule 15Ba1–1(d)(3)(v).

[758] This is consistent with the blanket exemption where a municipal entity or obligated person is represented by an independent registered municipal advisor. *See* Rule 15Ba1–1(d)(3)(vi).

[759] *See* Business Conduct Standards for Swaps, 77 FR 9738.

[760] The Commission notes that the CFTC has indicated that it is ''considering developing rules for [commodity trading advisors] that are comparable to rules adopted by the [Commission] or the MSRB for municipal advisors.'' *See* Business Conduct Standards for Swaps, 77 FR 9739. Additionally, the CFTC has stated that it believes it has harmonized its rules with the regulatory regime for municipal advisors and will continue to work with the Commission as the Commission's proposed rules for the registration of municipal advisors are finalized. *Id.*

[761] Municipal advisors, investment advisers, and ERISA fiduciaries all owe fiduciary duties to their clients.

[762] *See supra* note 754 (setting forth the disclosure requirements for swap dealers under CFTC Rule 23.440).

[763] *See, e.g.,* Transcript of the U.S. Securities and Exchange Commission Birmingham Field Hearing on the State of the Municipal Securities Market at 241 and 244.

[764] *See, e.g., supra* note 744.

[765] The Commission has proposed standards for security-based swap dealers that are similar to those that the CFTC has adopted. *See* Business Conduct Standards for Security-Based Swaps. Comments received by the Commission on this proposal are available at *http://www.sec.gov/comments/s7-25-11/s72511.shtml.*

[766] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

proposed a limited exemption for accountants.[767]

Accountants Providing Attest Services

Exchange Act Section 15B(e)(4) does not explicitly exclude accountants from the definition of municipal advisor. In the Proposal, however, the Commission proposed to interpret the statutory definition of municipal advisor to exempt any accountant, unless the accountant engages in municipal advisory activities other than preparing or auditing financial statements or issuing letters for underwriters. In other words, the Commission proposed to exempt from the municipal advisor definition accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[768] In the Proposal, the Commission noted that it was not appropriate to exempt accountants entirely, because accountants may provide advice to municipal entities that includes advice about the structure, timing, terms, and other similar matters concerning the issuance of municipal securities.[769]

The Commission requested comment on its proposed exemption for accountants. In particular, the Commission requested comment on whether the Commission should provide this exemption and whether there are additional types of accounting services that should fall under the exemption.[770]

The Commission received approximately 11 comment letters that addressed the proposed accountant exemption. Two commenters expressed support for the accountant exemption as proposed and did not suggest any changes.[771] Several commenters, however, believed that the proposed accountant exemption was too narrow and recommended including additional services under the exemption.[772]

Several commenters recommended that attest, not just audit, services should be part of the accountant exemption.[773] The performance of attest services is generally limited to certified public accountants by state regulation and professional standards.[774] One commenter noted that audit services are a subset of the broader category of attest services and both are subject to similar professional standards, including an ''independence'' requirement.[775] Another commenter also provided examples of services in this broader category of attest services, all of which it believed would be subject to professional standards: (1) Examinations, compilations, or agreed-upon procedures engagements on projections or forecasts using AICPA Statements on Standards for Attestation Engagements (''SSAEs''); (2) performance of other types of agreed-upon procedures engagements; (3) compliance audits (*e.g.,* opinions on compliance with federal, state, or local compliance requirements); and (4) review of debt coverage requirements on outstanding bonds and verification of calculations of escrow account requirements for advance refunding of bonds.[776]

Further, one commenter asked if the following services would be included or excluded from the accountant exemption: (1) The preparation of unaudited annual financial statements; (2) the provision of annual independent audits of a municipal entity; (3) the review and preparation of pro forma maturity schedules of principal and interest on proposed bond issues; (4) the provision of budget, audit, and other information to credit rating agencies; and (5) the preparation of the ''front end'' of offering statements and financial and demographic information.[777]

Several commenters also recommended extending the exemption to services that non-certified public accountants can provide but are subject to regulation and professional standards. For example, two commenters stated that advice related to Generally Accepted Accounting Principles (''GAAP'') and tax advice related to municipal securities and derivatives should also fall under the accountant exemption.[778]

In addition to these services, another commenter recommended, more generally, that the Commission extend the accountant exemption to the provision of non-attest services, such as certain tax and actuarial services.[779] Two other commenters stated that accountants and other consultants who provide feasibility studies should not be considered municipal advisors.[780]

One commenter suggested that accountants of conduit borrowers should be exempt as municipal advisors.[781]

The Commission has carefully considered issues raised by commenters on the Proposal and is expanding the accountant exemption to include accountants providing audit or other attest services. Specifically, Rule 15Ba1–1(d)(3)(i), as adopted, provides that the term ''municipal advisor'' shall

[767] *See* proposed Rule 15Ba1–1(d)(2)(iv)–(vi) and Proposal, 76 FR 833–834.

[768] *See* proposed Rule 15Ba1–1(d)(2)(vi).

[769] *See* Proposal, 76 FR 833. The Commission noted that accountants may also be engaged by municipal entities to provide other services, such as conducting feasibility studies or preparing financial projections and that, in defining municipal advisor in Exchange Act Section 15B(e)(4), Congress only excluded attorneys offering legal advice or services of a traditional legal nature or engineers providing engineering advice. *See id.,* at 833, notes 127–128 and accompanying text.

[770] *See id.,* at 837.

[771] *See* MSRB Letter (agreeing that the exemption should apply solely when an accountant is preparing financial statements, auditing financial statements, or issuing bring down, comfort or ''agreed upon procedures'' letters for underwriters); letter from Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated February 22, 2011 (''Acacia Financial Group Letter'') (stating that ''[t]o the extent accountants or engineers provide advice regarding municipal financial products or issuance of municipal securities, accountants and engineers should be considered Municipal Advisors'').

[772] *See, e.g.,* State of Indiana Letter; letters from Deloitte LLP, dated February 22, 2011 (''Deloitte Letter''); Gerald G. Malone, H.J. Umbaugh & Associates, dated February 22, 2011 (''Umbaugh Letter''); letter from Susan S. Coffey, Senior Vice President, Member Quality and International Affairs, American Institute of Certified Public Accountants (''AICPA''), dated February 25, 2011 (''AICPA Letter''); and Gary Higgins, President, Registered Municipal Accountants Association of New Jersey, dated February 22, 2011 (''RMAA Letter'').

[773] *See, e.g.,* Deloitte Letter (stating that ''[a]udit services are a subset of the broader category of attest services. . . and we see no reason for the final rule to distinguish between the two''); Umbaugh Letter (stating that attest services and tax services (*e.g.,* arbitrage rebate calculations on behalf of issuers) do not appear to fit the ''municipal advisor'' definition); letter from KPMG LLP, dated February 22, 2011 (''KPMG Letter'') (recommending that the Commission include, at a minimum, specific exemptions for attest services in the accountant exemption).

Commenters referred to the definition of the term ''attest engagements'' by the AICPA as ''engagements . . . in which a certified public accountant in the practice of public accounting . . . is engaged to issue or does issue an examination, a review, or an agreed-upon procedures report on subject matter, or an assertion about the subject matter . . . that is the responsibility of another party.'' *See* Deloitte Letter (citing AICPA Attestation Standards AT § 101.01). The Uniform Accountancy Act, which has been used as a basis for state regulation of certified public accountants, incorporates similar concepts. (*See, e.g.,* Section 14(a) of The Uniform Accountancy Act (5th ed. 2007), available at *http://www.aicpa.org/Advocacy/State/StateContactInfo/uaa/DownloadableDocuments/UAA_Fifth_Edition_January_2008.pdf*).

[774] *See, e.g.,* AICPA Code of Professional Conduct ET 201.01, 202.01; *see also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance''); *see also, e.g.,* The Uniform Accountancy Act (5th ed. 2007), available at *http://www.aicpa.org/Advocacy/State/StateContactInfo/uaa/DownloadableDocuments/UAA_Fifth_Edition_January_2008.pdf.*

[775] *See* Deloitte Letter.

[776] *See* AICPA Letter.

[777] *See* RMAA Letter.

[778] *See* KPMG Letter; AICPA Letter.

[779] *See* Deloitte Letter.

[780] *See* Gilmore & Bell Letter; State of Indiana Letter.

[781] *See* South Lake County Hospital Letter.

not include any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[782] To the extent commenters requested clarification regarding whether specific activities would be exempted, such activities would be exempted if they constitute audit or other attest services,[783] the preparation of financial statements, or the issuance of letters for underwriters for, or on behalf of, a municipal entity or obligated person.

The Commission believes that it is appropriate to include attest services in general, and not just audit services in particular, among the services that fall under the exemption. Both audit and other attest services are generally subject to regulation and professional standards,[784] including independence requirements. Such independence requirements could potentially conflict with municipal advisors' fiduciary duty to the municipal entities they advise.[785] Accountants providing attest services are also required to meet general standards related to adequate technical training and proficiency, adequate knowledge of subject matter, suitability and availability of criteria, and the exercise of due professional care.[786] Accordingly, the Commission believes that attest services, and not just audit services, exemplify the types of services typically performed by accountants that should not constitute the provision of advice within the meaning of Exchange Act Section 15B(e)(4)(A)(i).[787]

The Commission has considered whether various non-attest services should also be included in the accountant exemption, such as tax services (including arbitrage rebate services[788]) and advice relating to GAAP. While the Commission acknowledges that such non-attest services may represent activities provided by accountants, such services are neither necessarily provided by certified public accountants, nor necessarily subject to similar regulation and professional standards as attest services. The Commission does not believe it is appropriate to expand the exemption to cover activities or services that non-accountants could perform. Accordingly, the Commission is not including non-attest services in the accountant exemption. Nevertheless, a person providing non-attest services would only be required to register as a municipal advisor if such services are within the scope of the municipal advisory activities definition.

Several commenters noted that non-attest services should be included because accountants are already subject to other regulatory regimes, including those of state boards of accountancy, the Commission, and the Public Company Accounting Oversight Board.[789] The Commission does not believe those regimes, which are principally focused on the certified public accountant's provision of attest services,[790] are sufficient to warrant further expansion of the accountant exemption.

As stated above and in the Proposal, accountants may provide advice to municipal entities, including advice about the structure, timing, terms, and other similar matters, and such advice may be the basis for an issuance of municipal securities. Therefore, the Commission does not believe that it is appropriate to exempt accountants from the definition of municipal advisor entirely. In addition, although attest services are often included as part of larger engagements, such as the examination of prospective financial information that is included as part of a feasibility study or acquisition study,[791] the accountant exemption includes only the attest portion of these engagements and does not cover all services that comprise such engagements.[792]

The Commission also notes that, according to the exemption provided by Rule 15Ba1–1(d)(3)(i), feasibility studies concerning the issuance of municipal securities or municipal financial products for which an accountant provides only audit or attest services would not require the accountant to register as a municipal advisor.[793]

Lastly, with respect to accountants of obligated persons, the Commission notes that such accountants will be treated consistently with accountants of municipal entities.[794]

For these reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt accountants from the definition of municipal advisor, subject to the limitations described above.

Attorneys Offering Legal Advice or Providing Services of a Traditional Legal Nature

Section 15B(e)(4)(C) of the Exchange Act excludes from the municipal advisor definition attorneys offering legal advice or providing services that are of a traditional legal nature. In the Proposal, the Commission proposed to interpret the exclusion to mean that the term ''municipal advisor'' shall not include any attorney, unless the attorney engages in municipal advisory activities other than offering legal advice or providing services that are of a traditional legal nature to a client of the attorney that is a municipal entity or obligated person.[795] In addition, the Commission proposed to interpret advice from an attorney to his or her client with respect to the structure, timing, terms, and other similar matters concerning the issuance of municipal securities or municipal financial products to be services of a traditional legal nature, if such advice is provided within an attorney-client relationship specifically related to the issuance of municipal securities or such municipal

[782] *See* Rule 15Ba1–1(d)(3)(i). In addition to adopting an expanded accountant exemption, as compared to the Proposal, the Commission is also making minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[783] *See supra* notes 776–777.

[784] *See, e.g.,* AICPA Code of Professional Conduct ET 201.01, 202.01; *see also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance'').

[785] *See* AICPA Attestation Standards AT § 101.35 (''The practitioner must maintain independence in mental attitude in all matters relating to the engagement.''), 101.36 (''The practitioner should maintain the intellectual honesty and impartiality necessary to reach an unbiased conclusion about the subject matter or the assertion. This is a cornerstone of the attest function.'').

[786] *See* AICPA Attestation Standards AT § 101.19 to 101.41.

[787] *See* 15 U.S.C. 78*o*–4(e)(4)(A)(i).

[788] *See, e.g., supra* note 773.

[789] *See, e.g.,* KPMG Letter.

[790] *See* Sarbanes-Oxley Act of 2002, as amended by Section 982 of the Dodd-Frank Act. 15 U.S.C. 7201 *et seq. See, specifically,* Section 102 of the Sarbanes-Oxley Act of 2002. 15 U.S.C. 7212.

[791] *See* AICPA Attestation Standards AT § 101.05.

[792] For example, the exemption would not apply to accountants that provide consulting services to municipal entities, including advice with respect to the structure, timing, terms, or other similar matters concerning an issuance of municipal securities or a municipal financial product, modeling future debt service coverage, suggesting future rate schedules, tax advice related to municipal securities and derivatives, and other non-attest services that constitute municipal advisory activities. The scope of the accountant exemption is different from the scope of the investment adviser exclusion because, unlike accountant engagements that include attest as well as other services, investment advice provided pursuant to an advisory agreement would be subject to the anti-fraud provisions of the Investment Advisers Act and a fiduciary duty. *See supra* note 671.

[793] This is consistent with the approach for engineers that provide feasibility studies discussed below in this section.

[794] *See* Rule 15Ba1–1(d)(3)(i). *See also* South Lake County Hospital Letter.

[795] *See* Proposal, 76 FR 833–834. *See also* proposed Rule 15Ba1–1(d)(2)(iv).

financial products in conjunction with related legal advice.[796] Further, in the Proposal, the Commission indicated that, for example, the following advice would be considered to be services of a traditional legal nature: (1) Advice comparing the structures, terms, or associated costs of issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) given by an attorney hired to advise a municipal entity client embarking on a bond offering; (2) advice concerning the tax consequences of alternative financing structures; or (3) advice recommending a particular financing structure due to legal considerations, such as the limitations included in existing contracts and indentures to which the issuer is a party.[797] The Commission, however, also stated in the Proposal that the following advice would not be services of a traditional legal nature: (1) advice concerning the financial feasibility of a project or a financing; (2) advice estimating or comparing the relative cost to maturity of an issuance, depending on various interest rate assumptions, or (3) advice recommending a particular structure as being financially advantageous under prevailing market conditions.[798]

The Commission requested comment on numerous aspects of the attorney exclusion, including whether the exclusion should only apply to legal services to an attorney's municipal or obligated person client; whether the Commission should provide an exclusion for all an attorney's activities as long as that attorney has an attorney-client relationship with the municipal entity or obligated person; and whether the meaning of the term ''services of a traditional legal nature'' is sufficiently clear.[799]

The Commission received approximately 20 comment letters regarding the attorney exclusion. Two commenters generally supported the proposed interpretation of the exclusion,[800] although one of these commenters recommended that the Commission continue to refine the attorney exemption. The commenter suggested that exempted activity ''consists of advice on legal matters such as the legal ramifications of such structure, timing, terms and other matters, the appropriate documentation thereof, and matters of a similar legal nature.'' [801] Meanwhile, two other commenters stated that they did not support the exclusion because advice provided by attorneys to financing teams is generally financial in nature and represents municipal advisory activity.[802]

The majority of commenters did not support the proposed interpretation of the statutory exclusion, stating that the interpretation is too limited in scope.[803] One commenter sought clarification that the statutory exclusion for attorneys covers all ''legal advice'' and that the ''traditional legal nature'' limitation applies only to ''services'' provided by attorneys.[804] Some commenters noted the difficulty of separating ''services of a traditional legal nature'' from advice that could be considered ''financial'' in nature.[805] These commenters also noted that roles of outside counsel are not neatly compartmentalized, and that municipal clients benefit from attorneys' ''financial'' advice.[806] Other commenters indicated that attorneys should feel free to provide advice to municipal entities and obligated persons without fear of falling subject to municipal advisor registration.[807] Some commenters questioned whether registration of attorneys was necessary, even if they provided financial advice. These commenters reasoned that attorneys already have a fiduciary duty to their clients, in addition to state ethics laws and well-established disciplinary processes for those who breach their fiduciary duties.[808]

Several commenters stated that the attorney exclusion should not depend on a pre-existing attorney-client

[796] As an example, the Commission stated that advice comparing the structures, terms, or associated costs of the issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) given by an attorney hired to advise a municipal entity client embarking on a bond offering, would be considered to be services of a traditional legal nature, as would advice concerning the tax consequences of alternative financing structures or advice recommending a particular financing structure due to legal considerations such as the limitations included in existing contracts and indentures to which the issuer is a party. *See* Proposal, 76 FR 834.

[797] *See id.*

[798] *See id.*

[799] *See id.,* at 837.

[800] *See* MSRB Letter I (supporting the language of the attorney exclusion, ''including in particular that such exclusion applies solely when an attorney is providing legal advice or services that are of a traditional legal nature to a client that is a municipal entity or obligated person''); letter from Robert Doty, AGFS, dated March 1, 2011 (''Doty Letter II'') (stating that: ''[i]n the municipal securities market . . . it has long been recognized that attorneys providing other services are stepping beyond their recognized roles'').

[801] *See* MSRB Letter I.

[802] *See* letter from John J. Haas, President, Ranson Financial Consultants, LLC, dated February 17, 2011 (''Ranson Financial Consultants Letter'') (''How an attorney can give advice on whether an entity should be rated or not, and/or to walk and [sic] entity through the rating process without being a registered Municipal Advisor is not understandable . . . . The Commission, in principal [sic], is allowing bond attorney and local attorneys to continue to act as Municipal Advisors without the requirement to be registered as one.''); Acacia Financial Group Letter (stating that attorney advice comparing the structures, terms or associated costs of issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) is not service that should be included in the definition of traditional legal services as it is at the heart of the advice that a municipal advisor provides and is directly financial in nature).

[803] *See, e.g.,* NABL Letter (''[A]ttorneys have an obligation to give frank advice to their clients and . . . not to limit their advice to strictly legal issues if their clients otherwise would be prejudiced . . . . The attorney should be free to discuss the possible pros and cons of different transaction structures if more than one is legally authorized, including practical consequences that are financial in nature . . . . [T]he exclusion for attorneys should not be afforded only for advice given to clients, but should apply to all advice that one must be licensed as an attorney to give or that is given as part of a traditional legal nature, or that is incidental to such services.''); letter from Wm. Raymond Manning, President & CEO, Manning Architects, dated February 21, 2011 (''Manning Architects Letter'') (''[B]y requiring attorneys for the government entity to register if they stray beyond pure legal advice . . . the SEC will be chilling some of the most effective advice that a lawyer can provide. Attorneys often challenge the analysis of experts and other advisors to their clients and if that challenge strays beyond the purely legal, then those lawyers may be fearful to fully and ably represent their clients. The Commission should consider carefully if chilling a lawyer's advice to a client serves the interests it seeks to protect.''); Sherman & Howard Letter (''We believe that in so limiting the exemption for attorneys, the Commission is going beyond what Congress intended, as shown by the language of the Act, and beyond what Congress has authorized.'').

[804] *See* NABL Letter.

[805] *See, e.g.,* letter from Joe B. Allen, Allen Boone Humphries Robinson LLP, dated February 21, 2011 (''Allen Boone Humphries Robinson Letter'') (''''[S]ervices that are of a traditional legal nature' is vague, especially for bond counsel. Bond counsel's consultation with a client necessarily includes 'structure, timing, terms and other similar matters.''').

[806] *See, e.g.,* American Municipal Power Letter; Squire Sanders & Dempsey Letter (''[C]ertain advice and services the Commission may identify as financial in nature are in fact an integral part of and inseparable from legal advice and services that attorneys have traditionally been expected to provide to their clients in connection with municipal finance transactions'' and attorneys should be excluded from the application of the proposed rules ''when the attorney is providing legal advice or services, including ancillary financial or related advice or services relating to a municipal finance transaction or municipal financial product, or providing information concerning developments in the municipal marketplace.''); letter from Edward G. Henifin, General Manager and Steven G. de Mik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011 (''Hampton Roads Sanitation District Letter'').

[807] *See, e.g.,* NABL Letter; American Municipal Power Letter; Hampton Roads Sanitation District Letter; Rose Letter; letter from Susan Combs, Texas Comptroller of Public Accounts, dated February 22, 2011 (''Texas Comptroller of Public Accounts Letter'').

[808] *See, e.g.,* NABL Letter; State of Indiana Letter; Squire Sanders & Dempsey Letter.

relationship.[809] Some commenters generally noted that attorneys are often expected to provide counsel to all financing team members, and not only to the attorney's clients that are municipal entities and obligated persons.[810] One commenter stated that ''others in the bond issue clearly rely upon the legal advice of bond counsel, including the . . . obligated person in a conduit financing. The very role of bond counsel is to provide advice to the entire group relative to the state law authority for the issuance of the bonds (the approving legal opinion) and the federal and state tax status of the interest on the bonds.'' [811] Similarly, another commenter noted that bond counsel has at times been described as representing ''the transaction'' rather than any particular party to an offering.[812] Accordingly, the commenter asked the Commission to clarify if in such instance the bond counsel would be viewed as having a municipal entity or obligated person as a client. Finally, commenters also stated that attorneys representing parties other than municipal entities and obligated persons, such as underwriter's counsel, are called upon to provide their views or advice to the entire team, yet the attorney exclusion, as proposed, would not pertain to these attorneys.[813]

Some commenters noted that, if an attorney is required to register as a municipal advisor in order to provide advice to non-clients on the financing team, the resulting municipal advisory relationship would create a fiduciary duty for the attorney to the non-client. According to these commenters, such a fiduciary duty would directly conflict with the attorney's pre-existing fiduciary duties to its clients, and thus potentially infringe upon state rules of professional responsibility.[814]

Other commenters indicated that many law firms provide to both clients and non-clients educational material about municipal bond financings through newsletters and emails and expressed concern that such activity would not be covered under the proposed interpretation of the attorney exclusion.[815] Moreover, some commenters indicated that attorneys typically provide legal advice to a client, both before a formal attorney-client relationship is formed and after the attorney-client relationship has ended (*e.g.,* upon the closing of a bond transaction).[816] One commenter noted that it is often asked to provide its view or advice on matters relating to prior transactions for which it served as bond counsel or in another legal capacity.[817]

The Commission has carefully considered issues raised by commenters on the Proposal and is modifying its interpretation of the statutory attorney exclusion to provide that attorneys are excluded from the definition of municipal advisor to the extent that the attorney is offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products to a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction. The Commission recognizes that legal advice and services of a traditional legal nature in the area of municipal finance inherently involves a financial advice component. By contrast, to the extent an attorney represents himself or herself as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, the attorney is not excluded with respect to such financial activities under Rule 15Ba1–1(d)(2)(iv) as this type of advice and services would be outside the statutory exclusion.[818]

By revising its interpretation of the exclusion in this way and providing guidance, the Commission intends to clarify that all legal advice or services of a traditional legal nature involving the issuance of municipal securities or a municipal financial product are covered under the attorney exclusion. This approach addresses many comments received by the Commission noting the negative impacts of requiring attorneys in municipal finance transactions to limit their advice and services to those related strictly to legal issues and describing the difficulty involved in complying with such limitations given the nature of the legal advice and services attorneys traditionally have provided, and are expected to provide, in municipal finance transactions.[819] In addition, if another participant in the issuance or transaction, who is not a client of the attorney, receives and acts upon the legal advice the attorney provides to its client, the attorney will not have to register as a municipal advisor. In this situation, the attorney is still only advising its client, even if the advice affects the actions of other participants in the transaction. This approach addresses commenters' concerns that bond counsel and other attorneys routinely share their views with non-client parties in a municipal finance transaction in the context of working group discussions.[820] Because such attorney would not be required to register as a municipal advisor, he or she would not be subject to an additional fiduciary duty that could potentially conflict with the attorney's existing fiduciary duty to his or her client.[821] By revising its interpretation of the exclusion to include a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction, the Commission intends to be responsive to the comments received that attorneys representing participants other than a municipal entity or obligated person should be included in the exemption.[822]

[809] *See, e.g.,* State of Indiana Letter (''Not all attorneys who are integrally involved in a typical municipal finance transaction have an attorney/client relationship with the municipal entity issuing the bonds . . . . The responsibilities of these counsel are relatively standard at the core, but can be varied in accordance with the agreements of the various parties to the transaction to produce the most efficient and effective final product for the municipal entity . . . . All these attorneys need absolute comfort that their contributions will not be considered municipal advisory services which are outside the scope of the exemption simply because they are not engaged by the municipal entity.''); Squire Sanders & Dempsey Letter (stating that imposing a federal fiduciary duty upon an attorney with respect to a non-client municipal entity or obligated person will create potential ethical dilemmas regarding conflicts of interest rules under state professional conduct rules that already impose a prior competing fiduciary duty in favor of the attorney's client); Chapman and Cutler Letter; Gilmore & Bell Letter; Sherman & Howard Letter; and Texas Comptroller of Public Accounts Letter.

[810] *See, e.g.,* Gilmore & Bell Letter; NABL Letter.

[811] *See* Gilmore & Bell Letter.

[812] *See* MSRB Letter.

[813] *See, e.g.,* State of Indiana Letter; Squire Sanders & Dempsey Letter; Sherman & Howard Letter; NABL Letter.

[814] *See, e.g.,* NABL Letter (recommending that the Commission clarify the attorney exclusion to prevent the imposition of fiduciary duties to issuers that are inconsistent with the duties of lawyers under their state professional conduct rules); Sherman & Howard Letter; Squire Sanders & Dempsey Letter.

[815] *See, e.g.,* NABL Letter; Squire Sanders & Dempsey Letter; Sherman & Howard Letter.

[816] *See, e.g.,* State of Indiana Letter; Squire Sanders & Dempsey Letter; NABL Letter.

[817] *See* Squire Sanders & Dempsey Letter.

[818] Rule 15Ba1–1(d)(2)(iv). In addition to the modifications discussed above, the Commission is adopting the attorney exclusion with minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[819] *See supra* notes 803–807 and accompanying text.

[820] *See supra* notes 809–813 and accompanying text (discussing comments on the role of bond counsel in a municipal securities transaction and the expectation that attorneys share their advice with the financing team).

[821] *See supra* notes 809 and 814 and accompanying text (discussing comments on potentially conflicting duties if an attorney is not counsel to the municipal entity or obligated person, but would be required to register as a municipal advisor to the extent they provide advice on the transaction).

[822] *See supra* note 813 and accompanying text (discussing role of underwriter's counsel in a municipal securities transaction).

If, however, in connection with the issuance of municipal securities or municipal financial products, an attorney represents himself or herself as a ''financial advisor'' or ''financial expert,'' the attorney will be required to register as a municipal advisor if the attorney engages in municipal advisory activities. As provided in the Proposal, the Commission would consider an attorney to be representing himself or herself as a ''financial advisor'' or ''financial expert'' if the attorney provides advice that is primarily financial in nature, such as: (1) The financial feasibility of a project or financing; (2) advice estimating or comparing the relative cost to maturity of an issuance of municipal securities depending on various interest rate assumptions; (3) advice recommending a particular structure as being financially advantageous under prevailing market conditions; (4) advice regarding the financial aspects of pursuing a competitive sale versus a negotiated sale; and (5) other types of financial advice that are not related to the attorney's provision of legal advice and services of a traditional legal nature.[823] In these examples, attorneys would be providing services that are primarily financial in nature and that are beyond their traditional legal roles and outside of the statutory exclusion. The Commission believes that if an attorney represents himself or herself as a financial advisor or expert and engages in municipal advisory activities, the attorney is acting outside the scope of the statutory exclusion (*i.e.,* the attorney is not offering legal advice or providing services that are of a traditional legal nature).[824]

The Commission recognizes that analysis, discussion, negotiation, and advice regarding the legal ramifications of the structure, timing, terms, and other provisions of a financial transaction by an attorney to a client are essential to the development of a plan of finance. In turn, these services become, among other things, the basis for a transaction's basic legal documents, the preparation and delivery of the official statement or other disclosure document that describes the material terms and provisions of the transaction, the preparation of the various closing certificates that embody the terms and provisions of the transaction, the preparation and delivery of the attorney's legal opinion with respect to the transaction that is relied upon by the client and investors in the municipal securities marketplace, and advice and documentation with respect to post-closing policies and procedures that are necessary for compliance with federal and state law during the term of the municipal securities or municipal financial product. Similarly, attorneys often provide legal advice and related legal services regarding Federal tax requirements for issues of municipal securities, such as, for example, legal advice and services in determining ongoing compliance of an issue of municipal securities with the Federal tax law requirement to ''rebate'' excess arbitrage earnings on investments of tax-exempt bond proceeds to the Federal Government at periodic intervals during the term of the bond issue. The legal advice and legal services described in this paragraph would be within the attorney exclusion to the municipal advisor definition. Thus, attorneys providing this advice or these services would not be required to register as municipal advisors.

In addition, the Commission recognizes that attorneys seeking to represent municipal entities and obligated persons are often required to respond to RFPs and RFQs, and to participate in interviews during which they are requested to, and do, offer advice regarding the structure, timing, terms, and other provisions of a proposed offering of municipal securities or municipal financial products before being retained as counsel and that these requests may not be limited to legal questions. As discussed above in Section III.A.1.c.ii, the Commission does not believe that a response to an RFP or RFQ is advice with respect to the issuance of municipal securities or municipal financial products, and the Commission is adopting an exemption from the definition of municipal advisor for any person providing a response to an RFP or RFQ, provided such person does not receive separate direct or indirect compensation for advice provided as part of such RFP or RFQ. The Commission notes that responses to RFPs and RFQs are provided at the request of the municipal entity or obligated person. Thus, anyone responding to an RFP or RFQ in accordance with the exemption, including an attorney, will not have to register as a municipal advisor.

The Commission also recognizes that attorneys who represent municipal entities or obligated persons with respect to the issuance of municipal securities or municipal financial products are often asked to provide interpretation of the provisions of the legal documents throughout the term of the municipal securities or municipal financial products, including before and after the formal attorney-client relationship with respect to the issuance or municipal financial product exists.[825] Although the attorney-client relationship may not be in existence, if the advice is with respect to an issuance or transaction in connection with which the municipal entity was or will be a client of the attorney, the Commission considers such advice to be ''to a client.'' Accordingly, such advice will not require the attorney to register as a municipal advisor.

Finally, as discussed above, the Commission is clarifying that provision of general information, including the provision of educational materials to an attorney's clients and non-clients does not constitute advice, and therefore, will not require the attorney to register as a municipal advisor.[826]

Engineers Providing Engineering Advice

Section 15B(e)(4)(C) of the Exchange Act excludes engineers providing engineering advice from the municipal advisor definition. In the Proposal, the Commission proposed to interpret this exclusion to mean that the term ''municipal advisor'' shall not include ''[a]ny engineer, unless the engineer engages in municipal advisory activities other than providing engineering advice.'' [827] In the Proposal, the Commission stated that costing out engineering alternatives would not subject an engineer to registration because such activity would be considered ''engineering advice.'' [828] The Commission, however, further proposed that this exclusion would not include circumstances in which the engineer is engaging in municipal advisory activities, including cash flow modeling or the provision of information and educational materials relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice.[829] The Commission also proposed that the exclusion would not include preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that provide analysis beyond the engineering aspects of the project. Therefore, under the Proposal, engineers engaging in the types of activities described above

[823] *See* Proposal, 76 FR 834.

[824] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[825] *See supra* notes 816–817 and accompanying text.

[826] *See supra* Section III.A.1.b.i. (discussing the provision of general information) and note 815 and accompanying text.

[827] *See* proposed Rule 15Ba1–1(d)(2)(v).

[828] *See* Proposal, 76 FR 834.

[829] *See id.*

would have been required to register as a municipal advisor.[830]

The Commission requested comment on whether it should expand its proposed interpretation of the statutory exclusion beyond engineers providing engineering advice.[831] The Commission also asked how the term ''engineering advice'' should be interpreted and whether the engineering exclusion should include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project.[832]

The Commission received approximately 32 comment letters regarding the proposed interpretation of the statutory engineering exclusion. Some commenters supported the proposed interpretation of the exclusion.[833] One commenter stated that the Commission ignored the statutory exclusion altogether.[834] Most commenters, however, suggested that the Commission's proposed interpretation of the engineering exclusion was too narrow and that activities such as cash flow analyses and feasibility studies represent an integral part of an engineer's services.[835] Some commenters suggested that the terms ''cash flow analysis'' and ''feasibility studies'' have very specific meanings within the engineering industry.[836] One commenter specifically recommended that engineering firms reporting on the condition of water and sewer systems should be excluded from the definition of municipal advisor.[837] Another commenter noted that the Brooks Act,[838] which was enacted in 1972, delineates what constitutes ''engineering services.'' [839]

A number of commenters highlighted energy services and solar energy companies, in particular, as a sector of the engineering industry that would be especially affected by the Commission's proposed interpretation.[840] Three commenters suggested that energy service companies should be able to provide disclosure statements to municipalities without being considered municipal advisors,[841] and one commenter suggested that solar energy companies acting in an engineering role and providing just information and education related to cost savings integral to solar engineering should be included in the exemption.[842]

The Commission has carefully considered the issues raised by commenters on the Proposal and is adopting its interpretation of the statutory engineering exclusion, substantially as proposed, to provide that engineers are excluded from the definition of municipal advisor ''to the extent that the engineer is providing engineering advice,'' [843] with modifications and clarifications regarding the scope of its interpretation of the statutory exclusion in response to public comment.[844] In general, the Commission believes activities within the scope of the engineering exclusion may include feasibility studies, cash flow analyses, and similar activities; provided, however, that the engineering exclusion does not cover activities in which an engineer provides advice to a municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities, as discussed further herein.

Activities within the scope of the engineering exclusion include, among other things, certain activities discussed below. The Commission believes that this exclusion covers an engineer's provision of certain information to its client regarding a project schedule and anticipated funding requirements of the project. The Commission further

[830] *See id.*

[831] *See id.,* at 837.

[832] *See id.*

[833] *See* MSRB Letter (''The MSRB supports the language of proposed Rule 15Ba1–1(d)(2)(v) regarding the exclusion for engineers, including in particular that such exclusion applies solely when an engineer is providing engineering advice. Thus, to the extent that an engineer provides advice with respect to municipal financial products, the issuance of municipal securities or other financing structure that is not considered engineering advice (such as advice on how to structure an issue to cover the costs of a project), the engineer would be considered a municipal advisor.'') and Acacia Financial Group Letter.

[834] *See* letter from Spencer Bachus, Chairman, United States House of Representatives, Committee on Financial Services, dated February 23, 2011 (''Bachus Letter'').

[835] *See, e.g.,* letters from David King, President, Virginia/DC/Maryland Chapter, American Public Works Association, dated February 16, 2011 (''APWA Letter'') (stating that engineering professional services for infrastructure evaluations, studies, and design contracts by their very nature involve and require cost analyses); David A. Raymond, President & CEO, American Council of Engineering Companies, dated February 18, 2011 (''ACEC Letter'') (stating that in many cases, analysis of cash flow requirements is inextricable from the design of an engineering project, and that engineers often provide guidance regarding alternative phasing of projects to match available revenues or to maximize the infrastructure given limited resources); Parsons Brinckerhoff Inc., dated February 18, 2011 (''Parsons Brinckerhoff Letter'') (noting that in the engineering context, cash-flow modeling often involves (1) a cost-loaded design and construction schedule, or (2) a record-keeping cash flow analysis that facilitates periodic reporting); Kutak Rock Letter (stating that the Commission should treat an engineer's preparation of a project feasibility study as a part of routine engineering advice); Honeywell Letter (stating that ''the provision of such [feasibility studies and other activities that currently do not fall under the engineer exemption] is simply necessary for the municipality to initially understand the costs associated with a proposed engineering project and the range of potential options for financing such project, not to assist it in specifically evaluating or recommending financing options''); NAESCO Letter (stating that ''engineering includes a continuum of services . . . including the provision of general and specific information about financing options for energy projects, preparation of studies including information about cash-flows and other financial projections, and identification of, and introduction to brokers, dealers, municipal advisors (including financial advisors) and municipal securities dealers with expertise in financing energy service projects''); letter from David A. Raymond, President & CEO, HNTB Holdings Ltd, dated February 22, 2011 (''HNTB Holdings Letter'') (stating that ''[t]he conception of engineering advice expressed in the proposing release does not reflect engineering as it is practiced today, particularly in the context of infrastructure projects, and excludes many activities that are intrinsic to the profession of engineering'').

[836] *See, e.g.,* Parsons Brinkerhoff Letter.

[837] *See* letter from Mark Page, Director of Management and Budget, The City of New York, dated February 22, 2011 (''NYC Management and Budget Letter''). This commenter also stated that sewer rate consultants issuing reports relating to the sufficiency of water and sewer rates to satisfy obligations of a city's water authority are not providing advice relating to municipal securities or municipal financial products; and that rate consultants providing advice regarding rates and revenues should, like engineers providing engineering advice, be excluded from the definition of ''municipal advisor.''

[838] 40 U.S.C. 1102. The Brooks Act is a federal law that sets forth policies and certain procedures for selection by the federal government of engineering and architecture firms and related services.

[839] *See* letter from Mark A. Casso, President, Construction Industry Round Table, dated February 22, 2011 (''Construction Industry Round Table Letter'').

[840] *See, e.g.,* letters from Senator Daniel Coats, Congressmen Dan Burton, Larry Bucshon, Todd Rokita, and Todd Young, dated May 27, 2011 (''Senator Coats et al. Letter'') (highlighting the ''unnecessarily dire impacts'' that the proposed rule would have on energy services companies); Senator Landrieu, Senator Coons, and Chairman Bingaman, United States Senate Committee on Energy and Natural Resources, dated June 22, 2011 (''Senator Landrieu et al. Letter'') (stating that ''the Commission's proposal undermines [the engineering] exemption by suggesting that any [energy services company] that so much as provides a cash flow analysis or feasibility study to a municipality would not be providing 'engineering advice' and would therefore be subject to registration as a 'municipal advisor'''); Honeywell Letter; letter from Katherine Gensler, Director, Regulatory Affairs, and Emily J. Duncan, Policy Specialist, Solar Energy Industries Association, dated November 9, 2011 (''Solar Energy Industries Association Letter'').

[841] *See* NAESCO Letter; Honeywell Letter; Chevron Letter.

[842] *See* Solar Energy Industries Association Letter. For purposes of the engineering exclusion discussion, the Commission treats energy services and solar energy companies as engineering companies.

[843] *See* Rule 15Ba1–1(d)(2)(v). The Commission is adopting the engineering exclusion with minor, non-substantive modifications from the version proposed to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[844] *See supra* notes 835–836 and accompanying text (discussing comments related to cash flow analyses and feasibility studies).

believes that the provision of engineering feasibility studies that include certain types of projections, such as projections of output capacity, utility project rates, project market demand, or project revenues that are based on considerations involving engineering aspects of a project are within the scope of the engineering exception.

For example,[845] an engineer who provides funding schedules and cash flow models that anticipate the need for funding at certain junctures in a project or engineering feasibility studies based on analysis of engineering aspects of the project will fall within the Commission's interpretation of the statutory engineering exclusion from the municipal advisor definition. An engineering feasibility study, for example, might include a discussion of how much power might be generated by the installation of solar panels, and such a discussion would not constitute a municipal advisory activity. Similarly, recommendations about how to increase power output based on factors such as the placement of the panels or the number of panels would also not constitute a municipal advisory activity. Moreover, an engineer might provide estimates of water delivery capacity or a road's traffic capacity without engaging in municipal advisory activity. Engineers who report on the physical condition of infrastructure, such as roads, bridges or water and sewer systems, would also not be engaged in municipal advisor activity.[846] Absent other facts and circumstances which indicate that an engineer is providing advice to a municipal entity or obligated person regarding the issuance of municipal securities, an engineer's use of assumptions provided by a municipal entity or obligated person regarding interest rates or debt levels in preparing an engineering feasibility study or cash flow analysis alone will not result in municipal advisory activity.

With respect to services related to cash flow analysis, a municipal entity might seek input from an engineering company about whether a project could be accomplished with estimated available funding, including the timing of such funding. As noted above, engineers that provide input about the anticipated funding requirements of a project would not be engaging in a municipal advisory activity.[847] Thus, an engineer could advise a municipal entity about whether a project could be safely or reliably completed with the available funds and provide engineering advice about other alternative projects, cost estimates, or funding schedules without engaging in municipal advisory activity. Further, the Commission would consider an engineering company that informs a municipal entity or obligated person of potential tax savings, discounts, or rebates on supplies to be acting within the scope of the engineering exclusion.

By contrast, however, activities of engineers are outside the scope of the engineering exclusion if they include advice to a municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances. For example, an engineer that is engaged by a municipal entity or obligated person to prepare revenue projections to support the structure of an issuance of municipal securities would be providing advice outside the scope of the engineering exclusion and would be engaging in municipal advisory activity. Further, while the inclusion of an engineering feasibility study in an official statement or other offering document for an issuance of municipal securities alone does not cause an engineer's activities with respect to the feasibility study to be treated as municipal advisory activity, other facts and circumstances, such as the inclusion of revenue projections and debt service coverage calculations in the feasibility study, may suggest municipal advisory activity.

Engineering companies may also provide advice to their clients regarding financing of products and services delivered to such clients. As noted previously, the Commission is clarifying that provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including general information with respect to financing options) would not be municipal advisory activity.[848] Depending on all the facts and circumstances, however, the provision of information describing financing alternatives that may meet the needs of a municipal entity or obligated person may be considered a recommendation with respect to municipal financial products or the issuance of municipal securities that would be municipal advisory activity.[849]

One commenter stated that another standard service offered by engineers involves the provision of introductions of municipal entities to brokers, dealers, municipal advisors, and municipal securities dealers and that such introductions should be within the engineering exclusion.[850] One commenter recommended that the Commission ''refine its approach'' to register only those solicitors that receive compensation for introductions to funding sources.[851]

The Commission does not believe it is necessary or appropriate to provide a separate exemption for engineers engaging in introductions. The Commission notes that introductions provided by engineers would be subject to the same analysis as any other ''solicitation of a municipal entity or obligated person.'' [852] Thus, if an introduction does not result in direct or indirect compensation to the engineer, the introduction will not constitute such a solicitation and the engineer will not be required to register as a municipal advisor.

Finally, as discussed previously, the Commission is providing an exemption for advice given to municipal entities and obligated persons in circumstances in which the municipal entity or obligated person separately is represented by an independent registered municipal advisor.[853]

[845] *See, e.g., supra* note 835 and accompanying text.

[846] *See supra* note 837. Whether a rate consultant providing advice regarding rates and revenues would be a ''municipal advisor'' will depend upon the facts and circumstances. For example, if such consultant provides advice on whether certain rates and revenues would support debt service on an issue of municipal securities, such activity would be municipal advisory activity that would subject the consultant to the registration requirement. Although the Commission is not adopting an exemption for persons performing such activities, the Commission notes that like all persons, such entities could apply for no-action or exemptive relief. As noted above, when requesting exemptive relief pursuant to Section 15B(a)(4), a person may follow the procedures for requesting exemptive relief pursuant to Section 36 of the Exchange Act, as set forth in Rule 0–12 under the Exchange Act. *See* 17 CFR 240.0–12.

[847] In the Proposal, the Commission gave as an example of activity that would be engineering advice the costing out of engineering alternatives. *See* Proposal, 76 FR 834.

[848] *See supra* note 168 and accompanying text. *See also supra* Section III.A.1.b.i. (providing guidance on the term ''advice'' and discussing the provision of general information).

[849] *See supra* Section III.A.1.b.i. (providing guidance on the term ''advice'' and discussing the provision of general information).

[850] *See* NAESCO Letter.

[851] *See* letter from Jennifer Schafer, Coordinator, Federal Performance Contracting Coalition, dated February 22, 2011 (''Federal Performance Contracting Coalition Letter'').

[852] *See supra* Section III.A.1.b.x. (discussing ''solicitation of a municipal entity or obligated person'').

[853] *See supra* Section III.A.1.c.iii. (discussing the exemption when a ''municipal entity or obligated person represented by an independent municipal advisor'').

Engineers may provide advice beyond engineering advice when such an independent registered municipal advisor is present without triggering the requirement to register as a municipal advisor.

Vendors Generally

Some commenters who commented on other aspects of the Proposal also provided information with respect to purchases from vendors made by municipal entities that could potentially involve the issuance of municipal securities. One commenter stated that most municipalities, for example, do not purchase a solar installation upfront, but rather enter into a purchase or lease agreement with the solar company.[854] Another commenter referenced lease-leaseback arrangements and preferred provider or performance contract arrangements.[855]

The Commission notes that municipal entities and obligated persons purchase a wide range of products from vendors, including, for example, computers, office furnishings and supplies, car, truck and school bus fleets, telephone systems, and a multitude of other products. The Commission believes that the activities of vendors in advertising, promoting, and selling their products to municipal entities are generally outside the scope of municipal advisory activities because these activities generally do not involve advice with respect to the issuance of municipal securities or municipal financial products.[856]

The Commission understands, however, that sometimes municipal entities and obligated persons may finance the purchase of products from vendors through the use of instruments such as installment purchase contracts, installment sale contracts, lease-purchase agreements, or loans. The Commission notes that the provision of advice and recommendations by vendors (or any other person including, for example, lease financing companies affiliated with vendors) to municipal entity or obligated person clients regarding specific financing options for the purchase of products could, depending on the facts and circumstances, be a municipal advisory activity. For example, certain financings, depending on how they are structured, could constitute the issuance of a security[857] by a municipal entity and, therefore, could constitute the issuance of a municipal security.[858] The provision of advice and recommendations regarding such an issuance would constitute municipal advisory activity unless an exclusion or exemption applies.

Actuaries

Section 15B(e)(4)(C) of the Exchange Act does not include an exclusion for actuaries from the municipal advisor definition. The Commission received approximately five comment letters concerning a possible exemption for actuaries.[859]

One commenter stated that if the term ''investment strategies'' extends beyond proceeds of municipal securities to include funds held in pension plans, actuarial services for pension plans would potentially require municipal advisor registration.[860] The same commenter recommended that the Commission exempt from the municipal advisor definition enrolled actuaries and members of the five U.S.-based actuarial organizations that have adopted the actuarial Code of Professional Conduct (including the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries).[861] This commenter suggested that such exemption should apply to actuaries providing actuarial services that are governed by the Actuarial Standards of Practice and the Code of Professional Conduct.[862] Further, another commenter recommended that actuaries providing actuarial services to public pension plans, 403(b) plans, and 457(b) plans generally should also be exempt.[863] Additionally, one commenter recommended that the Commission clarify whether actuaries who perform actuarial and/or consulting services for certain other governmental benefit plans and trusts, such as retiree medical plans, voluntary employee benefit associations and related trusts (''VEBAs''), and other post-employment benefits (''OPEB'') plans and trusts would be municipal advisors.[864] Finally, another commenter stated that actuarial studies should not be considered to be ''municipal advisory activities.''[865]

For the reasons discussed below, the Commission does not believe that it is necessary or appropriate to exempt actuaries from the municipal advisor registration regime as suggested by commenters. However, as discussed in other sections of the release, the Commission is making several changes to the final rule text and its interpretations that would also address some of the concerns raised by commenters. As discussed above in Section III.A.1.b.viii, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. Thus, persons who provide advice with respect to a plan, such as a public employee benefit plan (including 403(b) plans and 457(b) plans, to the extent the plans do not contain proceeds of municipal securities) will not be required to register as municipal advisors. To the extent that a plan contains proceeds of municipal securities, the Commission understands that an actuary's service does not generally involve advice with respect to the investment of such proceeds. As such, an actuary's services with respect to such plan generally would not constitute municipal advisory activities and would not require the actuary to register as a municipal advisor.

In addition, the provision of actuarial studies that are used as the basis for a municipal entity to engage in a financing will not be considered a municipal advisory activity if the actuarial study only uses client-provided investment return assumptions and does not make any recommendations about how such municipal entity might address an unfunded liability, including a discussion of the advisability of an issuance of municipal securities or a municipal financial product. Further, in order for the provision of actuarial studies that form the basis for disclosure with respect to an issuance of municipal securities to not constitute a municipal advisory activity, it must not include a discussion of the advisability of an issuance of municipal securities or a municipal financial product. Such

[854] *See* Solar Energy Industries Association Letter.

[855] *See* NAESCO Letter.

[856] *See supra* note 143 and accompanying text (discussing the term ''municipal advisory activities'').

[857] *See* Reves v. Ernst & Young, Inc., 494 U.S. 56 (1990), where the U.S. Supreme Court established a multi-factor test to distinguish securities from instruments that are not securities.

[858] *See* 15 U.S.C. 78c(a)(29) (defining ''municipal securities'').

[859] *See, e.g.,* Fraser Stryker Letter; State of Indiana Letter; letter from Maria Sarli, Resource Actuary, and Lynn Cook, Towers Watson, dated February 22, 2011 (''Towers Watson Letter''); American Society of Pension Professionals Letter; and American Academy of Actuaries Letter.

[860] *See* American Academy of Actuaries Letter.

[861] *See id.*

[862] *See id.*

[863] *See* Towers Watson Letter.

[864] *See* Fraser Stryker Letter.

[865] *See* State of Indiana Letter.

actuarial studies only provide calculations using data from the client and do not involve the provision of any advice. An actuary may be deemed to be engaged in a municipal advisory activity if the facts and circumstances indicate that the actuary tailored its actuarial study to support an issuance of municipal securities or to support entering into a municipal financial product.

viii. Banks

In the Proposal, the Commission discussed a commenter's suggestion that the Commission exempt from the definition of ''municipal advisor'' banks providing ''traditional banking services'' and banks and trust companies that provide ''investment advisory services.''[866] The Commission noted that Congress included in the statutory definition of municipal advisor a limited number of exclusions, and such exclusions did not include banks in any capacity.[867] In addition, as discussed more fully above,[868] the Commission proposed to interpret the term ''investment strategies'' to include ''plans, programs, or pools of assets that invest in funds held by or on behalf of a municipal entity.'' [869] In connection with its proposed interpretation of ''investment strategies,'' the Commission stated that, because every bank account of a municipal entity is comprised of funds ''held by or on behalf of a municipal entity,'' money managers that provide advice to municipal entities regarding their bank accounts could be municipal advisors.[870]

The Commission requested comment on whether it should exempt banks providing advice to a municipal entity or obligated person concerning transactions that involve a ''deposit'' (as defined in Section 3(*l*) of the Federal Deposit Insurance Act [871]) at an ''insured depository institution'' (as defined in Section 3(c)(2) of the Federal Deposit Insurance Act [872]). The Commission stated that, if adopted, banks would be exempted from the definition of municipal advisor to the extent they provide advice to a municipal entity or obligated person with respect to such banking products as insured checking and savings accounts and certificates of deposit. However, banks would not be exempted if they engage in other municipal advisory activities.[873]

In response to request for comment, the Commission received over 300 letters from commenters, many of them commercial banks and banking associations. The commenters stated that, because the Commission was proposing to interpret the term ''investment strategies'' to encompass any funds ''held'' by a municipal entity, regardless of whether such funds are related to the issuance of municipal securities or investment of bond proceeds, the definition would potentially cover what commenters termed ''traditional banking products and services.'' [874] According to the commenters, such services include deposit accounts, cash management products, and loans to municipalities, all of which are already subject to supervision by federal bank regulators.[875] As a result, these commenters stated that banks providing such products and services would have to register as municipal advisors, adding ''a new layer of regulation on bank products for no meaningful public purpose.'' [876] One commenter noted that ''the OCC and the other federal banking agencies have an existing regulatory framework and oversight over traditional banking products and services, which include bank deposit transactions * * * The OCC also already evaluates the ability of bank management to monitor and control traditional banking products and services, including the administration of deposit accounts, through regular and extensive on-site examinations.'' [877] Other commenters recommended that municipal advisor registration should

[866] *See* letter from Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, and Deputy General Counsel, ABA Securities Association, dated October 13, 2010. *See also* Proposal, 76 FR 834, notes 143–144 and accompanying text. As support, this commenter stated that banks are currently well-regulated and banks that offer trustee services are subject to rigorous and frequent examination, as well as extensive regulation by the various federal or state banking regulators.

The commenter also listed the following activities as examples of the types of activities in which bank and trust companies engage: providing direct loans, checking accounts, and CDs; responding to RFPs regarding investment products offered by the bank, such as interest bearing deposits, money market mutual funds, or other exempt securities; investing in securities issued by municipalities and providing credit, or through their affiliates, underwriting services to municipalities (such as when the municipality wants to buy a fire truck or build a school); providing fiduciary services to municipal entities (such as by managing investment accounts for local towns or acting as trustee with respect to bond proceeds, escrow accounts, governmental pension plans and other similar capacities). *See* Proposal, 76 FR 834, n.143.

[867] *See id.,* at 835.

[868] *See supra* Section III.A.1.b.viii.

[869] *See* Proposal, 76 FR 830.

[870] *See id.*

[871] 12 U.S.C. 1813(*l*).

[872] 12 U.S.C. 1813(c)(2). *See* Proposal, 76 FR 835.

The Commission also requested on comment on whether to exclude banks performing certain other specific activities, including, for example: banks responding to RFPs from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities; banks that provide to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiate the terms of an investment with the municipal entity; banks that provide to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the municipal entity, such as bond anticipation notes, tax anticipation notes, or revenue anticipation notes; banks that direct or execute purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis; banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities; and banks and trust companies to the extent they are providing advice that otherwise would subject them to registration under the Investment Advisers Act, but for the operation of a prohibition to or exemption from registration. *See* Proposal, 76 FR 837.

[873] *See id.,* at 835.

[874] *See, e.g.,* American Bankers Association Letter I (the SEC's proposed interpretation would regulate ''already-regulated traditional banking products, such as deposit, cash management and lending activities, and trust or custody products with or on behalf of municipalities''); Union Bank Letter; Form Letter A (of the approximately 300 comment letters that addressed the topic of commercial bank regulation, 170 were submitted in Form Letter A format) (the SEC's proposed interpretation would cover ''traditional bank products and services, such as deposit accounts, cash management products, and loans to municipalities''). *See also* Form Letter D (36 comment letters were submitted in this form) (the SEC's proposed interpretation ''would label as ''municipal advisors'' banks and many bank employees providing essential and traditional bank services to their local municipalities, including day-to-day deposit, cash management, custody, trustee, and lending services—a result we do not believe furthers any legitimate policy goal . . .'').

[875] *See, e.g.,* American Bankers Association Letter I; Union Bank Letter; Form Letter A.

[876] *See, e.g.,* Form Letter A. *See also* Form Letter D (36 comment letters were submitted in this format) (stating that ''the rule would result in . . . additional, redundant layers of multiple rules by the SEC and Municipal Securities Rulemaking Board (MSRB) for the very same products and services for which we are already comprehensively supervised by the prudential banking regulators''); BOK Financial Corp. Letter (stating that ''[e]xpanding the . . . registration requirement to providers of traditional banking services is unnecessary because it provides no additional protection to municipalities or investors in municipal securities beyond existing regulation and oversight''); American Bankers Association Letter I (stating that ''[d]eposit accounts, cash management products, loans, and trust and custody products are but four broad types of [municipal financial products]'' and that ''[a]ll are extensively regulated, and the institutions providing them are supervised and regularly examined by the federal bank regulators'').

[877] *See* OCC Letter.

instead only apply to currently unregulated entities.[878]

Many commenters focused, in particular, on the potential effects of the proposed rules on ''community banks.'' [879] Many other commenters claimed that the additional regulatory burden of registering as a municipal advisor would raise costs, which would either discourage community banks from offering their full array of products and services to municipalities [880] or lead community banks to pass on added costs and expenses to their municipal entity customers.[881]

Commenters stated that ''traditional banking products and services'' are not the intended focus of the municipal advisor registration provision of the Dodd-Frank Act and that banks that provide these services should not be subject to this provision.[882] For example, one commenter noted that products such as deposit accounts and cash management products do not warrant municipal advisor registration, because ''[t]hese types of products merely are extension [sic] of more traditional deposit products, such as savings accounts, checking accounts and CDs, and do not constitute 'advice' under any reasonably accepted definition of the term.'' [883]

Other commenters listed specific banking products and services that, in their view, should not be encompassed within municipal advisor registration. For example, one commenter stated that, ''[a]t a minimum, the Commission should clarify that banks providing municipal entity customers advice regarding traditional banking products including deposit accounts, savings accounts, certificates of deposit, bankers acceptances, bank loans and letters of credit, and certain loan participations do not need to register as municipal advisors.'' [884] This commenter also stated that the Commission should clarify that ''banks providing the terms for the purchase of municipal securities for the bank's own account shall be excluded from registration as 'municipal advisors''' and explained that ''banks are authorized to purchase municipal securities for their own account subject to extensive regulation and oversight.'' [885] Another commenter also argued that banks extending credit, ''whether through loans, letters of credit or otherwise,'' should be excluded from the definition of municipal advisor.[886]

Meanwhile, another commenter recommended that the Commission adopt an exclusion for providing advice concerning (or soliciting) transactions that involve a ''deposit'' at an ''insured depository institution,'' as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, including advice with respect to: (1) Insured checking and savings accounts and certificates of deposit; (2) directing or executing purchases and sales of securities or other instruments in a trust, fiduciary, or investment management account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis; (3) providing other services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities; (4) providing advice concerning (or soliciting) transactions that are subject to an exemption under Regulation R under the Exchange Act, or transactions otherwise excluded from the definition of broker-dealer activities under the Exchange Act, including bank broker-dealer exceptions relating to third-party networking arrangements, trust and fiduciary activities, deposit ''sweep'' activities, custody and safekeeping activities and certain securities lending transactions; (5) and serving as trustee to a pooled investment vehicle.[887] Another commenter recommended that the municipal advisor definition only cover the services of advisors with respect to the investment of proceeds of municipal securities and exclude the deposit and cash management services traditionally provided by ''community banks.'' [888] Another commenter suggested that ''investment strategies'' not include products and services in the categories of deposit accounts insured by the FDIC (up to $250,000) or bank activities that the Commission has exempted from the definitions of ''broker'' under Section 3(a)(4)(B) of the Exchange Act.[889]

The Commission is exempting from the definition of municipal advisor persons that provide advice with respect to ''investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.'' [890] Accordingly, the performance of many of the bank activities and services about which commenters were concerned would not require banks to register as municipal advisors. In addition, as discussed further below, the Commission is exempting from registration banks that perform certain activities.

Specifically, the Commission is exempting from the definition of municipal advisor ''[a]ny bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), to the extent the bank provides advice with respect to the following: (A) [a]ny investments that are held in a deposit account, savings account, certificate of deposit, or other

[878] *See, e.g.,* SIFMA Letter I; American Bankers Association Letter I (stating that ''as drafted, the proposal goes far beyond legislative intent or public policy need by purporting to regulate already-regulated traditional banking products, such as deposit, cash management and lending activities, and trust and custody products with or on behalf of municipalities''); Union Bank Letter (stating that Congress intended to regulate a heretofore unregulated group that advises municipal entities, and not banks that are already regulated).

[879] Entities referring to themselves as ''community banks'' include, for example First Bank of Owasso; ACB Bank, Cherokee; First National Bank of Bastrop, Texas; and The First National Bank of Suffield. *See* letter from Dominic Sokolosky, President, First Bank of Owasso, dated February 14, 2011; letter from Kari Roberts, President/CCO, ACB Bank, Cherokee, dated February 15, 2011; letter from Reid Sharp, President/CEO, First National Bank of Bastrop, Texas, Bastrop, Texas, dated February 16, 2011; letter from George W. Hermann, President/CEO, The First National Bank of Suffield, dated February 17, 2011.

The OCC defines ''community banks'' generally as ''banks with less than $1 billion in total assets and may include limited-purpose chartered institutions, such as trust banks and community development banks.'' *See* Comptroller's Handbook, Community Bank Supervision (2010) available at *http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/cbs.pdf* at 1.

[880] *See, e.g.,* Form Letter A.

[881] *See, e.g.,* Hancock Holding Co. Letter. However, none of the commenters provided any data on the dollar cost that would be imposed by the proposed rules.

[882] *See, e.g.,* Form Letter A, Form Letter D, American Bankers Association Letter I, Independent Community Bankers of America Letter, and OCC Letter.

[883] *See* Independent Community Bankers of America Letter. As examples of short-term investment of cash, this commenter listed ''interest-bearing bank accounts and overnight or other periodic investment sweeps.'' *See id.*

See also letter from Charles V. Motil, Capital One Financial Corporation, dated February 22, 2011 (stating that ''a bank teller would be caught under the [municipal advisor] definition when helping an employee of the municipal entity deposit money into the entity's checking account if the teller, seeing that the account carries a high balance, recommends a savings account or certificate of deposit that would give the entity a higher rate of return'').

[884] *See* OCC Letter.

[885] *See id. See also* Independent Community Bankers of America Letter (stating that the Commission should exclude from the definition of ''municipal advisor'' banks that provide ''to a municipal entity the terms upon which the bank would purchase for [its] own account securities . . . issued by the municipal entity,'' and arguing that ''[s]uch activities do not involve the safeguarding of public funds'').

[886] *See* Independent Community Bankers of America Letter.

[887] *See* SIFMA Letter I.

[888] *See* First Bank of Owasso Letter.

[889] *See* First Tennessee Bank National Association Letter.

[890] *See* Rule 15Ba1–1(d)(3)(vii). *See also supra* Section III.A.1.b.viii.

deposit instrument issued by a bank; (B) [a]ny extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account; (C) [a]ny funds held in a sweep account that meets the requirements of Section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)); or (D) [a]ny investment made by a bank acting in the capacity of an indenture trustee [891] or similar capacity.'' [892] The Commission believes that advice by banks to municipal entities and obligated persons with respect to these products and services would not subject municipal entities and obligated persons to the kinds of risks that the municipal advisor registration regime is intended to mitigate.

The Commission notes that the products and services included in the exemption, such as deposit accounts and certain other short-term cash investments like sweep accounts, and extensions of credit by a bank (whether by direct loan or otherwise),[893] are transactions in which there should be no confusion as to the role of the bank or its employees. Similarly, the Commission notes that banks that purchase securities from municipal entities or obligated persons for their own account (without providing advice to the municipal entities or obligated persons with respect to other issues or municipal products) are not engaging in municipal advisory activities. Instead, they are acting as principals in purchase transactions.[894] In the case of investments made by an indenture trustee, the bank acts at the direction of the municipal entity or obligated person.

Accordingly, Rule 15Ba1–1(d)(3)(iii) provides an exemption from the definition of municipal advisor for banks that provide advice with respect to certain enumerated products and services that the Commission believes do not pose the types of risks that the Dodd-Frank Act was designed to address. Moreover, the Commission notes that the narrower focus of the ''investment strategies'' definition on investments of proceeds of municipal securities and municipal escrow investments discussed above is intended to be responsive to comments about the impact of the municipal advisor registration requirement on the provision of products and services offered by banks. The Commission believes that, together, these exemptions to the definition of ''municipal advisor'' generally will cover banks with respect to advice that they provide regarding the types of products and services that commenters referred to as ''traditional banking products and services.'' [895] For example, commenters identified deposit accounts, which municipal entities typically use for short-term investments of revenues, as one type of traditional banking product. Under the final rules, banks that provide advice regarding deposit accounts generally will be explicitly exempt from the definition of municipal advisor for this type of account. Similarly, banks will be explicitly exempt with respect to other identified products and services such as letters of credit and sweep accounts. Additionally, although the final rules would not explicitly exempt certain products and services such as custody accounts and trust services (unless the bank is serving in the capacity of an indenture trustee or a similar capacity), a bank providing advice with respect to such products or services would not be required to register as a municipal advisor, as a result of the narrower approach with respect to investment strategies, unless such accounts contain proceeds of municipal securities or municipal escrow investments.

By contrast, however, the Commission is not exempting from registration banks that engage in municipal advisory activities, including without limitation banks that provide advice to municipal entities or obligated persons with respect to the issuance of municipal securities, or banks that provide advice with respect to municipal derivatives, unless the bank qualifies for another exclusion or exemption, such as under the limited circumstances described above with respect to the exemption for certain swap dealers.[896] As discussed above in the context of the definition of municipal derivatives and the exemption for certain swap dealers, with the Dodd-Frank Act, Congress established heightened protection with respect to swaps and security-based swaps,[897] and the Commission therefore does not believe that a blanket exemption for banks with respect to such activities would be appropriate. The Commission believes it is important to emphasize that the bank exemption does not apply to advice on municipal derivatives, which is a significant problem area identified in the financial crisis in which municipal entities suffered significant losses,[898] and further, the bank exemption does not apply to advice on the issuance of municipal securities, which is a core focus of the protections to municipal entities in the municipal advisor registration provision and is an area in which a blanket exemption to banks would result in a potential inappropriate competitive advantage to banks over other financial advisors.[899]

The Commission believes that the exemption it is providing for banks will help ensure that parties engaging in key municipal advisory activities are registered, while permitting banks to continue to provide products and services to municipal entities and obligated persons that do not pose the types of risks that the Dodd-Frank Act was designed to address. Therefore, for these reasons and the reasons described above, the Commission finds that it is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt banks engaging in certain municipal advisory activities from the definition of municipal advisor pursuant to the limitations described above. Accordingly, such banks are not required to register as municipal advisors.

[891] For purposes of this rule, an indenture trustee acts as an order-taker at the direction of the municipal entity that issued the municipal securities, within the investment parameters set forth in the indenture, ordinance, resolution, or similar instrument, and, therefore, acts in a constrained capacity, because the indenture trustee is responsible for making sure that any investments it undertakes fall within the investment parameters of the indenture.

[892] Rule 15Ba1–1(d)(3)(iii).

[893] The Commission notes that the examples of extensions of credit set forth in Rule 15Ba1–1(d)(3)(iii) are not intended to be exhaustive, and that the exemption would also apply to banks providing advice to a municipal entity or obligated person with respect to other extensions of credit by a bank such as a banker's acceptance or a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns.

[894] Specifically, banks providing municipal entities or obligated persons with the terms under which they would purchase securities for their own account are not engaging in municipal advisory activities.

The Commission notes that, in this context, such banks may, however, depending on the facts and circumstances, be subject to regulation as ''municipal securities dealers.'' *See* Sections 3(a)(30) and 15B of the Exchange Act and the rules and regulations thereunder.

[895] *See, e.g., supra* notes 874 and 875, and accompanying text. *See also supra* note 884 and accompanying text (discussing the OCC Letter).

[896] *See supra* Section III.A.1.b.v. (discussing the definition of municipal derivatives) and Section III.A.1.c.vi. (discussing an exemption for certain swap dealers). *See also supra* note 275 (discussing generally the protections afforded to special entities under the Dodd-Frank Act with respect to swap and security-based swap transactions).

[897] *See id.*

[898] *See supra* note 3 and accompanying text.

[899] *See infra* Section VIII.D.6.b. (discussing alternatives to the exemptions from the definition of municipal advisor).

Separately Identifiable Departments or Divisions

Sections 3(a)(30) and 15B(b)(2)(H) of the Exchange Act provide for the MSRB to define a separately identifiable department or division of a bank (''SID'') for purposes of whether a bank is a municipal securities dealer and must register as such.[900] In the Proposal, the Commission specifically requested comment on whether the Commission should permit SIDs (providing a bank's municipal advisory activities) to register as a municipal advisor, rather than the bank itself.[901] The Commission requested comment on suggested rule text relating to SIDs, based on MSRB Rule G–1 relating to SIDs engaged in municipal securities dealer activities,[902] and asked: whether such a rule would provide appropriate conditions for determining whether and when a SID engaged in municipal advisory activities may register as a municipal advisor; whether there were reasons the language based on MSRB Rule G–1 should not be used for SIDs engaging in municipal advisory activities; and whether the language should be modified or clarified in any way, or if there was alternative language the Commission should consider.[903] The Commission notes that the concept of separate treatment for SIDs exists in the current regulatory regimes for both municipal securities dealers and investment advisers, which both permit the SID to be the regulated entity.[904]

Although as discussed above many commenters recommended that the Commission create a blanket exemption for banks,[905] some commenters specifically recommended that, to the extent a bank provides products or services that would not be excluded, the Commission should allow a bank to register a SID if its municipal advisory services or actions are performed through such a SID.[906] A few commenters[907] additionally stated that permitting registration of SIDs would be consistent with the registration scheme for municipal securities dealers[908] and investment advisers.[909]

The Commission has carefully considered issues raised by commenters on its proposal and is adopting Rule 15Ba1–1(d)(4) to permit a SID that meets the requirements of the rule to register as a municipal advisor instead of the bank. The Commission agrees with commenters that it is appropriate to treat banks performing municipal advisory activities through a SID in a manner consistent with their treatment under the investment adviser and municipal securities dealer registration regimes.[910] Thus, to the extent a bank provides advice with respect to a municipal derivative or engages in any other non-exempted municipal advisory activity, if such advice is provided through a SID that meets the requirements of Rule 15Ba1–1(d)(4), the SID, rather than the bank itself, shall be deemed to be the municipal advisor.[911] The Commission believes that permitting SIDs to register is in the public interest, because it will ensure that municipal entities and obligated persons receive the regulatory protection intended by the statute, while addressing commenters' general concerns about duplicative regulation for banks and the impact of imposing the municipal advisor registration regime on banks in general.[912]

Specifically, as adopted, Rule 15Ba1–1(d)(4) provides that ''[i]f a bank engages in municipal advisory activities through a separately identifiable department or division that meets the requirements of [Rule 15Ba1–1(d)(4)], the determination of whether those municipal advisory activities cause any person to be a municipal advisor may be made separately for such department or division. In such event, that department or division, rather than the bank itself, shall be deemed to be the municipal advisor.'' For purposes of Rule 15Ba1–1(d)(4), a SID of a bank is defined as ''that unit of the bank which conducts all of the municipal advisory activities of the bank'' provided that certain specific requirements are met. In the Proposal, the Commission suggested defining SID as such term is defined in Section 3(a)(30) of the Exchange Act. To

[900] Exchange Act Section 3(a)(30)(B) provides that the term ''municipal securities dealer'' does not include banks, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, provided, however that if the bank is engaged in such activities through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the municipal securities dealer. Exchange Act Section 15B(b)(2)(H) provides for the MSRB to ''define the term 'separately identifiable department or division', as that term is used in [Exchange Act Section 3(a)(30)], in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of [the Exchange Act], the rules and regulations thereunder and the rules of the [MSRB].''

[901] *See* Proposal, 76 FR 838.

[902] *See id.*

[903] *See* Proposal, 76 FR 838.

[904] *See supra* note 900 and *infra* note 909, respectively.

[905] *See supra* notes 874–878 and accompanying text.

[906] *See, e.g.,* Kutak Rock Letter (stating in response to the Commission's request for comment with respect to SIDs that ''a bank creating a SID should be exempted in all its other activities from registration as an advisor); SIFMA Letter 1 (encouraging the Commission to permit SIDs to register instead of the entire banking entity); Union Bank Letter (recommending that the Commission permit registration of SIDs on a voluntary basis, because given the dispersion of public finance activities throughout a bank, a bank may not be able to consolidate the activities in a single department or division as is contemplated in the analogous language for municipal dealer SIDs); ABA Letter (supporting the concept of permitting banks to register, when required to register at all, SIDs).

[907] *See* Financial Services Roundtable Letter (requesting that, if banks are required to register as municipal advisors, they should only be required to register those department actually providing municipal advisory services, consistent with the exclusion from the definition of ''municipal securities dealer'' for banks under Section 3(a)(30)(B) of the Exchange Act); First Tennessee Bank National Association Letter (stating that registration as a SID would be consistent with the registration scheme for bank municipal securities dealers and bank investment advisers to investment companies); and letter from Kurt R. Bauer, President/CEO, Wisconsin Bankers Association, dated February 21, 2011 (noting the discrepancy between the municipal advisor registration regime for municipal securities dealers that are banks, in that the Dodd-Frank Act did not provide for registration of SIDs).

[908] *See supra* note 900.

[909] *See* Section 202(a)(11)(A).

The Commission notes that the Investment Advisers Act excepts from the definition of ''investment adviser'' ''a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company,'' but provides that the exception does not apply to ''any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company.'' The Investment Advisers Act also provides that ''if in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser'' *See* Section 202(a)(11) of the Investment Advisers Act.

[910] One commenter stated that, ''given the dispersion of municipal advisory activities throughout the bank, banks may not be able to consolidate the activities in a *single* department or division as is contemplated in the analogous language for municipal dealer SIDs'' and, as a result, does ''not think the referenced language is workable.'' This commenter also stated that the Commission should not dictate the structure of a bank's municipal business. *See* American Bankers Association Letter I.

The Commission notes that it is not requiring banks to consolidate their municipal advisory activities into a SID. Rather, to the extent that a bank does not otherwise qualify for an exclusion or exemption (such as the exemption for banks with respect to certain activities described above), the bank may choose to consolidate its municipal advisory activities into a SID. In such case, only the SID, and not the bank itself, would be required to register as a municipal advisor. Also, as discussed further below, Rule 15Ba1–1(d)(4) would not preclude a finding that a bank has a SID if the bank's municipal advisory activities are conducted in more than one geographic organizational or operational unit, so long as all such units are identifiable and otherwise meet the requirements of the rule with respect to each such unit.

[911] *See* Rule 15Ba1–1(d)(4).

[912] *See, e.g.,* notes 874–889 and accompanying text.

provide additional clarity, however, the Commission is eliminating the specific reference to Section 3(a)(30) of the Exchange Act in the definition of SID that it is adopting because, while based on that definition, Section 3(a)(30) relates specifically to activities of municipal securities dealers, as opposed to municipal advisory activities. The Commission is also clarifying, consistent with the definition for SIDs suggested in the Proposal, that the fact that directors and senior officers of the bank may from time to time set broad policy guidelines affecting the bank as a whole and which are not directly related to the day-to-day conduct of the bank's municipal advisory activities, shall not disqualify such unit or require that such directors or officers be considered as part of such unit. Further, the fact that the bank's municipal advisory activities are conducted in more than one geographic organizational or operational unit of the bank shall not preclude a finding that the bank has a separately identifiable department or division for purposes of Rule 15Ba1–1(d)(4), provided, however, that all such units are identifiable and that the requirements of Rule 15Ba1–1(d)(4) are met with respect to each such unit. All such geographic, organizational or operational units of the bank shall be considered in the aggregate as the separately identifiable department or division of the bank for purposes of this paragraph Rule 15Ba1–1(d)(4).[913] With the exception of the reference to Section 3(a)(30) and the removal from the rule text of the Commission's guidance with respect to the activities of directors and senior officers and multiple geographic locations, the other applicable requirements are substantively identical to those suggested in the proposal and based on the rules applicable to municipal securities dealer SIDs.[914]

2. Rule 15Ba1–2

a. Application for Municipal Advisor Registration

Section 15B(a)(1)(B) of the Exchange Act provides that it shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with the relevant provisions of the statute. A ''municipal advisor'' is defined in Section 15B(e)(4) of the Exchange Act to mean, with certain exceptions, ''a person'' that ''provides advice to or on behalf of a municipal entity or obligated person . . . . or undertakes a solicitation of a municipal entity.'' [915] In the Proposal, the Commission indicated that the type of information it should gather from firms versus individuals for registration purposes may be different.[916] As such, the Commission proposed two different registration forms: Form MA for ''municipal advisory firms'' and Form MA–I for ''natural person municipal advisors.'' [917]

In connection with these forms, the Commission also proposed Rule 15Ba1–2(a) and 15Ba1–2(b) for the registration of municipal advisory firms and natural person municipal advisors, respectively. Rule 15Ba1–2(a), as proposed, required a ''person, other than a natural person, including a sole proprietor'' [918] applying for registration with the Commission as a municipal advisor to complete Form MA in accordance with the instructions to the form and to file the form electronically with the Commission. Rule 15Ba1–2(b), as proposed, required a ''natural person (including a sole proprietor)'' [919] applying for registration with the Commission as a municipal advisor to complete Form MA–I in accordance with the instructions to the form and to file the form electronically with the Commission. This proposed requirement applied to, among others, each individual employee of a firm who meets the definition of municipal advisor. The two proposed provisions read together required a sole proprietor to complete both Form MA and Form MA–I.

The Commission requested comments on proposed Rule 15Ba1–2(a) and Form MA. The Commission received no comments directly on proposed Rule 15Ba1–2(a) and is adopting this provision substantively [920] as proposed.[921]

The Commission also requested comments on proposed Rule 15Ba1–2(b) and Form MA–I. Specifically, the Commission solicited comments on the effects of a separate registration requirement for natural persons and firms and the relative advantages and disadvantages for firms, municipal advisor employees, municipal entities, obligated persons, investors, and regulators, of requiring separate registration for natural person municipal advisors.[922] The Commission also asked, if the Commission were to only require registration of municipal advisory firms, would inclusion of information regarding the firm's employees on the firm's Form MA cause confusion for municipal entities, obligated persons, and investors.[923] Finally, the Commission also asked what, if any, legal ramifications may result for firms, and/or for natural persons, based on a registration regime that allows natural person municipal advisors that are employees of a municipal advisory firm to be registered by their firms as opposed to separate registration.[924]

The Commission received several comment letters regarding the proposed requirement for individual registration of natural person municipal advisors on

[913] The Commission notes that it is not including this clarification in Rule 15Ba1–1(d)(4) itself as suggested in the Proposal. *See supra* note 902.

[914] *See* Rule 15Ba1–1(d)(4)(i)(A)–(B). *See also supra* note 902 and accompanying text. The other differences between the definition suggested in the Proposal and the adopted definition are technical and organizational in nature.

[915] *See supra* Section III.A.1.a. (discussing the definition of the term ''municipal advisor'').

[916] *Id.*

[917] *Id.* A ''municipal advisory firm,'' as defined in the Glossary of Terms for the forms and used hereinafter, is ''any organized entity that is a municipal advisor, including sole proprietors.'' A ''natural person municipal advisor,'' as was defined in the Glossary, as proposed, and used hereinafter, is ''any natural person that is a municipal advisor, including sole proprietors,'' with the further clarification that ''[a] sole proprietor that is a municipal advisor is also a municipal advisory firm.'' *See also infra* notes 918 and 919.

[918] This language in proposed paragraph 15Ba1–2(a) is equivalent to the simpler term, ''municipal advisory firm'' used in the forms and herein, *see supra* note 917. The formulation of the rule language was intended to preclude any misinterpretation of the word ''firm'' as excluding sole proprietors.

[919] The category to which proposed paragraph 15Ba1–2(b) applied is identical to the ''natural person municipal advisor'' defined above. *See supra* note 917. The formulation of the rule language was intended to preclude any misinterpretation that would exclude sole proprietors.

[920] The adopted rule, however, is phrased differently. Rule 15Ba1–2(a), as adopted, provides: ''A person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in the Form and file the Form electronically with the Commission.''

The adopted rule no longer includes the phrase ''person, other than a natural person, including a sole proprietor'' to describe the person subject to registration on Form MA. As discussed below, under the adopted rules, natural persons that engage in municipal advisory activities solely on behalf of a firm with which they are associated (generally, as employees) are exempted from registration. Thus, such persons do not need to be excluded from Rule 15Ba1–2(a), which applies to municipal advisors ''applying for registration.'' In addition, sole proprietors do not need to be identified specifically among the persons who are required to complete Form MA.

[921] As discussed in the Proposal at 76 FR 838, Rule 15Ba1–2(a) requires firms that are currently registered on Form MA–T to register anew on Form MA.

[922] *See* Proposal, 76 FR 851.

[923] *Id.*

[924] *Id.*

Form MA–I.[925] One commenter asserted that the Commission should not require individuals to register separately on Form MA–I.[926] This commenter stated such requirement would not only impose significant burden and costs on municipal advisory firms and their individual associated persons but also would ''force the SEC to devote substantial resources to processing many individual applications for registration'' in addition to processing municipal advisory firms' registrations on Form MA.[927] This commenter noted that the Commission expected approximately 21,800—if not more—individuals to register as municipal advisors on Form MA–I [928] and that ''[t]he sheer number of registrations would place significant strain on the SEC's budget and personnel, especially if it plans to review all applications for municipal advisors that are filed under the permanent registration program.'' [929] The commenter questioned ''whether the incremental regulatory benefit (which [the commenter] does not believe would be significant) stemming from the public availability of the information that would be produced by a system of individual registration would justify this massive resource commitment by both applicants and the SEC.'' [930] Another commenter also suggested that the Commission eliminate individual registration of registrants' employees.[931]

Two commenters argued that the statute does not require individual registration of natural person municipal advisors.[932] One of these commenters asserted that the statute appears to intend that registration of municipal advisors be limited to entities (including partnerships, unincorporated organizations, and sole proprietors).[933] This commenter also stated that such entities would provide the critical information about individuals (including associated persons of the municipal advisor entity) during the registration process.[934]

Another commenter believed that ''dual reporting'' on Forms MA and MA–I ''could lead to confusion'' and that ''there could be inadvertent inconsistencies in the information.'' [935] In particular, the commenter noted that, under the Proposal, natural persons would be required to maintain and comply with recordkeeping and inspection requirements, which, in the commenter's view, would be ''a significant burden'' without ''any meaningful benefit.'' The commenter suggested that the Commission eliminate registration for natural persons altogether, or at least require natural persons to register as ''registered representatives,'' without recordkeeping and inspection requirements.[936] Similarly, another commenter believed that, rather than introducing a new Form MA–I to provide for registration of natural persons, FINRA's Form U4 should be adapted to allow for registration of individuals.[937]

The Commission has carefully considered the issues raised by commenters on the Proposal. In response to these comments, the Commission is modifying its approach in the final rules and is not adopting Rule 15Ba1–2(b) and Form MA–I as proposed. Specifically, the Commission is exempting certain natural persons from the requirement to register as municipal advisors [938] and is modifying Rule 15Ba1–2(b) and Form MA–I accordingly. Rule 15Ba1–3, as adopted, exempts from municipal advisor registration natural persons who are associated persons of a registered municipal advisor and who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[939] In practical terms, this exemption means that employees of municipal advisory firms who do not engage in municipal advisory activities independently of their firms (*e.g.,* by engaging in municipal advisory activities on the side as a sole proprietor) will not be required to register as municipal advisors.

While the Commission is not requiring municipal advisor registration for these natural persons, the Commission is requiring municipal advisory firms to provide the Commission with information relating to these exempted natural persons. In this regard, Rule 15Ba1–2(b), as adopted, requires the municipal advisor to complete and file with the Commission Form MA–I for each of its natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[940] While Form MA–I, as adopted, is not a form for individual registration of natural persons, adopted Form MA–I requires municipal advisory firms to provide similar information regarding its associated natural persons as proposed Form MA–I required (with some modifications, as discussed below).

The Commission believes that the information obtained from Form MA–I is necessary and appropriate to assist

[925] *See, e.g.,* Deloitte Letter; JPMorgan Chase & Co. Letter; MSRB Letter I; and SIFMA Letter I.

[926] SIFMA Letter I. The commenter also argued that the separate registration requirement would be ''excessively burdensome and costly.'' Although this description was made primarily in the context of the commenter's belief that the information requested by Form MA–I regarding individuals ''largely duplicates Form MA's disclosures regarding a municipal advisor's associated persons,'' the Commission believes that the commenter also intended it as a reason to eliminate individual registration regardless of the extent of the information required on the form. Regarding the commenter's concern about duplication, *see infra* notes 1171–1173 and accompanying discussion.

[927] *See* SIFMA Letter I.

[928] *Id.* The commenter added that ''[t]his would be in addition to the 800 municipal advisory firms that have already registered with the SEC on Form MA–T and would be required to re-register on Form MA, and at least 200 additional firms that are also expected to register.'' For the basis of the referenced Commission's estimate, *see* Proposal, 76 FR 865.

[929] *See* SIFMA Letter I.

[930] *Id.*

[931] *See* JPMorgan Chase & Co. Letter. This commenter also advocated the ''simplification of Form MA'' and more broadly criticized the scope of the proposed rules.

[932] *See* SIFMA Letter I (asserting that ''the registration of individuals in the manner proposed by the SEC is not called for in any respect by Section 975'') and MSRB Letter I.

[933] *See* MSRB Letter I.

[934] *Id.* The commenter further maintained that forms relating to individuals at municipal advisor firms should be viewed as officially submitted by the municipal advisor entity. (To clarify, however, the commenter was questioning why individuals within a firm that is itself acting as a registered municipal advisor should be viewed as municipal advisors rather than as associated persons of a municipal advisor.)

[935] Deloitte Letter. This letter, like SIFMA Letter I, *see supra* note 926, tied the argument against separate registration for individuals to its belief that ''separate registration for natural persons is largely redundant.''

[936] *See id.*

[937] *See* Financial Services Roundtable Letter. *See also infra* note 992 and accompanying text for information concerning Form U4 and further discussion.

[938] *See* Rule 15Ba1–3, as adopted, which provides: ''A natural person municipal advisor shall be exempt from section 15B(a)(1)(B) of the Act (15 U.S.C. 78o–4(a)(1)(B)) if he or she: (a) [I]s an associated person of an advisor that is registered with the Commission pursuant to section 15B(a)(2) of the Act (15 U.S.C. 78o–4(a)(2)) and the rules and regulations thereunder; and (b) [e]ngages in municipal advisory activities solely on behalf of a registered municipal advisor.''

[939] This exemption does not include sole proprietors, who must register as a municipal advisor on Form MA and also file a Form MA–I.

[940] *See* Rule 15Ba1–2(b), as adopted, which provides: ''(1) A person applying for registration or registered with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA–I (17 CFR 249.1310) with respect to each natural person who is a person associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf in accordance with the instructions in the Form and file the Form electronically with the Commission. (2) A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a), must complete Form MA–I (17 CFR 249.1310) in accordance with the instructions in the Form and file the Form electronically with the Commission.''

the Commission in assuring compliance with Section 15B of the Exchange Act and the rules thereunder. The Commission believes that exempting certain natural persons from registration and requiring municipal advisors to complete and file a Form MA–I for certain exempted natural persons retains the benefits of individual registration discussed in the Proposal while also addressing the concerns raised by commenters. Specifically, the final rules and forms mitigate commenters' concerns about imposing registration obligations upon the large number of individuals without negating the important disclosures and other benefits that the Commission believes would be obtained through Form MA–I.[941] For example, as discussed in the Proposal, the information provided by Form MA–I would help the Commission (i) manage its regulatory and examination programs by assisting the Commission in identifying municipal advisors and understanding their business structures; (ii) prepare for its inspection and examination of municipal advisors; and (iii) oversee the municipal securities market and investigate possible wrongdoing.[942] This approach would also provide municipal entities, obligated persons, investors, and other regulators with information that would inform them as to the relevant municipal advisory experience and history of each natural person for whom the municipal advisor completed and filed a Form MA–I.[943]

This approach also would help to streamline the manner of gathering pertinent information, reduce confusion in the disclosure process, and reduce inconsistencies in the information reported because the municipal advisory firm will be required to complete and file Form MA and Form MA–I for each of the associated natural persons engaged in municipal advisory activities on its behalf.[944] Indeed, commenters observed that a registered municipal advisory firm should provide critical information about its employees who engage in municipal advisory activities, rather than require the individual's separate registration.[945] Accordingly, as adopted, Rule 15Ba1–2(b), Rule 15Ba1–3, and Form MA–I will serve this purpose. Finally, the Commission also believes that eliminating the requirement for individual municipal advisors to separately register addresses commenters' concerns regarding regulatory efficiency, as it will allow the Commission to direct resources that would have otherwise been required to review many thousands of these individuals' applications to other regulatory matters.

As stated above, one commenter argued against individual registration, claiming that, under the Proposal, natural persons would be required to maintain and comply with recordkeeping and inspection requirements, which, in the commenter's view, would be ''a significant burden'' without ''any meaningful benefit.'' [946] The Commission notes, however, that the recordkeeping obligations imposed by the Proposal always applied only to municipal advisory firms.[947]

The Commission recognizes that the rule, as adopted, places on municipal advisory firms an obligation to file a Form MA–I for each individual employee that acts as a municipal advisor on its behalf. The Commission notes that, in the context of broker-dealer regulation, Form U4, which is required of individual employees and asks for much the same information as Form MA–I, is generally filed by the employees' firms.[948] Indeed, commenters appeared to favor a regime in which firms submit information regarding their employees rather than one in which each employee submits information separately.[949]

The Commission notes further that, as described below,[950] the information that firms will need to obtain to complete Form MA–I is primarily the individual's full legal and other names, social security number, and employment and residential history, other business activities in which the employee is engaged, and his or her disciplinary history. The Commission notes that, in any case, a firm generally must obtain information regarding any relevant criminal, regulatory, or civil judicial history concerning any of its associated persons [951] in order to accurately complete Form MA for purposes of its own registration.[952] In addition, to help ensure adequate regulatory oversight, aid the prosecution of wrongdoing, and benefit municipal entities and investors, the final Form MA–I collects substantially the same information as required under the proposed form.[953] Moreover, although under the adopted rules employees of municipal advisory firms are not required to register independently, they are otherwise not exempt from any other provision relating to municipal advisors.

The Commission received no comments on the requirement, under the Proposal, for a sole proprietor to file both Form MA and Form MA–I. Accordingly, the Commission is retaining this requirement in the rules, although, in view of the other changes described above, a provision has been added to set forth explicitly that a natural person applying for registration must file Form MA–I in addition to Form MA.[954]

[941] *See, e.g.,* SIFMA Letter I.

[942] *See* Proposal, 76 FR 850.

[943] *See id.,* at 851.

[944] This approach does not address the argument of commenters that Form MA–I is redundant of Form MA. That issue is addressed in the discussion below regarding the information requested in Form MA–I. *See infra* notes 1171–1173 and accompanying text.

[945] *See, e.g.,* MSRB Letter I.

[946] *See id.*

[947] As proposed, the text of Rule 240.15Ba1–7(a) provided: ''Every person, other than a natural person, including sole proprietors, *registered or required to be registered under Section 15B* of the Securities Exchange Act . . . shall make and keep true, accurate, and current the following books and records relating to its municipal advisory activities . . . . '' (emphasis added). *See* Proposal, 76 FR 883. The highlighted language is retained in the recordkeeping rule, as adopted, which has been renumbered as Rule 240.15Ba1–8. *See infra* Section III.C.

[948] The Commission notes, moreover, that Form U4 is used for registration. Under the rules as adopted Form MA–I is not a registration form. It is a form to obtain information about persons who engage in municipal advisory activities on behalf of the firm.

[949] *See, e.g.,* MSRB Letter I and citation at *supra* note 934. *See also* Deloitte Letter, stating: ''Alternatively, if the SEC does not eliminate separate registration for natural persons, the Commission should require such persons to register as registered representatives of municipal advisors, as is done in the broker-dealer context, rather than as municipal advisors.'' Although the commenter is suggesting an alternative kind of registration for natural persons, and does not specifically state that the applications for registration of such persons would be filed by their firms, the analogy to the broker-dealer context suggests that the proposed alternative would operate in a similar manner, where firms file an individual's Form U4.

[950] *See infra* Section III.A.2.c., ''Information Requested in Form MA–I.''

[951] *See infra* note 1054 for the meaning of ''associated persons'' in this context.

[952] *See infra* Section III.A.2.b., under ''Item 9: Disclosure Information and Related DRPs.'' Thus, for purposes of completing an employee's Form MA–I, a firm will additionally need to obtain the information required by the form concerning investigations of the employee; customer complaints, arbitration, and civil litigation relating to municipal advisor-related or investment-related matters involving the employee; terminations of the employee; and outstanding judgments or liens against the employee. This information is substantially the same as required by Form MA–I under the Proposal, with the modifications discussed below. *See infra* Section III.A.2.c., ''Information Requested in Form MA–I.''

[953] *See id.*

[954] *See* Rule 15Ba1–2(b)(2) of the adopted rules, 17 CFR 240.15Ba1–2(b)(2), which provides: ''A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a), must complete Form MA–I (17 CFR 249.1310) in accordance with the

Continued

The Commission stated in the Proposal that it was considering whether Form MA and Form MA–I should be submitted through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') or otherwise.[955] The Commission requested comment on whether the electronic registration system to be established should have the ability to cross-check other electronic systems, such as IARD and CRD, and whether requiring the filing of forms on EDGAR would be an appropriate means to make the requested information available.[956]

Two commenters favored the use of FINRA's electronic registration system for CRD and IARD or some similar system for the registration of municipal advisors.[957] One commenter stated that this system would ''allow regulators to easily find filings for firms and individuals, as well as cross reference between the CRD and IARD systems.'' [958] The commenters believed that use of FINRA's system would allay concerns that EDGAR would subject registration information to ''unnecessary public scrutiny'' [959] and ''compromise the confidentiality of operating performance data for privately held Municipal Advisors.'' [960]

After carefully considering the comments, the Commission has determined to require the forms to be submitted through EDGAR.[961] Although EDGAR is known primarily as the vehicle through which public companies file their annual and quarterly reports and other disclosures, the Commission has adapted EDGAR for other information gathering purposes.[962] Further, collecting information regarding municipal advisors through EDGAR should enable the Commission to efficiently retrieve and analyze data in a cost-effective manner to carry out its oversight of municipal advisors and their municipal advisory activities. The Commission notes that, while IARD, which is an electronic filing system that facilitates investment adviser registration, is funded through user fees,[963] there is no comparable provision in Section 975 of the Dodd-Frank Act authorizing the Commission to charge municipal advisors (or to authorize another entity to collect) registration fees. Accordingly, the Commission has determined to leverage its existing technology to serve as a mechanism by which municipal advisors can register with the Commission. The Commission further notes that EDGAR is a widely utilized resource that is already familiar to investors and other interested parties seeking information about public companies, and believes that municipal entities, investors, other regulators, and members of the public seeking information about municipal advisors should not have difficulty learning how to use the system.

Regarding the comment that the use of FINRA's CRD and IARD systems would be preferable because it would allow regulators to cross reference the information in Forms MA and MA–I with information in those other systems, the Commission notes that, as discussed further below, Form MA requires a municipal advisor that has been assigned a number either under the CRD system or the IARD system (a ''CRD Number'') to provide that number in completing the form.[964] In addition, Form MA asks an applicant specifically whether it is registered with the Commission in various other capacities (*e.g.,* municipal securities dealer, government securities broker-dealer, or other category that the applicant must specify) and, if so, to provide the relevant file numbers.[965] In a similar fashion, an applicant is required to supply file numbers for any registrations it has with another federal agency or state or other U.S. jurisdiction.[966] Form MA–I requires the municipal advisory firm filing the form to provide the relevant individual's CRD Number, if registered on the CRD or IARD system; list any other names by which the individual is known or has been known; and provide the name, registration number, and the firm's EDGAR CIK (Central Index Key) number.[967] These identifying numbers should assist municipal entities, regulators, and the public to access any other publicly available information about the municipal advisor. Although EDGAR will not automatically provide an electronic link to the information on the CRD and IARD systems, these systems are nevertheless readily accessible to regulators, municipal entities, and to the public.

With respect to commenters' concerns regarding privacy, the Commission notes that, while information required in Form MA and Form MA–I generally will not be confidential, some information, such as social security numbers, will be kept confidential (subject to the provisions of applicable law).[968] The EDGAR system will block

instructions in the Form and file the Form electronically with the Commission.'' The addition of Rule 15Ba1–2(b)(2), which relates to sole proprietors, was necessary because Rule 15Ba1–2(b)(1), as adopted, is worded specifically to require municipal advisors that are firms to file Form MA–I with respect to associated persons who engage in municipal advisory activities on their behalves, and would not by definition apply to sole proprietors.

[955] *See* Proposal, 76 FR 839.

[956] *See id.*

[957] *See* NASAA Letter and letter from Gary Kimball, President, Specialized Public Finance, Inc., dated February 22, 2011 (''Specialized Public Finance Letter'').

[958] *See* NASAA Letter.

[959] *See* Specialized Public Finance Letter. In this regard, the commenter mentioned specifically social security numbers.

[960] *Id.*

[961] As discussed in the Proposal, because the registration forms will be required to be submitted through EDGAR, the electronic filing requirements of Regulation S–T will apply. *See generally* 17 CFR 232 (governing the electronic submission of documents filed with the Commission). The Commission will provide, in the municipal securities area of its Web site, full instructions on how applicants for municipal advisor registration that are not currently EDGAR filers can acquire authorized codes to access the system. These instructions have now also been added to the General Instructions for the Form MA series. General information about EDGAR is available at *http://www.sec.gov/info/edgar.shtml*, where the EDGAR Filer Manual can also be accessed. The Commission recommends that applicants read this filer manual before they begin using the system.

[962] Most recently, for example, the Commission determined to adapt EDGAR to accept Form 13H filings required under the ''Large Trader Reporting'' regime established by new Rule 13h–1 under Section 13(h) of the Exchange Act. *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (August 3, 2011).

[963] *See* Section 204(c) of the Advisers Act, which permits the Commission to charge fees associated with filings and the maintenance of a filing system.

[964] *See infra* Section III.A.2.b., ''Information Requested in Form MA,'' discussion of Item 1, ''Identifying Information.'' *See also infra* note 1007.

[965] *See infra* Section III.A.2.b.

[966] *Id.*

[967] *See infra* Section III.A.2.c., ''Information Requested in Form MA–I,'' discussion of Items 1 and 2, ''Identifying Information and Other Names.''

[968] The Proposal specified that social security numbers would not be made public. *See* Proposal, 76 FR 867, 868, and 869. The forms, as adopted, specify additional instances in which responses will be kept confidential subject to the provisions of applicable law. *See, e.g.,* Item 8 of Schedule A of Form MA (advising applicants that social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated) and Item 3 of Form MA–I, as adopted (advising that private residential addresses disclosed in completing the residential history section of the form will not be included in publicly available versions). The Commission has determined that it is appropriate to block this information from public view, as well. To make this clear, in the forms, as adopted, in each place where an applicant is asked for a social security number, foreign identity number, private residential address, or a date of birth, guidance has been added stating that the information will not be included in publicly available versions of the form. In addition, at various other places in the forms that ask for an address, the filer is asked to indicate whether the address provided in response is a private residence and is advised that, if so, the address will not be included in publicly available versions of the form. One of the DRPs in Form MA–I, which asked whether the docket or case number of a particular case is the municipal advisor's social security number, bank card number, or personal identification number, has been deleted as unnecessary.

the relevant information in these forms in the versions that will be made public.

One commenter argued that information relating to operating performance of privately held municipal advisors should be kept confidential.[969] The commenter did not specify which particular questions in the forms it considered problematic. The Commission believes, however, that the public interest in making the information available—to allow municipal entities to better evaluate candidates for service in municipal advisory roles and to provide investors in municipal securities with clearer knowledge of who may be influencing the use and outcome of their investments—outweighs this type of confidentiality concern.[970]

The Commission received no comments on the requirement in proposed Rules 15Ba1–2(a) and (b) that Forms MA and MA–I, respectively, must be filed electronically, and is adopting this requirement as proposed. The Commission also received no comments on paragraph (c) of proposed Rule 15Ba1–2, which provided that the forms would be considered filed with the Commission ''upon acceptance by the [applicable electronic system].'' However, the Commission is adopting the rule with modifications.

As proposed, Rule 15Ba1–2 provides that Forms MA and MA–I ''shall be considered filed with the Commission upon acceptance by the [applicable electronic system].'' As adopted, the rule instead provides that the forms are considered filed upon ''submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310) . . .'' The Commission is modifying the rule to state that the form is considered filed upon ''submission'' to EDGAR rather than upon ''acceptance'' to align the rule with the terminology used by the EDGAR system. Further, the Commission is modifying the rule to provide that Form MA will be considered filed upon submission of a ''completed Form MA, together with all additional required documents,'' to clarify that, if a Form MA is not considered complete, the Commission's statutory forty-five day review period will not commence.[971] Moreover, because a municipal advisor applying for registration under the final rules is responsible for submitting Form MA–I for each associated person engaging in municipal advisory activities on its behalf, the Commission believes it appropriate to stipulate that the firm's application for registration will be considered filed only if the firm has submitted all requisite Form MA–Is.

When an applicant attempts to transmit its Form MA electronically, EDGAR performs the initial automated checks to determine whether questions that require responses have been answered and to detect, in certain instances, defective responses. For example, if an applicant indicates that it has three Web sites but provides, contrary to instructions, only two corresponding Web site addresses, EDGAR will detect the deficiency.[972] In such instance, EDGAR will not permit the applicant's submission. However, if a form passes EDGAR's automated checks, EDGAR will display a message indicating that the submission was successfully transmitted and will provide an ''accession number,'' which permits the applicant to enter the system to check the status of its application. At this point, the applicant is also advised that its application is not ''accepted,'' which is an EDGAR term for not ''approved,'' and EDGAR will display the status of the application as ''In Progress.''

Once an application passes EDGAR's initial automated check and is successfully transmitted, the Commission staff will check the application for the types of deficiencies that may not be detected through automation, and if the Form MA is considered incomplete, the applicant will receive by email an EDGAR-generated notice of suspension. The notice will inform the applicant that the transmission has been suspended and the reason for the suspension. The notice will also instruct the applicant to make corrections and re-transmit the application to the Commission in its entirety.

The Commission notes that, within forty-five days of the date a complete Form MA is considered filed, the Commission shall by order grant registration or institute proceedings to determine whether registration should be denied. The Commission also notes that the statutory review period for a filed Form MA may be longer if the applicant consents to a longer time period. If the Commission determines to grant registration, an EDGAR-generated email will be sent to inform the applicant that the filing has been ''accepted'' and the Commission will issue a formal order of approval separately.

The Proposed paragraph (d) of Rule 15Ba1–2 provided that Forms MA and MA–I constitute ''reports'' within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[973] The Commission received no comments on paragraph (d) and is adopting this provision as proposed. As a consequence, it is unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA or Form MA–I.

b. Information Requested in Form MA

Municipal advisors that are municipal advisory firms (including sole proprietors) must submit Form MA to register with the Commission. The Commission received several comments, as discussed further below, on the information it proposed to require from applicants in completing Form MA.[974] After carefully considering the comments, the Commission is adopting Form MA substantially as proposed, with some modifications, as discussed below.

Form MA is modeled primarily on Form ADV (Part 1),[975] which is used for the registration of investment advisers with the Commission, with appropriate changes made to reflect the differences in the activities of municipal advisors and the markets that they serve. The information that applicants are required to provide on the form is described in detail below. As discussed in the Proposal, the items in Form MA were drafted broadly to apply to the different types of municipal advisors that may register with the Commission.[976]

Form MA asks for information about the municipal advisor and persons associated with the advisor. The Commission believes it necessary to obtain the requested information to manage the Commission's regulatory and examination programs and to make such information available to the MSRB

[969] *See supra* note 960.

[970] Form ADV, upon which Form MA was substantially modeled (*see* text accompanying *infra* note 975), requires a similar level of disclosure. The Commission would make this information publicly available regardless of the electronic registration system that is used. *See also infra* notes 1046 and 1048 and accompanying text.

[971] If a Form MA is complete and all additional required documents are attached, the form is considered filed and the forty-five day period for the Commission to act upon the application (*i.e.,* either approve or institute proceedings to determine whether it should be denied) begins.

[972] *See infra* note 1003 for more examples.

[973] *See* Rule 15Ba1–2(d).

[974] *See infra* notes 979–987.

[975] *See* 17 CFR 279.1. *See also* Proposal, 76 FR 840.

[976] *See* Proposal, 76 FR 840.

to better inform its regulation of municipal advisors. The information will assist the Commission in identifying municipal advisors, their owners, and their business models, and in determining whether a municipal advisor might present sufficient concerns as to warrant the Commission's further attention in order to protect the municipal advisor's clients. In addition, the information will assist the Commission in understanding the kinds of activities in which the applicant participates. The information will also be useful to the Commission in tailoring any requests for additional information that the Commission may send to a municipal advisor. Furthermore, the required information will assist the Commission in the preparation of the Commission's inspection and examination of municipal advisors and the MSRB in determining what regulations for municipal advisors may be necessary or appropriate and how such regulations might be best implemented.[977]

Moreover, the Commission believes that the information sought will enable municipal entities and potential obligated persons to better assess the experience and background of municipal advisors in deciding whether to engage the services of, or do business with, any particular municipal advisor. Similarly, information about the persons serving as municipal advisors can be important to investors in deciding whether to purchase specific municipal securities. In determining what information should be disclosed, the Commission also considered the broader public interest in the availability of information about municipal advisors to the public.[978]

The Commission received several comments regarding the extent and kind of information sought on Form MA, as a general matter, and the impact that the requirement to provide this information will have on municipal advisors.[979] While one commenter generally approved of the content of the questions, most of the commenters on this subject believed that the scope of information sought was too broad, that the form should ask different questions for different kinds of municipal advisors, or that providing the answers would be too burdensome.

Specifically, one commenter stated its belief that the information requested was ''generally appropriate'' and that it would assist the Commission in its examination and enforcement activities as well as assist its rulemaking activities.[980] Another commenter stated that it does not object in principle to requiring municipal advisors to make disclosures similar to the disclosures required of registered investment advisers, but urged that the Commission ''tailor carefully'' any disclosure document to ''ensure that the information to be disclosed relates only to the municipal advisor activities of the provider, rather than broadly requiring companies to disclose information unrelated to municipal advisory activities.'' [981] Another commenter suggested that the forms be tailored for various categories of advisors, instead of a ''one-size-fits-all'' approach.[982] According to another commenter, ''the disclosures required for investment advisers on Form ADV, on which proposed Form MA is based, are, in many cases, not relevant to municipal advisors.'' [983] The commenter maintained that many of the other questions drawn from Form ADV are ''not likely to obtain useful responses from municipal advisors'' and that the Commission ''has not articulated a convincing purpose for much of the information.'' [984]

Some commenters additionally believed that supplying the information requested on the proposed forms would be too burdensome on certain firms and individuals, but varied on the specifics.[985] On the one hand, some commenters believed, as one commenter expressed, that ''the scope of the proposed information to be collected'' in Form MA ''is exhaustive and could place a burden on small municipal advisors.'' [986] On the other hand, one commenter believed that large organizations would incur ''significant time, burden, and expense in identifying personnel involved in activities that would subject them to registration.'' [987]

In considering these comments, the Commission carefully analyzed each aspect of Form MA as set forth in the Proposal, consulting with and drawing on the experience and expertise of Commission's enforcement and examination staffs. As already stated, the Commission had paid conscious and due attention in developing Form MA to the differences between the activities of investment advisers and those of municipal advisors. The Commission has analyzed proposed Form MA in the light of the comments received, specifically with an eye to making any possible further adjustments to reflect the field of municipal advisory activities and to remove any proposed elements of Form MA that are not appropriate to the regulation of municipal advisors or valuable for such regulation in consideration of the burdens of completing the form.

The Commission continues to believe that the information requested will be valuable in establishing and maintaining effective oversight of municipal advisors. The various purposes to which the Commission intends to put the information to use, as well as its value for municipal entities and investors, have been broadly described above. The decision to model Form MA on Form ADV was based, in part, on the Commission's belief that the level of information sought in Form ADV is important, appropriate, and not unduly burdensome for participants engaged in providing investment advice, bearing in mind the goal of protection of investors and the public interest. The Commission believes that the regulation of municipal advisors warrants obtaining a similar level of information as pertinent to municipal advisors.[988]

[977] *See id.,* at 841.

[978] *See id.*

[979] *See, e.g.,* Acacia Financial Group Letter; Financial Services Roundtable Letter; JP Morgan Chase Letter; Managed Funds Association Letter; MSRB Letter I; NAESCO Letter; SIFMA Letter I; Specialized Public Finance Letter.

[980] *See* MSRB Letter I. The MSRB also expressed the hope that the Commission would receive ''significant meaningful feedback from small municipal advisors regarding the potential burdens the Rule Proposal would impose, and give due weight to such feedback in light of the Congressional intent regarding regulatory burden on small municipal advisors.'' At the same time, the MSRB believed that the information gleaned from the forms will ''help the MSRB to better gauge the parameters of what should be considered a small municipal advisor and to structure its rules to effectuate the intent of Section 15B(b)(2)(L)(iv) [of the Exchange Act],'' which requires that the MSRB ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.''

[981] *See* NAESCO Letter.

[982] *See* Acacia Financial Group Letter.

[983] *See* SIFMA Letter I.

[984] *See id.* The commenter cited in particular in this regard the proposed disclosure requirements in Form MA relating to a municipal advisor's clients; compensation arrangements; other business activities; financial industry affiliations; proprietary and sales interests in its municipal advisory clients' transactions; and investment or brokerage discretion. The Commission believes that information in each of these areas can shed light on the possible conflicts of interest that a municipal advisor may have when providing advice. *See also infra* notes 1065, 1087, and 1119 and accompanying text, regarding this commenter's comments relating specifically to disclosures about affiliates and other associated persons.

[985] *See, e.g.,* Acacia Financial Group Letter, SIFMA Letter I.

[986] *See* Acacia Financial Group Letter.

[987] *See* SIFMA Letter I.

[988] For example, knowledge of the kind of clients that a municipal advisor serves may be useful to a municipal entity in determining whether that advisor has the background and expertise necessary to provide advice regarding the issuance that the

The Commission notes that the MSRB, the statutorily mandated rulemaking body for the municipal securities market, believes that the information obtained generally will contribute to the Commission's and its own regulatory activities.[989]

Some commenters believed that the information sought by Form MA with respect to many municipal advisors is information already available to the Commission through other registrations and that the proposed disclosures would therefore be redundant.[990] One commenter argued that ''adding new layers of regulation in this area will not serve to enhance the protection of municipal entities or investors.'' [991] Another commenter contended that it would be ''more efficient for the SEC to leverage existing registration forms, which have years of interpretive guidance behind them, than to create a new form seeking much of the same information as required by Forms BD and U4.'' [992] To address this issue, some suggested that the Commission allow persons that are already registered with the Commission—such as broker-dealers, investment advisers, and municipal securities dealers—to check an additional box on their primary registration forms already filed with the Commission or to provide them with a short-form registration process.[993] Short of this, commenters urged that, if such persons must complete Form MA, they should be allowed to incorporate by reference on Form MA any information that is included on another registration form and be required to provide on Form MA only such additional information as deemed essential regarding municipal advisory activities.[994]

The Commission notes that Form MA, both as proposed and adopted, allow for incorporation by reference of certain information that already has been submitted on certain other forms by the applicant, any of its associated persons, or another entity pursuant to the requirements of other regulatory regimes. Specifically, each of the Disclosure Reporting Pages (''DRPs'') of Form MA permits incorporation by reference to DRPs that are already on file with regulators.[995] The DRPs are generally where the most significant amount of information is requested on Form MA and on which applicants will likely need to expend the most time and effort.

Form MA, as adopted, more prominently highlights the option to incorporate information by reference. Part A of each DRP asks for basic information regarding the person(s) or entity(ies) concerning whom the DRP must be filed. Immediately thereafter, in Part B, the form asks if there is another DRP or other disclosure already on file in the IARD, CRD, or EDGAR system containing the information required by the DRP. If the answer is ''Yes,'' the form asks the applicant to identify where the disclosures may be found. In addition, for the benefit of regulators, municipal entities, and other interested parties, the DRPs ask for information that will enable such parties to locate the referenced document easily, by requiring the applicant to provide the name of the registrant on the referenced document, the relevant registration number, and other identifying information. Thus, for all persons for whom disclosures of criminal, regulatory, and civil judicial actions must be made, Form MA already allows for incorporation by reference. The Commission believes that the accommodation of incorporation by reference for these disclosures will eliminate a significant amount of redundancy to which the commenters refer.

The Commission believes that commenters' suggestion to allow applicants already registered with the Commission under other regulatory regimes to check an additional box on their primary registration forms [996] would not achieve the aim of the municipal advisor registration regime. Specifically, the Commission believes that persons seeking to compile, compare, and analyze data pertaining to registered municipal advisors, as well as regulators overseeing compliance with rules and regulations applicable to registered municipal advisors, should generally be able to easily access within one system relevant information about municipal advisors.

The Commission notes that the vast majority of applicants registering under the permanent registration regime would be new Commission registrants.[997] As such, the majority of all information pertaining to municipal advisors will be centralized in EDGAR. On the other hand, the Commission acknowledges that, because disclosures required by Form MA DRPs and Form MA–I DRPs may be incorporated by reference from other forms, some

entity is contemplating. Similarly, information regarding the advisor's compensation arrangements generally may help a municipal entity evaluate the advisor's proposed compensation arrangements for the issuance under consideration. Such information can also be valuable to regulators in uncovering irregularities when questions are raised regarding a municipal advisor's motives and/or business conduct with respect to a particular transaction. The information that a municipal advisor provides regarding its other business activities, its financial industry affiliations, the proprietary and sales interests it may have in its municipal advisory clients' transactions, and the investment or brokerage discretion that it is granted in carrying out its services may help municipal entities, investors in municipal securities, and regulators assess whether conflicts of interest may affect the advice that the firm provides or may have influenced its advice in a transaction under investigation. The Commission believes that obtaining such information is consistent with the intent of the Dodd-Frank Act in establishing a regulatory framework for municipal advisory activities.

[989] *See* MSRB Letter I. The MSRB also commented that the Commission ''should give due weight to feedback from small municipal advisors regarding the potential burdens in light of the Congressional intent regarding regulatory burden on small municipal advisors.'' *See id.* The Commission addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below. *See infra* Section IX.

[990] *See, e.g.,* JP Morgan Chase Letter; SIFMA Letter I; and Specialized Public Finance Letter. *See also* Financial Services Roundtable Letter (maintaining that, for registered broker-dealers, ''Form MA is largely duplicative of Form BD''); and Managed Funds Association Letter (maintaining that proposed Form MA, ''but for items specifically relating to municipal advisory activities,'' is ''substantially similar to Form ADV'').

[991] *See* JP Morgan Chase Letter. This view was expressed particularly with respect to traditional banking products and services. *See also supra* Section III.A.1.c.viii., regarding banks.

[992] *See* Financial Services Roundtable Letter. Form U4 is the Uniform Application for Securities Industry Registration or Transfer, available at *http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf.*

[993] *See* SIFMA Letter I. *See also* Managed Funds Association Letter, Financial Services Roundtable Letter.

Also, one commenter suggested that, instead of registering a second time as a municipal advisor, an investment adviser should be permitted to amend its Form ADV to reflect the fact that it engages in municipal advisory activities. This commenter also suggested permitting state-registered investment advisers to register as municipal advisors by amending their Forms ADV. *See* ABA Letter.

[994] *See* SIFMA Letter I, ABA Letter.

[995] As explained below, Item 9 of Form MA requires an applicant to provide certain information concerning any criminal, regulatory, and civil judicial actions relating to the applicant or any of its associated persons. For each action reported in Item 9, the applicant is required to complete a DRP by providing for further details, such as the court where the charges were filed and when, a description of the charge and the circumstances relating to it (in the case of criminal actions); the authority that initiated the action and a description of the allegations and the product-type (in the case of regulatory actions); or the initiator of the court action, the relief sought, and the product type (in the case of civil judicial actions). The information sought in the DRPs of Form MA is similar to information sought in DRPs that must be filed, as applicable, with Forms BD, ADV, and U4.

[996] *See supra* note 993.

[997] According to MA–T data as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, 226 were also registered with the Commission as broker-dealers; 39 were also registered with the Commission as investment advisers; and 65 were registered with the Commission as both broker-dealers and investment advisers. Therefore, the vast majority of Form MA–T registrants were new Commission registrants.

information will reside outside EDGAR. However, the Commission notes that, under the temporary registration regime, only about 15% of applicants on Form MA–T indicated a history of criminal, regulatory, or civil judicial action that would require the submission of DRPs under the permanent registration regime. Moreover, not all 15% of municipal advisors indicating such a history would have DRPs on file elsewhere, as many may not be broker-dealers or investment advisers and thus would not be required to file Form BD or Form ADV. Accordingly, the Commission believes that fewer than 15% of municipal advisors should have DRP information stored outside EDGAR, with the majority of information collected under the permanent municipal advisor regime centralized in EDGAR. The Commission also notes that, if applicants that are already registered with the Commission under other regulatory regimes can register as municipal advisors by only checking an additional box on their primary registration form, a municipal entity or investor seeking information about a municipal advisor may not realize that the information they seek is available on a Form BD or ADV, rather than a Form MA or MA–I.

Description of the Form: Introduction

As previously noted, in addition to considering the comments, the Commission analyzed the entire proposed Form MA and its appended schedules and disclosure pages to make any necessary adjustments. The discussion below describes Form MA, as adopted, and notes the substantive changes to the proposed form. At the outset, the Commission notes that it is making some revisions to clarify questions asked in Form MA. Other revisions are intended to elicit additional information. The Commission believes that the additional required data should make the information provided by registrants more useful to examiners, investigators, and other regulatory authorities and/or to municipal entities and investors.[998]

As noted below, the Commission made some revisions to the form to eliminate unnecessary disclosure requirements. Other changes involve a reorganization of the requested information. In general, the Commission intends to improve the picture that municipal entities, investors, and regulators will be able to obtain from Form MAs, whether regarding municipal advisors, in particular, or regarding municipal advisory activities, as a whole. For example, while the proposed DRPs required information generally regarding the disposition of criminal charges or resolution of regulatory or civil proceedings, in the DRPs, as adopted, the questions are more specific and require certain additional details.[999]

Format of Form MA

Form MA, as proposed, required the applicant to provide information describing itself and its business through a series of fill-in-the-blank, multiple choice, and the check-the-box questions.[1000] In the form, as adopted, these questions have been adapted to an electronic, web-based format,[1001] with minor revisions to the text as necessary or appropriate for online completion.[1002] As stated above, EDGAR is designed to detect certain failures to respond to mandatory questions and, to detect, in certain instances, defective responses.[1003]

Form MA also contains several supplemental schedules that must be completed, where applicable, each of which is discussed further below: Schedule A asks for information about the municipal advisor's direct owners and executive officers; Schedule B asks for information about the municipal advisor's indirect owners; Schedule C is used to amend information on either Schedule A or Schedule B; and Schedule D asks for additional information when an applicant answers in the affirmative regarding certain questions in the form and also provides space for any explanations that a filer may wish to add to its application. Form MA also contains DRPs, which require further details about events and proceedings involving the municipal advisor and/or the municipal advisor's associated persons that the applicant was required to report in Item 9 of the main body of the form, and are discussed in the context of Item 9 below.

Form MA, as proposed, first required a municipal advisor to indicate whether it is submitting the form for initial registration as a municipal advisor or submitting an annual update or an amendment (other than an annual update) to a registration as a municipal advisor.[1004] In the electronic form, as adopted, Form MA asks the applicant to indicate, upon entry, whether it is filing an initial form, an annual update, or amendment. Once an initial form is submitted, when a filer subsequently enters the system and selects the choice of annual update or amendment, the most recently submitted version of the form will appear, pre-populated with the responses as completed at that time. Thus, the filer will need only to amend the outdated information.

Item 1: Identifying Information

The Commission proposed Item 1 of Form MA to require essential identifying information regarding the applicant. For the reasons discussed

[998] Although some commenters believed, generally, that the forms, as proposed, required too much information, the Commission believes that the modifications it has made to the forms that ask for additional information will elicit information that can be of significant use to regulators and municipal entities. The discussion below includes the reasons why, in each significant case, the Commission has made the revision. *See, e.g., infra* notes 1028–1030.

[999] *See further* the discussion below regarding Item 9 of Form MA.

[1000] No comments were received on the format of the form.

[1001] For example, where the paper form asked a Yes or No question and, if the answer is Yes, other questions must be answered, in the electronic form those additional questions will appear only if the applicant selected Yes. In the paper form, in some instances when the applicant answers Yes, the form instructs the applicant to supply additional information in Schedule D of the form. In the electronic form, a pop-up screen appears that immediately enables the applicant to complete the additional information. Filers will be able to obtain a paper version of the form at any time through the electronic system, which should help them anticipate in advance the information they will need to gather to complete on the online form. In addition, filers will be able to print out a hard copy version of the form with their responses included in their appropriate places on the form.

[1002] Certain documents, such as a signed and notarized Form MA–NR (required of certain non-residents as discussed below) or copies of court orders required as part of a DRP will need to be converted into a portable document file (PDF) meeting the specifications set forth in the EDGAR Filer Manual, *supra* note 961, and attached to the electronic submission.

[1003] Some examples: If an applicant provides an EDGAR CIK number, the name of the company will be pre-populated in the electronic form with the name assigned to that CIK number and the applicant will not be permitted to list a different name. When an applicant indicates that it is registered under another Commission regulatory regime but supplies a registration number for that regulatory regime that cannot be valid because it is not in the correct numbering format, the system will prevent the applicant from filing the form. If an applicant answers affirmatively to a question that asks whether it only engages in solicitation and does not advise clients, it will not be possible to indicate in response to another question that it advises clients and does not solicit. If an applicant indicates that it has three Web sites but provides the addresses of only two, the system will not permit submission of the form. If an applicant discloses that it or an associated person has been involved in a criminal, regulatory, or civil judicial action, the system will prevent the applicant from filing the form if the appropriate DRP is not completed. If the principal address of a firm in Form MA or the residence of an individual reported in Form MA–I is in a foreign country (which the system can detect because states and countries are indicated by selecting the appropriate name in a drop-down box), the system will not permit submission of the form unless, at the appropriate step in the form, a Form MA–NR is attached.

[1004] Amendments to Form MA are discussed further below. *See infra* Section III.A.5.

below and in the Proposal,[1005] the Commission is adopting Item 1 substantially as proposed but with the minor modifications discussed below.

As proposed and adopted, Items 1–A and B of Form MA require a municipal advisor to indicate the full legal name of the municipal advisor and, if different, the name under which it primarily conducts its municipal advisor-related business.[1006] As adopted, Item 1–A also asks for the municipal advisor's CRD Number, if it has one.[1007] Item 1–C of Form MA as proposed and adopted requires a municipal advisor also to provide its Employer Identification Number (or ''EIN,'' a number used with respect to Internal Revenue Service matters) or, if the applicant (such as a sole proprietor) does not have an EIN, a social security number.[1008]

In Item 1–D, as proposed and adopted, if the municipal advisor is also registered with the Commission as an investment adviser, broker, dealer, or municipal securities dealer, or if it has previously registered with the Commission as a municipal advisor on Form MA–T, such municipal advisor is required to provide its related SEC file number or numbers. Further, if the municipal advisor is a broker-dealer or an investment adviser and has a CRD Number assigned to it either under the CRD system or the IARD system, it is required to provide its CRD Number.

As proposed and adopted, Item 1–D also requires an applicant to indicate whether it is a state-registered investment adviser. In such case, as adopted, Item 1–D additionally requires the applicant to identify the state (or states) with which it is registered,[1009] and adds to this category other U.S. jurisdictions where the applicant is registered.[1010]

Item 1–D, as adopted, additionally requires a municipal advisor to indicate if it is an ''exempt reporting adviser'' with respect to investment adviser registration and, if so, to provide the SEC file number and CRD Number. The category of exempt reporting advisers, discussed in Section III.A.1.c.v. herein, was created by Commission rule after Form MA was proposed. Because exempt reporting advisers are not exempt from municipal advisor registration, if applicable, the Commission believes that the information that such advisers must report to the Commission, and the identifying numbers necessary to ease access to such information, is no less important to regulators of the municipal market, municipal entities, and investors than the equivalent information available regarding municipal advisors who are registered investment advisers.[1011]

The information provided in response to Item 1–D will allow the Commission to more effectively cross-reference those entities applying for registration as municipal advisors to those who are registered as brokers, dealers, municipal securities dealers, investment advisers, or otherwise registered[1012] with the Commission. As discussed in the Proposal, the ability to cross-reference will allow the Commission to assemble more complete information concerning a municipal advisor to inform the Commission's decision to approve or institute proceedings to deny an application for registration as a municipal advisor. The ability to cross-reference will also permit the Commission or any designee[1013] to plan for, and carry out, efficient and effective examinations of registered municipal advisors. By obtaining all of an applicant's regulatory file numbers, the Commission will be able to cross-reference disciplinary information in the CRD or IARD systems with the information on Form MA. This ability would provide the Commission with a more complete understanding of a municipal advisor's structure and business.

Item 1–E asks for the address of applicant's principal office and place of business[1014] and the telephone and fax numbers at that location. As proposed, Item 1–E of Form MA required an applicant to list on Schedule D any additional names under which it conducts municipal advisor-related business and the offices at which such business is conducted. In consideration of comments, generally, that the form is too burdensome,[1015] in Item 1–E, as adopted, the Commission has determined to require information pertaining only to the five largest offices.

Item 1–F of Form MA, as proposed, asked whether the applicant has one or more Web sites, and, if so, to list them in Schedule D of the form. As adopted, Item–F continues to require an applicant to list all its Web sites, but also requires the address of its principal Web site on the main part of the form and any additional Web site addresses on Schedule D.[1016]

Item 1–G of Form MA, as proposed, required applicants to supply the name, address, email address, and telephone and fax numbers of its Chief Compliance Officer, if it has such an officer, and to list any other title(s) the officer holds. Item 1–H, as proposed, asked for the title of, and similar contact information for, any other person whom the municipal advisor has authorized to receive information and respond to questions about the registration (the ''contact person''). Items 1–G and 1–H are being adopted, as proposed, with a clarification to advise applicants that they must provide the name and contact

[1005] *See* Proposal, 76 FR 841.

[1006] As proposed and adopted, Item 1–B requires any additional names under which the applicant conducts municipal advisor-related business and the jurisdictions in which they are used to be listed in Schedule D.

[1007] Obtaining a municipal advisor's CRD Number, if it has one, enables regulators, municipal entities, and investors in a most basic way to research the background of a registrant. *See, e.g., supra* text accompanying note 964.

[1008] As discussed in the Proposal, the Commission is asking for the social security number of sole proprietors to permit the electronic filing system to distinguish between persons who share the same name. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)). *See* Proposal, 76 FR 840, note 176. *See also supra* note 968.

[1009] Requiring the place(s) of registration directly on Form MA can be helpful to regulators, municipal entities, and investors while imposing little burden upon the applicant. The omission of this disclosure requirement in the proposed version of the form was unintentional.

[1010] The revision to include other U.S. jurisdictions in addition to states has been made throughout the forms.

[1011] As proposed and adopted, an applicant is further asked in Item 1–D whether it is a government securities broker-dealer, and, if so, to provide the SEC file number and bank identifier; whether it has any other SEC registration, and, if so, to specify which registration and the file number; and whether it is registered with another federal or state regulator, and, if so, to specify the regulator's name and the applicant's registration number. As adopted, Item 1–D asks whether the applicant has any additional registrations that were not already reported, and, if so, to list the regulator and the applicant's registration number in Schedule D. The addition of this last question clarifies that if there are additional registrations, the applicant must list all of them.

[1012] For example, as the Commission noted in the Proposal, pursuant to Section 764 of the Dodd-Frank Act, security-based swap dealers will be required to register with the Commission. *See* Section 764(a) of the Dodd-Frank Act and 15 U.S.C. 78*o*–8(a). *See* Proposal, 76 FR 841, note 178.

[1013] *See* 15 U.S.C. 78*o*–4(c)(7)(A)(iii) (providing that examinations of municipal advisors shall be conducted by the Commission or its designee).

[1014] Rule 15Ba1–1(*l*) defines principal office and place of business to mean: ''the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor.'' *See also* Glossary. In addition, the municipal advisor must supply its mailing address, if it is different from its principal office and place of business.

[1015] *See, e.g., supra* note 979 and accompanying text and text following note 987.

[1016] The Commission believes that identification of the applicant's principal Web site out of possibly many will increase the benefit of the information to regulators, municipal entities, and investors without adding any unreasonable burden on the applicant.

information for only one person (*i.e.,* either a Chief Compliance Officer or another contact person). The intent of the Proposal was for the applicant to provide one or the other, and the form, as adopted, makes this clearer. The added note also advises, however, that information for both may be provided if the applicant so chooses. As discussed in the Proposal, the Commission is requesting the identifying and contact information in Item 1–G and/or 1–H to assist the Commission and the staff in evaluating applications for registration and overseeing registered municipal advisors.[1017]

As proposed and adopted, Item 1–I of Form MA requires the applicant further to state whether it maintains, or intends to maintain, some or all of its books and records required to be kept under MSRB or Commission rules somewhere other than at its principal office and place of business and, if so, to provide (on Schedule D) information about the other location(s).

Item 1–J of Form MA, as proposed and adopted, requires an applicant to answer whether it is registered with any foreign financial regulatory authority,[1018] and, if so, to provide the name (on Schedule D) of each such authority and the country. Item 1–J is being adopted as proposed, with the additional requirement to provide the applicant's registration number under the foreign authority.[1019]

Item 1–K, as proposed and adopted, requires an applicant to disclose whether it is affiliated with any other business entity, and, if so, to disclose on Schedule D the name and registration number of each such affiliate.[1020] As discussed in the Proposal, this information will help inform the Commission as to the structure of the municipal advisor's business, which will help staff prepare for examinations of the municipal advisor.[1021]

Item 2: Form of Organization

The Commission proposed Item 2 of Form MA to require information about a municipal advisor's form of organization. The Commission received no comments regarding Item 2 and is adopting this item substantially as proposed. Item 2 requires a municipal advisor to specify whether it is organized as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, limited partnership, or other form of organization that the municipal advisor must specify; the month of its annual fiscal year end; the date on which it was organized; and the state or other U.S. jurisdiction [1022] or foreign jurisdiction where it was organized. As discussed in the Proposal, this information will assist the Commission in evaluating the applications for registration and overseeing registered municipal advisors.[1023]

Item 2 also requires an applicant to specify whether it is a public reporting company under Section 12 or 15(d) of the Exchange Act and, if so, to provide its Commission-assigned EDGAR CIK number. As discussed in the Proposal, the information that an applicant is a public reporting company will provide a signal that additional public information is available about the municipal advisor and/or its control persons.[1024]

Item 3: Successions

The Commission proposed Item 3 of Form MA to require applicants to disclose whether they are succeeding to the business of a registered municipal advisor and, if so, the date of succession. Further, Item 3 requires, on Schedule D, the name of, and registration information for, the firm the applicants are succeeding.[1025] The Commission received no comments regarding Item 3 and is adopting this item as proposed. As discussed in the Proposal, this information will assist the Commission, among other things, in overseeing registered municipal advisors and in determining whether there has been a change in control of a municipal advisor.[1026]

Item 4: Information About Applicant's Business

The Commission proposed Item 4 to require certain information about the applicant's business. The Commission received several comments relating to Item 4, which are discussed below.[1027] The Commission is adopting Item 4 substantially as proposed, with certain modifications as discussed in the description of the item below.

As proposed and adopted, subparts A to C of Item 4 require an applicant to provide information regarding the approximate number of employees it has, approximately how many of those employees engage in municipal advisory activities, and approximately how many are registered representatives of a broker-dealer or investment adviser representatives.

Item 4–D, as proposed and adopted, requires an applicant to state approximately how many firms, or other persons (that are not employees or otherwise associated persons of the applicant) solicit municipal advisory clients on the applicant's behalf. As proposed, an applicant is required to disclose on Schedule D the names, addresses, and phone numbers of firms that solicit on its behalf. As adopted, Item 4–D additionally requires the applicant to disclose on Schedule D the same information for other persons who are not employed by, or otherwise associated persons of, the applicant but who solicit on its behalf.[1028] In addition, to make the information more useful, the Commission has determined to require an applicant also to provide the EDGAR CIK and/or individual CRD Number, if any, of the soliciting firm or other person.

Further, Item 4–E, as proposed, required an applicant to state whether it has any employees that also do business independently on the applicant's behalf as affiliates of the applicant and, if so, to disclose in related Section 4–E of Schedule D the names of such employees.[1029] In the form, as adopted,

[1017] *See also* Proposal, 76 FR 841.

[1018] An added instruction in Item 1–J, as adopted, makes clear that an applicant should answer ''No'' to this question even if it is affiliated with a business that is registered with a foreign financial regulatory authority.

[1019] Schedule D relating to Item 1–J, as adopted, clarifies that both the name of the country and the name of the authority must be provided in English, which may not have been evident in the proposed version. In general, throughout the forms, as adopted, when the name of a foreign country and/or authority is required, the filer is instructed that answers must be provided in English.

[1020] The text of Item 1–K has been revised to make explicit that ''business entity'' refers to any domestic or foreign entity. Similarly, the related questions in Schedule D, which, as proposed, asked only for ''any federal or state registration'' has been revised to include foreign registrations, as well. These revisions have been made in accordance with the description of this disclosure item in the Proposal, which included foreign affiliates among the required disclosures. *See* Proposal, 76 FR 842.

[1021] *See id.*

[1022] Proposed Item 2 did not specifically mention U.S. jurisdictions other than states. The Item, as adopted, makes clear that such jurisdictions are included. *See supra* note 1010 and accompanying text.

[1023] *See* Proposal, 76 FR 842.

[1024] *See id.*

[1025] As discussed elsewhere in this release, depending on whether the succession is a result of a merger or acquisition, or a reorganization, the succeeding firm will be able to register by either submitting a new Form MA or amending the Form MA of its predecessor. *See infra* note 1318 and accompanying text and *infra* Section III.A.7. (discussing Rule 15Ba1–7 regarding registration of a successor to a municipal advisor).

[1026] *See id. See also* Proposal, 76 FR 842.

[1027] *See infra* notes 1040–1046 and accompanying text.

[1028] Upon review of the form as proposed, the Commission determined that requiring a firm to list the names of all persons who solicit on its behalf will provide potentially valuable and more fulsome information, as it may yield the names of persons who are providing such services without themselves registering.

[1029] This category of employee includes persons who do not necessarily engage in municipal

Section 4–E of Schedule D requires the applicant, in addition, to provide the address, telephone and fax number, EDGAR CIK (if any) and individual CRD Number (if any) of each such employee.[1030]

Item 4–F, as proposed and adopted, requires the applicant also to approximate the number of clients it served in the context of its municipal advisory activities in the past fiscal year and to specify by checking the appropriate box(es) whether its clients include: municipal entities, non-profit organizations (*e.g.,* 501(c)(3) organizations) who are obligated persons, corporations or other businesses not listed previously who are obligated persons, or other types of entities (and specify which other types of entities); or whether the applicant engages only in solicitation and does not serve clients in the context of its municipal advisory activities.

As proposed and adopted, applicants also are required, in Item 4–G,[1031] to specify approximately the number of municipal entities or obligated persons that were solicited by the applicant on behalf of a third-party during its most recently completed fiscal year, including any clients that it solicits in addition to serving them in the context of its municipal advisory activities. However, Item 4–G, as adopted, requires the applicant to provide the numbers separately for municipal entities and obligated persons.[1032]

Further, as proposed and adopted, applicants must indicate, in Item 4–H,[1033] whether they solicit public pension funds, 529 Savings Plans, local or state government investment pools, hospitals, colleges, or other types of municipal entities or obligated persons (and to specify which other types). Alternatively, an applicant is able to indicate that the question is inapplicable, because it serves only clients and does not engage in solicitation in the context of its municipal advisory activities.

As proposed and adopted, applicants are also required to disclose, in Item 4–I,[1034] whether they are compensated for their advice to or on behalf of municipal entities or obligated persons by hourly charges, fixed fees (not contingent on the success of solicitations), contingent fees, subscription fees (for a newsletter or other publications), or otherwise.[1035] If the applicant checks ''other,'' the other kind of arrangement must be described. Item 4–J,[1036] as proposed and adopted, asks for similar information about compensation for solicitation activities. Item 4–K,[1037] as proposed and adopted, asks whether the applicant receives compensation, in the context of its municipal advisory activities, from anyone other than clients, and, if so, to provide an explanation.

As discussed in the Proposal, disclosure of information relating to the number of a municipal advisor's employees and compensation arrangements will provide the Commission with a clearer understanding of the business structure of registered municipal advisors, including the size of each advisor, the number of its employees that engage in municipal advisory activities, and in what capacity these employees engage in such activities. Information about compensation arrangements also will identify possible conflicts of interest that the municipal advisor may have with its clients.[1038]

The Commission received several comments regarding the five categories of compensation arrangements.[1039] One commenter believed that the Commission should ''refrain from utilizing this limited information in making a determination as to the existence of conflicts of interest with respect to compensation'' and that ''a more comprehensive analysis of compensation arrangements and the rationale for such fees should be considered prior to making any determination as to the appropriateness of a particular fee arrangement.'' [1040] Another commenter believed that, because investment advisers generally have ''a completely different business model, approach to business and compensation model,'' as well as ''scale of business,'' than municipal advisors, Form ADV is ''not a good model in this element of registration.'' [1041]

The five choices from among which applicants are asked to select are not intended to give an exhaustive picture of a municipal advisor's business model, but the Commission does believe that receiving responses regarding compensation, at least on the level of specificity requested in this item, will enable Commission staff to ask more targeted questions on routine examinations and may highlight relationships that should be more closely examined. Furthermore, the Commission notes that in addition to the five choices, an applicant may also check ''Other'' to describe its compensation arrangements. If selected, the applicant is required to specify the nature of such arrangements.

Item 4–L,[1042] as proposed and adopted, also requires the municipal advisor to indicate the general types of municipal advisory activities in which it engages.[1043] The Commission

advisory activities on behalf of the firm, and for whom a Form MA–I would thus not be required. Regarding employees who do also engage in municipal advisory activities on behalf of the firm, the applicant must in any case obtain the information requested in Section 4–E, as adopted, to complete a Form MA–I for each such employee. *See also infra* note 1030.

[1030] The Commission believes that these additional details in Schedule D will further serve the purposes for which Item 4 is designed and that an applicant firm should be able to provide such information about employees that do business on its behalf. Item 4–E, as adopted, asks the applicant to state the number of employees of this kind. This does not require an applicant to search for any additional information, because each such employee must be named in Schedule D. However, it can serve as a helpful cross-check to the filer as well as to regulators, and is also a useful number for interested parties who do not need the additional details.

[1031] The section of Item 4 that relates to solicitations of municipal entities and obligated persons has been restructured in Form MA, as adopted, into two parts. Item 4–G is the first part of Item 4–G as proposed, which requires the applicant to state the number of municipal entities and obligated persons that the applicant solicited on behalf of a third party, as described above. New Item 4–H is comprised of the questions regarding the types of persons solicited by the applicant that constituted the rest of Item 4–G as proposed. Hereinafter, subparts 4–H, I, J, and K of the Proposal will be referred to by their numbers in the adopted form, *i.e.,* 4–I, J, K, and L, respectively.

[1032] The Commission believes that the information requested will be more useful for regulatory purposes, and for gaining an understanding of municipal advisory activities in general, when broken down in this manner. Municipal entities and other interested parties can also benefit from this breakdown in assessing the specific experience of a municipal advisor.

[1033] Item 4–H was a part of Item 4–G as proposed. *See supra* note 1031.

[1034] Item 4–I was Item 4–H as proposed. *See supra* note 1031.

[1035] An applicant may alternatively state that the question is inapplicable because the applicant engages only in solicitation.

[1036] Item 4–J was Item 4–I as proposed. *See supra* note 1031.

[1037] Item 4–K was Item 4–J as proposed. *See supra* note 1031.

[1038] *See* Proposal, 76 FR 843.

[1039] *See* Joy Howard WM Financial Strategies Letter; Public FA Letter; and Fiscal Advisors and Marketing Letter, Inc., dated February 21, 2011 (''Fiscal Advisors and Marketing Letter'').

[1040] *See* Joy Howard WM Financial Strategies Letter.

[1041] *See* Public FA Letter. Another commenter stated that most municipal advisors ''charge on a project or transaction specific basis and not on an annual all encompassing service basis'' and thus believed that Form ADV is not a relevant document that would help in understanding ''the nature of an 'Independent Municipal Advisor,' its corporate makeup, nor the fee relationship'' and ''does not afford any basis for analyzing potential conflict of interest.'' *See* Fiscal Advisors and Marketing Letter.

[1042] Item 4–L was Item 4–K as proposed. *See supra* note 1031.

[1043] The following eleven activities are listed: (1) Advice concerning the issuance of municipal

Continued

understands that the listed activities are those in which the municipal advisors engage and are derived from the definition of municipal advisor in Exchange Act Section 15B(e)(4) [1044] or closely related to the activities included within that definition. As discussed in the Proposal, this information will help the Commission understand the scope of activities in which a municipal advisor engages and identify possible conflicts of interest and in preparing for examinations, and will also provide the Commission with data useful to making regulatory policy.[1045]

One commenter believed that, due to competitive concerns, a municipal advisor should not be required to disclose the names and contact information of persons that solicit municipal clients on its behalf.[1046] The Commission notes that the definition of municipal advisor under the Exchange Act includes, specifically, persons who undertake solicitation of municipal entities and obligated persons. The Commission thus believes that requiring an applicant to provide information about persons who solicit clients on its behalf will help it carry out its oversight responsibilities with respect to the full range of persons who are municipal advisors. For example, as already stated,[1047] such information may yield the names of persons who are engaged in such activities without themselves registering. Moreover, as stated in the Proposal, the Commission believes that information requested in Item 4–L is important for discerning possible conflicts of interest.[1048] The Commission further notes that the requirement that a municipal advisor disclose all persons who solicit clients on its behalf applies equally to all applicants for registration. The Commission believes that such universal disclosure serves to mitigate the competitive concerns raised by the commenter.

Item 5: Other Business Activities

The Commission proposed Item 5 to require information about the applicant's other business activities. The Commission received no comments regarding Item 5 and is adopting Item 5 substantially as proposed, with minor modifications as discussed below.

As proposed and adopted, Item 5 requires applicants to indicate whether they are actively engaged any one of an enumerated list of businesses.[1049] In Item 5, as adopted, the applicant is required additionally to indicate, for each other business in which it is engaged, whether this is its primary business.[1050] As proposed and adopted, Item 5 requires an applicant also to state whether it is actively engaged in any other business that is not one of those enumerated above and whether that other business is its primary business. It also is required to describe the other business on Schedule D to Form MA. As discussed in the Proposal, this information will assist the Commission, among other things, in identifying conflicts of interest for municipal advisors and preparing for inspections and examinations of municipal advisors. The information also will assist the Commission and the MSRB in understanding municipal advisors in the context of their activities for regulatory purposes.[1051]

Item 6: Financial Industry and Other Activities of Associated Persons [1052]

The Commission proposed Item 6 to require an applicant to disclose financial industry affiliations of its associated persons. The Commission received several comments on Item 6, as discussed below.[1053] The Commission has carefully considered these comments and is adopting Item 6 and the related information it requires on Schedule D of Form MA largely as proposed. Some modifications have been made, however, and these are discussed below.

Item 6, as proposed and adopted, requires an applicant to provide information about its associated persons [1054] that are engaged in

securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters, such as the preparation of feasibility studies, tax rate studies, appraisals and similar documents, related to an offering of municipal securities), (2) advice concerning the investment of the proceeds of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (3) advice concerning municipal escrow investments (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (4) advice concerning the investment of other funds of a municipal entity or obligated person (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (5) advice concerning guaranteed investment contracts (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (6) advice concerning the use of municipal derivatives (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (7) solicitation of investment advisory business from a municipal entity or obligated person (including, without limitation, municipal pension plans) on behalf of an unaffiliated person or firm (*e.g.,* third party marketers, placement agents, solicitors and finders), (8) solicitation of business other than investment advisory business from a municipal entity or obligated person on behalf of an unaffiliated broker, dealer, municipal securities dealer, municipal advisor or investment adviser (*e.g.,* third party marketers, placement agents, solicitors and finders), (9) advice or recommendations concerning the selection of other municipal advisors or underwriters with respect to municipal financial products or the issuance of municipal securities, (10) brokerage of municipal escrow investments, or (11) other. Applicants who check ''other'' activities will be required to provide a narrative description of such activities.

[1044] *See* 15 U.S.C. 78*o*–4(e)(4).

[1045] *See* Proposal, 76 FR 843.

[1046] *See* SIFMA Letter I.

[1047] *See supra* note 1028.

[1048] *See supra* note 1038 and accompanying text.

[1049] Specifically, in Item 5, as adopted, an applicant is asked whether it is actively engaged in business in, or as, a (1) broker-dealer, municipal securities dealer or government securities broker or dealer, (2) registered representative of a broker-dealer, (3) commodity pool operator (whether registered or exempt from registration), (4) commodity trading advisor (whether registered or exempt from registration), (5) futures commission merchant, (6) major swap participant, (7) major security-based swap participant, (8) swap dealer, (9) security-based swap dealer, (10) trust company, (11) real estate broker, dealer, or agent, (12) insurance company, broker, or agent, (13) banking or thrift institution (including a separately identifiable department or division of a bank), (14) investment adviser (including financial planners), (15) attorney or law firm, (16) accountant or accounting firm, (17) engineer or engineering firm, or (18) other financial product advisor (and, if so, to specify the type). Minor differences in this multiple choice list from the list, as proposed, are that engineer is now included, in addition to engineering firm (as in Item 6 as proposed and adopted), and swap dealer and security-based swap dealer are now two distinct categories.

[1050] Although this specific question was not included in the proposed form, the Commission notes that in the next subpart of Item 5, as proposed, if the applicant identifies any other businesses in which it is engaged that are not included in the list of choices described above, it is further asked whether this is its primary business. *See infra* note 1051.

[1051] *See* Proposal, 76 FR 844.

[1052] The title of Item 6, which, as proposed, was ''Financial Industry Affiliations of Associated Persons,'' has been changed in Form MA as adopted to better reflect the range of activities that the item concerns—all of which may be a source of conflict of interest for the municipal advisor—and to avoid any possible confusion that could be caused by the use of the term ''affiliations'' in the title.

[1053] *See infra* notes 1064–1070.

[1054] Section 15B(e)(7) provides that the term ''person associated with a municipal advisor'' or ''associated person of an advisor'' means ''(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions); (B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and (C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.'' 15 U.S.C. 78*o*–4(e)(7). For purposes of Form MA, the Glossary defines ''associated person or associated person of a municipal advisor'' to have the same meaning as in Exchange Act Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)), but to exclude employees that are solely clerical or administrative. Specifically, the Glossary defines these terms to mean: ''Any partner, officer, director, or branch manager of a municipal advisor (or any person occupying a similar status or performing similar functions); any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any

activities other than those that relate to their association with the applicant. As discussed in the Proposal, Item 6 lists twenty activities that an associated person may engage in, some of which are not listed in Item 5 as other activities in which the applicant itself may be engaged.[1055] The collection of this information is designed to gather more complete information about the associated persons of a municipal advisor who are actually providing advice or are controlling the firm and help better inform the Commission's regulatory and examination programs.[1056]

As proposed, Item 6 of Form MA required an applicant to list, on related Section 6 of Schedule D of the form, all associated persons, including foreign affiliates, that are broker-dealers, municipal securities dealers, or government securities brokers or dealers, or investment advisers, municipal advisors, registered swap dealers, banking or thrift institutions, or trust companies. As adopted, the form requires the applicant also to list in Section 6 of Schedule D all associated persons that are investment companies (including mutual funds), major swap participants and major security-based swap participants, commodity pool operators, commodity trading advisors, futures commission merchants, accountants or accounting firms, attorneys or law firms, insurance companies or agencies, pension consultants, real estate brokers or dealers, sponsors or syndicators of limited partnerships, or engineers or engineering firms.[1057]

Section 6 of Schedule D, as proposed and adopted, also requires the applicant to provide the legal and primary business names of each associated person listed, as well as to indicate the category or categories listed in Item 6 of the main form of which the associated person is a member. Finally, Section 6 of Schedule D, as proposed and adopted, requires the applicant to indicate whether it controls, or is controlled by, the associated person; whether the two are under common control;[1058] and/or whether the associated person is registered with a foreign financial regulatory authority and, if so, the country and name in English of that authority.[1059]

As discussed above, the purpose of Item 6 is to elicit more complete information about who is providing advice or controlling the applicant. Moreover, as new Rule 15Bc4–1 underscores, all associated persons of municipal advisors are subject to censure.[1060] Thus, after further consideration, the Commission believes that requiring the applicant municipal advisory firm to identify associated persons that are involved in any of the above categories—each of which involves activities that can impact or be impacted by the advice the firm provides—will better assist the Commission in gaining an understanding of possible conflicts of interest or wrongful influence in the municipal advisor's activities. The Commission notes that Form MA elsewhere already reflects a concern that involvement in a wider range of areas can lead to conflict of interest, as Item 5 of the form requires disclosure of whether the applicant firm itself is involved in any of 17 enumerated categories of that Item and must further indicate whether it acts as any other type of financial product advisor and specify the type.[1061]

As already noted,[1062] in conformance with the additions to the categories of associated persons that must be identified in Item 6, Section 6 of Schedule D, as adopted, will require disclosure of foreign registration information with respect to associated persons in twenty categories. As discussed above, the Commission believes that an associated person's involvement in any of these categories can impact or be impacted by the advice the firm provides, and foreign financial regulatory authorities can be of significant help in tracking such activity and uncovering possible wrongdoing. An additional change in Section 6 of Schedule D, as adopted, requires the applicant to provide, in the case of an associated person registered with a foreign financial regulatory authority, the relevant registration number. The Commission believes that, for associated persons that are active in foreign countries, having the registration number, if any, under foreign financial regulatory authorities can be particularly helpful in obtaining information for regulatory and investigative purposes.

The Commission received several comment letters opposing the extent of the disclosures required by Item 6 and, on a more general level, all the disclosures that Form MA requires regarding an applicant's associated persons.[1063] One commenter believed that the form requires ''overly extensive disclosure'' regarding affiliates of a municipal advisor, particularly for a municipal advisor that is a member of a large affiliated group of institutions.[1064] These requirements, the commenter said, would impose ''a vast information-gathering burden on applicants.'' [1065] The commenter raised specifically the case of affiliates that are under common control with a municipal advisor (''sister affiliates''), whose activities ''may have no connection to municipal advisory activities, let alone, in the case of financial institutions with global operations, a nexus or connection to any

municipal advisory activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities (other than employees who are performing solely clerical, administrative, support or other similar functions); and any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.''

[1055] Specifically, under Item 6, a municipal advisor is required to disclose whether any of its associated persons is: (1) A broker-dealer, municipal securities dealer, or government securities broker or dealer; (2) an investment company (including a mutual fund), (3) an investment adviser (including a financial planner), (4) a swap dealer, (5) a security-based swap dealer, (6) a major swap participant, (7) a major security-based swap participant, (8) a commodity pool operator (whether registered or exempt from registration), (9) a commodity trading advisor (whether registered or exempt from registration), (10) a futures commission merchant, (11) a banking or thrift institution, (12) a trust company, (13) an accountant or accounting firm, (14) an attorney or law firm, (15) an insurance company or agency, (16) a pension consultant, (17) a real estate broker or dealer, (18) a sponsor or syndicator of limited partnerships, (19) an engineer or engineering firm, or (20) another municipal advisor. *See supra* note 1049. As adopted, Item 6 includes an instruction that if an associated person is involved in more than one of these activities, each such activity must be reported.

[1056] *See* Proposal, 76 FR 844.

[1057] In other words, the form, as adopted, requires the applicant to list in Section 6 of Schedule D the names of all associated persons in any of the categories in Item 6. *See supra* note 1055 and accompanying text.

[1058] *See infra* note 1080 for the definition of ''control'' as used in the municipal advisor registration forms.

[1059] To the extent that Item 6, as adopted, requires associated persons in additional categories to be listed in Schedule D, as discussed *supra* note 1057, the requirements to provide in Schedule D the legal and primary business names of each associated person, indicate the category or categories to which the person belongs, and respond to the questions relating to control now apply to persons in those additional categories. Similarly, the questions relating to registration with foreign financial regulatory authorities, as discussed further below, apply to associated persons in all the categories listed in Item 6, as adopted.

[1060] *See infra* Section III.A.9.

[1061] Item 6, as adopted, also asks the applicant to state the total number of its associated persons that belong to any of the twenty categories (listed above in note 1055). Because, in Item 6, as adopted, all such persons must be identified in Schedule D, tallying the number involves no additional disclosure and will act as a cross-check to ensure that the information provided is complete.

[1062] *See supra* note 1059.

[1063] *See, e.g.,* Acacia Financial Group Letter; Deloitte Letter; SIFMA Letter I.

[1064] SIFMA Letter I.

[1065] *Id.*

activities in the United States.'' [1066] The commenter suggested that disclosures regarding affiliates be limited to affiliates that control or are controlled by the municipal advisor or ''at a minimum'' to sister affiliates providing municipal advisory services in the U.S.[1067] This commenter also believed that a municipal advisory firm should not be required to provide information regarding its individual associated persons (citing the example of employees) on Form MA unless those persons ''devote a significant amount of time or resources'' to, or are ''primarily engaged'' in, municipal advisory activities, particularly if those persons are already registered with a broker-dealer, investment adviser, municipal securities dealer, commodity trading advisor or swap dealer.[1068]

Another commenter believed that requiring disclosures regarding associated persons performing ''any activities'' relating to advice could ''impose significant costs'' and ''create a significant burden.'' [1069] This commenter stated that the Commission should ''establish a threshold for reporting and updating associated person information in Form MA''—a certain minimum of hours spent on municipal advisory activities over a specified time period. The commenter also suggested that, when personnel from an entity are subcontracted, the entity itself should not be required to register.[1070]

The Commission notes that, for certain information pertaining to affiliates, it has determined to limit the required disclosures in Form MA to information regarding persons that control, or are controlled by, the municipal advisor (and not persons under common control).[1071] However, with respect to financial industry and other activities represented on the list in Item 6, the Commission believes it is appropriate to extend its information base regarding such activities to all of a municipal advisor's associated persons (which, by definition, includes persons under common control with the municipal advisor).[1072] For example, the Commission believes that ascertaining such information may assist the Commission in identifying potential conflicts of interest.

The ability to discern connections within a large network of affiliations and other associations that otherwise would not be evident is particularly important to the Commission for purposes of enforcement, to enable regulators to detect possible trails of influence and to widen their potential sources of factual information relevant to investigations of wrongdoing. The Commission believes that establishing such an information base is consistent with the Dodd-Frank Act's amendments to Section 15B of the Act, which explicitly extend the Commission's regulatory authority (directly and through its oversight of the MSRB) to associated persons of municipal advisors.[1073]

The Commission notes that Item 6 and Section 6 of Schedule D ask for little more than the names (legal and business) of any associated persons of the municipal advisor that do business in the specified fields and, if the associated person is registered with a foreign financial regulatory authority, the registration number. Otherwise, Section 6 asks only whether the municipal advisor controls or is controlled by the associated person or whether the two are under common control. Such control relationships are directly relevant to investigations of the municipal advisor.

The Commission believes that, in today's world of organizational and managerial sophistication and advanced information technology, including as is pertinent to cross-border affiliations, it should not be unreasonably difficult for a municipal advisor that finds itself within a larger family of affiliates, particularly of the size discussed by commenters, to obtain knowledge of its own place and the place of others within that family. Given the potential relevance and importance of such information, as discussed above, to assuring lawfulness and fairness in the field of municipal advisory services, as well as in maintaining confidence in the municipal securities markets, the Commission believes it is appropriate to require municipal advisors to obtain and provide such information.

With respect to the suggestions that a municipal advisory firm should not be required to provide information regarding its individual associated persons unless those persons devote a certain threshold of time or resources to municipal advisory activities, the Commission disagrees. In particular, the kind of activity that disclosure relating to associated persons is intended to bring to light may involve the kind of significant influence that often is wielded in very short timeframes of activity, *e.g.,* a short phone call from a partner in the firm to a key person in a municipal entity ''urging'' the issuance of a particular offering, or soliciting the municipal entity's investment.

Item 7: Participation or Interest in Municipal Advisory Client or Solicitee Transactions [1074]

The Commission proposed Item 7 to require information about an applicant's participation and interest in the transactions of its municipal advisory clients. The Commission received no comments referencing Item 7 that are not discussed elsewhere [1075] and is adopting Item 7 as proposed.[1076]

As discussed in the Proposal, the purpose of Item 7 is to identify possible conflicts of interest that the municipal advisor and its associated persons may have with the municipal advisor's clients and/or the persons the municipal advisor solicits.[1077] For example, a municipal advisor that receives commissions or other payments for sales of securities to clients may have a conflict of interest with its clients. This type of practice gives the municipal advisor and its personnel an incentive to base investment recommendations on the amount of compensation they will

[1066] *Id.*

[1067] *Id. See also infra* notes 1119–1120 (related SIFMA comments regarding disclosure requirements with respect to the disciplinary history of affiliates and associated persons).

[1068] *See* SIFMA Letter I.

[1069] *See* Deloitte Letter.

[1070] *See id.*

[1071] *See also* the discussion below regarding Item 8, *infra* notes 1079–1088 and accompanying text.

[1072] *See* Section 15B(e)(7)(C) of the Exchange Act, which defines the term ''person associated with a municipal advisor'' or ''associated person of an advisor'' as including ''any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.''

[1073] *See, e.g.,* Section 15B(c)(4) of the Exchange Act (authority of Commission to censure or place limitations on the activities or functions of associated persons of municipal advisors); and Section 15B(b)(2)(A) (authority of MSRB to establish standards of training, experience, competence, and other qualifications for associated persons of municipal advisors). *See also* Section 15B(a)(2) (application for registration as a municipal advisor to contain such information and documents concerning associated persons of municipal advisors as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors).

[1074] The title of Item 7 has been revised in Form MA, as adopted, to include ''solicitee'' transactions to better reflect the information sought in this item. The term ''solicitee'' is defined in the discussion below and is included in the Glossary of Terms for the Form MA series as adopted.

[1075] As discussed above, the Commission received a general comment questioning whether useful information could be elicited from applicants with regard to some required disclosures. *See supra* note 984 and accompanying discussion.

[1076] The Commission notes that, as published in the Proposal, several of the questions in this item referred explicitly only to clients of the municipal advisor. It is clear from the context, however, that these questions were also intended to apply to persons that the municipal advisor solicits or intends to solicit in the context of its municipal advisory activities. Item 7, as adopted, has been modified to explicitly reference such solicitees in addition to clients in each of these instances.

[1077] *See* Proposal, 76 FR 844.

receive rather than on the client's best interests.

Specifically, Item 7 requires an applicant to disclose whether it, or any of its associated persons, has a proprietary interest in the securities or other investment or derivative product transactions of its clients or of persons whom it solicited or intends to solicit (''solicitees''). These disclosures include whether the applicant buys securities or other investment or derivative products from, or sells them to, its clients or solicitees; whether it buys or sells for itself securities (other than shares of mutual funds) or other investment or derivative products that it also recommends to such clients or solicitees; whether it enters into derivative contracts with such clients or solicitees; or whether it recommends to its clients or solicitees securities or other investment or derivative products in which it or any associated person has any proprietary interest (other than as already disclosed in response to the previous questions).

An applicant is also asked to disclose whether it or its associated persons recommend purchases of securities or derivative products to clients or solicitees for which the municipal advisor or its associated persons serve as underwriter, general or managing partner, or purchaser representative; recommend purchases or sales of securities or derivatives to clients or solicitees in which applicant or its associated person has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer); have certain discretionary authority over transactions in securities or other investment or derivative products for its clients or solicitees; and recommend brokers, dealers, or investment advisers to its clients or solicitees, and, if so, whether those brokers, dealers, or investment advisers are associated persons of the municipal advisor. Item 7 also requires the municipal advisor to disclose whether it or its associated persons give or receive compensation for municipal advisory client referrals.[1078]

Item 8: Owners, Officers, and Other Control Persons [1079]

The Commission proposed Item 8 of Form MA to require information about an applicant's control persons. As discussed below, the Commission received one comment specifically relating to Item 8. The Commission carefully considered issues raised by the commenter and is adopting Item 8 substantially as proposed, with minor modifications discussed below.

Item 8, as proposed and adopted, asks applicants to identify on Schedules A and B every person that owns a certain percentage of the applicant, that directly or indirectly controls the applicant, or that the applicant directly or indirectly controls.[1080] An initial applicant is required to complete Schedules A and B. Schedule C is used to amend information previously reported on Schedules A and B.

Schedule A requires information about the applicant's executive officers and, for firms, persons that directly own 5% or more of the applicant.[1081] Schedule B requests information about persons that indirectly own 25% or more of the applicant. A clarifying instruction has been added to Schedule B, as adopted, explaining that, for these purposes, an ''indirect owner'' includes any owner of 25% or more of any direct owner listed in Schedule A and any owner of 25% or more of each such indirect owner going up the chain of ownership. Applicants are also asked to identify, on Schedule D, any person that controls the applicant's management or policies if not otherwise identified as an owner or officer in Schedule A or B. Further information is requested with respect to control persons that are public reporting companies under Sections 12 or 15(d) of the Exchange Act.[1082]

For ease of use and clarity, Form MA, as adopted, asks for information separately on Schedules A–1 and B–1 for owners and control persons that are business entities and on Schedules A–2 and B–2 for owners and control persons who are natural persons, as well as (in Schedule A–2) for executive officers.[1083] The information sought in these schedules, however, is the same as in the Proposal, with minor modifications.[1084]

For each business entity listed, the applicant is required to provide its organization CRD Number, if it has one, or its IRS tax number, EIN, or, if not a domestic entity, any foreign business number. For each natural person listed, the applicant is required to provide the person's individual CRD Number, if any, or the person's social security number or foreign identity number, as well as date of birth.[1085]

As discussed in the Proposal, the information requested and the definition of control are consistent with that requested and used by the Commission in other contexts.[1086] This

[1078] In Item 7, as adopted, the phrase ''in the context of its municipal activities'' has been deleted in instances where the intention may not have been clear. For example, Item 7.C, as proposed, asked: ''Does applicant or any associated person have discretionary authority to determine the: (1) Securities or other investment or derivative products to be bought or sold for the account of a client that it serves or person that it has solicited or intends to solicit in the context of its municipal advisory activities.'' The phrase ''in the context of its municipal advisory activities'' was not intended to limit the question to products bought or sold in such context, but to limit the kind of solicitation being referenced. To avoid confusion, it has been deleted.

[1079] The title of this item as proposed was ''Control Persons.'' It has been changed in Form MA, as adopted, because the item, among other things, is seeking information about owners to determine whether such persons are control persons.

[1080] The term ''control'' is defined in the Glossary to mean, for purposes of the municipal advisor registration forms, ''the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.'' Further, the Glossary provides that: (a) Each of the municipal advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the municipal advisor; (b) a person is presumed to control a corporation if the person: (i) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities; (c) a person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership; (d) a person is presumed to control a limited liability company (''LLC'') if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC; and (e) a person is presumed to control a trust if the person is a trustee or managing agent of the trust. *See* Glossary.

[1081] As detailed in the form, the 5% criterion varies in its applicability and does not always mean ownership in the ordinary sense of the word—depending on whether the applicant is a corporation, partnership, trust, or limited liability company.

[1082] Section 8–B of Schedule D to Form MA requires the name and CIK number of each control person listed on Schedule A, B, C or Section 8–A of Schedule D.

[1083] The guidance provided in the form has been correspondingly revised to reflect this restructuring. Although these Schedules, as published in print, display the information requested in table form, the electronic version of Form MA—which is the only format in which the form can be completed and submitted—asks the questions in a series of pop-up boxes and instructions. *See also supra* note 1001.

[1084] In the form, as adopted, in addition to providing information about other registrations that the control person that is a firm or organization may have with the Commission, information about any registration on Form MA–T must also be provided. In addition, the nature of the control must also be described. If the control person is a natural person, his or her CIK number, if any, must be supplied in addition to the other basic information requested.

[1085] As noted above, the form, as adopted, makes clear that social security numbers, foreign identification numbers, and date of birth will not be publicly disseminated.

[1086] The requested information and definition of ''control'' are consistent with the information requested of, and definition used for, investment advisers required to register on Form ADV. *See* 17

Continued

information will help to inform the Commission's understanding of the ownership structure of the municipal advisor and who ultimately controls the municipal advisor. Such information in turn will provide useful information in preparing for examinations and also in identifying potential conflicts of interest. The information requested also will inform the Commission about changes in control of the municipal advisor.

One commenter, as discussed above with respect to Item 6,[1087] cited Item 8 and Schedules A, B, C and D as another illustration of the burden imposed by the reach of Form MA's questions to information about affiliates. Although Item 8 refers to ''control persons,'' [1088] the Commission notes that the disclosure requirements in Item 8 apply only to ''every person that, directly or indirectly, controls the applicant, or that the applicant directly or indirectly controls'' and does not include sister affiliates (although a control relationship in other contexts is sometimes understood to include two persons under common control). The very point of registration is that, to be permitted to register as a municipal advisor, a firm must provide certain basic information that will enable the Commission to oversee the activities of, and exercise jurisdictional authority over, those who register. The Commission notes that Forms BD and ADV require filers to provide substantially similar information.

Item 9: Disclosure Information and Related DRPs

As discussed in the Proposal, Item 9 requires an applicant to provide certain information concerning any criminal, regulatory, and civil judicial actions relating to the applicant or any of its associated persons [1089] (collectively referred to hereinafter as ''disciplinary history'').[1090] If an applicant indicates in Item 9 that there has been a history of such actions involving itself or any of its associated persons, the applicant must report further information in the DRPs that comprise Part II of Form MA, which are described below.[1091] The Commission received several comments regarding the disclosures required by Item 9 and its related DRPs, which are discussed below.[1092] The Commission is adopting Item 9 with certain changes. Although, as adopted, Item 9 generally seeks the same information as in the Proposal, some questions have been more narrowly tailored and broken down into subparts. These changes and the reasons for them are detailed below.

As discussed in the Proposal,[1093] Section 975(c)(3) of the Dodd-Frank Act amended Section 15B of the Exchange Act to direct the Commission, by order, to censure, place limitations on the activities, functions, or operations of, or suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor, if it finds [1094] that such municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G) or (H) [1095] of paragraph (4) of Section 15(b) of the Exchange Act; has been convicted of any offense specified in Section 15(b)(4)(B) [1096] of the Exchange Act within ten years of the commencement of the proceedings under Section 15B(c); or is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C) [1097] of the Exchange Act.[1098]

Generally, Item 9 was designed to elicit information from a municipal advisor concerning certain of its activities or the activities of its associated persons that could subject the municipal advisor to disciplinary action by the Commission under these statutory provisions. The Commission intends to use this information to determine whether to approve an application for registration, to decide whether to institute proceedings to revoke registration, or to place limitations on an applicant's activities as a municipal advisor. In addition, the information will also identify potential problem areas on which to focus examinations.[1099]

In addition to its value for the Commission's oversight of municipal advisors, generally, as well as to inform MSRB rulemaking, the Commission seeks this information because it may indicate that a municipal advisor is statutorily disqualified from acting as a municipal advisor.[1100] Further, this information may be valuable to municipal entities and obligated persons who engage municipal advisors and to investors who may purchase securities from offerings in which municipal advisors have participated, as well as to other regulators.

The information to be disclosed is substantially similar to the information required to be disclosed in Form BD [1101] for broker-dealers and in Form ADV [1102] for investment advisers.[1103] In addition to information sought on Forms BD and ADV with respect to investment-related activities Form MA also requests parallel information with respect to municipal advisory activities.

The requested information is also generally consistent with the disclosure requirements of the temporary registration form, Form MA–T.[1104] However, as discussed in the Proposal, in Form MA–T, the Commission limited the disciplinary history disclosure requirements to ''associated municipal advisor professionals.'' [1105] As

CFR 279.1. *See also* Proposal, 76 FR 845, note 195 and accompanying text.

[1087] SIFMA Letter I, *supra* note 1065.

[1088] The definition of ''control'' does not refer to persons under common control. On the other hand, the definition of ''associated person'' of a municipal advisor does include a person that is under common control with the municipal advisor.

[1089] *See supra* note 1054 (discussing the definition of ''person associated with a municipal advisor'' or ''associated person of a municipal advisor'').

[1090] However, as discussed further below, the disclosures regarding criminal actions are limited to the period of the past ten years.

[1091] *See infra* note 1115 and accompanying text.

[1092] *See infra* notes 1119–1121 and accompanying text.

[1093] *See* Proposal, 76 FR 845.

[1094] Such findings must be on the record after notice and opportunity for hearing and include a finding that the particular disciplinary action is in the public interest. *See* 15 U.S.C. 78*o*–4(c)(2).

[1095] *See* 15 U.S.C. 78*o*(b)(4)(A), (D), (E), (G) and (H).

[1096] *See* 15 U.S.C. 78*o*(b)(4)(B).

[1097] *See* 15 U.S.C. 78*o*(b)(4)(C).

[1098] The Commission has the same authority with respect to municipal securities dealers. *See* 15 U.S.C. 78*o*–4(c).

[1099] *See infra* Section III.B. (discussing approval or denial of registration). *See also* Proposal, 76 FR 846, note 205 and accompanying text.

[1100] *See infra* Section III.B. and Proposal, 76 FR 846, note 206 and accompanying text. *See also* Section 15B(a)(2) of the Exchange Act, which directs the Commission to deny registration to an applicant municipal advisor if, among other things, it finds that if the applicant was registered, its registration would be subject to suspension or revocation.

[1101] *See* 17 CFR 249.501.

[1102] *See* 17 CFR 279.1.

[1103] *See* Proposal, 76 FR 846.

[1104] As discussed in the Proposal, in Form MA–T, the disclosure required with respect to orders entered against the municipal advisor by regulatory authorities, and whether any court has enjoined the municipal advisor or associated person in connection with investment related activities, are limited to the past 10 years. *See* Proposal, 76 FR 846, note 209. On Form MA, the Commission is not including any time limitation on this disclosure, as discussed further below.

[1105] The Commission defined the term ''associated municipal advisor professional'' in the glossary section of Form MA–T to mean: (A) any associated person of a municipal advisor primarily engaged in municipal advisory activities; (B) any associated person of a municipal advisor who is engaged in the solicitation of municipal entities or obligated persons; (C) any associated person who is a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, the Chief Executive Officer or similarly situated official designated as responsible for the day-to-day conduct of the municipal advisor's municipal

explained in the Proposal, due to the short timeframe between the passage of the Dodd-Frank Act and the deadline for registration of municipal advisors on October 1, 2010, the Commission believed it was appropriate to limit the disclosure requirement to this subgroup of associated persons, which is limited to persons who are closely associated with an advisor's municipal advisory activities.[1106]

In connection with the permanent registration regime, however, the Commission believes it is appropriate to require in Item 9 that a municipal advisor disclose the disciplinary history, as applicable, of all its associated persons, as that term is defined in Exchange Act Section 15B(e)(7), with the exclusion of employees who perform solely clerical, administrative, support, or other similar functions.[1107] The Commission believes that, for purposes of the permanent registration regime, it is important to collect information about disciplinary matters for all such associated persons, because, under the Exchange Act, such matters may form the basis for an action to suspend or revoke a municipal advisor's registration.[1108]

Specifically, Item 9 as proposed and adopted requires disclosure of disciplinary history with respect to any partner, officer, director or branch manager of a municipal advisor, and any other employee who is engaged in the management, direction, supervision, or performance of any municipal advisory activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and any person that directly or indirectly controls, is controlled by, or under common control with the municipal advisor. As a result, Form MA will capture information with respect to employees that engage in municipal advisory activities, even if that is not their primary activity. Form MA, in contrast to temporary Form MA–T, also requires disclosure with respect to controlling persons and other affiliates of the municipal advisor.

As proposed and adopted, Item 9 asks whether the applicant or any associated person has, in the last ten years, been convicted of any felony, or pled guilty or nolo contendere to any charge of a felony in a domestic, foreign, or military court, or charged with any felony. Item 9 further asks whether the applicant or any associated person has been convicted of any misdemeanor or pled guilty or nolo contendere in a domestic, foreign, or military court to any charge of a misdemeanor in a case involving municipal advisor-related business,[1109] investments or an investment-related business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion or a conspiracy to commit any of these offenses, or charged with any misdemeanor of the type described above.[1110] With respect to charges alone, an applicant must respond only with respect to charges that are currently pending.

A clarification has been added in Item 9, as adopted, regarding the provision that disclosure of an event in the Criminal Action Disclosure section is not required if the date of the event was more than ten years ago. The applicant is instructed that, for purposes of calculating the ten-year period, the date of an event is the date that the final order, judgment, or decree was entered, or the date that any rights of appeal from preliminary orders, judgments, or decrees lapsed. This instruction provides a clear-cut guideline by requiring any past cases to be resolved with finality before the ten-year period of no criminal history can begin. The Commission notes that this defining line has been set forth explicitly in other contexts.[1111]

In the Regulatory Action disclosure section of Item 9, Form MA as proposed and adopted asks for information regarding whether the SEC or the CFTC has ever: found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its regulations or statutes; found the municipal advisor or any associated person to have been a cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted; entered an order against the municipal advisor or any associated person in connection with municipal advisor- or investment-related activity; or imposed a civil money penalty on the municipal advisor or any associated person, or ordered the municipal advisor or any associated person to cease and desist from any activity. Item 9 of the form also asks for similar information with respect to other federal regulatory agencies, any state regulatory agency, or any foreign financial regulatory authority.

Item 9 further asks for information regarding whether any SRO or commodity exchange ever found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its rules (other than a violation designated as a ''minor rule violation'' under a plan approved by the SEC); found the municipal advisor or any associated person to have been the cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted; or disciplined the municipal advisor or any associated person by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities. It also asks whether the municipal advisor or its associated persons have had authorization to do business or to act as an attorney, accountant or federal contractor revoked or suspended.

The Civil Judicial Disclosure section of Item 9, as proposed, asks whether any domestic or foreign court has ever (a) enjoined the applicant or any associated person in connection with any municipal advisor-related or investment-related activity; (b) found that the applicant or any associated person was involved in a violation of any municipal advisor- or investment-related activity; or (c) dismissed a municipal advisor- or investment-related civil action brought against the applicant or an associated person by a state or foreign financial regulatory authority. Form MA, as adopted, retains the same questions, although the latter

advisory activities; and (E) any associated person who is a member of the executive or management committee of the municipal advisor or a similarly situated official, if any; and excludes any associated person whose functions are solely clerical or ministerial. *See also* Proposal, 76 FR 846, note 211 and accompanying text.

[1106] This includes those persons who are primarily engaged in an advisor's municipal advisory activities, have supervisory responsibilities over those primarily engaged in municipal advisory activities, are engaged in day-to-day management of the conduct of an advisor's municipal advisory activities, or are responsible for executive management of the advisor. *See* Temporary Registration Rule Release, 67 FR 54469. *See also* Proposal, 76 FR 846, note 212 and accompanying text.

[1107] *See supra* note 1054.

[1108] *See* Section 15B(c)(2) and (c)(4) of the Exchange Act and Rule 15Bc4–1 thereunder, discussed *infra* Section III.A.9. of this release, and Section 15(b)(4) of the Exchange Act. *See also* Proposal, 76 FR 847, note 217 and accompanying text.

[1109] The term ''municipal advisor-related'' is defined as ''[c]onduct that pertains to municipal advisory activities (including, but not limited to, acting as, or being an associated person of, a municipal advisor).'' *See* Glossary.

[1110] The disclosures relating to felonies, in Form MA as in Form BD, concern felonies of any kind, and are not limited to felonies relating to municipal advisor-related and investment-related business.

[1111] *See, e.g.,* Item 11 of Form ADV.

question has been revised to explicitly include actions brought by U.S. jurisdictions other than states.[1112]

As already indicated, the Criminal Action Disclosure section of Form MA as proposed and adopted requires disclosure of events that occurred within the last ten years.[1113] With respect to Regulatory and Civil Judicial Actions, the form as proposed and adopted places no time limit on how far back in time events must be disclosed. The applicability of these disclosure requirements to any event in the past is consistent with the disclosure reporting requirements on Form BD, adopted pursuant to Section 15(b)(1) of the Exchange Act,[1114] with one exception. In Form BD, the requirement to disclose any civil judicial injunctions is limited to the past ten years. In contrast, the Commission proposed its corresponding question in Form MA regarding past civil injunctions without limiting the disclosure requirement to the past ten years. The Commission received no comment on this disclosure requirement and is adopting it as proposed.

As mentioned above, Form MA includes three separate kinds of DRPs to report information, as relevant, relating to criminal, regulatory, and civil actions involving the municipal advisor or its associated persons reported in Item 9.[1115] The Commission is adopting each of these DRPs as proposed. Some modifications have been made, however, and these are discussed below.

Generally, each DRP requires detailed information about the reported action, such as the court where the charges were filed and when, a description of the charge and the circumstances relating to it (in the case of criminal actions); the authority that initiated the action and a description of the allegations and the product-type (in the case of regulatory actions); or the initiator of the court action, the relief sought, and the product type (in the case of civil judicial actions). Applicants are also required to indicate the status of the charge or action, including resolution details as appropriate. As discussed in the Proposal and consistent with the limitations set forth in Section 15(b)(4)(B)[1116] of the Exchange Act,[1117] however, information on the Criminal Action DRP is limited to matters within the last ten years.

The Commission believes that it is important to collect the information required by the DRPs in addition to the basic disclosures in Item 9 to further the aims described above regarding the information required in Item 9: to assist it in deciding whether to grant or institute proceedings to deny an application for registration or to revoke a registration; to manage the Commission's regulatory and examination programs; to make such information available to the MSRB; and to obtain information that can be of value to municipal entities engaging the services of municipal advisors and to investors who may purchase securities from offerings in which municipal advisors have participated, as well as to other regulators.[1118]

One commenter expressed concerns about the ''vast information-gathering burden on applicants'' imposed by Item 9.[1119] The commenter indicated that its concerns, which focused on the requirement to collect information regarding sister affiliates of a municipal advisor, applied ''particularly in the light of the required disciplinary history disclosures.''[1120] This commenter observed that Form ADV, upon which Form MA is based, does not require disclosure of a sister affiliate's disciplinary history. Another commenter stated that ''[s]ome entities, such as banks, broker-dealers and investment advisers, may have many branches, and branch managers, that have nothing to do with the entity's municipal advisory business'' and urged that Form MA be amended to require disciplinary history ''only with respect to branch managers of branches where a municipal advisory business is conducted.''[1121]

In considering these comments, the Commission notes that Section 15B of the Exchange Act assigns the Commission oversight and disciplinary responsibilities with respect to all associated persons of a municipal advisor, a category that includes sister affiliates and branches. Moreover, as discussed elsewhere in this release,[1122] the Commission is clarifying with new Rule 15Bc4–1 that associated persons of municipal advisors are subject to censure, limitations on their activities, suspension, or being barred from being associated. As explained above, with regard to the value of obtaining information regarding financial industry and related activities of associated persons, the Commission believes that the ability to discern connections within a large network of affiliations and other associations is important for investigations of wrongdoing. The ability to gain, through disclosure requirements, a base of knowledge that includes actions of past wrongdoing is all the more important for these purposes.

Regarding the comment concerning the burden of obtaining information about sister affiliates, the Commission notes that Form ADV, too, requests certain information regarding an investment adviser's sister affiliates—specifically, business information—as the commenter acknowledged. Moreover, as the commenter also acknowledged, Form ADV requests the disciplinary history of the investment adviser and all of its ''*advisory* affiliates'' (emphasis added)—*i.e.,* all current employees, all officers, partners or directors, and all persons directly or indirectly controlling or controlled by the investment adviser. Given that a municipal advisor is in any case required to gather certain facts about its sister affiliates' business activities, the Commission believes that it is appropriate to request the added information about any disciplinary history of these affiliates, particularly in view of its potential value to regulators for purposes of investigation and enforcement discussed above.

The DRPs associated with the disclosures in Item 9 are being adopted substantially as proposed. However, as discussed below, some additional disclosure requirements and other revisions have been included in the DRPs, as adopted.[1123]

[1112] The Commission notes that the question, as proposed, relates to actions in ''any domestic or foreign court.'' The Commission believes this phrase implicitly includes courts in U.S. jurisdictions other than states, but is making this explicit to clarify its intent. If an action was brought and dismissed in a U.S. jurisdiction other than a state or a foreign jurisdiction, the information requested is no less pertinent to regulators and investors.

[1113] As is the case with respect to brokers and dealers pursuant to Section 15(b)(4) of the Exchange Act (15 U.S.C. 78*o*(b)(4)), Section 15B(c)(2) of the Exchange Act (15 U.S.C. 78*o*–4(c)(2)), as amended by the Dodd-Frank Act, limits the Commission's ability to impose sanctions on municipal advisors for convictions of felonies and misdemeanors to convictions occurring within ten years preceding the filing of any application for registration.

[1114] *See* Proposal, 76 FR 846.

[1115] An applicant is required to complete a separate DRP of the relevant kind for each event or proceeding in which the applicant itself or any of its associated persons was involved, but the same event or proceeding may be reported for more than one person or entity using one DRP.

[1116] 15 U.S.C. 78*o*(b)(4)(B). *See also* 15 U.S.C. 78*o*–4(c)(2).

[1117] *See* Proposal, 76 FR 847.

[1118] *See* Proposal, 76 FR 847.

[1119] *See* SIFMA Letter I. *See also supra* notes 1065 and 1087.

[1120] *See* SIFMA Letter I.

[1121] *See* ABA Letter.

[1122] *See infra* Section III.A.9.

[1123] Many of the same or similar revisions have also been made to the DRPs of Form MA–I, including those other than the Criminal, Regulatory, and Civil Judicial Action DRPs of that form, and a discussion of all of them will not be repeated in the section on Form MA–I below.

Generally in all the DRPs, as proposed, when an amendment was filed seeking to remove a previously-filed DRP, the applicant was asked for the reason. Some, but not all of the DRPs, gave the option of checking a box indicating that the DRP was filed in error. Some, but not all of the DRPs, additionally asked for an explanation of the circumstances that gave rise to the error. For the sake of consistency and to provide regulators, municipal entities, and others with important detail, all the DRPs, as adopted, have been revised to include these elements. Also, in the Criminal Action DRP, an additional option is given to indicate why the DRP was filed an error. The new option is that the event or proceeding occurred more than ten years ago.[1124]

As proposed, if a DRP pertains to an associated person of the municipal advisor, the DRP asks whether that person is registered with the Commission. In the DRPs, as adopted, if the associated person is registered, the registration number must be provided.[1125] The Commission believes that, if an applicant for registration with the Commission has an associated person that is otherwise registered with the Commission, such information is valuable for cross-referencing and enforcement and other regulatory purposes and providing it should not constitute an undue burden.[1126]

Each DRP, as proposed, asked if the municipal advisor or associated person whom the DRP concerned was registered through the IARD or CRD system or the municipal advisor was previously registered on Form MA–T, whether the advisor or associated person previously filed a DRP (with Form ADV, BD, or U4) or the advisor filed disclosure on Form MA–T regarding the same event. The adopted version of each DRP now asks whether an accurate and up-to-date DRP containing the information regarding the applicant or associated person required by the DRP is already on file in the IARD or CRD system (with a Form ADV, BD, or U4) or in the SEC's EDGAR system (with a Form MA or Form MA–I), and, if so, to specify the type of filing and provide specific information regarding the name of the filer, the CRD Number (where relevant), the date, and disclosure or accession number of the relevant other form.[1127] As discussed above,[1128] the ability to incorporate by reference any required information about the disciplinary history of an applicant or associated person from a DRP that already has been filed relieves the regulatory burden on applicants who can do so. At the same time, however, sufficient information about where the information is filed is necessary for regulators, municipal entities, and investors to be able to access it with reasonable ease.

As proposed, some of the DRPs, where relevant, asked for the name of the federal, military, state or foreign court where a case was formally brought or appealed. In the DRPs, as adopted, an applicant is presented with a list of types of courts from which to choose and must specifically check the type of court in which the case was brought.[1129] In addition, ''international court'' and ''other'' have been added to the choices (and, if the latter is checked, the applicant must specify the type) and the street address and postal code of the court will now need to be provided in addition to the city or county and state or country. Requests for information in all the DRPs regarding courts and other panels have been made consistent to require the name of the case (in addition to the docket number, as proposed). The Commission believes that these additions will enable regulators, municipal entities, and investors to more easily locate information that may be relevant to them and, if need be, address further inquiries. The Commission further believes that complete responses to the questions in the DRPs, as proposed, would have supplied most of this same information.[1130]

For the same reason, similar changes have been introduced into the DRPs regarding regulatory adjudications and civil judicial actions. Where the proposed Regulatory Action DRP asked the filer to indicate whether a regulatory proceeding was initiated by the SEC, another federal authority, state, SRO, or foreign authority, the forms as adopted add, as choices, the CFTC, a federal banking agency, the National Credit Union Administration, or other regulator or authority that the applicant must specify. In addition, the applicant must now indicate, as applicable, the name of the administrative proceeding, commission or agency hearing, or other regulatory proceeding or forum in which the action was brought and the street address and postal code of the location where the case was heard. Specific choices added with respect to who initiated a Civil Judicial Action include the CFTC, another federal authority (which the applicant must specify), and a municipal advisory firm.

As proposed, not all the DRPs contained instructions to the applicant regarding the language to be used in naming or describing the charges brought in a foreign jurisdiction. As adopted, the forms consistently require the applicant to provide all the information requested in English. The Commission believes that this requirement is appropriate in an application for U.S. registration designed to obtain information on behalf of U.S. regulators, municipal entities, and investors.

As proposed, in the Criminal Action DRP, in a case where criminal charges were brought against a firm or organization over which the applicant or associated person had control, the applicant was required to indicate whether the firm or organization was engaged in a municipal advisor-related business. In the DRP, as adopted, the question has been revised to ask, in addition, whether the firm or organization was engaged in an investment-related business.[1131] Because of the close relationship between investment-related business and municipal advisory activities, the Commission believes that it is important for regulators, municipal entities, and

[1124] *See supra* note 1116 and accompanying text.

[1125] In all the DRPs, as adopted, if an applicant indicates that the DRP concerns one or more associated persons, the form asks how many. Because the names of all such associated persons must be identified in the DRP in any case, tallying the number involves no additional disclosure and will act as a cross-check to ensure that the information provided is complete.

[1126] On the other hand, the requirement to name the employer of an associated person when the activity occurred that led to an action has been eliminated.

[1127] The DRPs, as adopted, do not provide the option of indicating that the information is already on file in a Form MA–T, as Form MA–T does not require the disclosures required in the DRPs.

[1128] *See supra* note 995 and accompanying text.

[1129] In the electronic form, the applicant must make a selection and thus cannot avoid answering the question specifically.

[1130] As proposed, the DRP asked the applicant to describe details of the event in narrative form, and to, among other things, ''include charge(s)/charge Description(s), and for each charge provide: (1) Number of counts, (2) felony or misdemeanor, [and the] (3) plea for each charge'' and ''provide a brief summary of circumstances leading to the charge(s) as well as the disposition.'' The proposed version separately required the applicant to ''[i]nclude, for each charge, (a) Disposition Type (*e.g.,* convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc., (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.'' It also required an applicant to provide ''a brief summary of circumstances leading to the charge(s) as well as the disposition'' and to include ''the relevant dates when the conduct which was the subject of the charge(s) occurred.'' The Commission also notes that the Criminal Action DRP of Form MA–I, both as proposed and adopted, asks for information about amended or reduced criminal charges.

[1131] In the form, as proposed, the applicant would have been required to indicate only whether the firm or organization was in municipal advisor-related business.

investors in municipal securities to have this information.

The instructions in the Criminal Action DRP on how to report an event or proceeding have been revised in the form as adopted.[1132] No substantive changes have been introduced in the reporting requirements. The revisions have been made solely for purposes of clarity. The adopted version of the instructions states: ''Use this DRP to report all charges, including multiple counts of the same charge, arising out of the same event and filed in one criminal action. The same DRP may be used for more than one person with respect to the same event or proceeding. Separate criminal actions arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.'' The Commission believes that the revised instructions, which are similar to instructions that appear in the DRPs for Forms BD and ADV, will help assure that the disciplinary information provided in response can be easily understood.

An instruction has been added to the Criminal Action DRP advising applicants that applicable court documents must be attached to, and filed with, the DRP if not previously submitted.[1133]

In the Criminal Action DRP, as proposed, an applicant was not required specifically to indicate whether the original criminal charge was amended or reduced. As adopted, the DRP asks for this information and for the relevant date. The Commission believes that the clearer picture of the disciplinary history that will emerge when this information is supplied should assist regulators, municipal entities, and investors in assessing the credentials and background of the municipal advisor and its associated persons.

In the Criminal Action DRP, as proposed, an applicant was not required to state, if the case was on appeal, to whom it was appealed and the date of the appeal. As adopted, the DRP now requires these disclosures.[1134]

The Criminal Action DRP, as proposed, asked for information generally about the disposition of the relevant action, in narrative form, and to include details concerning any sentence or penalty imposed, its start date, and its duration, and the amount and date of payment.[1135] As adopted, the form requires the applicant to choose from among 16 types of disposition of a case (or to check ''other,'' and specify the other), and to further identify any other type of disposition. Choices are also provided to describe specifically the disposition of any appeal.[1136] The DRP, as adopted, further asks specifically whether any incarceration was imposed in connection with the action, and, if so, the duration, the start and end dates, and any concurrent sentences.[1137] It also asks, in question-by-question format, whether any portion of a monetary penalty was reduced or suspended, whether it has been paid in full, and, if not, how much remains unpaid. The Commission believes that these revisions will help ensure that the description of the disposition is complete.

As proposed, the Regulatory Action DRP required the applicant to check off any of 14 types of ''principal sanctions'' [1138] in the case (or to check ''other,'' and specify the other type), and to further identify any other sanctions. As adopted, the DRP does not differentiate between principal sanctions and any other kind of sanction, but adds more types to the list in addition to requiring the applicant to identify any others. This, too, will help ensure that the filer provides appropriate detail, thereby enabling interested parties to better assess the credentials and background of the applicant and its associated persons.

Similarly—and for the same reason—the Civil Judicial Action DRP no longer differentiates between ''principal relief'' sought and other relief, and provides a longer list of possible sanctions or relief sought from among which the applicant must select in addition to identifying any other sanctions or relief sought.

The questions in the Regulatory and Civil Judicial Action DRPs regarding how a case was resolved, like the questions in the Criminal Action DRP regarding disposition, have been revised in the DRPs, as adopted, to be more specific and to offer more choices from among which an applicant must select, for the same reason as in the Criminal Action DRP. The Commission believes that these revisions will help ensure that the description of the disposition is complete. More possible answers are provided from among which the applicant must choose to describe specifically the type of resolution that resulted (acceptance, waiver, and consent, settlement, dismissal, judgment rendered, etc.) and choices are now given regarding how any appeal was resolved.

Similarly, more choices are presented to describe any sanctions that were ordered in the relevant Regulatory or Civil Judicial Action.[1139] In addition, questions are broken out into separate sections regarding the details of three specific types of sanctions and/or conditions of sanctions: (a) Bars, injunctions, and suspensions; (b) requalifications (by examination, retraining, or other process); and (c) monetary sanctions.[1140]

[1132] In the Criminal Action DRP, as proposed, the applicant was instructed: ''Use a separate DRP for each event of proceeding. The same event or proceeding may be reported for more than one person or entity using one DRP . . . Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Use this DRP to report all charges arising out of the same event. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. One event may result in more than one affirmative answer to the [questions asked earlier in the DRP].''

[1133] This instruction, which was included in the proposed Criminal Action DRPs for Form MA–I, was not included in the proposed Criminal Action DRP for Form MA. The Commission notes that Form BD also requires applicable court documents to be attached to the Criminal Action DRP in that form.

[1134] The Commission notes that the Regulatory and Civil Judicial Action DRPs, when proposed, already required similar information regarding appeals.

[1135] *See supra* note 1130.

[1136] These choices are: affirmed; vacated and returned for further action; or vacated/final. An applicant may also respond ''other,'' in which case the other type of disposition must be specified.

[1137] The DRP, as adopted, also asks specifically whether any sentence or any other penalty is ordered, and, if so, to list each type, giving the examples of prison, jail, probation, community service, counseling, education, or other (which must be specified).

[1138] The DRP, as adopted, clarifies that the question refers to the sanctions sought.

[1139] For example, the choices in the Regulatory Action DRP, as proposed, were: monetary/fine; revocation/expulsion/denial; censure; disgorgement/restitution; cease and desist/injunction; bar; suspension; and other (which must be specified). The choices added in the adopted version include: civil and administrative penalties/fines; expulsion; prohibition; reprimand; rescission; requalification; revocation; and undertaking.

[1140] For example, in the Regulatory and Civil Judicial Action DRPs, as proposed, the applicant was asked broadly to describe, in narrative form: ''Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the applicant or an associated person, date paid and if any portion of penalty was waived.''

By contrast, in the DRPs as adopted, similar information is requested in question-by-question format in each of the separate sections described above. Questions relating to bars, injunctions, and suspensions are further subdivided into a separate subsection for each, and the questions distinguish between temporary and permanent bars. The applicant is also instructed to report any additional details if one or more bars, injunctions, or suspensions were imposed with regard to different activities and the terms specify different time periods, and a similar instruction is included with regard to requalifications. Details similar to those specified in the Criminal Action DRP, as adopted, *see supra* notes 1135–1137 and accompanying text, are also requested.

As proposed, the Regulatory and Civil Judicial Action DRPs asked the applicant to provide a brief summary of details relating to the action's status with relevant terms, conditions, and dates. As adopted, the DRPs specifically ask whether any limitations or restrictions are in effect while the case is pending or on appeal, as applicable. For pending cases, the DRPs also ask for the date that notice or other process was served.[1141] Here, too, the Commission believes that specifying these details as required elements will serve to ensure that the applicant's description is complete.

The Civil Judicial Action DRP, as proposed, did not ask for the full name of the defendant or ask whether the applicant is a named defendant. As adopted, the DRP requires this information, and, if the applicant is not a named defendant, further requires a description of how the action involves the defendant. This information should help interested parties more easily determine the role of the applicant or associated person in the civil judicial action as part of their assessment of the applicant.

The DRPs, as adopted, now ask for various minor additional disclosures reflecting a level of detail generally similar to the disclosures discussed above, which the Commission believes should serve to enhance the usefulness of the information to regulators and the benefit it will have for municipal entities and the investing public without unreasonably burdening applicants for registration.[1142]

Item 10: Small Businesses

As described further in Section IX below, the Commission is required by the Regulatory Flexibility Act (''RFA'') [1143] to consider the effect of its regulations on small entities. The Commission's rules do not define ''small business'' or ''small organization'' for purposes of municipal advisors. As discussed in the Proposal, the Small Business Administration (''SBA'') defines small business for purposes of entities that provide financial investment and related activities as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[1144] The Commission proposed to use the SBA's definition of small business to define municipal advisors that are small entities for purposes of the RFA.[1145] This definition will remain unchanged in the rules as adopted.

The Commission proposed Item 10 of Form MA to enable it to determine how many applicants meet the SBA's definition of ''small business'' or ''small organization'' as applied to municipal advisors. Thus, Item 10 requires each applicant to disclose whether it had annual receipts of less than $7 million during its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business). Item 10 also requires each applicant to disclose whether any business or organization with which it is affiliated had annual receipts of more than $7 million in its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business).

The Commission received no comments on the information requested by Item 10 and is adopting this item as proposed.[1146]

Technical and Other Changes

In addition to the modifications discussed above, a number of non-substantive, technical and clarifying changes have been made to Form MA, its schedules and the DRPs as adopted.[1147] Further, some of the multi-pronged questions have been broken down into separate parts to make the form clearer and more user-friendly.[1148] The Commission has also made certain additional changes to correct inadvertent omissions in the form, as proposed.[1149]

Execution Page

Form MA includes an Execution Page that an authorized person of the municipal advisor filing the form is required to sign electronically before the form can be submitted.[1150] The Commission received no comments regarding the Execution Page, other than on the self-certification contained therein. For reasons discussed below, the Commission is removing the self-certification section of the Execution Page in Form MA but otherwise is adopting the Execution Page substantially as proposed.[1151]

An authorized person signs the form by typing his or her name and submitting the form on behalf of the municipal advisor. The authorized person is required to sign one of two different Execution Pages, depending on whether the municipal advisor is resident in the United States or a ''non-resident'' municipal advisor. In either case, by signing the Execution Page, the authorized person states that he or she is signing Form MA on behalf, and with the authority, of the municipal advisor and affirms that the information in Form MA is true and correct.

[1141] As previously mentioned, the DRPs, as proposed, already requested the date of any appeal. *See supra* text accompanying note 1134.

[1142] Some examples, when an applicant is asked to check the type of product involved in a case, more choices are included in the list of possibilities than in the proposed version. When the resolution of a case is an order, the applicant is asked whether it is a final order based on violations of any laws or regulations that prohibit fraudulent or deceptive conduct. Several changes were made so that if one or more DRPs asks a follow-up question when a certain response is given, other DRPs are consistent and ask the same follow-up question. Thus, each time an applicant selects more than one resolution of a case as having occurred or if the choice that the applicant has selected does not adequately summarize the resolution, the applicant must provide an explanation. Each time an applicant indicates that a relevant date provided is not exact, an explanation is required. *See also infra* note 1147. In addition, throughout the DRPs, instructions have been revised to offer more clarity on how to file a DRP or when a separate DRP must be filed regarding the same event. *See also supra* note 968.

[1143] 5 U.S.C. 601 *et seq.*

[1144] *See* 13 CFR 121.201. *See also* Proposal, 76 FR 848, note 222 and accompanying text.

[1145] *See* Proposal, 76 FR 848.

[1146] Several commenters did raise issues with respect to the impact that the new registration requirements could have, generally, on small businesses. *See, e.g., supra* note 986, and *see also supra* note 980. Such concerns are addressed in Section IX below.

[1147] For example, new guidance is included on Form MA, as adopted, that reminds applicants that they must supply supporting documents where applicable, and that Form MA–NR must be included for non-residents. Filers are also advised that false statements or omissions may result in administrative or civil actions, in addition to the other legal consequences mentioned in the Proposal. Instructions have been included regarding non-US telephone and fax numbers. References to U.S. state jurisdictions have been amended to consistently include other types of U.S. jurisdictions, and the choices on the forms, accordingly, include such jurisdictions by name. *See also supra* note 968.

[1148] For example, the questions in the DRPs regarding associated persons are divided into separate sections for firms and organizations, on the one hand, and natural persons on the other. Many of the questions now present applicants with a series of choices that they can check off. Some questions are renumbered, and some subsections have been given titles where there were none in the proposed version.

[1149] For example, the Criminal Action DRP requires that if the applicant is amending a previously filed DRP pertaining to an associated person because it was filed in error, the applicant is required to explain the circumstances. The Proposal inadvertently omitted a requirement to explain the circumstances when the error pertained to the applicant itself. The Regulatory and Civil Judicial Action DRPs as previously proposed and now adopted require an explanation in both cases.

[1150] *See* Proposal, 76 FR 849. As proposed, the Execution Page (except for the self-certification section) is similar in purpose to the Execution Page of Form ADV (*see* 17 CFR 279.1), but deletes references to state registration, bonding requirements and other inapplicable components, and will require a non-resident municipal advisor to execute a separate form (Form MA–NR) to designate agent for service of process. *See infra* Section III.A.6.

[1151] The description immediately below relates to the Execution Page as adopted. Discussion of the removal of the self-certification section follows.

The Execution Page for both resident and non-resident municipal advisors requires the signatory to certify that the books and records of the municipal advisor will be preserved and available for inspection and to authorize any person with custody of the books and records to make them available to federal representatives. On the Execution Page for non-resident municipal advisors, the signatory, in signing the form, also states that the municipal advisor agrees that it will provide to the Commission, at its own expense, copies of all books and records that the municipal advisor is required to maintain by law. As discussed in the Proposal, the Commission believes that, before granting registration to a domestic or non-resident municipal advisor, it is appropriate to obtain assurance that such person has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission.[1152]

On the Execution Page for domestic municipal advisors, the signatory also states that it appoints certain officials as agents for service of process in the state where the advisor maintains its principal office or place of business. Specifically, a domestic municipal advisor appoints the Secretary of State or other legally designated officer in the state where it maintains its principal office and place of business. As discussed in the Proposal, this appointment allows private parties and the Commission to bring actions against the municipal advisor by delivering necessary papers to the appointed agent.[1153] The agent is able to receive any process, pleadings, or other papers in any action that arises out of or relates to or concerns municipal advisory activities of the municipal advisor. The agent also is able to receive service for investigation and administrative proceedings.

On the Execution Page for non-resident municipal advisors, the signatory on behalf of the registrant also states that an opinion of counsel is attached as an exhibit to Form MA and that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of the municipal advisor, as required by law, and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.[1154] As discussed in the Proposal, each jurisdiction may have a different legal framework with respect to its laws (*e.g.,* privacy laws) that may limit or restrict the Commission's ability to receive information from a municipal advisor.[1155] Providing an opinion of counsel that a municipal advisor can provide access to its books and records and can be subject to inspection and examination allows the Commission to better evaluate a municipal advisor's ability to meet the requirements of registration and ongoing supervision.[1156] Failure to provide an opinion of counsel may be a basis for the Commission to deny an application for registration.[1157]

As proposed, Form MA required the authorized person of a municipal advisor completing the Execution Page to certify separately on behalf of the municipal advisor that it and every natural person associated with it had met, or within any applicable required timeframes would meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor and natural persons associated with it, required by the Commission, the MSRB, or any other relevant SRO. Under the Proposal, the authorized person, on behalf of the municipal advisor also would have been required to certify that the municipal advisor had conducted an initial or annual review, as applicable, of the municipal advisor's business, and had reasonably determined that the municipal advisor: (a) could carry out the activities described in the items that are checked in Item 4–K (Applicant's Business Relating to Municipal Securities) of Form MA; [1158] (b) could comply with all applicable regulatory obligations; and (c) had met such regulatory obligations during the last year (or during such shorter period if the application was an initial application for registration). For these purposes, such applicable regulatory obligations were to include obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO.

Under the Proposal, the authorized person also would have been required to certify that the municipal advisor had documented this review process and would maintain all documents relating to the review in accordance with Rule 15Ba1–7 under the Exchange Act.[1159] Such certification would have been required in conjunction with the filing of an initial application for registration as a municipal advisor and annually thereafter.[1160]

The Commission received one comment letter opposing the proposed self-certification requirement.[1161] The commenter provided that self-certification should not be required and noted that similar certifications are not

[1152] *See* Proposal, 76 FR 848.

[1153] *See id.* Appointment of agent for service of process for non-resident municipal advisors is discussed further below. *See infra* Section III.A.6 (discussing Form MA–NR).

[1154] The opinion of counsel is required by Rule 15Ba1–6, as adopted. General Instruction 13 (General Instruction 14 as proposed) now states that the non-resident municipal advisor filing Form MA must attach the opinion as an exhibit to the Execution Page.

[1155] The Execution Page for non-resident municipal advisors, as adopted, however, does not require the opinion of counsel to state that the municipal advisor is able, as a matter of law, to submit specifically to ''onsite'' inspection.

[1156] *See* Proposal, 76 FR 848.

[1157] *See* Section 15B(a)(2), providing that a municipal advisor applying for registration must file with the Commission an application for registration in such form and containing such information and documents concerning such municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Thus, failure to provide an opinion of counsel, as required, is a basis under the statute for the Commission to conclude that the requirements of Section 15B(a)(2) are not satisfied.

[1158] Under the Proposal, factors to be considered in determining whether a municipal advisor can carry out the described activities included, but were not limited to, whether the municipal advisor has, with respect to the described activities, the appropriate technology systems and equipment; the appropriate financial resources; adequate staffing with appropriate skill sets, training, and expertise; and adequate facilities, such as office space, as appropriate. *See* Proposal, 76 FR 849.

[1159] Proposed Rule 15Ba1–7 also required municipal advisory firms to make and keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of its business in connection with its self-certification on Form MA. Because the Commission is not adopting a self-certification requirement, the Commission is also not adopting this corresponding books and records requirement. *See infra* note 1344.

[1160] *See* proposed Rule 15Ba1–4(e). The rule required the annual self-certification to be filed by municipal advisory firms within 90 days of the end of the municipal advisor's fiscal year, or within 90 days of the end of the calendar year for municipal advisors that are sole proprietors.

[1161] Further, the Commission received two comment letters that, although did not object to the proposed self-certification requirement, related to the Commission's request for comment on an alternative to self-certification. *See infra* notes 1164 and 1165. The Commission also received many letters commenting, in the context of opposing the Commission's proposal to exclude appointed members of the governing body of a municipal entity from its interpretation of ''employee of a municipal entity,'' that the cost to comply with ''reporting, record keeping, and certification requirements'' and the related continuing education requirements and training, would take away from the board members' full-time jobs and families, and that such costs were unjustified. *See, e.g.,* letter from Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel, and Diane Moody, Director, Statistical Analysis, American Public Power Association, dated February 22, 2011; Nick Costanzo, Vice President Strategic, Financial, and Management Services, City of El Paso, Texas, dated February 22, 2011; and letter from Ben Gorzell, Chief Financial Officer and Michael D. Bernard, City Attorney, City of San Antonio, dated February 18, 2011.

required with Form BD and Form ADV.[1162] The commenter also asserted that requiring a municipal advisory firm to conduct an annual review of its business and determine that it can carry out its municipal advisory activities, including requiring the applicant to document the review process, would be costly, burdensome, and confusing. Further, the commenter noted that the Commission and the MSRB have yet to propose standards that are the subject of the certification. Accordingly, the commenter believed that, without such standards or related guidance, it is premature for prospective advisors to even comment. The commenter added that a municipal advisor would be unsure as to how to conduct the review, which may lead to unnecessary expense and exposure to liability (since the certification would be ''reports'' and therefore subject the municipal advisor to criminal liability). The commenter suggested that, if the Commission's interest is in ensuring competence of a municipal advisor, a better approach would be to create an MSRB examination process with qualifications clearly defined by the MSRB.

After careful consideration of the comment received, the Commission is not requiring self-certification in Form MA, as adopted. As the commenter notes, Forms BD and ADV, on which Form MA is based, do not require self-certification. Further, as pointed out by the commenter, the MSRB has yet to propose standards that are the subject of the certification. Accordingly, at this time, the Commission does not believe that self-certification should be required of municipal advisors.

In response to the Commission's request for comment regarding an independent third party review and whether the Commission should mandate a minimum level of review as an alternative to the self-certification requirements,[1163] the Commission received two letters. The two commenters did not object to the self-certification requirement but did oppose any third-party review or audit.[1164] Both commenters assert that such a review would impose unnecessary costs, and that Commission review would be sufficient. One of these commenters also opposed any minimum review standards.[1165] In concurrence with these commenters, the Commission has determined at this time not to establish a minimal level of review or require review by an independent third-party.

c. Information Requested in Form MA–I

As discussed above, although Form MA–I was proposed as a registration form for all natural person municipal advisors, Rule15Ba1–3, as adopted, exempts a natural person municipal advisor from the requirement to register, if such person is associated with a registered municipal advisory firm and engages in municipal advisory activities solely on behalf of a registered firm.[1166] Rule 15Ba1–2(b)(1), as adopted, requires a municipal advisory firm, on behalf of which an associated natural person engages in municipal advisory activities, to file Form MA–I with the Commission with respect to each such individual. Pursuant to Rule 15Ba1–2(b)(2), as adopted, a natural person who is a sole proprietor must file Form MA–I in addition to filing an application to register as a municipal advisor on Form MA.

The Commission received more than 30 comment letters relating to proposed Form MA–I. About 25 of these letters concerned the impact that the registration requirement for natural person municipal advisors would have if applied to volunteer members of public boards, in view of the fact that registration would require completing a Form MA–I. Because, under the rules as adopted, volunteer public board members would generally not be required to register, the Commission believes the concerns of these commenters have been otherwise addressed.[1167]

The remaining comment letters concerned the nature and scope of the information requested by Form MA–I and are discussed below.[1168] After considering the comments, the Commission is adopting Form MA–I substantially as proposed. However, the Commission is modifying Form MA–I to require a few additional points of information and is also eliminating some data requests. In addition, some of the language in Form MA–I has been modified to reflect the fact that, under the rules, as adopted, the form is no longer an application for registration and, except in the case of sole proprietors, will be completed by a firm, rather than by the individual with respect to whom the form is being filed.[1169]

As a general matter, the information requested on Form MA–I, as proposed and adopted, is similar to information requested on FINRA's Form U4.[1170] Some questions on Form U4 have been adapted for purposes of Form MA–I to relate specifically to municipal advisors. Other questions have been omitted as not necessary or appropriate in the municipal advisor context.

One commenter argued that information sought by Form MA–I largely duplicates information relating to associated persons sought by Form MA.[1171] The Commission acknowledges that a municipal advisory firm that registers by filing Form MA must already provide information on that form concerning the disciplinary history of each of its associated persons, including employees providing advice on behalf of the firm. However, there is very little overlap between the information required by Form MA and that required by Form MA–I that cannot be incorporated by reference.[1172] Moreover, Form MA–I elicits additional information that would not be provided by the firm as part of its Form MA. For

[1162] *See* SIFMA Letter I.

[1163] *See* Proposal, 76 FR 850.

[1164] *See* NAIPFA Letter I and Joy Howard WM Financial Strategies Letter. The Commission also received a third comment letter opposing, as overly-burdensome, any independent party review either prior to the filing of an initial application or on an annual or periodic basis thereafter. *See* Public FA Letter.

[1165] *See* NAIPFA Letter I.

[1166] *See supra* note 938.

[1167] *See supra* Section III.A.1.c.i. *See also infra* note 1187.

[1168] In addition, the Commission notes that a number of the comments received regarding proposed Form MA apply similarly to proposed Form MA–I. Examples include concerns about the duplicative nature of seeking information already gathered through other registration programs; confidentiality issues; and compliance burdens. These comments have been discussed in the section on Form MA above and are not further addressed here. *See, e.g., supra* notes 991–992 and 995–996 and accompanying text and the Commission's response in the discussion following these comments.

[1169] For example, the form will now no longer refer to the individual as ''the applicant'' or ''the registrant.''

[1170] *See* Form U4, *supra* note 992. *See also* Proposal, 76 FR 851, note 237 and accompanying text.

[1171] *See* SIFMA Letter I. The concern over duplication of information was raised as an argument against separate registration of individuals on Form MA–I. The rules, as adopted, no longer require registration for natural person municipal advisors acting solely as employees of a municipal advisory firm. However, because Form MA–I is being retained in the rules, as adopted, the Commission believes it important to address concerns that the information required by Form MA–I is redundant of information already available from the firm's Form MA.

[1172] Regarding incorporation by reference, *see supra* notes 994–995 and accompanying text. The Commission acknowledges that a municipal advisory firm must already provide information on Form MA concerning the disciplinary history of each of its associated persons—a term that includes employees who are ''engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities.'' However, to the extent that the disciplinary history of an individual is reported in Form MA, it can be incorporated by reference in Form MA–I.

example, Form MA–I requires the following information about each relevant natural person that would not be found on his or her firm's Form MA if engaged in municipal advisory activities on behalf of a firm or on his or her own Form MA if acting as a sole proprietor: social security number of the individual; other names of the individual; his or her residential and employment history; the offices of the firm where the individual is located and from which he or she is supervised; the names of any other municipal advisory firms that employ the individual; and any other businesses in which the individual is engaged.[1173]

Therefore, in completing a Form MA–I for each employee, the Commission believes that a firm will be supplementing, rather than duplicating, the information provided on Form MA. For this reason, as proposed and adopted, the rules require a sole proprietor to complete and file both forms.

Among the comments received by the Commission, specifically with regard to Form MA–I, as has already been discussed, several commenters questioned the need for separate registration forms for firms and their individual employees.[1174] One commenter believed that separate registration of individuals on Form MA–I could ''lead to confusion'' and ''inadvertent inconsistencies in the information.''[1175] Another commenter believed that processing the estimated 21,800 forms expected to be filed would put ''significant strain'' on the Commission.[1176] In addition to these comments, one commenter suggested that, in lieu of requiring individuals to register separately with the Commission on Form MA–I, the Commission could ''work with the MSRB to establish, through the MSRB, a licensing and registration mechanism for individuals who are municipal advisors, which would be similar to the program used to register a broker-dealer's licensed associated persons with FINRA.''[1177] Further, the commenter stated that, if the Commission believes it is necessary to formally register individuals (in addition to licensing them), the MSRB could adopt Form U4 and require it to be filed in connection with granting a license to individuals who engage in municipal advisory activities on behalf of a Commission- and MSRB-registered municipal advisory firm.[1178] The Commission believes that these comments have been addressed by the exemption created in the rules, as adopted, for natural persons who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[1179]

Commenters also expressed concerns regarding the disclosures required by Form MA–I and the plan to make them publicly available.[1180] For example, one commenter believed that some of the information required in Form MA–I ''could not be disclosed by a law enforcement agency, such as the individual's detailed criminal history—which includes arrests that do not result in prosecution or conviction.''[1181] The commenter further believed that ''[g]overnment disclosure of a compiled criminal history is a criminal offense.''[1182]

The Commission believes that it is consistent with the Exchange Act to require disclosure of such information in order to permit persons whom Form MA–I concerns to lawfully engage in municipal advisory activities.[1183] Regarding a commenter's concern about government disclosure of compiled criminal history, the Commission notes that engaging in municipal advisory activities is voluntary. Persons engaging in municipal advisory activities are on notice that the information supplied to the Commission on Form MA and MA–I will not be kept confidential (except where indicated otherwise). Therefore, if a person does not wish to disclose his or her criminal history, such person may choose to not engage in municipal advisory activities. In addition, the Commission notes that the information requested on Form MA–I is consistent with comparable provisions in Forms BD and ADV, as well as Form U4.[1184]

One commenter focused on the impact that Form MA–I could have on bank employees, believing that it would require such information as the addresses of all offices at which the employee will be physically located or supervised and noting that it was not uncommon for bank branch employees such as tellers to work at multiple branch locations in a geographic region.[1185] As discussed above, the Commission is limiting the application of the term investment strategies, providing a limited exemption for banks, and permitting the registration of SIDs.[1186] Due to these changes, few, if any, bank employees of the type described by the commenter will be engaging in municipal advisory activities that would require filing of a Form MA–I. For those who are, the Commission believes that it is as important to obtain this information as it is with respect to any other natural

[1173] As noted above, the Commission believes that, in fact, there is very little overlap between the information required by Form MA and that required by Form MA–I. For example, when Form MA asks for the number of employees of the firm engaged in municipal advisory activities, such information might be gleaned, technically, by counting all the Form MA–I submissions filed by the firm, but is not readily apparent. When Form MA asks for the names of all associated persons of the firm and requires the firm to indicate whether each such person is active in certain municipal advisory related fields, the firm is not required to state whether the associated person is an employee and it does not capture information on other businesses in which the person is engaged. The requirement to list the firm's registration information (which, of course, is available on the firm's Form MA) on the Form MA–I of the individual will better serve to identify the individual and locate his or her firm when only the database of individuals reported on Form MA–I is being searched, separately from the database in which information obtained in Forms MA is collected. Similarly, the responses to Form MA's questions in Item 9, in which a firm must disclose whether any of its associated persons has had a disciplinary history, do not shed light on the history of any particular employee unless the relevant DRPs are consulted. Moreover, the disciplinary history questions in Item 6 of Form MA–I, other than those concerning criminal, regulatory, and civil judicial actions, do not appear in Form MA.

[1174] *See* Deloitte Letter; JP Morgan Chase Letter; SIFMA Letter I. Deloitte stated that registration for natural persons should be eliminated altogether; or that individuals at least be required to register only as ''registered representatives.'' *See also* MSRB Letter I, stating that ''forms relating to individuals at municipal advisor entities should be viewed as officially submitted by the municipal advisor entity.''

[1175] *See* Deloitte Letter.

[1176] SIFMA Letter I.

[1177] *Id.* SIFMA stated that because the MSRB is already planning to develop qualification tests for individuals engaged in municipal advisory activities, ''having only the MSRB, as opposed to both the SEC and MSRB, involved in the licensing and registration of individuals would eliminate duplication and reserve the SEC resources for regulation of municipal advisory firms.''

[1178] *See id.* SIFMA added that, because many individual municipal advisors may also be associated persons of a broker-dealer or investment adviser, it would better serve the interests of the public to have a single source of information—on Form U4—about a licensed individual. It would also be easier for an individual and his or her employer to ensure that the individual is properly licensed under all applicable regulatory programs if only a single form is required to be filed with any applicable regulator. *See also* Financial Services Roundtable Letter (advocating use of Form U4 for individuals).

[1179] *See supra* note 938.

[1180] The comments cited in this paragraph appeared in the context of letters opposing the application of the definition of municipal advisor to appointed members of public boards, *see supra* note 1161, but are treated here separately because of their possible relevance to any municipal advisor.

[1181] *See* letter from Jo Anne Bernal, County Attorney, El Paso County, Texas.

[1182] *Id.*

[1183] *See* Section 15B(c)(2) and (4) of the Exchange Act.

[1184] Except where indicated otherwise, the information supplied on Forms BD, ADV, and U4 is not kept confidential.

[1185] Capital One Letter.

[1186] *See supra* Sections III.A.1.b.viii.

person who is engaged in municipal advisory activities.

The Commission also received comment letters on Form MA–I from many municipal entities and agencies concerned about the impact of requiring appointed members of public boards to make the disclosures required by the form.[1187] As discussed in Section III.A.1.c.i., the Commission is exempting all members of the governing body of a municipal entity (acting in their capacity as such), including appointed members, from the requirement to register as municipal advisors. Thus, the concerns of these commenters should be alleviated.

Items 1 and 2: Identifying Information and Other Names

Item 1 of Form MA–I is being adopted substantially as proposed, with minor modifications as discussed below.[1188] Item 1 requires certain basic identifying information to be disclosed about any natural person engaged in municipal advisory activities.[1189] Although, as discussed above, certain information about an employee of a firm would already be available through the firm's Form MA, the individual's Form MA–I requires more information, including:

- the individual's CRD Number, if he or she has one;
- the individual's social security number; [1190]
- the date of the individual's employment or contract with the firm;
- whether the individual has an independent contractor relationship with the firm;
- the firm's registration status;
- all the offices of the firm where the individual may be physically located and all the offices from which the individual is or will be supervised; and
- whether any of these offices are located in a private residence.

These elements of Item 1 are being adopted as proposed. With respect to information about the employee's firm, Item 1, as proposed, would have required the filer to provide any SEC file and registration numbers assigned to the firm in any registered capacity and also the firm's CRD Numbers, if any. To ease the completion of the form, Item 1, as adopted, requires a filer only to indicate whether the firm is currently registered as a municipal advisor on a Form MA and, if not, whether it has filed an application for registration on Form MA. If the latter, the filing date and the firm's EDGAR CIK number must be provided.

Item 1, as adopted, additionally requires a filer to provide the name under which the firm primarily conducts its municipal advisor-related business, if different from its legal name. It further also takes into account that an individual may be employed at more than one municipal advisory firm and requires entry of the relevant information for each such firm.[1191] The Commission believes that this additional information would be useful to the Commission's oversight of the municipal advisory market, without unreasonably increasing the burdens upon registrants in completing the form.

As proposed, Item 2 requires a filer to disclose all other names that the natural person engaged in municipal advisory activities is using or has been known by since the age of 18, such as nicknames, aliases, and names before and after marriage. No comments were received concerning Item 2, and it is being adopted substantially as proposed.

As stated in the Proposal, the Commission believed that the information sought by Items 1 and 2 would be useful to municipal entities and obligated persons in exploring the background, credentials, reliability, and trustworthiness of an individual in the course of making a decision whether to engage that natural person or his or her firm as a municipal advisor.[1192] The same information will be valuable to regulators in overseeing municipal advisors and investigating possible instances of wrongdoing.

Item 3: Residential History

In Item 3, which is being adopted substantially as proposed,[1193] Form MA–I requires disclosure of each location where the natural person engaged in municipal advisory activities has resided for the past five years, including the time period at each residence.[1194] Changes in residence must be reported (via an amendment) as they occur. In addition, no gaps greater than three months between addresses are permitted.

As stated in the Proposal, the Commission believes that the residential history of a natural person engaged in municipal advisory activities, like the additional identifying information Form MA–I seeks, will be useful for municipal entities and other interested parties in exploring the background, credentials, reliability, and trustworthiness of the individual and be valuable to regulators in overseeing municipal advisors and investigating possible instances of wrongdoing. The information that is required regarding residential history is similar to the information requested on Form U4.[1195]

Item 4: Employment History

In Item 4, which is being adopted substantially as proposed,[1196] Form MA–I requires a listing of the complete employment history of the natural person engaged in municipal advisory activities for the past ten years, including full and part-time employment, self-employment, military service, and homemaking. All statuses during the ten-year period, such as unemployed, full-time education, extended travel, and other similar circumstances must be included. In addition, the filer may not leave a gap longer than three months between entries. As discussed in the Proposal, the information required is similar to the information requested on Form U4.[1197] Such information will help inform an understanding of an employee's business experience and provide useful information in preparing for regulatory examinations.[1198]

[1187] *See, e.g.,* letter from Barry Moline, Executive Director, Florida Municipal Electric Association, dated February 22, 2011; and Pennsylvania Public School Employees' Retirement Board Letter.

[1188] No comments were received concerning Item 1.

[1189] This includes, for example, the individual's full legal name. It also requires the registration and other identifying numbers of the individual's firm to be provided directly in the Form MA–I, to make it easier for regulators, municipal entities and investors to gather the information they need.

[1190] This information will not be made publicly available. As stated in the Proposal, this information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)). *See* Proposal, 76 FR 851, note 240. *See also generally supra* note 968.

[1191] The form also asks the filer for the total number of such firms. This question does not require a filer to research any further information than indicated above, but it can serve as a helpful cross-check to the filer as well as to regulators, and is also a useful number for interested parties who do not need the additional details.

[1192] *See* Proposal, 76 FR 851.

[1193] No comments were received concerning Item 3, other than in the general context of concerns that the degree of detail required by the forms was overly burdensome and, in particular, in the context of concerns about registration requirements for appointees to municipal entity boards, which concerns are discussed elsewhere in this release.

[1194] Non-substantive, technical, and clarifying changes have been made to Item 3. *See infra* note 1237.

[1195] *See* Proposal, 76 FR 852. As stated in the Proposal, the Commission does not intend to make the information required by Item 3 publicly available. *See id.,* at 852, note 241. A statement to this effect has been added to the introduction to Item 3, as adopted.

[1196] No comments were received concerning Item 4, other than in the general context of concerns that the degree of detail required by the forms was overly burdensome and, in particular, in the context of concerns about registration requirements for appointees to municipal entity boards, which concerns are discussed elsewhere in this release.

[1197] The Commission intends to make this information publicly available.

[1198] *See* Proposal, 76 FR 852. Because no separate blanks are provided for statuses other than

Continued

Item 5: Other Business

Item 5 of Form MA–I is being adopted substantially as proposed.[1199] Item 5 requires information about the individual's other business activities, if any, in which he or she is currently engaged, as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. The form asks for the name of the other business, its address, whether it is municipal advisor-related and, if not, the nature of the business in which it is engaged.

The filer is required to provide the individual's position, title, or relationship with the other business, the start date of the relationship, the approximate number of hours per month the individual devotes to the other business, and a brief description of his or her duties relating to the other business. As discussed in the Proposal, the information sought in this section is similar to the information sought by the equivalent section in Form U4. Such information will help the Commission understand the other business activities of a natural person engaged in municipal advisory activities and will help staff prepare for examinations.[1200]

Item 6: Disclosures Relating to Any Criminal Action, Regulatory Action, Investigation, Civil Judicial Action, Customer Complaint/Arbitration/Civil Litigation, Termination, Certain Financial Matters, and Judgments and Liens

Item 6 of Form MA–I, regarding the disciplinary history of the individual, is being adopted substantially as proposed.[1201] However, the Commission has made some modifications to the information sought in the DRPs, which are discussed below.

Item 6 of Form MA–I includes three sections that require the same general types of information regarding an individual's criminal, regulatory, and civil judicial history, if any, as required regarding municipal advisory firms in corresponding sections in Form MA,[1202] although the questions in these sections of Form MA–I differ somewhat from those in the corresponding sections of Form MA, as will be discussed below. As in Form MA, certain responses in the criminal, regulatory, and civil judicial action sections of Form MA–I require disclosure of complete details of all events or proceedings in DRPs pertaining to these areas.

Item 6 of Form MA–I also has five additional disclosure sections [1203] relating to an individual, which are also discussed below. Four of these ask about any investigations, terminations, customer complaints/arbitration/civil litigation, or judgments/liens relating to the individual. Each of these four sections has an associated DRP requiring further detail where applicable. The fifth additional section, which has no associated DRP, asks for certain financial disclosures. As discussed in the Proposal, the Commission believes that additional disclosures in these five areas, which are also required of individuals associated with broker-dealers and investment advisers on Form U4, are appropriate to aid municipal entities, obligated persons, and other members of the public in researching the background of municipal advisors and to aid regulators in enhancing their oversight of municipal advisors.[1204]

As discussed in the Proposal, the Commission believes that the additional disclosure items in the DRPs will be helpful to municipal entities and obligated persons as clients or prospective clients of municipal advisors.[1205] The information may also serve as the basis for granting or instituting proceedings to deny a registration or for revoking a registration or imposing other sanctions by the Commission with respect to an individual.[1206]

As a general matter, as was the case with the proposed DRPs of Form MA, many of the questions in the proposed DRPs of Form MA–I did not ask for specifics. The Commission believes that, with regard to certain questions, additional details of the kind requested in the adopted versions of Form MA's DRPs will help regulators, municipal entities, and other interested parties more easily research and better assess the background of the individual that is the subject of the DRP of Form MA–I.[1207] Thus, many of the revisions made to the DRPs of Form MA have also been made to the DRPs of Form MA–I.

Among these are changes in questions relating to: removing a DRP filed in error; [1208] incorporation by reference of disclosures already filed elsewhere; [1209] names and types of courts, regulatory authorities and forums and their locations, and parties who initiated the relevant action; [1210] how to report an event; [1211] appeals; [1212] disposition of a case and sanctions imposed in criminal cases; [1213] sanctions and/or relief sought, type of resolution, and sanctions ordered in regulatory and civil judicial actions; [1214] and other matters.[1215]

The following discussion summarizes Item 6 and its related DRPs as well as additional revisions made in their adopted versions:

Criminal Action Disclosures

With respect to felonies, Item 6 of Form MA–I—in contrast to the disclosures required by Item 9–A of Form MA—requires disclosure of:

- any past conviction of, or plea of guilty or nolo contendere to, a felony by the individual, rather than limiting the disclosure to the past ten years, as in a firm's or solo practitioner's Form MA;
- any charges of felony against the individual in the past, rather than limiting disclosure to currently pending charges, as in a firm's or sole proprietor's Form MA; and
- any convictions of, or plea of guilty or nolo contendere to, a felony by an organization based on activities that occurred when the individual exercised control over the organization—a disclosure not required in Form MA.

With respect to misdemeanors, while Form MA requires only disclosures of convictions and pleas concerning an individual looking back ten years, and requires only disclosures of charges that are currently pending, Form MA–I requires disclosure of such convictions, pleas, and charges that occurred at any time in the individual's past. Misdemeanors, and convictions, pleas,

employment at a firm or company, (*e.g.,* military service, homemaking, unemployment, education, or travel), guidance has been included in Item 4, as adopted, instructing the filer to enter such statuses in the space provided for ''Name of Municipal Advisory Firm or Company.'' Regarding non-substantive, technical, and clarifying changes, generally, *see infra* note 1237.

[1199] No comments were received concerning Item 5. Only slight clarifying changes have been made in the wording of this item as adopted.

[1200] *See* Proposal, 76 FR 853.

[1201] The Commission received no comments specifically relating to Item 6 in the Proposal.

[1202] *See supra* Section III.A.2.b.

[1203] In the proposed version of Item 6, the question about investigations appeared at the end of the Regulatory Action section. In the adopted version, a separate section has been created for this question (which remains the same) for the sake of clarity, as it concerns both criminal and regulatory investigations. Form MA–I, both as proposed and adopted, has a separate DRP that concerns only investigations reported in this question.

[1204] *See* Proposal, 76 FR 853.

[1205] *See id.,* at 854.

[1206] *See supra* notes 1093–1097 and accompanying text (discussing grounds for revocation of a municipal advisor's registration or imposing other sanctions).

[1207] *See supra* note 1123.

[1208] *See supra* text following note 222.

[1209] *See supra* notes 1127–1128 and accompanying text.

[1210] *See supra* notes 1129–1130 and accompanying and following text.

[1211] *See supra* text accompanying note 1132.

[1212] *See supra* note 1134 and accompanying text.

[1213] *See supra* notes 1135–1137 and accompanying text.

[1214] *See supra* notes 1137–1139 and accompanying text.

[1215] *See supra* notes 1140-1142 and accompanying text.

and charges of misdemeanor against an organization while the individual exercised control over the organization are also required to be disclosed.

These criminal action disclosure requirements regarding individuals beyond the information required in Form MA, are consistent with the disclosure requirements on Form U4. In addition, as discussed in the Proposal, these disclosures provide additional information with respect to natural persons engaged in municipal advisory activities that will be useful to the Commission's regulatory and examination programs, and may be useful to municipal entities and obligated persons who are clients or prospective clients of the individual or his or her firm.[1216]

As proposed and adopted, the Criminal Action DRP of Form MA–I asks for additional details regarding, among other things: the charges, number of counts, and the court in which they were brought; status of the action; details of its disposition and sanctions ordered; and the date of amended charges, if any. It also provides an option and space for comment consisting of a brief summary of the circumstances leading to the charge(s) as well as their current or final disposition.

Certain revisions have been made in the adopted version of the DRP. For example, in its disclosure requirements concerning the charges, the DRP, as adopted, asks specifically whether the charge is (a) municipal advisor-related or (b) investment-related; and, if so, in each case, (c) what product type it involved.[1217]

Moreover, as proposed, the DRP required a description, in narrative form, of details concerning any sentence or penalty imposed, its start date, and its duration, and the amount and date of payment.[1218] As adopted, the DRP asks specifically whether any sentence or any other penalty is ordered, and requires, if so, a description of whether it involved prison, jail, probation, community service, counseling, education, or other. It further asks, in question-by-question format, for the duration in days, months, and/or years of any incarceration, the start and end dates, whether any concurrent sentence is to be served, and, if so, the end date. It also asks, in question-by-question format, whether any portion of a monetary penalty was reduced or suspended, whether it has been paid in full, and, if not, how much remains unpaid. These details should contribute to the clarity of the picture received by regulators, municipal entities, and investors of the individual's disciplinary background.

Finally, the proposed Criminal Action DRP of Form MA–I did not ask specifically about appeals. In its adopted version, the DRP asks whether the criminal action was appealed, and, if so, the name and location of the appeals court, and other details. Choices are also provided to describe specifically the disposition of any appeal.[1219] The Commission believes that obtaining this information will better enable regulators, municipal entities, and other interested parties to research the complete criminal history of the individual.[1220]

Regulatory Action Disclosures

As proposed and adopted, the questions in Item 6 of Form MA–I relating to regulatory actions by the Commission or the CFTC, similar to those in Form U4, require the same disclosures as in proposed Item 9 of Form MA and additional disclosures, including whether the Commission or the CFTC has ever found the individual to have:

- willfully violated, or been unable to comply with, any provision of the federal securities laws, the Commodity Exchange Act, and the rules thereunder, and any rule of the MSRB;
- willfully aided, abetted, commanded, induced, or procured the violation by any other person of these laws and rules; and
- failed reasonably to supervise another person subject to his or her supervision with a view to preventing violation of these laws and rules.

As proposed and adopted, Form MA–I requires the same disclosures as proposed Form MA with respect to findings and actions relating to the individual by other federal regulatory agencies, state regulatory agencies, and foreign financial regulatory authorities. It also requires additional disclosures, including whether the individual has ever been subject to a final order of a state securities commission or similar agency or office; state authority that supervises or examines banks, savings associations, or credit unions; state insurance commission; an appropriate federal banking agency; or the National Credit Union Administration that:

- bars the individual from association with an entity regulated by such commission, agency, authority or office, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or
- constitutes a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

In addition to the disclosures required of a municipal advisory firm regarding its individual associated persons on proposed Form MA, Form MA–I as proposed and adopted requires disclosure of any finding by an SRO that the individual:

- willfully violated, or is unable to comply with, any provision of the federal securities laws, the Commodity Exchange Act and the rules thereunder, or the rules of the MSRB;
- willfully aided, abetted, counseled, commanded, induced, or procured the violation of any of these laws or rules; or
- failed reasonably to supervise another person subject to his or her supervision, with a view to preventing such violations.

Like Form MA, Form MA–I as proposed and adopted also requires disclosure of whether the individual had an authorization to act as an attorney, accountant or federal contractor revoked or suspended.

Item 6 of Form MA–I as proposed and adopted also requires disclosure of whether the individual has been notified in writing that he or she is currently the subject of a regulatory complaint or proceeding that could result in any occurrence of the kind that would trigger any of the disclosure requirements described above relating to regulatory actions, except the latter occurrence pertaining to attorneys, accountants, and federal contractors. The form advises that if the answer is affirmative, the filer must complete a Regulatory Action DRP.[1221]

[1216] *See* Proposal, 76 FR 853.

[1217] The Commission believes that these additional details contribute to an accurate picture of the individual's disciplinary history and notes that the same questions are asked in the equivalent DRP of Form MA, as both proposed and adopted. On the other hand, specific questions regarding pleas to amended charges have been removed as unnecessary because the requested information should be provided in responses to other questions.

[1218] The form provided a blank space for: ''Sentence/Penalty, Duration (if suspension, probation, etc.), Start Date of Penalty: (MM/DD/YYYY), End date of Penalty (MM/DD/YYYY); If Monetary penalty/fine—Amount paid, Date monetary/penalty fine paid: (MM/DD/YYYY), if not exact, provide explanation.'' It also gave the filer the option of providing ''a brief summary of circumstances leading to the charge(s) as well as the current status or final disposition.''

[1219] These choices are: affirmed; vacated and returned for further action; or vacated/final. An applicant may also respond ''other,'' in which case the other type of disposition must be specified.

[1220] *See also supra* note 1134.

[1221] Form MA does not include an analogous question and advisory in its regulatory action section. Item 6, as proposed, also asked whether the

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The DRP for regulatory action disclosure in Form MA–I, as proposed and adopted, requires the filer to provide further details, including: the allegations, which regulatory authority initiated the action, the kind of product involved, and the sanctions sought; the status of the action; the disposition or resolution of the action, the sanctions ordered, and their duration; the registration capacities of the individual that were affected; whether requalification was a condition of any sanction reported, and whether it was by exam, retraining, or other process; the length of time given to requalify; and whether the requalification condition was satisfied. Disclosures required in the Regulatory Action DRP, as proposed, also include details of any monetary sanction imposed, including amount; portion levied against the individual; any amount waived; payment plan; whether such plan was current; date paid; and whether the sanction was a civil or administrative penalty or fine, a monetary penalty other than a fine, disgorgement, or restitution. Revisions made in the Regulatory Action DRP, as adopted, include the following:

- In the DRP, as proposed, a filer was asked to identify every type of product involved in the action. As adopted, the DRP requires the filer to distinguish between principal product types and other products.
- As proposed, the DRP asked about any bars and suspensions of the individual from his or her registration capacities. As adopted, the DRP also requires information specific to any injunction that was imposed as a regulatory sanction.
- In addition to the questions about requalification and exams, as described above, the DRP as adopted asks for a description in narrative form of any examination, re-training, or other process that was required as a condition for the person to re-qualify.

The Commission believes that these additional details will provide regulators, municipal entities, and investors with a more accurate picture of disciplinary history of the individual.[1222]

Disclosure of Investigations [1223]

Item 6 of Form MA–I, as proposed and adopted, asks whether the individual has been notified in writing that he or she is currently the subject of any investigation that could result in a positive answer to any of the questions in either the criminal and regulatory sections of Item 6 described, except the question pertaining to attorneys, accountants, and federal contractors. If the answer is positive, an Investigation DRP must be filed.

The Investigation DRP requires details of any such investigation, including the date the investigation was initiated and whether it was initiated by an SRO, a foreign financial regulatory authority (giving the specific jurisdiction), the Commission, other federal agency, or ''other.'' The Investigation DRP requires that the full name of the authority that initiated the investigation be specified. Space is provided for the filer to briefly describe the nature of the investigation, if known; whether it was pending or resolved; and details of any resolution. Space for optional comment is also provided to present a brief summary of the circumstances leading to the investigation and its current status or final disposition and/or findings.

The Investigation DRP also asks for similar details regarding a criminal investigation by a federal, military, state, foreign or international authority or court. Although Item 6 requires a DRP for criminal investigations, the DRP, as proposed, did not specifically reference criminal investigations or authorities.

Civil Judicial Action Disclosure

The disclosures required by Form MA–I with respect to certain matters relating to an individual's civil judicial history are the same as disclosures required on Form MA. Thus, a filer is required to disclose on Form MA–I whether the individual:

- was ever enjoined by a domestic or foreign court in connection with any investment-related or municipal advisor-related activity;
- was ever found by a domestic or foreign court to be involved in a violation of any investment-related or municipal advisor-related statute or regulation; or
- ever had an investment-related or municipal advisor-related civil action brought against him or her dismissed, pursuant to a settlement agreement, by a domestic jurisdiction [1224] or foreign financial regulatory authority; or
- was ever named in any such pending action that could result in a positive answer to the three previous questions.

As discussed in the Proposal, the Commission believes that it is appropriate to seek information regarding investment-related activities as well as municipal advisor-related activities due to the significant similarities that exist between the two advisory functions. Moreover, such information could serve as a basis to institute proceedings to deny registration of a municipal advisor or to impose other sanctions on the municipal advisor's activities.[1225]

A DRP is required for affirmative responses to questions under this item. Specifically, the DRP requires, among other things, information regarding: by whom the court action was initiated; the name of the party initiating the proceeding; information about the relief sought; the date on which the action was filed and notice or process was served; the types of financial products involved; a description of the allegations relating to the civil action; the current status, including whether the action is on appeal and details relating to any such appeal; sanction details; and if the disposition resulted in a fine, disgorgement, restitution or monetary compensation, information relating thereto. The DRP also provides the opportunity for a filer to provide additional comment, including a summary of the circumstances leading to the action and current status.

The Civil Judicial Action DRP, as adopted, has been modified to ask whether the individual is a named defendant in the action for which the DRP is being completed; [1226] indicate, if an order was issued, whether the order is a final order based on violations of any laws or regulations that prohibit fraudulent or deceptive conduct; and indicate whether a condition of any sanction was requalification by examination, retraining, or other process. The Commission believes that these changes generally will add clarity

individual has been notified in writing that he or she is the subject of an *investigation* that could result in affirmative answers to questions about criminal and regulatory actions above in the form. This question has been separated into a separate section in the form, as adopted, titled ''Investigation Disclosures.'' *See infra* note 1223 and accompanying text.

[1222] Other revisions in the adopted version of the Regulatory Action DRP: The form now asks for date of service of process in pending actions; and additional details when one or more injunctions specify different time periods; and more choices to describe sanctions sought, how the action was resolved, and sanctions ordered.

[1223] *See supra* note 1203.

[1224] The phrase ''domestic jurisdiction'' is used in the form, as adopted, in place of ''state'' in the proposed version. The question of whether such an occurrence is part of the individual's history was not intended to be limited to state actions.

[1225] *See* Proposal, 76 FR 854–855.

[1226] In addition, this DRP, as proposed and adopted, asked for the full name(s) of the plaintiff(s) in the action. The adopted version further asks the filer whether all plaintiffs were fully identified, to make clear that the information needs to be complete.

for filers in determining the type of information that must be provided.[1227]

Customer Complaints/Arbitration/Civil Litigation

Form MA does not require a municipal advisory firm to disclose any customer complaints, arbitration matters, and civil litigation concerning natural person municipal advisors. Form MA–I, however, requires disclosure of whether an individual engaged in municipal advisory activities has ever been:

- the subject of a complaint initiated by a customer, whether written or oral, regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices; or
- the subject of an arbitration or civil litigation initiated by a customer regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices.

In the case of a complaint, the filer must indicate whether the complaint is still pending or was settled. In the case of arbitration or civil litigation, the filer must indicate whether the arbitration or litigation is still pending; resulted in an arbitration award or civil judgment against the individual in any amount; or was settled.

A DRP is required for affirmative responses to questions under this item. Specifically, the relevant DRP requires the filer to disclose the customer's name; the customer's state of residence and other states of residence; the employing firm of the individual when the activities occurred that led to the complaint, arbitration, CFTC reparation or civil litigation; and the allegations and a brief summary of events related to the allegations, including the dates when they occurred; the product type; and the alleged compensatory damage amount.

For customer complaints, arbitration, CFTC reparation, or civil litigation in which the individual is not a named party, the DRP requires disclosure of whether the complaint is oral or written, or whether it is an arbitration, CFTC reparation or civil litigation (and the arbitration or reparation forum, docket or case number, and the filing date); whether the complaint, arbitration, CFTC reparation or civil litigation is pending, and if not, the status. The DRP requires disclosure of the status date and the settlement award amount, including the individual's contribution amount.

If the matter involves an arbitration or CFTC reparation and the individual is a named respondent, the DRP requires disclosure of the entity with which the claim was filed; the docket or case number; the date process was served; whether the arbitration of CFTC reparation is pending, and if not pending the form of disposition; the disposition date; and the amount of the monetary award, settlement or reparation (including the individual's contribution).

If the matter involves a civil litigation in which the individual is a defendant, the DRP requires disclosure of the court in which the case was filed; the location of the court; the docket or case number; the date the complaint was served on or received by the individual; whether the litigation is still pending; if not still pending the form of its disposition; the disposition date; the judgment, restitution or settlement amount, including the individual's contribution amount; whether the action is currently on appeal, and if so, the date the appeal was filed, the court in which the appeal was filed, the location of the court, and the docket or case number for the appeal. The DRP also provides for optional additional comment, such as a summary of the circumstances leading to the complaint.

As discussed in the Proposal, these disclosures, too, mirror similar disclosures in Form U4, provide additional information about natural persons engaged in municipal advisory activities that may be useful to municipal entities or obligated persons as clients or prospective clients, and help the Commission prepare for and plan examinations.[1228]

Several revisions have been made to this DRP, as adopted. In the questions relating to settlements, awards, and monetary judgments, the DRP now additionally asks whether any portion of the individual's settlement, award, or monetary judgment amount was waived, and, if so, how much; and whether the final amount was paid in full, and, if so, the date. In the section relating to civil litigation, the DRP now additionally asks whether the individual appealed, and, if so, to which court, its location, and other details.[1229]

Termination Disclosure

Unlike Form MA, Form MA–I requires disclosure regarding the termination of a natural person's employment. Specifically, consistent with Form U4, Form MA–I asks whether the individual ever voluntarily resigned or was discharged or permitted to resign after allegations were made that accused him or her of:

- violating investment-related or municipal advisor-related statutes, regulations, rules, or industry standards of conduct;
- fraud or the wrongful taking of property; or
- failure to supervise in connection with investment-related or municipal advisor-related statutes, regulations, rules or industry standards of conduct.

An affirmative response to the questions described above requires additional information on a related DRP. Specifically, the DRP requires disclosure of the name of the firm, the type of termination (whether discharged, permitted to resign, or voluntary resignation), the termination date, the allegations, and the product types. The DRP also provides for optional additional comment, such as a summary of the circumstances leading to the termination.

As discussed in the Proposal, this disclosure will provide information that will be useful to the Commission in planning and preparing for inspections and examinations. The disclosure also will be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).[1230]

Financial Disclosures

Item 6 of Form MA–I, as proposed and as adopted, also requires financial disclosures regarding individuals that are not required to be made on Form MA by municipal advisory firms, generally, regarding their associated persons or by sole proprietors regarding themselves. Specifically, the form asks the filer whether, within the past ten years:

- the individual has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition;
- an organization controlled by the individual has made a compromise with

[1227] In addition, the list of sanctions or relief that are specified as required to be reported has more detail in order to provide more choices for filers. The list of specific possible resolutions of the action that the applicant can indicate as applicable has also been expanded. More information also is sought regarding details of how the action was resolved, and, if resolved with sanctions, more details about those sanctions.

[1228] *See* Proposal, 76 FR 855.

[1229] *See generally supra* notes 1208–1215.

[1230] *See* Proposal, 76 FR 856.

creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition based upon events that occurred while he or she exercised control over it; or

• a broker or dealer controlled by the individual has been the subject of an involuntary bankruptcy petition, had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act based upon events that occurred while he or she exercised control over it.

In addition, a filer must disclose whether a bonding company ever denied, paid out on, or revoked a bond for the individual. There is no DRP associated with these financial disclosures.

Judgment/Lien Disclosure

Item 6 of Form MA–I also asks whether the individual has any unsatisfied judgments or liens against him or her. An affirmative response requires additional disclosure on a DRP. Specifically, the filer must disclose the amount, holder, and type of the judgment or lien. The form also requires information about the date the judgment or lien was filed, the court in which the action was brought, the name and location of the court, the docket or case number,[1231] whether the judgment or lien is outstanding, and if the judgment or lien is not outstanding, the status date and how the matter was resolved. The DRP also provides for optional comment, such as a brief summary of the circumstances leading to the action.[1232]

As discussed in the Proposal, the Commission believes that the information that is required, which is consistent with that required by Form U4, will be useful for its regulatory purposes, including planning and preparing for inspections and examinations. The Commission also believes that the information will be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).[1233]

Other Changes in Form MA–I, as Adopted

Additional Modifications to the DRPs

The Commission has made the following modifications to the DRPs in addition to those discussed above. An instruction has been added at the beginning of all the DRPs, regarding incorporation by reference, to clarify that the filer of Form MA–I may incorporate information either from a DRP that was filed by the firm, or from a DRP filed by another Commission registrant about the individual. This should help filers avoid the inconvenience and burden of completing the additional information.

When a DRP is being filed to remove a previously filed DRP, the filer in each case is asked whether the reason is because the matter was resolved in the individual's favor, or because the DRP was filed in error.[1234] Moreover, as proposed, several of the DRPs asked for the name of the employing firm of the individual when the relevant event occurred only if the firm was a municipal advisory firm.[1235] The Commission has concluded, however, that the name of the individual's employer when the activity occurred can be useful to regulators, municipal entities, and investors regardless of whether the individual was employed specifically by a municipal advisory firm, and is not limiting the requested information to such firms. In the case of a municipal advisory firm employer, however, the DRPs as adopted ask for the municipal advisor registration number of the firm.[1236]

As proposed, the Regulatory and Civil Action DRPs asked the filer to identify the principal product types that were the subject of the activity regarding which the formal action involving the individual was taken. As adopted, they also ask for any other product types. Finally, the adopted versions of the Regulatory and Civil Action DRPs ask for the date on which notice or other process was served if the action being reported on the DRP is still pending.

An Associated Person Who Ceases To Be Engaged in Municipal Advisory Activities

Because Form MA–I, as adopted, is not a registration form, when a natural person associated with a registered municipal advisor ceases to engage in municipal advisory activities on its behalf, Form MA–W—which is a form designed for withdrawal of registration—will not be required. Instead, the change must be reported by the registered municipal advisor that filed the Form MA–I relating to that person. This is accomplished by filing an amendment to the Form MA–I, which must be submitted promptly, like any other amendment.

For this purpose, a filer submitting an amendment to Form MA–I can indicate that the purpose of the amendment is to report that the individual to whom the form relates is no longer an associated person of the municipal advisory firm or no longer engages in municipal advisory activities on its behalf. When submitting an amendment of this kind, the filer must complete only the portion of the form asking for the name of the individual, his or her social security number, and CRD Number if any (Item 1–A) and the Execution Page of the form (Item 7).

Non-Substantive, Technical, and Clarifying Changes

In addition, a number of non-substantive, technical and clarifying changes have been made to Form MA–I, as adopted, to make the form clearer and more user-friendly. These include, where applicable, the same kinds of changes made to Form MA.[1237]

Item 7: Execution of the Form

If Form MA–I is being filed by a municipal advisory firm with respect to a natural person engaged in municipal advisory activities on its behalf, the authorized representative of the firm who signs the Execution Page of Form MA–I must attest to the truth and correctness of the information provided in the form. He or she must also attest that the firm has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any proceeding before, the SEC or any self-regulatory organization in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address given in Item 1 of the firm.

If Form MA–I is being filed by a natural person municipal advisor who is a sole proprietor, by signing the Execution Page of Form MA–I, the filer must represent that the information and statements made in the form are true and correct. He or she must also consent that service of process of any civil action or notice of any proceeding before the Commission or an SRO

[1231] *See supra* note 968.

[1232] Modifications made to the DRPs of Form MA–I as adopted are discussed below under the sub-heading, ''Other Changes in Form MA–I, As Adopted.''

[1233] *See* Proposal, 76 FR 856.

[1234] This question is adapted from a similar question in the DRPs to Form MA, and should help clarify the status of the applicant for users of the information.

[1235] Included are the Regulatory, Civil Judicial Action, Termination, and Customer Complaint/Arbitration/Civil Litigation DRPs.

[1236] The Commission believes this specific information is particularly relevant for municipal advisor regulation.

[1237] *See supra* note 1147. Examples of other revisions of this nature in Form MA–I include: Guidance advising filers to refer to the Specific Instructions for Form MA–I; corrections of inaccurate references; clarifying and editorial changes; and additional instructions to aid the filer that do not introduce any substantive changes.

regarding its municipal advisory activities may be given by registered or certified mail to the address he or she has supplied in Item 1 of the form.

As proposed, Form MA–I also required its signatory to certify that he or she has: (a) Sufficient qualifications, training, experience, and competence to effectively carry out his or her designated functions; (b) met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant SRO; and (c) the necessary understanding of, and ability to comply with, all applicable regulatory obligations.

The Commission received comment letters on the self-certification requirement in Form MA–I from many municipal entities and agencies concerned about the impact of requiring appointed members of public boards to make such certifications. As discussed in Section III.A.1.c.i., the Commission is exempting all members of the governing body of a municipal entity (acting in their capacity as such), including appointed members, from the requirement to register as municipal advisors. Thus, the Commission believes that the concerns of these commenters have been addressed. However, one comment received by the Commission regarding the self-certification requirement in Form MA–I, as proposed, called the requirement ''problematic.'' [1238]

In view of the change in the nature of Form MA–I, as adopted, including who is required to sign the form, the Commission has decided to eliminate the self-certification requirement in Item 7. Because, under the rules, as adopted, individuals who engage in municipal advisory activities on behalf of a registered firm are exempt from registration, and, with respect to these individuals, the function of Form MA–I is only to provide information, the self-certification requirement is no longer *a propos.* Moreover, as discussed above, the Commission has determined to remove the self-certification requirement with respect to firms in Form MA. Thus, Form MA–I, as adopted, will no longer require self-certification.

3. Rule 15Ba1–3: Exemption of Certain Natural Persons Associated With Registered Municipal Advisors From Registration[1239]

Rule 15Ba1–3, as adopted, exempts certain natural persons from registration with the Commission as a municipal advisor if the natural person is associated with a registered municipal advisor and engages in municipal advisory activities solely on behalf of a registered municipal advisor. This exemption is discussed above in Section III.A.2.a.[1240]

4. Rule 15Ba1–4: Withdrawal From Municipal Advisor Registration; Form MA–W

a. Rule 15Ba1–4: Withdrawal From Municipal Advisor Registration

Proposed Rule 15Ba1–3 provided that notice of withdrawal from registration as a municipal advisor must be filed on Form MA–W, in accordance with the instructions to the form, and set forth other requirements regarding withdrawal of a municipal advisor from registration. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1241] The Commission is adopting Rule 15Ba1–4 as it was set forth in proposed Rule 15Ba1–3, with certain minor, technical modifications.[1242] The rule as adopted, however, only applies to municipal advisors registered on Form MA, because the Commission is exempting from registration certain natural persons who are associated persons of a registered municipal advisor and who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[1243]

As with Forms MA and MA–I, Form MA–W must be filed electronically with the Commission.[1244] Form MA–W also constitutes a ''report'' for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[1245]

Rule 15Ba1–4 also provides that a notice of withdrawal from registration becomes effective for all matters on the 60th day after the filing of the Form MA–W. It may also become effective within a longer time period to which the municipal advisor consents or which the Commission by order determines as necessary or appropriate in the public interest or for the protection of investors, or within a shorter time if the Commission so determines.[1246]

The rule further provides that if a municipal advisor filed a notice of withdrawal from registration with the Commission at any time subsequent to the date of issuance of a Commission order instituting proceedings pursuant to Section 15B(c) of the Exchange Act [1247] to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the municipal advisor or if, prior to the effective date of the notice of withdrawal, the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon the withdrawal, the notice of withdrawal will not become effective except at the time and upon the terms and conditions as deemed by the Commission as necessary or appropriate in the public interest or for the protection of investors.[1248]

b. Form MA–W

The Commission received one comment letter regarding Form MA–W, which was generally supportive of the form.[1249] As discussed in more detail above,[1250] the Commission is exempting certain natural persons from municipal advisor registration. Accordingly, the Commission is adopting Form MA–W substantially as proposed, but is modifying it solely to remove all references to individual registration of natural persons associated with a municipal advisor and engaged in municipal advisory activities on its behalf and to Form MA–I as an

[1238] *See* SIFMA Letter I.

[1239] Rule 15Ba1–3, under the Proposal, contained the requirements for a municipal advisor to withdraw an existing registration. This provision is being adopted as Rule 15Ba1–4, which is discussed below.

[1240] *See supra* notes 938–939 and accompanying text.

[1241] *See* MSRB Letter I.

[1242] *See* Rule 15Ba1–4, as adopted. The modifications are non-substantive and are limited to updating citations in the rule text or changing the article ''such'' to the article ''the.''

[1243] In the Proposal, the Commission proposed to require natural person municipal advisors to register on proposed Form MA–I and accordingly proposed that these natural person municipal advisors would be required to file a Form MA–W to withdraw from registration with the Commission as a municipal advisor. *See* Proposal, 76 FR 850, 857. As discussed in more detail in Section III.A.2.a. and Section III.A.3., the Commission is adopting an exemption from registration for certain natural persons and Form MA–I will not be an application for registration.

[1244] *See* Rule 15Ba1–4(b).

[1245] *See* Rule 15Ba1–4(d). As a consequence, it will also be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA–W.

[1246] *See* Rule 15Ba1–4(c).

[1247] 15 U.S.C. 78*o*–4(c).

[1248] *See* Rule 15Ba1–4(c).

[1249] *See* MSRB Letter I.

[1250] *See supra* note 1243 and *supra* Section III.A.2.a. and Section III.A.3.

application for registration[1251] and to add an introductory direction to refer to the General Instructions for the forms in the MA series before completing Form MA–W. Form MA–W for municipal advisors is designed to be generally consistent with the requirements of Form ADV–W for investment advisers withdrawing from registration. First, Form MA–W requires a municipal advisor to provide identifying information keyed to the identifying information on, and the SEC file number of, the municipal advisor's Form MA. A municipal advisor is required to provide on Form MA–W the name of a principal or employee of the municipal advisor who is authorized to receive information and respond to questions about the Form MA–W. Contact information for a municipal advisor's outside counsel is insufficient.

A municipal advisor filing to withdraw its registration is required to indicate on Form MA–W whether it has received any pre-paid fees for municipal advisory activities that have not been delivered, including subscription fees for publications, and, if so, to specify the amount. In addition, the withdrawing municipal advisor is required to indicate how much money, if any, it has borrowed from clients and has not repaid. If the municipal advisor responds affirmatively to either question, it is required to disclose on Schedule W2 to Form MA–W the nature and amount of its assets and liabilities and its net worth as of the last day of the month prior to the filing of the Form MA–W.

A municipal advisor that is filing to withdraw its registration is required to indicate on Form MA–W whether it has assigned any municipal advisory contracts to another person that engages in municipal advisory activities, and if so, the municipal advisor is required to list in Section 4 of Schedule W1 to Form MA–W each person to whom it has assigned any such municipal advisory contracts and provide the requested information.

A municipal advisor filing to withdraw its registration also is required to indicate whether there are any unsatisfied judgments or liens against it. If the municipal advisor responds affirmatively that it owes money or has any judgments or liens against it, it is required to disclose on Schedule W2 to Form MA–W the nature and amount of its assets and liabilities and its net worth as of the last day of the month prior to the filing of the Form MA–W.

As discussed in the Proposal, the Commission believes that requiring such information from a withdrawing municipal advisor is appropriate for the protection of investors and those persons who do business with municipal advisors.[1252] The filing of Form MA–W and the information contained in the form will provide notice that the municipal advisor is no longer registered and, therefore, is not able to engage in municipal advisory activities without violating federal securities laws.[1253] Additionally, the information provided will alert clients and prospective clients to a municipal advisor's financial stability if the municipal advisor received fees from clients for services not yet delivered, borrowed any money from clients that has not been repaid, or has any unsatisfied judgments or liens at the time of withdrawal because the municipal advisor would be required to disclose the nature and amount of its assets and liabilities and net worth on Schedule W2. This information also will help regulators' investigative and enforcement efforts. Additionally, as noted in the Proposal, an investment adviser that withdraws from registration must supply similar information on its Form ADV–W.[1254]

As discussed below, Rule 15Ba1–8(c), as adopted, requires a municipal advisor withdrawing from registration to preserve its books and records.[1255] Therefore, a municipal advisor filing a Form MA–W is required to list the name and address of each person who has or will have custody or possession of the municipal advisor's books and records and the location at which such books and records are or will be kept. In addition, as discussed above, a withdrawing municipal advisor also is required to identify on Schedule W1 each person to whom it has assigned any of its contracts. As discussed in the Proposal, the Commission believes that such a requirement—which also exists for investment advisers—is important for the protection of participants in the municipal securities markets.[1256]

The signatory to the Form MA–W is required to certify, under penalty of perjury, that the information and statements made in the Form MA–W, including any exhibits or other information submitted, are true. If the form is being filed on behalf of a municipal advisor that is not a sole proprietor,[1257] the signature constitutes such certification by both the municipal advisor and the signatory. Similarly, the signatory is required to certify that the municipal advisor's books and records will be preserved and available for inspection as required by law. The signatory is also required to authorize any person having custody or possession of these books and records to make them available to authorized regulatory representatives.

The certification includes a statement that all information previously submitted on the municipal advisor's most recent Form MA (and Form MA–I for sole proprietors) is accurate and complete as of the date the Form MA–W was signed. It also includes an understanding by the signatory that if any information contained in items on the Form MA–W is different from the information contained on the most recent Form MA (and MA–I for sole proprietors), the information on the Form MA–W will replace the corresponding entry on the municipal advisor's Form MA (and/or MA–I for sole proprietors). As discussed in the Proposal, the Commission believes that the certification requirement should serve as an effective means to assure that the information supplied in Form MA–W is correct.[1258]

5. Rule 15Ba1–5: Amendments to Form MA and Form MA–I

Proposed Rule 15Ba1–4 set forth requirements regarding when amendments to Form MA and Form MA–I are required and how such amendments must be filed. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1259] The Commission is adopting Rule 15Ba1–5 substantially as proposed in Rule 15Ba1–4, but is modifying the rule

[1251] The Commission has removed references in certain instructions that contemplated individual registration of certain natural persons on Form MA–I and that designated Form MA–I as a registration form. Additionally, on the Execution Page, the Commission has also removed the certification for natural person municipal advisors other than sole proprietors.

When a natural person for whom a municipal advisory firm filed a Form MA–I is no longer an associated person or no longer engages in municipal advisory activities on behalf of the firm, the firm must file an amendment to the Form MA–I to indicate this change. *See* General Instruction 2.d. of the General Instructions and *supra* Section III.A.2.c., under sub-heading ''An Associated Person Who Ceases to be Engaged in Municipal Advisory Activities.''

[1252] *See* Proposal, 76 FR 857.

[1253] *See id.*

[1254] *See* 17 CFR 279.2. *See also* Proposal, 76 FR 857.

[1255] *See infra* Section III.C.

[1256] *See* Proposal, 76 FR 857.

[1257] As discussed in the Proposal, in the case of a municipal advisor that is not a sole proprietor, the signatory's certification includes a statement that he or she has signed on behalf of and with the authority of the municipal advisor firm withdrawing the registration. *See id.,* at 857, note 254.

[1258] *See id.,* at 858.

[1259] *See* MSRB Letter I.

primarily to be consistent with the exemption of certain natural persons from municipal advisor registration that the Commission is adopting in Rule 15Ba1–3. Specifically, the Commission's modifications to Rule 15Ba1–5 are limited to removing or revising rule text to reflect that natural persons who are associated with a municipal advisor and engaged in municipal advisory activities on its behalf are not required to register as municipal advisors on Form MA and that Form MA–I is not an application for registration and to update citations in the rule text. Therefore, the requirement in Rule 15Ba1–5 to amend promptly Form MA and Form MA–I applies exclusively to registered municipal advisors since they will be responsible for amendments to their own Form MA and amendments to Form MA–I for each natural person who is a person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1260]

Rule 15Ba1–5(a) requires that a registered municipal advisor must promptly amend the information in its Form MA: (1) At least annually, within 90 days of the end of the municipal advisor's fiscal year, or of the end of the calendar year for a sole proprietor;[1261] and (2) more frequently than annually if required by the General Instructions.[1262]

In addition to the annual update amendment to Form MA, General Instruction 8 specifies that a municipal advisory firm must amend its Form MA promptly whenever a material event has occurred that changes the information provided in the form. General Instruction 8 further states that, for purposes of Form MA, a material event will be deemed to have occurred if information provided in response to Item 1 (Identifying Information), Item 2 (Form of Organization), or Item 9 (Disclosure Information) becomes inaccurate in any way; or if information provided in response to Item 3 (Successions), Item 7 (Participation or Interest of Applicant, or of Associated Persons of Applicant in Municipal Advisory Client or Solicitee Transactions), or Item 8 (Owners, Officers and Other Control Persons) becomes materially inaccurate.[1263]

In addition, General Instruction 8 provides that a non-resident municipal advisory firm must promptly file an amendment to Form MA to attach an updated opinion of counsel after any changes in the legal or regulatory framework or the firm's physical facilities that would impact its ability, as a matter of law, to provide the Commission with access to its books and records or to inspect and examine the municipal advisory firm.[1264] As the Commission stated in the Proposal,[1265] an amendment in such case should include a revised opinion of counsel describing how, as a matter of law, the municipal advisor will continue to meet its obligations to provide the Commission with the required access to the municipal advisor's books and records and to be subject to the Commission's onsite [1266] inspection and examination under the new regulatory regime. If a registered non-resident municipal advisory firm becomes unable to comply with this requirement, then this may be a basis for the Commission to institute proceedings to revoke the municipal advisor's registration.

Regarding amendments to Form MA–I, Rule 15Ba1–5(b) provides that a registered municipal advisor must promptly amend the information contained in Form MA–I by filing an amended Form MA–I whenever the information contained in the Form MA–I becomes inaccurate for any reason. As discussed above, registered municipal advisors will be responsible for filing and amending Form MA–I for each natural person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1267] As discussed in the Proposal, unlike municipal advisors filing Form MA, who must file annual updating amendments, the Commission is not requiring municipal advisory firms to update annually the Forms MA–I for each natural person who is associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1268] The Commission believes that the additional gains obtained by requiring the confirmation of an annual update would impose unnecessary burdens on municipal advisors and that the standard adopted in Rule 15Ba1–5(b) strikes an appropriate balance between maintaining current information regarding natural persons and minimizing the burden on municipal advisors to provide this information.

All amendments to Form MA and Form MA–I are required to be filed electronically with the Commission.[1269] In addition, amendments to Form MA and Form MA–I constitute ''reports'' for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[1270] As discussed in the Proposal, these rules are consistent with the Commission's requirements for other registrants (*e.g.,* national securities exchanges, securities information processors (''SIPs''), broker-dealers) to file updated and annual amendments with the Commission.[1271] The Commission believes that such amendments are important for obtaining updated information for registered municipal advisory firms and their associated natural persons engaged in municipal advisory activities on the firms' behalf so that the Commission can assess whether such persons continue to be in compliance with the federal securities laws and the rules and regulations thereunder.[1272] Obtaining updated information will also assist the Commission in its inspection and examination of municipal advisors and better inform the MSRB's regulation of municipal advisors. In addition, the Commission believes it is important for

[1260] *See* Rule 15Ba1–5(a) and (b).

[1261] *See* Rule 15Ba1–5(a)(1).

[1262] *See* Rule 15Ba1–5(a)(2). *See also infra* Section III.A.8. (discussing the General Instructions and Glossary).

[1263] *See* General Instruction 8 in the Instructions for the Form MA Series. General Instruction 8 further notes that a municipal advisor submitting an amendment between annual updates is not required to update the responses to Item 4 (Information About Applicant's Business), Item 5 (Other Business Activities), Item 6 (Financial Industry and Other Related Affiliations of Associated Persons), or Item 10 (Small Businesses), even if the responses to those items have become inaccurate.

[1264] *See* General Instruction 8 in the Instructions for the Form MA Series. *See also infra* note 1308 and accompanying text. For a discussion of Rule 15Ba1–6 (Consent to Service of Process to be Filed by Non-Resident Municipal Advisors) and Form MA–NR (Designation of U.S. Agent for Service of Process for Non-Residents), *see* Section III.A.6.

[1265] *See* Proposal, 76 FR 858.

[1266] As adopted, General Instruction 8 does not require the opinion of counsel to state that the municipal advisor is able, as a matter of law, to be subject specifically to ''onsite'' inspection and examination.

[1267] *See supra* note 1260 and accompanying text.

[1268] *See* Proposal, 76 FR 858. As discussed in the Proposal, in the case of firms, changes commonly occur over the course of a year, and a wide range of changes is possible—*e.g.,* changes in control persons and personnel, number of employees, nature of services provided, types of clients, and compensation arrangements, among others, as well as new disclosures that may be necessary for all of the firm's associated persons, rather than just one natural person. Accordingly, the Commission believes it is appropriate to require a firm to confirm through an annual update that its registration is up-to-date. With respect to natural person municipal advisors, however, an amendment to Form MA–I is promptly required whenever information previously provided becomes inaccurate. The Commission believes that any additional benefits of an annual update would not justify the burden such a requirement would impose. *See id.*

[1269] *See* Rule 15Ba1–5(c).

[1270] *See* Rule 15Ba1–5(d).

[1271] *See, e.g.,* Rules 6a–2 and 15b3–1 under the Exchange Act. 17 CFR 240.6a–2 and 240.15b3–1. *See also* 17 CFR 249.1001 (Form SIP, application for registration as a securities information processor or to amend such an application or registration).

[1272] *See* Proposal, 76 FR 858.

municipal entities and obligated persons, as well as the public generally, to have access to current information regarding advisors registered with the Commission.

6. Rule 15Ba1–6: Consent To Service of Process To Be Filed by Non-Resident Registered Municipal Advisors; Legal Opinion To Be Provided by Non-Resident Municipal Advisors; and Form MA–NR

a. Rule 15Ba1–6: Consent To Service of Process To Be Filed by Non-Resident Registered Municipal Advisors; Legal Opinion To Be Provided by Non-Resident Municipal Advisors

Proposed Rule 15Ba1–5 required each non-resident [1273] municipal advisor and each non-resident general partner and managing agent [1274] of a municipal advisor to furnish to the Commission, at the time of filing Form MA or Form MA–I, a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, general partner or managing agent.[1275] Proposed Rule 15Ba1–5 also specified circumstances when each non-resident municipal advisor, general partner and managing agent would be required to amend Form MA–NR. In addition, proposed Rule 15Ba1–5 required that each non-resident municipal advisor, other than a natural person, provide an opinion of counsel that the municipal advisor can provide the Commission with access to the advisor's books and records and submit to onsite inspection and examination by the Commission. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1276]

While adopted Rule 15Ba1–6 retains the same purpose and focus of the proposed rule, the Commission is adopting Rule 15Ba1–6 with certain modifications to reflect the Commission's decision to exempt certain natural persons from municipal advisor registration in Rule 15Ba1–3, as adopted, and to clarify and update the rule text as described below. First, the Commission is removing certain references that contemplate individual registration on Form MA–I of natural persons associated persons with a municipal advisor and is revising the rule text to clarify that a municipal advisor is required to file a Form MA–NR for each of its non-resident general partners, managing agents, and associated natural persons engaged in municipal advisor activities on the municipal advisor's behalf. Second, since the term registered municipal advisor no longer includes natural persons who are associated with a municipal advisor and engaged in municipal advisory activity on its behalf, the Commission is adding new language to Rule 15Ba1–6 to address such persons. For example, Rule 15Ba1–6(a)(2) requires a registered municipal advisor, at the time of the Form MA–I filing, to file with the Commission a Form MA–NR for each non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on its behalf.[1277] Third, the Commission is modifying the rule to require registered municipal advisors to file a new Form MA–NR in the instances where the proposed rule required an amendment because, unlike Form MA and Form MA–I, Form MA–NR is not completed online and signed electronically.[1278] Form MA–NR must be printed out and signed manually and a scanned copy of the signed and notarized form must be attached as a PDF file to the Form MA or Form MA–I being submitted.[1279] Finally, the Commission made other clarifying revisions to and updated the citations in the rule text.[1280]

As discussed in the Proposal,[1281] the provisions in Rule 15Ba1–6, as adopted, are designed to allow the Commission and others to provide service of process to a registered non-resident municipal advisor, a non-resident general partner or managing agent of a registered municipal advisor, and non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on its behalf by requiring the municipal advisor to file a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States for service of process.[1282] Rule 15Ba1–6 also requires a municipal advisor to file promptly a new Form MA–NR to reflect any change to the name or address of the agent for service of process for itself if the municipal advisor is a non-resident and for each of a municipal advisor's non-resident general partners, managing agents, or natural persons associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1283] The rule further requires a registered non-resident municipal advisor to appoint promptly a successor agent and file a new Form MA–NR if the non-resident municipal advisor discharges its agent or if its agent becomes unwilling or unable to accept service on behalf of the non-resident municipal advisor.[1284] Similarly, Rule 15Ba1–6(c)(2) provides that each registered municipal advisor must require each of its non-resident general partners or non-resident managing agents, or non-resident natural persons

[1273] The definition of ''non-resident'' in Rule 15Ba1–1(j) that the Commission is adopting is substantially similar to the definition of ''non-resident'' that the Commission set forth in proposed Rule 15Ba1–1(h). However, the Commission is modifying this definition so that it includes only those persons residing, having their principal office and place of business, or incorporated in any place not subject to the jurisdiction of the United States. Therefore, persons residing; having their principal office and place of business; and incorporated in the United States or a territory of the United States would not be considered non-residents. Rule 15Ba1–1(j), as adopted, defines ''non-resident'' as ''(1) [i]n the case of an individual, one who resides in or has his principal office and place of business in any place not subject to the jurisdiction of the United States; (2) [i]n the case of a corporation, one incorporated in or having its principal office and place of business in any place not subject to the jurisdiction of the United States; or (3) [i]n the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not subject to the jurisdiction of the United States.'' As adopted, this definition of ''non-resident'' is similar to the definition of ''non-resident broker-dealer'' in Rule 15b1–5 under the Exchange Act. *See* 17 CFR 240.15b1–5. *See also* 17 CFR 275.0–2 (defining the term ''non-resident'' for purposes of serving non-residents in connection with Form ADV).

[1274] Rule 15Ba1–1(c) defines a ''managing agent'' as ''any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.'' As discussed in the Proposal, this definition is consistent with the definition of a ''managing agent'' as used in Rule 15b1–5 under the Exchange Act relating to consent to service of process to be furnished by non-resident brokers or dealers and by non-resident general partners or managing agents of brokers or dealers. *See* 17 CFR 240.15b1–5. *See also* 17 CFR 275.0–2 (discussing general procedures for serving non-resident investment advisers in connection with Form ADV); and Proposal, 76 FR 859, note 262 and accompanying text.

[1275] *See* Rule 15Ba1–5(a). The agent may not be a Commission member, official, or employee.

[1276] *See* MSRB Letter I.

[1277] Similarly, Rule 15Ba1–6(c)(2), as adopted, sets forth requirements regarding when a registered municipal advisor is required to file a new Form MA–NR for its non-resident natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf.

[1278] *See* General Instruction 2.c. in the Instructions for the Form MA Series.

[1279] *See id.*

[1280] For example, the Commission removed ''onsite'' from Rule 15Ba1–6(d), as adopted, because the Commission does not conduct all inspections and examinations onsite.

[1281] *See* Proposal, 76 FR 859.

[1282] *See* Rule 15Ba1–6(a)(1) and (2) (requiring a non-resident municipal advisor to file a Form MA–NR on its own behalf and requiring municipal advisors to file a Form MA–NR for each of the municipal advisor's non-resident general partners, managing agents, or natural persons associated with the municipal advisor and engaged in municipal advisory activities on its behalf).

[1283] *See* Rule 15Ba1–6(b).

[1284] *See* Rule 15Ba1–6(c)(1).

associated with the municipal advisor and engaged in municipal advisory activities on its behalf to appoint promptly a successor agent and the registered municipal advisor must file a new Form MA–NR if such non-resident general partner, managing agent, or associated natural person discharges the agent or if the agent is unwilling or unable to accept service on behalf of such person. Rule 15Ba1–6 also requires each non-resident municipal advisor applying for registration to provide an opinion of counsel on Form MA that the municipal advisor can, as a matter of law, provide the Commission with access to the municipal advisor's books and records and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.[1285] Finally, similar to the other forms in the MA series, Form MA–NR must be filed electronically.[1286]

b. Form MA–NR

The Commission received one comment letter on proposed Form MA–NR, which generally supported Form MA–NR.[1287] While Form MA–NR, as adopted, retains the same purpose and focus of the proposed Form MA–NR, the Commission is adopting Form MA–NR with certain modifications. First, the Commission has provided more detailed instructions to improve the form's readability and ease of use. For example, the Commission included an introductory direction to refer to the General Instructions for the forms in the MA series before completing Form MA–NR, a paragraph explaining the purpose of the form, and a specific instruction providing technical guidance for how to attach Form MA–NR to Form MA or Form MA–I. Second, the Commission has expanded its discussion of certain concepts in Form MA–NR so that persons executing the form have a clearer and more complete understanding of the information they are required to provide. For example, Section A of Form MA–NR, as adopted, instructs the person executing the form to ''[i]dentify the agent for service of process for the *non-resident municipal advisor,* for the *non-resident* general partner or managing agent of a *municipal advisor,* or for the *non-resident* natural person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. Fill in all lines.''[1288] The Commission expanded the discussions in several other parts of Form MA–NR, such as the description relating to the designation and appointment of the agent for service of process immediately following the agent's address and phone number in Section A.2, including language addressing the effect on partnerships of the irrevocable power of attorney appointment and consent to service of process, the designator's certification, and the method by which the designator discloses the capacity in which he or she is signing the form. Third, the Commission has included Section B and Section C in Form MA–NR, as adopted. Section B requires the municipal advisor to obtain the signature of the United States person identified in Section A as the agent for service of process to demonstrate that this person has accepted the designation and appointment as the agent for service of process. This certification that the agent for service of process has accepted the designation and appointment is necessary to ensure effective service of process upon a non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, or non-resident natural person associated with the municipal advisor and engaged in municipal advisory activities on its behalf. Additionally, the Commission believes that the additional burden imposed on municipal advisors to obtain the signature of the U.S. agent for service of process would be minimal. Section C requires the person executing the form to disclose whether any signature is pursuant to a written authorization and whether there is a written contractual agreement or other written document evidencing the designation and appointment of the named agent for service of process and/or the agent's acceptance, and if so, to identify the document and provide an accurate and complete copy with submission of the Form MA or Form MA–I.

Pursuant to General Instruction 2, and consistent with the rule, every non-resident municipal advisor must file Form MA–NR in connection with the municipal advisor's initial application for registration on Form MA and file a new Form MA–NR when required.[1289] In addition, regardless of whether a municipal advisory firm is a resident of the United States, the firm must file a separately completed and executed Form MA–NR for (i) non-resident general partners and managing agents of the firm, and (ii) every non-resident natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf.[1290] Form MA–NR for general partners and managing agents is filed by the firm together with the firm's Form MA.[1291] Form MA–NR for natural persons associated with the firm and engaged in municipal advisory activities on the firm's behalf is filed by the firm together with the Form MA–I relating to the natural person associated with the firm.[1292]

7. Rule 15Ba1–7: Registration of Successor to Municipal Advisor

Proposed Rule 15Ba1–6 was designed to govern the registration of a successor to a registered municipal advisor.[1293]

[1285] *See* Rule 15Ba1–6(d). *See also supra* notes 1264–1265 and accompanying text (discussing when a non-resident municipal advisory firm must file an amendment to Form MA to attach an updated opinion of counsel).

[1286] *See* Rule 15Ba1–6(e).

[1287] *See* MSRB Letter I.

[1288] Section A in Form MA–NR, as proposed, consisted only of ''Name of United States person applicant designates and appoints as agent for service of process'' with space for the name provided in a blank box immediately underneath.

[1289] *See* General Instruction 2.c. As discussed in the Proposal, failure to attach a signed and notarized Form MA–NR, where required, for a non-resident municipal advisor or for any non-resident general partner or managing agent of a municipal advisory firm or non-resident natural person associated with a municipal advisor who engages in municipal advisory activities on behalf of the advisor, may delay SEC consideration of the municipal advisor's application for registration. Additionally, an SEC-registered municipal advisory firm that becomes a non-resident after the municipal advisor firm's initial application has been submitted must file a Form MA–NR within 30 days of becoming a non-resident. The same applies when a general partner or managing agent of a municipal advisory firm becomes a non-resident, or a non-resident becomes a general partner or managing agent of a municipal advisory firm, after the firm's initial application. Also, a municipal advisory firm must file a Form MA–NR together with Form MA–I if, after the firm's initial registration, a non-resident natural person becomes associated with the firm and engages in municipal advisory activities on the firm's behalf. In addition, a municipal advisory firm must file a form MA–NR if a natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm becomes a non-resident after the firm has filed a Form MA–I relating to that individual. The firm must file the Form MA–NR within 30 days of such individual becoming a non-resident. *See* Instruction 3 in the General Instructions to Form MA–NR. *See also* Proposal, 76 FR 859, note 263.

[1290] *See* General Instruction 2.c.

[1291] *See id.*

[1292] *See id.*

[1293] As discussed in the Proposal, the purpose of Rule 15Ba1–7 is to enable a successor municipal advisor to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor municipal advisor until the successor's own registration becomes effective. *See* Proposal, 76 FR 860. The rule is intended to facilitate the legitimate transfer of business between two or more municipal advisors and to be used only where there is a direct and substantial business nexus between the predecessor and the successor municipal advisor. The rule is not designed to allow a registered municipal advisor to sell its registration, eliminate substantial liabilities, spin off personnel, or facilitate the transfer of the registration of a ''shell'' organization that does not conduct any business. As discussed in the Proposal, no entity is permitted to

Continued

The rule is substantially similar to Rule 15b1–3 under the Exchange Act, which governs the registration of a successor to a registered broker-dealer.[1294] The Commission received no comments on the proposed Rule 15Ba1–6 and is adopting the rule as Rule 15Ba1–7 without modification.

Succession by Application

Rule 15Ba1–7(a) provides that in the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to Exchange Act Section 15B(a), the registration of the predecessor will be deemed to remain effective as the registration of the successor if the successor, within 30 days after the succession, files an application for registration on Form MA and the predecessor files a notice of withdrawal from registration with the Commission on Form MA–W. The rule further provides that the registration of the predecessor municipal advisor will cease to be effective as the registration of the successor municipal advisor 45 days after the application for registration on Form MA is filed by the successor.[1295] In other words, the 45-day period will not begin to run until a complete Form MA has been filed by the successor with the Commission. This 45-day period is consistent with Exchange Act Section 15B(a)(2), pursuant to which the Commission has 45 days to grant a registration or institute proceedings to determine if a registration should be denied.[1296]

Succession by Amendment

Rule 15Ba1–7(b) provides that, notwithstanding Rule 15Ba1–7(a), if a municipal advisor succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA to reflect these changes. Such an amendment will be deemed an application for registration filed by the predecessor and adopted by the successor.

In all three types of successions specified in Rule 15Ba1–7(b) (change in the date or state of incorporation, change in form of organization, and change in composition of a partnership), the predecessor must cease operating as a municipal advisor. As stated in the Proposal, the Commission believes that it is appropriate to allow a successor to file an amendment to the predecessor's Form MA in these types of successions because such successions do not typically result in a change of control of the municipal advisor.[1297]

8. General Instructions and Glossary

The Commission proposed a set of instructions, which includes general instructions for proper completion and submission of Forms MA, MA–I, MA–W, and MA–NR (''General Instructions''),[1298] as well as specific instructions relating to each of the forms individually, as applicable. A glossary of terms (''Glossary'') is included at the end of the General Instructions to help applicants complete the forms. As discussed in the Proposal, the definitions in the Glossary generally are derived from the terms in Exchange Act Section 15B(e),[1299] the definitions in Rule 15Ba1–1,[1300] and Form ADV.[1301] For ease of reference, the Commission proposed one Glossary to define terms that may appear in any or all of the forms. All terms that are defined or described in the Glossary appear in the forms in italics.

The Commission did not receive any comments on the General Instructions and Glossary and is adopting the General Instructions and Glossary generally as proposed. However, some revisions have been made to clarify or modify instructions and definitions or to provide additional guidance, as discussed more fully below. In particular, the instructions are being revised to reflect that Form MA–I, as adopted, will not serve as a registration form and that municipal advisory firms, rather than natural persons (other than sole proprietors), have the obligation to file and complete Form MA–I. In addition, some sections of the General Instructions have been reorganized to enhance their readability, three new instructions have been added, additional defined terms have been introduced and included in the Glossary, and one term has been removed from the Glossary.

General Instruction 1, as proposed, directed applicants to the Commission's Web site for additional information about the Commission's rules regarding municipal advisors and the Exchange Act. General Instruction 1, as adopted, notes that a comprehensive explanation of the form requirements is provided in this release.

General Instruction 2, as proposed, discussed who should file Form MA and Form MA–I and explained that these forms must be used to register with the Commission and to amend previously submitted Forms MA and MA–I. The instruction also discussed the responsibility of sole proprietors to file both forms. General Instruction 2, as proposed, further included information regarding voluntary registration for certain individuals; the requirement that a Form MA–NR must be submitted for municipal advisors and general partners and managing agents of municipal advisors that are not residents of the United States; and the requirement that a municipal advisor that is no longer required to be registered must file Form MA–W.

As adopted, General Instruction 2 has been revised for clarity and now also provides more details about the use of Form MA. For example, it now notes the requirement for a municipal advisor that registers on Form MA to submit an annual update of that form.[1302]

General Instruction 2 has been revised to reflect the fact that Form MA–I is no longer a registration form. It explains that municipal advisory firms must complete and file Form MA–I on behalf of natural persons associated with the firm and engaged in municipal advisory activities on behalf of the firm, including employees of the firm. In

rely on Rule 15Ba1–7 unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's municipal advisor business, or there has been no practical change of control. *See* General Instruction 1 to Form MA.

The Commission will not apply Rule 15Ba1–7 to a reorganization that involves only registered municipal advisors. *See* Proposal, 76 FR 860. In those situations, the registered municipal advisors need not rely on the rule because they can continue to rely on their existing registrations. The rule also will not apply to situations in which the predecessor intends to continue to engage in municipal advisory activities. Otherwise, confusion may result as to the identities and registration statuses of the parties.

[1294] *See* 17 CFR 240.15b1–3. *See also* Registration of Successors to Broker-Dealers and Investment Advisers, Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993) (providing interpretive guidance regarding amendments to Rule 15b1–3).

[1295] *See* Rule 15Ba1–7(a).

[1296] *See* 15 U.S.C. 78*o*–4(a)(2).

[1297] *See* Proposal, 76 FR 860.

[1298] Form MA–W is for withdrawal from registration as a municipal advisor, and Form MA–NR is for the appointment of an agent for service of process by a non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, or non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on behalf of the municipal advisor. *See supra* Sections III.A.4.b. and III.A.6. (discussing Forms MA–W and MA–NR, respectively).

[1299] *See* 15 U.S.C. 78*o*–4(e).

[1300] *See* Rule 15Ba1–1. *See also* Proposal, 76 FR 839.

[1301] *See* 17 CFR 279.1.

[1302] The instruction, as proposed, referred only to amendments, which may have implied that additional filings are required only in the instance of changes in the information provided on previously-submitted forms.

addition, General Instruction 2 notes that independent contractors are included in the definition of ''employee'' of a municipal advisor for purposes of a firm's obligation to complete and file Form MA–I.[1303] The instruction explains that Form MA–I is also used to amend a previously submitted Form MA–I.

With regard to Form MA–NR, General Instruction 2 now more clearly indicates that every municipal advisory firm must file with the firm's Form MA a separately completed and executed Form MA–NR for every general partner and/or managing agent of a firm that is a non-resident. In addition, the instruction has been revised to indicate that municipal advisory firms must also file Form MA–NR for every non-resident natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf together with the Form MA–I related to the person. General Instruction 2 indicates that firms have an obligation to file Form MA–NR in these circumstances, regardless of whether the firm itself is domiciled in the United States or is a non-resident filing a Form MA–NR on its own behalf. In addition, General Instruction 2 clarifies that a Form MA–NR for a non-resident general partner or managing agent of a municipal advisor must be filed with the Form MA of the municipal advisor. The instruction, as adopted, also explains that, unlike the other forms in the Form MA series, which are completed online and signed electronically, Form MA–NR must be printed out and signed manually by both the non-resident and the person designated as agent for service of process. Each of the signatures must be separately notarized, and a scanned copy of the signed and notarized form must then be attached as a PDF file to the electronically-completed Form MA or Form MA–I. To emphasize the importance of submitting a Form MA–NR, where required, General Instruction 2, as adopted, includes a warning that failure to attach a signed and notarized Form MA–NR for a non-resident municipal advisor, any non-resident general partner or managing agent of a municipal advisory firm, or non-resident natural person associated with a municipal advisory firm who engages in municipal advisory activities on behalf of the firm may delay Commission consideration of the municipal advisor's application for registration.

General Instruction 2 indicates that Form MA–W does not need to be completed when a natural person with respect to whom a municipal advisory firm filed Form MA–I is no longer associated with the firm or no longer engaged in municipal advisory activities on behalf of the firm. The instruction now explains that the firm must indicate this change by filing an amendment to Form MA–I.

The proposed instructions in General Instruction 2 regarding voluntary registration as a municipal advisor have been deleted, as the purpose for which this option was created is no longer relevant.[1304]

General Instruction 3, as proposed, instructed applicants with respect to the organization of Form MA (for example, that Form MA also includes Schedules A, B, C, and D, as well as Criminal Action, Regulatory Action, and Civil Judicial Action DRPs) and made clear that an applicant must complete all items in Form MA. General Instruction 3 is being adopted substantially as proposed, with only minor revisions, including an explanation that Form MA includes an ''Execution Page'' where the form is signed.

General Instruction 4, as proposed, provided comparable instructions with respect to the organization and completion of Form MA–I and the schedules and the DRPs required by that form. General Instruction 4 is being revised to state that Form MA–I asks questions about sole proprietors and natural persons associated with a municipal advisory firm and engaged in municipal advisory activities on behalf of the firm, and to reflect the fact that Form MA–I, as adopted, is not a registration form.

General Instructions 5–7 are being adopted substantially as proposed, with revisions to reflect the fact that municipal advisory firms, not natural persons associated with the firms and engaged in municipal advisory activities on behalf of the firms, must sign and file Form MA–I. However, the order of these instructions has been rearranged in their adopted version for purposes of clarity.

First, General Instruction 5 (in the order as adopted) sets forth who must sign Form MA or MA–I. General Instruction 5 explains that such person will be a sole proprietor (in the case of a sole proprietorship), a general partner (in the case of a partnership), an authorized principal (in the case of a corporation), and, for all others, an authorized individual who participates in managing or directing the municipal advisor's affairs.[1305] It further makes clear that in all cases the signature should be a typed name. Next, General Instruction 6 makes clear where Form MA must be signed, explaining that domestic municipal advisors are required to execute the Domestic Execution Page to Form MA, while non-resident municipal advisors are required to execute the Non-Resident Municipal Advisor Execution Page.[1306] General Instruction 7 provides that a municipal advisory firm signs Item 7 of Form MA–I.

General Instructions 8 and 9 discuss when to amend and/or update Forms MA and MA–I respectively, as discussed above.[1307] General Instruction 8 (which pertains to Form MA), has been adopted substantially as proposed, but has been revised to distinguish more clearly between an amendment and an annual update. To clarify how amendments and updates will work in the electronic filing system, the instruction also now explains that each time a firm accesses its Form MA after its initial filing of the form, the

[1303] Although independent contractors are included in the definition of employee for purposes of these forms in the Glossary (as both proposed and adopted), their inclusion is noted in General Instruction 2, as adopted, because it might otherwise be overlooked.

[1304] The Commission notes that several commenters raised concerns regarding the interaction of the Commission's proposed rule regarding voluntary municipal advisor registration with amendments that had been proposed in November 2010 to the Commission's ''Pay-to-Play Rule.'' *See, e.g.,* ICI Letter and MFA Letter. *See also* Investment Advisers Act Release No. 3010 (November 10, 2010), 75 FR 77052 (December 10, 2010) (Pay-to-Play Proposed Amendments); and Proposal, 76 FR 832 n.104 and accompanying text. The Commission notes that it adopted amendments to its Pay-to-Play Rule on June 22, 2011. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011). As proposed, the amendments to the Pay-to-Play Rule would have excepted *only* registered municipal advisors from that rule's ban on compensating third-party solicitors. If the amendments had been adopted as proposed, an investment adviser may have been unable to hire an affiliated solicitor to solicit government entities on its behalf (absent the option for voluntary municipal advisor registration) because affiliated solicitors would not fall within the statutory definition of municipal advisor. The final amendments to the Pay-to-Play Rule, however, permit advisers to compensate municipal advisors *and* Commission registered investment advisers and broker-dealers for soliciting government entities if they are subject to restrictions substantially equivalent to or more stringent than the Pay-to-Play Rule. *See id. See also* Rule 206(4)–5 under the Investment Advisers Act (17 CFR 275.206(4)(5)). Consequently, the option of voluntary registration as a municipal advisor for persons undertaking solicitation of a municipal entity is no longer necessary.

[1305] Because natural persons that are not sole proprietors are not required to file Form MA–I, the part of General Instruction 5 set forth in the Proposal that stated that a natural person filing Form MA–I on his or her own behalf must sign the form has been deleted.

[1306] *See supra* Section III.A.6. (discussing Rule 15Ba1–6 and Form MA–NR).

[1307] *See supra* Section III.A.5.

information from the firm's most recent previous filing will appear. Only the information that has changed will need to be amended; the applicant will not need to complete the entire form again. The statement in General Instruction 8 regarding the requirement for a non-resident municipal advisor to amend its form and attach an updated opinion of counsel has been revised to more accurately reflect the required content of the opinion of counsel as stated on Form MA.[1308] General Instruction 9, as proposed, concerned when Form MA–I (for natural person municipal advisors) needs ''to be updated.'' The instruction has been revised in its adopted form to state generally that Form MA–I must ''be amended'' whenever information previously provided on the form becomes inaccurate.[1309]

General Instruction 10, as proposed, provided that an applicant must complete and file the forms electronically. As adopted, General Instruction 10 provides that a municipal advisor must complete and submit the relevant form, including any required attachments, electronically. General Instruction 10 reflects the change to Rule 15Ba1–2(c), as adopted,[1310] that Form MA is considered filed upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310), to EDGAR. General Instruction 10 also explains that when a municipal advisor's submitted Form MA is accepted by the Commission, the municipal advisor will receive an SEC file number. General Instruction 11 is being adopted to provide more specific information about how to electronically file the forms in the Form MA series and, specifically, how to obtain access to EDGAR to do so.[1311]

A new General Instruction 12 has been added to the General Instructions, as adopted, to clarify what a municipal advisor (or, in the case of a firm, its authorized representative) represents by signing and executing the form as a whole.[1312] General Instruction 12 explains that, by signing the Execution Page of Form MA, the authorized signatory of a domestic municipal advisory firm is appointing the Secretary of State or other legally designated officer of the state in which the firm maintains its principal office and place of business as the firm's agent to receive service of process.[1313] The signatory is also attesting to the truth and correctness of the information provided in the form and declaring that the firm's books and records will be preserved and available for inspection and that any person having custody of the books and records is authorized to make them available to federal regulators.

General Instruction 12 further explains that a signatory on behalf of a non-resident municipal advisory firm must use the version of the Execution Page of Form MA that is specifically required for non-resident firms. Besides attesting to the truth and correctness of the information provided on the form and making the same representations as a U.S. firm regarding books and records, the signatory on behalf of the firm is agreeing to provide, at the firm's own expense, current, correct, and complete copies of its books and records to the SEC upon request. The instruction explains that a non-resident firm must designate an agent for service of process on a separate form, Form MA–NR.

General Instruction 12 explains that an authorized signatory of a domestic municipal advisory firm filing Form MA–I with respect to a natural person who is associated with the firm and engaged in municipal advisory activities on behalf of the firm, by signing the Execution Page of Form MA–I, is attesting to the truth and correctness of the information provided in the form. The instruction also explains that the authorized signatory is attesting that the firm has obtained and retained written consent from the natural person associated with the firm that service of any civil action brought by, or notice of any proceeding before, the SEC or any SRO in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address provided in Item 1 of the form.

General Instruction 12 further explains that by signing the Execution Page of Form MA–I, a sole proprietor filing Form MA–I is consenting that service of process may be given by registered or certified mail to the address the sole proprietor has supplied in Item 1 of the form and is also attesting to the truth and correctness of the information he or she has provided in the form.

General Instruction 13, as adopted, (General Instruction 14 as proposed) discusses the requirement for a non-resident municipal advisory firm to attach a legal opinion to its Form MA that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.[1314] As adopted, General Instruction 13 reflects the fact that the opinion of counsel that non-residents must file no longer needs to state that the municipal advisor can submit to ''onsite'' inspection and examination.[1315]

The Commission has also added new General Instruction 14 to list together in one place all the circumstances in which additional documents must be attached to a Form MA or Form MA–I. The list of such documents does not include any new requirements that were not included in the Proposal. General Instruction 14 has been added for purposes of clarity and convenience. The required documents enumerated include: (1) any documents relating to criminal actions, as specified in the Criminal Action DRPs of Form MA and Form MA–I, and any other supporting documentation; (2) a manually-signed Form MA–NR for each non-resident for whom such form is required;[1316] (3) any written document (*e.g.,* board resolution or power of attorney) authorizing a signatory to sign a Form MA–NR; and (4) any written contractual agreements relating to Form MA–NR; and (5) the required opinion of counsel for non-resident municipal advisory firms.

The Commission has added new General Instruction 15 to provide clarity

[1308] *See supra* note 1264 and accompanying text for the revised language.

[1309] The instruction no longer states that every ''natural person municipal advisor'' must amend Form MA–I because the rule, as adopted, requires municipal advisory firms, and not natural persons (other than sole proprietors), to complete and file Form MA–I. *See* Rule 15Ba1–2(b)(1) of the adopted rules.

[1310] *See supra* note 971 and accompanying text.

[1311] *See supra* note 961. General Instructions 12 and 13 as proposed, regarding self-certification by municipal advisors filing on Form MA and Form MA–I, have been removed, because, as discussed above, the Commission has eliminated the self-certification requirement in Form MA and Form MA–I as adopted.

[1312] General Instruction 12 does not introduce new substantive requirements that are being added in the adopting phase of this rulemaking. They were set forth in the forms, as proposed, and are now being added to the General Instructions in order to highlight them for applicants preparing to file. *See also supra* notes 1150–1156 and accompanying text.

[1313] *See also supra* notes 1275–1287 and accompanying text.

[1314] *See supra* note 1154 and accompanying text.

[1315] *See supra* note 1280 and accompanying text.

[1316] Form MA–NR, by which a non-resident municipal advisor designates an agent for service of process in the U.S., is accessed electronically via links within Form MA and Form MA–I. The information requested by the form may be entered online. However, the form must be printed out and signed manually—both by the applicant (an authorized signatory in the case of a firm) and by the designated agent for service of process—and each of the signatures must be notarized. After the signatures and notarizations are completed, Form MA–NR must be attached in PDF format to the Form MA or Form MA–I.

with respect to filing deadlines. General Instruction 15 provides that if the deadline for submitting an initial filing, annual update, or amendment to a form occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the deadline shall be the next business day.

The General Instructions also provide some instructions and explanations specific to certain items in Form MA and Form MA–I.[1317] In addition, the General Instructions provide some instructions and explanations specific to Form MA–NR. Specific Instruction 1 for Form MA, as adopted, explains that a municipal advisor that is not currently registered as a municipal advisor and has taken over the business of another municipal advisor or was registered as a municipal advisor but has changed its structure or legal status will be a new organization with registration obligations under the Exchange Act.[1318] It further explains that an applicant not registered with the SEC as a municipal advisor that is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered municipal advisor will be required to file a new application for registration on Form MA within 30 calendar days after the succession. The instruction also provides that, once the new registration is effective, Form MA–W (as described above) must be filed to withdraw the registration of the acquired municipal advisor. The instruction also explains that, if a new municipal advisor is formed solely as a result of a change in the form of organization or in the composition of a partnership or the date or the state of incorporation, and there has been no practical change in control or management, the applicant will be permitted to amend the existing registration to reflect the changes by filing an amendment within 30 calendar days after the change or reorganization.

Specific Instruction 2 for Form MA is being adopted substantially as proposed and has been revised only for clarity and to correct certain citations that have changed. The instruction provides guidance for newly-formed municipal advisors regarding how to respond to several questions in Item 4 of Form MA (described above) that may be difficult to answer when the applicant for registration has not been in existence for a significant amount of time. The instruction advises that, for a newly-formed municipal advisor, responses should reflect the applicant's current municipal advisory activities (*i.e.,* its activities at the time of filing, with certain exceptions). With respect to specified questions regarding the applicant's compensation arrangements, the instructions provide that the applicant base its responses on the types of compensation it expects to accept. Further, with respect to its business activities relating to municipal securities, the applicant is instructed to base its responses on the types of municipal advisory activities in which it expects to engage during the next year.

Specific Instruction 3 for Form MA is being adopted substantially as proposed, with non-substantive revisions. The instruction explains that Schedule D is to be completed if any response to Form MA requires further explanation, or if the applicant wishes to provide additional information.

The Specific Instructions for Certain Items in Form MA–I, as adopted, have been revised to reflect the fact Form MA–I is not a registration form and that municipal advisory firms, rather than natural persons (other than sole proprietors), have the obligation to complete and file Form MA–I. Specific Instruction 1 for Form MA–I explains that, in Item 1 of Form MA–I, the municipal advisory firm must enter the individual's CRD Number (if assigned), the individual's social security number,[1319] and the addresses of all offices at which the individual is or will be physically located or from which the individual is or will be supervised, even if the individual does not work at that location.[1320]

Specific Instruction 2 for Form MA–I is being adopted substantially as proposed, with revisions made for clarity. The instruction emphasizes that, for purposes of completing Item 2 to Form MA–I, the firm must enter all the other names that the individual is using, has used, is known or has been known by, other than the individual's legal name, since the age of 18, which includes nicknames, aliases, and names used before and after marriage.

Specific Instruction 3 for Form MA–I is being adopted substantially as proposed, but expanded with more information. The instruction explains that, for purposes of Item 3, with respect to the individual's residential history for the past 5 years, post office boxes may not be used to complete the response and the firm may not leave any gaps in the individual's residential history greater than three months. As adopted, this instruction also includes the statement: ''This information is needed for regulatory purposes. However, the version of completed Form MA–I that will be available for viewing by the public will not show the private residential addresses that you enter.''

Specific Instruction 4 for Form MA–I is being adopted substantially as proposed, with an added clarification. The instruction provides that, with respect to Item 4 of Form MA–I, the individual's employment history for the past 10 years must be provided with no gaps greater than three months; that the history should account for full-time and part-time employment, self-employment, military service and homemaking; and that unemployment, full-time education, extended travel, and other similar statuses should be included. The added clarification explains that such statuses should be entered on the line provided for ''Name of Municipal Advisor or Company.''

Specific Instruction 5 for Form MA–I, regarding Item 5 of Form MA–I (''Other Business''), has been revised in its adopted version. Instead of restating, as proposed, some of the information requests specified in Item 5, the instruction explains that other businesses in which the individual ''is engaged'' is intended to capture such engagements as a proprietor, partner, officer, director, or employee (including independent contractor, trustee, agent or otherwise). As adopted, the instruction also informs firms that if the number of hours per week that individuals devote to the other business varies, the firms should provide an average.

Specific Instruction 6 for Form MA–I, regarding Item 6 of Form MA–I, is being adopted as proposed. The instruction advises firms that affirmative responses to certain disclosure questions in the form could make an individual subject to a statutory disqualification.

Specific Instruction 7 for Form MA–I is being adopted as proposed, with an

[1317] As proposed, the sections of the General Instructions that explained how to complete certain items in Form MA and Form MA–I did not have names. As adopted, these sections are now called ''Specific Instructions for Certain Items in Form MA'' and ''Specific Instructions for Certain Items in Form MA–I.''

[1318] Specific Instruction 1 for Form MA as adopted has been significantly revised for purposes of clarity but includes no substantive changes. *See also infra* Section III.A.7, regarding Rule 15Ba1–7, adopted as part of this rulemaking, upon which this instruction is based.

[1319] As discussed above, social security numbers will not be made publicly available. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)). *See* Proposal, 76 FR 840, note 171.

[1320] General Instruction 1 to Form MA–I in its adopted form has been expanded to provide more explanation for a firm that submits Form MA–I on behalf of natural persons associated with the firm and engaged in municipal advisory activities on the firm's behalf, but no new requirements have been added.

added reminder for non-residents. The instruction indicates that, as with Form MA, the form is to be signed (in Item 7 of Form MA–I) by typing a signature in the designated field and makes clear that, by typing a name, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature. The added reminder advises the firm that if the individual is a non-resident, the firm must attach a manually-signed Form MA–NR to the form.

The General Instructions contain a new section called ''General Instructions to Form MA–NR'' that consists of instructions and explanations specific to Form MA–NR. General Instruction 1 to Form MA–NR repeats the information in General Instruction 2, discussed above, regarding when Form MA–NR must be filed.

General Instruction 2 to Form MA–NR describes the circumstances in which more than one Form MA–NR must be filed by a municipal advisory firm. For example, the instruction states that a non-resident municipal advisory firm filing a Form MA for itself would also need to file Form MA–NR for each of its non-resident general partners and managing agents, even if a Form MA–NR had been previously filed by another municipal advisor for the general partner or managing agent. In addition, a firm filing Form MA–I must attach Form MA–NR for every non-resident natural person associated with the firm and engaged in municipal activities on the firm's behalf.

General Instruction 3 to Form MA–NR describes when a Form MA–NR must be filed at times other than when a municipal advisor submits its initial application for registration. The instruction explains that a registered municipal advisory firm must file a Form MA–NR within 30 days of the firm becoming a non-resident. The same applies when a general partner or managing agent of the municipal advisory firm becomes a non-resident, or a non-resident becomes a general partner or managing agent of the firm after the firm's initial application for registration. In such cases, the municipal advisor must file an amendment to Form MA with the new Form MA–NR attached. The instruction explains that a municipal advisory firm must also file Form MA–NR with Form MA–I if, after the firm's initial registration, a non-resident natural person becomes associated with the firm and engages in municipal advisory activities on the firm's behalf. In addition, a firm must file Form MA–NR if a natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm becomes a non-resident after the firm has filed Form MA–I relating to that individual. The firm must file Form MA–NR within 30 days of the individual becoming a non-resident.[1321]

General Instruction 4 to Form MA–NR describes when a new Form MA–NR must be filed. The instruction indicates that a new Form MA–NR must be filed promptly if a previously-filed Form MA–NR becomes invalid or inaccurate.[1322] This includes any change to the name or address of the non-resident municipal advisory firm, general partner, managing agent, or natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm, or any change to the name or address of the agent of service of process of such non-resident, to which the previously-filed Form MA–NR relates. The instruction explains that a non-resident must promptly appoint a successor agent for service of process and the municipal advisor must file a new Form MA–NR if the non-resident discharges its identified agent for service of process or if its agent for service of process becomes unwilling or unable to accept service on behalf of the non-resident.

In the Proposal, the term ''non-resident'' was defined as an individual, corporation, or partnership or other unincorporated organization or association that resides in or has his or its principal office and place of business in ''any place not in the United States.'' As adopted, the language in the term ''non-resident'' that determines whether an individual, corporation, or partnership or other unincorporated organization or association is a ''non-resident'' has been slightly modified to whether the person resides in or has his or its principal office and place of business in ''any place not subject to the jurisdiction of the United States.'' The language has been changed to clarify that persons that reside or have their principal office and place of business in United States territories do not fall within the definition of ''non-resident.''

The Glossary of Terms is being adopted substantially as proposed. However, the Glossary, as adopted, contains some revisions that are being made for clarity. As adopted, the Glossary includes some revisions to terms that reflect changes to the definitions being adopted in Rule 15Ba1–1. For example, the definition of ''Guaranteed Investment Contract'' has been revised to clarify that the contract at issue must relate to investments of proceeds of municipal securities or municipal escrow investments. The definition of the term ''municipal advisor,'' as adopted, has been revised to make clear that the definition is subject to the exclusions that are being adopted under Rule 15Ba1–1(d)(2)[1323] and the exemptions under Rule 15Ba1–1(d)(3).[1324] Likewise, the definition of the term ''obligated persons,'' consistent with the definition in adopted Rule 15Ba1–1, has been revised to state that the term does not include a person whose financial information or operating data is not material to a municipal securities offering or the federal government. The Glossary contains other revisions to terms that are consistent with revisions to the definitions in Rule 15Ba1–1, as adopted.

The Glossary includes some new definitions that were not in the Proposal. For example, the Glossary now defines the term ''federal regulatory agency'' to include any federal banking agency and the National Credit Union Administration. The Glossary also defines the term ''state regulatory agency'' to include any State securities commission (or any agency or officer performing like functions); State authority that supervises or examines banks, savings associations, or credit unions; or State insurance commission (or any agency or office performing like functions to the above). The definitions of the terms ''federal regulatory agency'' and ''state regulatory agency'' are consistent with the language in Exchange Act Section 15(b)(4)(H).[1325] The Glossary has also been revised to include a new definition of the term ''affiliate, affiliated, affiliation,'' which is derived from the definition of ''advisory affiliate'' for Form ADV.

The term ''natural person municipal advisor'' has been removed from the Glossary, as adopted. In the Proposal,

[1321] General Instruction 3 to Form MA–NR also contains a note reminding non-resident municipal advisory firms of two additional requirements for non-resident municipal advisory firms that are discussed in General Instruction 12 (to complete Form MA Execution Page for non-residents and the undertaking regarding books and records) and General Instruction 13 (to attach an opinion of counsel that the firm can provide the Commission with access to its books and records and can submit to inspection and examination by the Commission).

[1322] A new Form MA–NR is filed by submitting an amendment to Form MA with a new Form MA–NR attached.

[1323] 17 CFR 240.15Ba1–1(d)(2).

[1324] 17 CFR 240.15Ba1–1(d)(3).

[1325] The statutory disqualification language of Section 15(b)(4)(H) is referenced in Exchange Act Section 15B(c)(2), which describes the Commission's power to censure, place limitations on the activities, functions, or operations, or suspend, or revoke the registration of a municipal advisor.

the term was defined to mean any natural person that is a municipal advisor, including sole proprietors. The term had been included in the Proposal to collectively describe natural persons who were required to file Form MA–I. Because municipal advisory firms, rather than natural persons (other than sole proprietors), are now responsible for filing Form MA–I, the term is no longer necessary, and is therefore being removed from the Glossary.

9. Rule 15Bc4–1: Persons Associated With Municipal Advisors

As noted in the Proposal, Section 975(c)(5) of the Dodd-Frank Act provides the Commission with authority to censure or place limitations on the activities or functions of any person associated with a municipal advisor or to suspend or bar any such person from being associated with a municipal advisor. As discussed in the Proposal, however, it appears that a technical error was made in the final draft of this provision.[1326] Specifically, Section 975(c)(5) of the Dodd-Frank Act provides that Section 15B(c)(4) of the Exchange Act be amended ''by inserting 'or municipal advisor' after 'municipal securities dealer or obligated person' each place that term appears.'' [1327] At the time the Dodd-Frank Act was enacted, however, Section 15B(c)(4) of the Exchange Act included the term ''municipal securities dealer,'' but did not include the phrase ''municipal securities dealer *or obligated person''* (emphasis added).

To address any ambiguity created by this error, the Commission stated in the Proposal its intent to recommend a technical amendment to Section 975(c)(5) of the Dodd-Frank Act.[1328] To date, however, the Exchange Act has not been amended to correct this technical error. Therefore, to clarify the Commission's interpretation of Section 15B(c)(4) of the Exchange Act, the Commission is adopting new Rule 15Bc4–1 to make clear the Commission's understanding of its authority with respect to associated persons of municipal advisors. Specifically, Rule 15Bc4–1 states that the Commission has the authority to, by order, censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal advisor, or suspend for a period not exceeding 12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of Section 15(b) of the Exchange Act, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under section 15B(c)(4) of the Exchange Act, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of Section 15(b)(4). Rule 15Bc4–1 also states the Commission's interpretation that Section 15B(c)(4) of the Exchange Act makes it unlawful for any person, as to whom an order is entered pursuant to Section 15B(c)(4) or Section 15B(c)(5) of the Exchange Act suspending or barring him from being associated with a municipal advisor is in effect, willfully to become, or to be, associated with a municipal advisor without the consent of the Commission. Further, Rule 15Bc4–1 sets forth the Commission's understanding that it is unlawful for any municipal advisor to permit such a person to become, or remain, an associated person without the consent of the Commission, if such municipal advisor knew, or, in the exercise of reasonable care should have known, of such order. Not only does the Commission believe that such interpretation is the only one that is consistent with the Congressional intent underlying Section 975(c)(5) of the Dodd-Frank Act, and that any other reading would produce the absurd result that no amendment would be made to Section 15(c)(4) of the Exchange Act, but the Commission also believes that this interpretation and the adoption of Rule 15Bc4–1 are necessary and appropriate to ensure that the Commission may censure or place limitations on the activities or functions of any person associated with a municipal advisor or to suspend or bar any such person from being associated with a municipal advisor.

B. Approval or Denial of Registration

As discussed in the Proposal,[1329] Exchange Act Section 15B(a)(2) provides that within forty-five days of the filing of an application to register as a municipal advisor,[1330] the Commission must either: ''(A) by order grant registration, or (B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.'' [1331]

In accordance with Exchange Act Section 15B(a)(2), the Commission will grant the registration of a municipal advisor if the Commission finds that the requirements of Section 15B of the Exchange Act are satisfied. The Commission will deny the registration of a municipal advisor if the Commission does not make such a finding or if it finds that, if the applicant were registered, its registration would be subject to suspension or revocation under Section 15B(c) of the Exchange Act.[1332]

As discussed in the Proposal, the information currently required by Form MA–T is not reviewed by the Commission prior to registration, although the Commission retains full authority to review such information and examine any registered municipal advisor at any time.[1333] The Commission intends that the permanent registration process will entail a review of each filed Form MA.

In considering whether to grant an application for registration as a municipal advisor, the Commission will review the information provided on Form MA. For example, as discussed in the Proposal, the Commission may perform cross checks of applicants through the use of the applicant's other registration numbers, such as its CRD or other SEC registration numbers, to the extent available.[1334] Also, the Commission may review the disclosures required by Item 9 of Form MA, including the disciplinary history of an applicant.[1335] In addition, as discussed

[1326] *See* Proposal, 76 FR 850, n.233.

[1327] *See* Section 975(c)(5) of the Dodd-Frank Act.

[1328] *See* Proposal, 76 FR 850, n.233.

[1329] *See id.,* at 860.

[1330] The statute allows for a longer period if the applicant consents. *See* 15 U.S.C. 78*o*–4(a)(2).

[1331] *See* 15 U.S.C. 78*o*–4(a)(2).

[1332] *See* 15 U.S.C. 78*o*–4(c).

[1333] *See* Proposal, 76 FR 860.

[1334] *See id.*

[1335] *See id.*

in the Proposal, the municipal advisor registration process will allow the Commission and staff to ask questions and, as needed, to request amendments before granting an application for registration.[1336]

C. Rule 15Ba1–8: Books and Records To Be Made and Maintained by Municipal Advisors

Section 17(a)(1) of the Exchange Act provides, in pertinent part, that all registered municipal advisors shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[1337] With proposed Rule 15Ba1–7, the Commission proposed to specify the books and records requirements applicable to municipal advisors.[1338] The Commission is adopting Rule 15Ba1–7 as proposed, but renumbered as Rule 15Ba1–8, with a few technical clarifications, the addition of general ledgers, and the addition of written consents to service of process from certain natural persons.

Record-Keeping for Municipal Advisors

As discussed in the Proposal, the Commission based Rule 15Ba1–7(a) (as adopted, Rule 15Ba1–8(a)) generally on the books and records requirements for broker-dealers and investment advisers.[1339] Rule 15Ba1–8(a), among other things, requires a municipal advisory firm to make and keep true, accurate, and current certain books and records relating to its municipal advisory activities.[1340] Specifically, Rule 15Ba1–8(a) requires all municipal advisory firms to make and keep originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of the communications.[1341] Municipal advisory firms also must keep all check books, bank statements, general ledgers,[1342] cancelled checks, and cash reconciliations; a copy of each version of the municipal advisor's policies and procedures, if any, that (i) are in effect or (ii) at any time within the last five years were in effect (not including those in effect prior to the effective date of Rule 15Ba1–8); and a copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person that memorializes the basis for that recommendation. In addition, a municipal advisory firm must keep all written agreements (or copies thereof) entered into by the municipal advisor with any municipal entity, employee of a municipal entity, or an obligated person or otherwise relating to the business of the municipal advisor as such. Further, a municipal advisory firm is required to keep a record of the names of persons who are, or have been in the past five years, associated with the municipal advisor (not including persons associated with the municipal advisor prior to the effective date of Rule 15Ba1–8); names, titles, and business and residence addresses of all persons associated with the municipal advisor;[1343] all municipal entities or obligated persons with which the municipal advisor is engaging or has engaged in municipal advisory activities in the past five years (not including those prior to the effective date of Rule 15Ba1–8); the name and business address of each person to whom the municipal advisor provides or agrees to provide payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and the name and business address of each person that provides or agrees to provide payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf.[1344] Finally, a municipal advisory firm must keep written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.[1345]

Rule 15Ba1–8(b)(1) requires municipal advisory firms to maintain and preserve all books and records required to be made for a period of not less than five years, the first two years in an easily accessible place. Further, corporate governance documents, such as articles of incorporation and stock certificate books of the municipal advisor, and those of any predecessor, excluding those that were only in effect prior to the effective date of Rule 15Ba1–8, must be maintained in the principal office of the municipal advisor and preserved until at least three years after termination of the business or withdrawal from registration as a municipal advisor.

As discussed in the Proposal, Rule 15Ba1–7(d) (as adopted, Rule 15Ba1–8(d)) is modeled on Rule 204–2 under the Investment Advisers Act.[1346] Specifically, Rule 15Ba1–8(d) permits, and sets forth the requirements for, electronic storage of the records required to be maintained and preserved pursuant to Rule 15Ba1–8. The rule further sets forth requirements with respect to the prompt [1347] provision of

[1336] *See id.*

[1337] *See* 15 U.S.C. 78q(a)(1).

[1338] *See* Proposal, 76 FR 860–862. In addition, Section 15B(b)(2)(G) of the Exchange Act provides that the rules of the MSRB shall ''prescribe records to be made and kept by . . . municipal advisors and the periods for which such records shall be preserved.'' 15 U.S.C. 78*o*–4(b)(2)(G).

[1339] *See* Proposal, 76 FR 861, note 274 and accompanying text.

[1340] Therefore, the books and records listed in Rule 15Ba1–8(a) are limited to those relating to a municipal advisor's municipal advisory activities.

[1341] As discussed in the Proposal, materials posted on a municipal advisor's Web site relating to municipal advisory activities are written communications sent by the municipal advisor for purposes of this provision. *See* Proposal, 76 FR 861, note 275. The Commission notes that written communications may be in electronic form, such as emails or instant messages. Further, as discussed above, in determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance. *See* Rule 15Ba1–1(m)(3). Similarly, in determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of Rule 15Ba1–1(h), a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance. *See* Rule 15Ba1–1(h)(2). Such representations provided by the municipal entity or obligated person official constitute written communications received by a municipal advisor relating to municipal advisory activities.

[1342] As discussed below in this section, the Commission is including ''general ledgers'' in the final books and records rule.

[1343] The Commission notes that this provision does not cover persons who were previously and are no longer associated with the municipal advisor.

[1344] Proposed Rule 15Ba1–7 also required municipal advisory firms to make and keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of its business in connection with its self-certification on Form MA. Because the Commission is not adopting a self-certification requirement, the Commission is also not adopting this corresponding books and records requirement.

[1345] As discussed below in this section, the Commission is including ''written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor'' in the final books and records rule.

[1346] *See* 17 CFR 275.204–2. *See also* Proposal, 76 FR 861.

[1347] For purposes of Rule 15Ba1–8(d), the Commission interprets the term ''prompt'' to mean making reasonable efforts to produce records that are requested by the staff during an examination without delay. The Commission believes that in

records upon request by the Commission or by its staff or other representatives. In addition, Rule 15Ba1–8(e) provides that any books or records made, kept, maintained, and preserved in compliance with Rules 17a–3 and 17a–4 under the Exchange Act, rules of the MSRB, or Rule 204–2 under the Investment Advisers Act, which are substantially the same as the books and records required to be made, kept, maintained, and preserved under Rule 15Ba1–8, will satisfy the record-keeping requirements under Rule 15Ba1–8.[1348] Subparagraph (e) of Rule 15Ba1–8 is designed to minimize the record-keeping burden for municipal advisory firms that are otherwise subject to similar record-keeping requirements.[1349]

In the Proposal, the Commission requested comment on the proposed books and records requirements. Specifically, the Commission requested comment regarding, among other things, the types of documents and data that should be retained; whether it is appropriate for the books and records requirements to be based on the books and records requirements for broker-dealers and investment advisers; the length of the period for maintaining and preserving books and records; the format of the records retained; and whether the proposed requirements are overly burdensome.[1350]

The Commission received several letters that specifically addressed the books and records requirements. One commenter generally supported the proposed record-keeping rule. This commenter stated it does not oppose establishing a five-year period for municipal advisor record retention and suggested that a record retention period of five years should be the same for broker-dealers, investment advisers, and municipal advisors.[1351] However, other commenters criticized some of the requirements as being too burdensome, especially for small independent municipal advisors.[1352] For example, one commenter noted that the expense required for firms to retain originals or copies of all written communications, internal or external, relating to their municipal advisory activities caused particular concern.[1353] This commenter recommended that this requirement be eliminated, while all other books and records requirements could remain.[1354] Alternatively, this commenter suggested that only certain communications with a client or generated internally be required to be kept.[1355] Another commenter stated that, because independent municipal advisors neither hold client accounts nor hold custody of monies from clients, audited financial statements should not be required, particularly as they are costly and burdensome for small firms.[1356] This commenter suggested that the Commission should narrow the record-keeping requirements to communication material specifically relevant to financing topics and financing recommendations or advice.[1357] One commenter also requested that the Commission clarify that every iteration of commonly used and routinely changing technical financial documents, typically referred to as ''numbers runs,'' need not be retained, and that only iterations either sent to a client or used internally to form the basis for a recommendation to a client must be retained.[1358]

The Commission has carefully considered the issues raised by commenters and is adopting Rule 15Ba1–7 generally as proposed, but renumbered as Rule 15Ba1–8 and with modifications to include general ledgers, as well as written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.

General ledgers would reflect asset, liability, reserve, capital, income and expense accounts.[1359] In the Proposal, the Commission inadvertently omitted general ledgers from proposed Rule 15Ba1–7. The Commission notes that ledgers are part of the books and records requirements for broker-dealers and investment advisers, and would already be made and kept by dually-registered municipal advisors.[1360] The Commission believes that general ledgers will assist its staff in understanding a municipal advisor's business dealings and financial condition, identifying and tracking illicit expenses, identifying sources of revenue that were previously undisclosed or that pose a conflict of interest, identifying and tracing possible acts of fraud and violations of applicable laws and rules (*e.g.,* MSRB Rule G–37 (Political Contributions and Prohibitions on Municipal Securities Business)), and conducting asset verification. In addition, the Commission notes that a municipal advisor's balance sheet and profit loss statement are derived from the general ledger.

The Commission believes it is also appropriate to include in the record-keeping requirement written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor. Under proposed Rule 15Ba1–2(b), each natural person who met the definition of municipal advisor would have been required to register as a municipal advisor by filing Form MA–I.[1361] Proposed Form MA–I included consent to service of process that a natural person would have been required to execute. In contrast, adopted Rule 15Ba1–2(b) requires a person applying

many cases a municipal advisor could, and therefore will be required to, furnish records immediately or within a few hours of a request. The Commission expects that only in unusual circumstances would a municipal advisor be permitted to delay furnishing records for more than 24 hours.

[1348] *See* Rule 15Ba1–8(e).

[1349] *See* Proposal, 76 FR 861.

[1350] *See id.,* at 862.

[1351] *See* MSRB Letter I.

[1352] *See, e.g.,* letter from Gerald Gornish, Chief Counsel, Pennsylvania Public School Employees' Retirement System, Pennsylvania Municipal Retirement System, Jeffrey B. Clay, Executive Director, Pennsylvania Public School Employees' Retirement System, and James B. Allen, Secretary, Pennsylvania Municipal Retirement System, dated February 22, 2011 (''Pennsylvania Public School Employees' Retirement Board Letter'') (noting that the Commission's estimate of 181 burden hours for books and records is not broken down further to an individual municipal advisor); letter from John B. Payne, Principal, B-Payne Group Financial Advisors, dated March 28, 2011 (''Bradley Payne Letter'') (''I can manage and support fee and conflict disclosures and outgoing email and client file retention, but that is it.''); letter from UFS Bancorp, dated February 22, 2011 (''UFS Bancorp Letter'') (''[The 181-hour annual burden for books and records] is nearly ten percent of a full-time person's time.''); letter from Adam W. Rygmyr, Associate General Counsel, TIAA–CREF, Individual & Institutional Services, LLC, dated February 22, 2011 (stating that the books and records requirement would largely duplicate existing record-keeping requirements for broker-dealers).

[1353] *See* Rule 15Ba1–8(a)(1) and NAIPFA Letter I (''The information technology and storage facilities required to keep all email or similar electronic communication and to segregate those that relate to municipal advisory business from other unrelated email is expensive. Firms would be required to either outsource this function or develop the capability in-house, which would necessitate hiring one or more IT professionals. Either way, the cost would be significant to firms with such limited revenue.''). *See also* letter from Thomas DeMars, Managing Principal, Fieldman, Rolapp & Associates, dated February 22, 2011 (''Fieldman Rolapp Letter'') (recommending that the Commission modify the record-keeping requirements to eliminate the need to retain all written communications, and clarify all other record-keeping requirements); and letter from Phillip C. Dotts, President, Public FA, Inc., dated February 22, 2011 (''Public FA Letter'').

[1354] *See* NAIPFA Letter I.

[1355] *See id.*

[1356] *See* Public FA Letter.

[1357] *See id.*

[1358] *See* NAIPFA Letter I.

[1359] *See* Rule 15Ba1–8(a)(2).

[1360] *See* 17 CFR 240.17a–3(a)(2) and 17 CFR 275.204–2(a)(2).

[1361] *See* proposed Rule 15Ba1–2(b).

for registration or registered as a municipal advisor to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1362] As such, Form MA–I no longer includes consents to service of process executed by such natural persons. Because the Commission would no longer receive these consents to service of process as part of Form MA–I, the Commission believes it is appropriate to include in the record-keeping requirement written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor. Specifically, the Commission believes that this requirement will help ensure that such natural persons have indeed executed consents to service of process and will allow Commission staff to examine such consents to service of process.

With respect to concerns related to the burden of the books and records requirements, including the burden for retaining originals or copies of all written communications relating to municipal advisory activities,[1363] the Commission continues to believe that the final books and records requirements are appropriate for all municipal advisors because they will facilitate the Commission's inspections and examinations of municipal advisors and assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. Moreover, even though it recognizes that such requirements may impose burdens and costs upon municipal advisors, the Commission understands that many municipal advisors already make and keep certain types of the books and records required to be made and kept under Rule 15Ba1–8(a) under other regulatory requirements or general industry practices. Specifically, because the books and records required to be made and kept under Rule 15Ba1–8(a) are generally based on the existing books and records requirements for broker-dealers and investment advisers, the Commission believes that many municipal advisors would already be familiar and in compliance with such requirements because they are also registered as broker-dealers or investment advisers. Moreover, as noted above, to reduce the burden that would result from the books and records requirements, Rule 15Ba1–8(e)(1) provides that any books or other records made, kept, maintained, and preserved in compliance with Rules 17a–3 and 17a–4 under the Exchange Act, rules of the MSRB, or Rule 204–2 under the Investment Advisers Act, which are substantially the same as the books and records required to be made, kept, maintained, and preserved under Rule 15Ba1–8, will satisfy the requirements of Rule 15Ba1–8.

With respect to those municipal advisors that are not also registered with the Commission as broker-dealers or investment advisers, the Commission recognizes that Rule 15Ba1–8 establishes new record-keeping requirements for these entities and may impact these entities to a greater degree than entities that have previously registered as broker-dealers or investment advisers.[1364] However, the Commission believes that all municipal advisors should be subject to the same record-keeping requirements, regardless of whether they have previously registered with the Commission in another capacity. As noted above, the Commission believes that Rule 15Ba1–8 is appropriate for all municipal advisors because it will facilitate the Commission's inspections and examinations of municipal advisors [1365] and assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. The Commission also believes that regulation of municipal advisors is in the public interest and will improve the protection of municipal entities and investors.

Further, because the Commission is adopting certain additional exemptions from the definition of municipal advisor, including an exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments, the burden of the books and records requirements is similarly reduced (*i.e.,* fewer persons would be required to register as municipal advisors and the record-keeping requirements would not cover activities that fall under an exemption or exclusion from the definition of municipal advisor). The Commission also notes that the burden of the books and records requirements for municipal advisors depends on the complexity of the business of a municipal advisor, which means smaller municipal advisors would be subject to proportionately lower burden in complying with such requirements.[1366] Further, as noted below, the Commission assumes that municipal advisors will use the most cost-effective method available, depending on their size and specific circumstances, to comply with Rule 15Ba1–8. The Commission understands that many municipal advisors generally make and keep the required records in electronic form, which will likely minimize the burdens and costs associated with record-keeping.[1367] Therefore, the Commission does not believe Rule 15Ba1–8 will be overly burdensome for municipal advisory firms, including small municipal advisory firms.[1368]

Finally, in response to comments, the Commission confirms that only iterations of ''numbers runs'' sent to a client or that are used to form the basis for a recommendation to a client must be retained.[1369] With respect to a commenter's suggestion that audited financial statements should not be required, the Commission notes that the requirements of Rule 15Ba1–8 do not apply to audited financial statements.[1370]

Record-keeping After a Municipal Advisor Ceases To Do Business

As proposed, Rule 15Ba1–8(c)[1371] requires a municipal advisory firm, before ceasing to conduct or discontinuing business as a municipal advisor, to arrange and be responsible for the continued preservation of the books and records for the remainder of the period required by Rule 15Ba1–8. It also requires the municipal advisory firm to notify the Commission in writing of the exact address where such books and records will be maintained during such period. The Commission did not

[1362] *See* Rule 15Ba1–2(b).

[1363] *See supra* notes 1353–1355.

[1364] *See infra* Sections VII.D.8.; VIII.D.3.a.; and X.D. (discussing the costs and burdens of Rule 15Ba1–8).

[1365] *See* 15 U.S.C. 78*o*-4(c)(7)(A). Based on the Commission's experience in conducting examinations of broker-dealers and investment advisers, which includes examinations of the types of books and records required by Rule 15Ba1–8(a), the Commission believes that the municipal advisor books and records requirements under Rule 15Ba1–8 will facilitate the Commission's inspections and examinations of municipal advisors.

[1366] *See also infra* notes 1594 and accompanying text (discussing PRA burdens of Rule 15Ba1–8) and 1867 and accompanying text (discussing the technological costs of Rule 15Ba1–8).

[1367] *See infra* note 1601 and accompanying text (discussing PRA burdens in connection with electronic storage of books and records).

[1368] Concerns expressed with respect to the impact of the rule on small municipal advisors are further discussed in Section IX below.

[1369] *See supra* note 1358 and accompanying text.

[1370] *See supra* note 1356 and accompanying text.

[1371] In the Proposal, this provision was numbered Rule 15Ba1–7(c).

receive any comments on this aspect of the proposal and is adopting Rule 15Ba1–8(c) without modification.

Requirements for Non-Residents

As proposed, Rule 15Ba1–8(f), which is modeled on Rule 204–2(j) under the Investment Advisers Act,[1372] sets forth the books and records requirements for non-resident municipal advisory firms, including requirements for keeping, maintaining, and preserving copies of the books and records that these municipal advisors are required to make, keep, maintain, and preserve under any rule or regulation adopted under the Exchange Act, as well as requirements for providing written notice to the Commission of the location of such books and records.[1373] Specifically, Rule 15Ba1–8(f) requires non-resident municipal advisory firms to keep, maintain, and preserve all such books and records in the United States [1374] and provide notice to the Commission of the address of such location within 30 calendar days [1375] after Rule 15Ba1–8 becomes effective (in the case of municipal advisory firms that are already registered or in the process of applying for registration when the rule becomes effective) or when filing an application for registration (in the case of municipal advisory firms that file applications for registration after the rule becomes effective).[1376] A non-resident municipal advisory firm is not required to keep, maintain, and preserve such books and records in the United States if the municipal advisor timely files with the Commission a written undertaking (in a form acceptable to the Commission and signed by a duly authorized person) to furnish the Commission, upon demand, copies of any or all of such books and records at the municipal advisor's expense at the Commission's principal or regional office (as specified by the Commission).[1377] Specifically, a non-resident municipal advisory firm must furnish the requested books and records within 14 calendar days [1378] of the Commission's written demand to the offices of the Commission as specified in the written demand.[1379]

The Commission did not receive any comments on its proposed record-keeping requirements for non-resident municipal advisory firms and is adopting Rule 15Ba1–8(f) without substantive modification.[1380] The Commission believes the requirements for non-resident municipal advisory firms will help ensure the Commission's effective regulation of municipal advisors. Further, as discussed in the Proposal, such requirements are designed to ensure that the Commission has access to the books and records of municipal advisors located outside of the United States to enable it to perform effective examinations and inspections. The requirements will also serve to mitigate the time and cost burdens the Commission may otherwise face in attempting to gain access to books and records located outside of the United States, such as in the case of any jurisdictional dispute relating to such access.[1381]

IV. Designation of FINRA To Examine FINRA Member Municipal Advisors

The Dodd-Frank Act amended the Exchange Act to, among other things, require new entities and individuals to register with the Commission and authorize the Commission to examine such registrants, including municipal advisors. Some entities that are currently registered, or will be registered, with the Commission as municipal advisors are also registered with the Commission as broker-dealers and are members of FINRA. The Commission anticipates that FINRA will conduct examinations of Commission-registered municipal advisors that are also FINRA members, subject to the Commission's oversight. The Commission will be responsible for examining registered municipal advisors that are not FINRA members, which comprise the vast majority of the anticipated registrants.[1382]

The Commission believes that Section 15A of the Exchange Act provides authority to FINRA to examine its members' municipal advisory activities. Section 15A provides, in relevant part, that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that: (1) The association has the capacity to be able to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act, the rules and regulations thereunder, the rules of the MSRB, and the rules of the association; [1383] and (2) the rules of the association provide that the association shall provide information to the MSRB about the examinations of the association so that the MSRB may assist in such examinations.[1384] In accordance with these provisions, FINRA, as a registered national securities association, has traditionally conducted examinations of its members' activities in connection with municipal securities for compliance with the Exchange Act, rules and regulations thereunder, and MSRB rules.

Registered municipal advisors are subject to the Exchange Act, rules and regulations thereunder, and MSRB rules. As such, Section 15A provides FINRA with authority to conduct examinations of its members' activities as registered municipal advisors in order to evaluate their compliance with the applicable laws and rules.[1385] In addition, the Dodd-Frank Act amended Section 15B of the Exchange Act to expressly provide that ''the Commission, or its designee, in the case of municipal advisors,'' conduct periodic examinations.[1386] Accordingly, the Commission designates FINRA as a designee to examine its members' activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and MSRB rules applicable to municipal advisors.

V. Implementation and Compliance Dates

As discussed above, Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor to provide advice to

[1372] 17 CFR 275.204–2(j).

[1373] In the Proposal, this provision was numbered Rule 15Ba1–7(f).

[1374] *See* Rule 15Ba1–8(f)(1).

[1375] The Commission is clarifying that the 30-day period refers to 30 calendar days.

[1376] *See* Rule 15Ba1–8(f)(2).

[1377] *See* Rule 15Ba1–8(f)(3)(i). Rule 15Ba1–8(f)(3)(i) sets forth the form of the undertaking.

[1378] The Commission is clarifying that the 14-day period refers to 14 calendar days.

[1379] *See* Rule 15Ba1–8(f)(3)(ii). The rule requires that any written demand be forwarded by the Commission to the municipal advisor by registered mail at the municipal advisor's last address of record filed with the Commission. *See id.*

[1380] *See supra* notes 1375 and 1378.

[1381] *See* Proposal, 76 FR 862.

[1382] As of December 31, 2012, approximately twenty-five percent of the 1,110 MA–T registrants were also registered with FINRA as broker-dealers. Accordingly, under the permanent registration regime, the Commission believes that FINRA will examine but a small percentage of registered municipal advisors.

[1383] *See* 15 U.S.C. 78*o*–3(b)(2).

[1384] *See* 15 U.S.C. 78*o*–3(b)(15).

[1385] Moreover, as noted above, Section 15A(b)(15) of the Exchange Act requires FINRA rules to specify that it shall provide information to the MSRB about its examinations so that the MSRB may ''assist in such . . . examinations.'' 15 U.S.C. 78*o*–3(b)(15). This statutory provision implies that FINRA has the requisite authority to examine municipal advisors.

[1386] 15 U.S.C. 78*o*–4(c)(7)(A)(iii). Specifically, Section 15B(c)(7) provides that ''periodic examinations . . . shall be conducted by—(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association; (ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers; and (iii) the Commission, or its designee, in the case of municipal advisors.''

or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.[1387] Section 15B of the Exchange Act also provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[1388] The temporary municipal advisor registration regime, also as discussed above, is set to expire on December 31, 2014.[1389] Rules 15Ba1–1 through 15Ba1–8, Rule 15Bc4–1, and Forms MA, MA–I, MA–W, and MA–NR will become effective 60 days after publication of the rules in the **Federal Register,** and municipal advisors must comply with the new rules within the applicable compliance filing periods described below.

The permanent municipal advisor registration system on EDGAR will be available to accept registration applications for municipal advisory firms, including sole proprietors, beginning July 1, 2014. As discussed below, however, the Commission is providing specific compliance filing periods for filing applications for registration under the permanent registration regime. To continue doing business as a municipal advisory firm, any firm that is registered as a municipal advisor under Rule 15Ba2–6T and Form MA–T as of the Effective Date must file a complete application for registration as a municipal advisor within the applicable filing period, as set forth below. In accordance with Section 15B(a)(2) of the Exchange Act, within forty-five days of the date such complete application is considered filed (or within such longer period as to which the applicant consents), the Commission shall grant registration or institute proceedings to determine whether registration should be denied.[1390] Before filing applications for registration as municipal advisors, municipal advisory firms will need to file a Form ID requesting an EDGAR access code as soon as possible, and should do so by no later than 30 days after the Effective Date to minimize processing delays.[1391]

To help ensure an orderly transition from the temporary registration regime to the permanent registration regime and the submission of applications through EDGAR, the Commission is providing the following compliance dates for municipal advisory firms to complete their applications for registration under the permanent registration regime. These compliance dates are based on the registration number a municipal advisor received (or will receive) when it registered (or will register) as a municipal advisor under Rule 15Ba2–6T and on Form MA–T (''temporary registration number''). A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00001–00 and ends on 866–00400–00 must file a complete application for registration under the permanent registration regime on or after July 1, 2014, but no later than July 31, 2014. A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00401–00 and ends on 866–00800–00 must file a complete application for registration under the permanent registration regime on or after August 1, 2014, but no later than August 31, 2014. A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00801–00 and ends on 866–01200–00 must file a complete application for registration under the permanent registration regime on or after September 1, 2014, but no later than September 30, 2014. A municipal advisory firm that has a temporary registration number that falls after 866–01200–00 must file a complete application for registration under the permanent registration regime on or after October 1, 2014, but no later than October 31, 2014.

A municipal advisory firm that enters into the municipal advisory business on or after October 1, 2014 and does not have a temporary registration number as of October 1, 2014, must file a complete application for registration under the permanent registration regime on or after October 1, 2014 and be registered with the Commission before engaging in municipal advisory activities. The Commission believes that this staggered compliance approach will help to facilitate an orderly transition from the temporary registration regime to the permanent registration regime.

For a municipal advisory firm that files a complete application during the applicable filing period, its temporary municipal advisor registration will continue in effect until the Commission grants or denies the application for registration, unless the temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm. Any complete application for registration received prior to the start of the applicable filing period for a municipal advisory firm will be considered filed[1392] on the first day of the applicable filing period.[1393] For a municipal advisory firm that engages in municipal advisory activities before and during the applicable filing period but that fails to file a complete application within the applicable filing period, the firm's temporary registration will expire forty-five days after the end of the applicable filing period. Therefore, a firm that continues to engage in municipal advisory activities after the expiration of its temporary registration would be in violation of Section 15B of the Exchange Act until it submits a complete application and the Commission grants its application for registration under the permanent registration regime.

A municipal advisory firm that is required to register as a municipal advisor with the Commission on or after the Effective Date but before the applicable filing period must register under the temporary registration regime as a municipal advisor and must file an application for registration under the permanent registration regime during the applicable filing period. Such municipal advisory firm's temporary registration will continue to be in effect until the date that its registration is granted or denied by the Commission under the permanent registration regime, unless the municipal advisory

[1387] *See* 15 U.S.C. 78*o*–4(a)(1)(B).

[1388] *See* 15 U.S.C. 78*o*–4(a)(2).

[1389] *See supra* Section II.C. *See also* Rule 15Ba2–6T and Form MA–T Extension Release, *supra* note 7.

[1390] *See* 15 U.S.C. 78*o*–4(a)(2).

[1391] As discussed in the Instructions, before a municipal advisory firm can electronically file the application with the Commission on EDGAR, such person must become an EDGAR filer with authorized access codes through the ''Form ID'' authorization process. Form ID is available on the Commission's Web site at *http://www.sec.gov/about/forms/secforms.htm#EDGAR.* For staff guidance regarding Form ID, Electronic Form ID Frequently Asked Questions are available on the Commission's Web site at *http://www.sec.gov/info/edgar/feifaq052306.htm.*

[1392] *See* Rule 15Ba1–2(c). *See also supra* note 971 and accompanying text (discussing that a Form MA is considered filed upon submission of a completed Form MA, together with all additional required documents, and clarifying that, if a Form MA is not considered complete, the Commission's statutory forty-five day review period will not commence).

[1393] For example, if a municipal advisory firm with a temporary registration number that falls between 866–00401–00 and 866–00800–00 files a complete application for registration on July 15, 2014, its application will be considered filed on August 1, 2014.

firm's temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm. A municipal advisory firm that is required to register as a municipal advisor with the Commission after the commencement of the applicable filing period must file an application with the Commission under the permanent registration regime.

VI. Delegation of Authority [1394]

A. Delegation to the Director of the Office of Municipal Securities

Rule 30–3a of the Commission's Rules of Organization and Program Management

The Commission is amending its existing delegations of authority by adding Rule 30–3a to its Rules of Organization and Program Management, which governs the delegations of authority to the Director of the Office of Municipal Securities (''Director'').[1395] Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that ''[w]ithin forty-five days of the date of the filing of [a municipal advisor registration] application (or within such longer period as to which the applicant consents), the Commission shall . . . by order grant registration, or . . . institute proceedings to determine whether registration should be denied.'' [1396] New Rule 30–3a delegates to the Director the authority to issue orders granting registration of municipal advisors within forty-five days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents).[1397]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, provides the Commission with the authority to cancel the registration of a municipal advisor if it finds that such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1398] Rule 30–3a delegates to the Director the authority to issue orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1399]

The delegations of authority to the Director in Rule 30–3a will allow the staff, on behalf of the Commission, pursuant to Section 15B of the Exchange Act,[1400] to review and act upon applications for registration, and to issue orders canceling municipal advisor registrations. The Commission believes that these delegations of authority will facilitate efficient registration and regulation of municipal advisors. Also, pursuant to Rule 30–3a, the Director may submit matters to the Commission for consideration as it deems appropriate.[1401]

Rule 19d of the Commission's Rules of Organization and Program Management

The Commission is also amending its existing Rules of Organization and Program Management by adding Rule 19d, which sets forth the responsibilities of the Director.[1402] In light of the changes made by the Dodd-Frank Act to Section 15B of the Exchange Act regarding the registration and regulation of municipal advisors, the Commission is adding Rule 19d, which states that the Director is responsible to the Commission for the administration and execution of the Commission's programs under the Exchange Act relating to the registration and regulation of municipal advisors. Rule 19d also states that the functions involved in the regulation of municipal advisors include recommending the adoption and amendment of Commission rules, and responding to interpretive and no-action requests. Therefore, Rule 19d specifies the role of staff in the registration and regulation of municipal advisors.

B. Delegation to the Director of the Office of Compliance Inspections and Examinations

Rule 30–18 of the Commission's Rules of Organization and Program Management

The Commission is amending its existing delegations of authority by amending Rule 30–18 of its Rules of Organization and Program Management governing the delegations of authority to the Director of the Office of Compliance Inspections and Examinations (''OCIE Director'').[1403] As noted above, Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that ''[w]ithin forty-five days of the date of the filing of [a municipal advisor registration] application (or within such longer period as to which the applicant consents), the Commission shall . . . by order grant registration, or . . . institute proceedings to determine whether registration should be denied.'' [1404] The Commission delegates to the OCIE Director the authority to issue orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents), and to grant registration of municipal advisors sooner than 45 days after the filing of an application for registration.[1405]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, provides the Commission with the authority to cancel the registration of a municipal advisor if the Commission finds that such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1406] The amendment to Rule 30–18 delegates to the OCIE Director the authority to issue orders to cancel the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1407]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, also provides for the withdrawal of municipal advisors from registration under such terms and conditions that the Commission deems necessary in the public interest or for the protection of investors or municipal entities or obligated persons.[1408] The amendment to Rule 30–18 delegates to the OCIE Director the authority to determine

[1394] The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**. *See* 5 U.S.C. 553(b). This requirement does not apply, however, to rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). Because the amendments described in this Section VI are limited to the Commission's Rules of Organization and Program Management, they are not subject to the provisions of the APA requiring notice and opportunity for comment. Because the Commission is not publishing these rule amendments in a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act are not applicable. *See* 5 U.S.C. 603. For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are also not applicable. *See* 5 U.S.C. 804(3)(C). Additionally, the Commission does not believe the amendments will have any anti-competitive effects for purposes of Section 23(a)(2) of the Exchange Act because they will not impose any new burden on municipal advisors or other market participants. *See* 15 U.S.C. 78w(a)(2). Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. *See* 44 U.S.C. 3501 *et seq.*

[1395] 17 CFR 200.30–3a.

[1396] 15 U.S.C. 78*o*–4(a)(2).

[1397] *See* 17 CFR 200.30–3a(a)(1)(i).

[1398] *See* 15 U.S.C. 78*o*–4(c)(3).

[1399] *See* 17 CFR 200.30–3a(a)(1)(ii).

[1400] 15 U.S.C. 78*o*–4.

[1401] *See* 17 CFR 200.30–3a(b).

[1402] 17 CFR 200.19d.

[1403] 17 CFR 200.30–18.

[1404] 15 U.S.C. 78*o*–4(a)(2).

[1405] *See* 17 CFR 200.30–18(j)(7).

[1406] *See* 15 U.S.C. 78*o*–4(c)(3).

[1407] *See* 17 CFR 200.30–18(j)(8)(i).

[1408] *See* 15 U.S.C. 78*o*–4(c)(3).

whether notices of withdrawal from registration on Form MA–W may become effective sooner than the 60-day waiting period.[1409]

These delegations of authority to the OCIE Director will allow the staff, on behalf of the Commission, pursuant to Section 15B of the Exchange Act,[1410] to review and act upon applications for registration and withdrawals from registration, and to make determinations with regard to the cancellation of municipal advisor registrations. These delegations of authority will facilitate efficient registration and regulation of municipal advisors. Also, the OCIE Director may submit matters to the Commission for consideration as it deems appropriate.[1411]

Rule 19c of the Commission's Rules of Organization and Program Management

The Commission is also amending its existing Rules of Organization and Program Management by amending Rule 19c, which sets forth the responsibilities of the OCIE Director.[1412] Currently, Rule 19c provides that the OCIE Director is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the MSRB, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers. Under Sections 15B and 17(a) of the Exchange Act, as amended by the Dodd-Frank Act, municipal advisors are now required to be registered with the Commission and are subject to record-keeping requirements promulgated by the Commission.[1413] Further, Section 17(b) of the Exchange Act provides that all records of persons described in Section 17(a) are subject ''to such reasonable periodic, special, or other examinations by representatives of the Commission . . . as the Commission * * * deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.'' [1414] In light of the changes made by the Dodd-Frank Act, the Commission is amending Rule 19c to reflect the responsibilities of the OCIE Director with respect to all persons subject to compliance inspections and examinations, including municipal advisors. These amendments specify the role of OCIE staff in the inspection and examination of records kept by municipal advisors.

VII. Paperwork Reduction Act

Certain rules that the Commission is adopting impose new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1415] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted these collections of information to the Office of Management and Budget (''OMB'') for review. The title for the collection of information requirement is ''Rules 15Ba1–1 to 15Ba1–8—Registration of Municipal Advisors.'' The collection of information was assigned OMB Control No. 3235–0681.

In the Proposal, the Commission solicited comments on the collection of information requirements. In particular, the Commission solicited comments on whether the calculations of either the burden hours or associated costs were too high or too low.[1416] Some commenters addressed the collection of information aspects of the Proposal.

Many commenters opined generally that municipal advisor registration under the proposed rules would be overly burdensome and would impose significant costs that would prove detrimental, especially to smaller ''community banks'' and local and state municipalities.[1417] Although most of these letters neither provided specific suggestions to revise the Commission's estimates, nor provided specific alternative figures or calculations for actual burden hour figures, the Commission addresses the comments below.

A. Summary of Collection of Information

Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form, and containing such information and documents concerning the municipal advisor and any persons associated with the municipal advisor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[1418]

Under the final rules and forms, the permanent registration regime for municipal advisors will be more comprehensive than the temporary one and will require more detailed disclosures. Under Rule 15Ba1–2(a), each firm applying for registration with the Commission as a municipal advisor is required to complete and file electronically with the Commission Form MA. In addition, each person applying for registration, or registered with, the Commission as a municipal advisor must complete and file electronically with the Commission Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf.[1419] Each Form MA shall be considered filed with the Commission upon acceptance of Form MA, together with all additional required documents, including all required Form MA–Is, by the Commission's EDGAR system.[1420] A sole proprietor will have to complete both Form MA and Form MA–I.[1421]

Under the permanent registration regime, municipal advisors will include sole proprietorships and firms of varying sizes. In addition, municipal advisors will include firms that engage in municipal advisory activities as part of a broader array of financial services, serving many types of clients, and that have many associated persons. Thus, the paperwork burden will reflect these differences in size and types of other financial services in which the municipal advisors engage.

Pursuant to Rule 15Ba1–5(a), a municipal advisory firm that registers on Form MA must amend its Form MA at least annually, within 90 days of the end of the municipal advisor's fiscal year in the case of firms or within 90 days of the end of the calendar year for sole proprietors, and more frequently as required by the General Instructions. In addition, a registered municipal advisor must promptly amend Form MA–I whenever any information previously provided therein becomes inaccurate.[1422] Municipal advisory firms must also amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory

[1409] *See* 17 CFR 200.30–18(j)(8)(ii).

[1410] 15 U.S.C. 78*o*–4.

[1411] *See* 17 CFR 200.30–18(m).

[1412] 17 CFR 200.19c.

[1413] 15 U.S.C. 78*o*–4 and 78q(a).

[1414] 15 U.S.C. 78q(b).

[1415] 44 U.S.C. 3501 *et seq.*

[1416] *See* Proposal, 76 FR 872, 878.

[1417] *See, e.g.,* Form Letter A.

[1418] *See* 15 U.S.C. 78*o*–4(a)(2).

[1419] *See* Rule 15Ba1–2(b)(1).

[1420] *See* Rule 15Ba1–2(c).

[1421] *See* Rule 15Ba1–2(b)(2). The Commission has developed an online filing system to permit municipal advisors to file a completed Form MA and Form MA–I through the EDGAR system.

[1422] *See* Rule 15Ba1–5(b).

activities on its behalf. Finally, registered municipal advisors must report successions of registration on Form MA.[1423]

Pursuant to Rule 15Ba1–4, all registered municipal advisors are required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor. As will be the case with both Forms MA and MA–I, Form MA–W will be required to be filed electronically with the Commission.

Rule 15Ba1–6 sets forth the general procedures for serving non-residents. Pursuant to Rule 15Ba1–6 and the instructions to Form MA–NR, each non-resident municipal advisor applying for registration, at the time of filing of the municipal advisor's application on Form MA, must file with the Commission a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor. In addition, each municipal advisor applying for registration pursuant to, or registered under, Section 15B of the Exchange Act must file Form MA–NR with the Commission for each non-resident general partner, non-resident managing agent, and non-resident natural person associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor.[1424] Rule 15Ba1–6(d) requires each non-resident municipal advisor to provide an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records and submit to inspection and examination by the Commission.

Rule 15Ba1–8 requires all registered municipal advisors to maintain true, accurate, and current books and records relating to their municipal advisory activities. Generally, Rule 15Ba1–8 requires such books and records to be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

Rule 15Ba1–1(d)(3)(vi) exempts from the definition of ''municipal advisor'' any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that certain requirements are met. First, an independent registered municipal advisor must be providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities.[1425] Second, the person seeking to rely on Rule 15Ba1–1(d)(3)(vi) must receive from the municipal entity or obligated person a representation in writing that the municipal entity or obligated person is represented by, and will rely on the advice of, an independent registered municipal advisor.[1426] Third, the person must make certain disclosures to the municipal entity or obligated person and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor.[1427] With respect to a municipal entity, the person seeking to rely on the exemption must disclose in writing that, by obtaining the representation discussed above from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in Section 15B(c)(1) of the Exchange Act[1428] with respect to the municipal financial product or the issuance of municipal securities.[1429] With respect to an obligated person, the person seeking to rely on the exemption must disclose in writing that, by obtaining the representation discussed above from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[1430]

Rule 15Ba1–1(h) defines ''municipal escrow investments'' to mean proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities. In determining whether or not funds to be invested or reinvested constitute municipal escrow investments, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1431]

Similarly, the Commission is adopting a qualification to the definition of ''proceeds of municipal securities'' that provides that in determining whether or not funds to be invested constitute proceeds of municipal securities, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1432]

B. Use of Information

The Commission believes Form MA and Form MA–I will help to ensure that the Commission can make information about municipal advisors transparent and easily accessible to the investing public, including municipal entities and obligated persons who engage municipal advisors; investors who may purchase securities from offerings in which municipal advisors participated; and other regulators. Further, the information provided on Form MA and Form MA–I will expand the amount of publicly available information about municipal advisors, including conflicts of interest and disciplinary history. Although much of the information required by Form MA is already publicly available with respect to municipal advisors that are already registered with the Commission as investment advisers or broker-dealers, many municipal advisors that are not currently registered with the Commission in another capacity will make this information available for the first time. In addition, while municipal advisors are currently required to disclose disciplinary history for some of their associated persons on Form MA–T, municipal advisors will be required to disclose on Form MA disciplinary history for all associated persons. Consequently, the final rules and forms will allow municipal entities and obligated persons, as well as others, to become more fully informed about municipal advisors in a more efficient manner.

In addition, the requirement that each municipal advisory firm register with

[1423] *See* Rule 15Ba1–7.

[1424] *See* Rule 15Ba1–6(a)(2).

[1425] *See* Rule 15Ba1–1(d)(3)(vi)(A). For purposes of this exemption, the term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi).

[1426] *See* Rule 15Ba1–1(d)(3)(vi)(B). The person receiving the written representation may rely on the representation, provided that the person receiving such representation has a reasonable basis for relying on the representation.

[1427] Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities. *See* Rule 15Ba1–1(d)(3)(vi)(C)(3).

[1428] 15 U.S.C. 78*o*–4(c)(1).

[1429] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[1430] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2).

[1431] *See* Rule 15Ba1–1(h)(2).

[1432] *See* Rule 15Ba1–1(m)(3).

the Commission on Form MA and complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf will help ensure that the Commission has information to oversee respondents and their activities in the municipal securities market effectively. In particular, the information provided in Form MA will be used to determine whether to grant a municipal advisor's application for registration or to institute proceedings to determine whether registration should be denied. The information will also be used to focus examinations and aid in risk-based examination. Moreover, Form MA and Form MA–I will enable the Commission to obtain an accurate estimate of the number of municipal advisors, by size and by municipal advisory activity; analyze data regarding the various types of municipal advisory activities in which municipal advisors engage; and evaluate the disciplinary history of all municipal advisors and associated persons, including all regulatory, civil, and criminal proceedings.

The requirement that a municipal advisor make and keep books and records, including written communications and records of associated persons, will help to ensure that records of the respondent's primary municipal advisory activities, as well as the activities of its associated persons, exist. The Commission and other regulators could potentially request books and records during an examination to evaluate the municipal advisor's compliance with the Exchange Act, the rules thereunder, and MSRB rules, as well as for other regulatory purposes.

The requirement that a non-resident municipal advisor complete Form MA–NR, and furnish Form MA–NR for its non-resident general partners, non-resident managing agents, and associated persons engaged in municipal advisory activities, will help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, conserve Commission resources, and avoid potential conflicts of law. The requirement that a non-resident municipal advisor provide an opinion of counsel on Form MA will help ensure that such non-resident municipal advisor can provide access to its books and records and submit to inspection and examination by the Commission.

The requirement that certain written representations and disclosures be made in order for a person to be exempt from the definition of municipal advisor where a municipal entity or obligated person is represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Further, the information will allow municipal entities and obligated persons to understand whether a person is acting as a municipal advisor. Similarly, the exceptions from the definitions of municipal escrow investments and proceeds of municipal securities for reasonable inquiries will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission.

C. Respondents

In the Proposal, the Commission estimated that the proposed ''collections of information'' would initially apply to approximately 1,000 municipal advisory firms, including sole proprietors.[1433] This estimate was based partly on the number of municipal advisors that had registered with the Commission under Rule 15Ba2–6T. As of October 2010, there were approximately 800 total unique electronic temporary registrations for municipal advisors where Form MA–T was completed and not withdrawn.[1434] In the Proposal, the Commission stated its belief that the number of Form MA–T registrants would likely increase beyond 800 because numerous applicants that would have been required to register might have missed the October 1, 2010, deadline for a variety of reasons, such as concluding, based on their interpretation of the Dodd-Frank Act, that they were not required to register as municipal advisors.[1435] For the PRA analysis of Rule 15Ba2–6T, the Commission estimated that approximately 1,000 applicants would be required to complete Form MA–T.[1436] The Commission therefore believed that 1,000 applicants would remain an appropriate estimate for the total number of municipal advisory firms that would be required to register on Form MA under the proposed permanent registration regime. The Commission also estimated that the average number of new Form MA applicants per year would be 100.[1437]

In the Proposal, the Commission also estimated that approximately 21,800 individuals would be required to register as natural person municipal advisors on Form MA–I,[1438] while the average number of new Form MA–I applicants per year would be 1,800.[1439] These estimates were based on trends observed in registrations of investment advisers and Form U4 applications submitted to FINRA.

In the Proposal, the Commission solicited comments on how many municipal advisors would incur collection of information burdens if the proposed rules and forms were adopted by the Commission.[1440] The Commission received no comments regarding the estimated number of municipal advisory firms that would be required to register initially on Form MA [1441] and no comments regarding estimates for the average annual number of new Form MA and Form MA–I applicants. Nevertheless, the Commission is revising its initial estimates of the numbers of applicants required to complete Form MA. The Commission's decision to revise its estimates is based, in part, on a comparison between the current number of Form MA–T registrants and the number of municipal advisors that are registered with the MSRB.

In October 2010, there were approximately 800 Form MA–T registrants. According to Form MA–T data, as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, as of December 31, 2012, approximately 901 were also registered as municipal advisors with the MSRB, as they are required to do prior to engaging in municipal advisory activities.[1442] For the reasons discussed below, the Commission believes that the number of Form MA–T registrants may not be an accurate representation of the number of municipal advisors and that MSRB data represents a better basis on which to estimate the number of municipal advisors active in the market.

The Commission believes that a number of persons, recognizing that the

[1433] *See* Proposal, 76 FR 865.

[1434] *See id.*

[1435] *See id.*

[1436] *See* Temporary Registration Rule Release, 75 FR 54473.

[1437] *See* Proposal, 76 FR 866.

[1438] *See id.* at 865.

[1439] *See id.*

[1440] *See id.* at 872.

[1441] For a discussion of comments regarding the number of natural persons who will need to initially register on Form MA–I, see *infra* note 1447–1467 and accompanying text.

[1442] The Commission staff obtained this estimate by comparing the list of MSRB registrants to the Commission's list of Form MA–T registrants as of December 31, 2012.

Commission does not impose any fees for registration, may have registered with the Commission as municipal advisors out of an initial overabundance of caution. Although some current Form MA–T registrants may not have registered with the MSRB because of uncertainty regarding the scope of the temporary registration regime, others may have determined in the intervening time after October 1, 2010, that registration with the MSRB was not required because they were not engaging in municipal advisory activities. The Commission staff understands based on discussions with market participants that these Form MA–T registrants may have retained Commission registration because there are no associated fees to maintain such registration.[1443] In addition, the Commission anticipates that the exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments [1444] will reduce the estimated number of initial Form MA applicants. Likewise, the Commission anticipates the additional exemptions adopted today will also reduce the estimated number of initial Form MA applicants.[1445] For these reasons, the Commission now estimates that the ''collections of information'' will initially apply to approximately 910 municipal advisory firms, including sole proprietors.[1446]

In addition, the Commission is revising its estimate of the number of Form MA–I submissions the Commission expects municipal advisory firms will be required to file.[1447] For reasons discussed below, the Commission is revising its estimate of approximately 21,800 Form MA–I submissions downward and currently estimates that, during the first year, municipal advisors will need to complete a Form MA–I for approximately 11,250 individuals.[1448]

In the Proposal, the Commission divided the number of Form MA–I applicants into three main categories: (1) Individuals who are currently also registered as investment adviser representatives, registered representatives of broker-dealers, or both, and who are employed at investment advisory firms, broker-dealer firms, or banks; (2) individuals who are employed at financial advisor firms that are not registered as broker-dealers or investment advisers; and (3) individual solicitors who are employed at third-party marketing and solicitor firms.[1449] First, the Commission estimated the number of individuals who are currently registered as investment adviser representatives, registered representatives of broker-dealers, or both, and would register on Form MA–I. To calculate this estimate in the Proposal, the Commission compared the proportion of FINRA Form U4 filers (*i.e.,* individuals who are investment adviser representatives and/or registered representatives of broker-dealers) to the sum of all investment advisers registered on Form ADV and all broker-dealers registered on Form BD. FINRA estimated that, as of October 2010, 637,000 individuals had registered as investment adviser representatives and/or registered representatives of broker-dealers on Form U4.[1450] The Commission estimated that as of October 2010, 11,888 investment advisers had registered on Form ADV, while as of March 2010, 5,163 broker-dealers had registered on Form BD. The proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants was approximately 37.36 to 1.[1451] According to Form MA–T data that had been collected as of October 2010, the Commission estimated that approximately 450 of 1,000 Form MA–T registrants would be investment adviser and/or broker-dealer firms. Thus, in the Proposal, the Commission estimated that approximately 16,800 individuals who are registered as investment adviser representatives, registered representatives of broker-dealers, or both, would be required to register on Form MA–I.[1452]

Based on data collected as of December 31, 2012, the Commission is revising its estimate of the number of individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers and for whom a municipal advisor will be required to file Form MA–I. FINRA estimates that, as of December 31, 2012, 670,016 individuals had registered as investment adviser representatives and/or registered representatives of broker-dealers on Form U4.[1453] The Commission estimates that, as of December 31, 2012, there were 32,645 broker-dealer and investment advisory firms.[1454] Thus, the revised estimate of the average number of individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers and for whom a municipal advisor will be required to file Form MA–I is approximately 20.52.[1455] The Commission estimates that approximately 273 of the 910 Form MA registrants will be municipal advisors registered with the

[1443] The Commission staff also understands based on discussions with market participants that some municipal advisors may have maintained Form MA–T registration instead of withdrawing from registration to wait and see whether registration would be required under the permanent registration regime, while others may not have realized they could withdraw from registration or may have determined not to withdraw for other reasons.

[1444] *See* Rule 15Ba1–1(d)(3)(vii).

[1445] *See supra* Section III.A.1.c.

[1446] This estimate rounds to the nearest higher multiple of ten the number of municipal advisors that are registered with the MSRB to engage in municipal advisory activities. The Commission uses a similar rounding convention in estimating the number of municipal advisors that will newly register with the Commission in subsequent years, amend prior filings, and withdraw from registration.

[1447] As discussed above, natural person municipal advisors who are not sole proprietors no longer need to register with the Commission. However, the Commission is retaining Form MA–I to obtain information about individuals associated with municipal advisory firms engaged in municipal advisory activities on behalf of such firms. The Commission notes, moreover, that it is the municipal advisory firms, not the individuals, that will be required to file Form MA–I with the Commission.

[1448] 5,602 (estimated number of individuals who are registered as investment adviser representatives, registered representatives of broker-dealers, or both, for whom a municipal advisor will be required to file Form MA–I) + 4,910 (estimated number of individuals employed by a municipal advisor not otherwise registered with the Commission for whom a municipal advisor will be required to file Form MA–I) + 730 (estimated number of individuals who are employed at solicitors) = 11,242 Form MA–I applicants.

[1449] *See* Proposal, 76 FR 865.

[1450] *See* October 2010 ''Registered Reps'' in ''FINRA Statistics,'' available at *http://www.finra.org/Newsroom/Statistics. See also* Proposal, 76 FR 865.

[1451] 637,000 (estimated number of Form U4 registrants) ÷ (11,888 (estimated number of Form ADV registrants) + 5,163 (estimated number of Form BD registrants)) = 37.36. *See* Proposal, 76 FR 865.

[1452] 450 (total number of investment adviser and broker-dealer firms registered as municipal advisors) × 37.36 (proportion of Form U4 registrants to all Form ADV and Form BD registrants) = 16,812. *See id.*

[1453] 630,391 (number of registered representatives of broker-dealers) + 39,625 (number of investment adviser representatives who are not also registered representatives of a broker-dealer) = 670,016. *See* 2012 ''Registered Reps'' in ''FINRA Statistics,'' available at *http://www.finra.org/Newsroom/Statistics.* The Proposal did not include the number of investment adviser representatives who are not also registered representatives of a broker-dealer when determining the proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants.

[1454] 4,632 (broker-dealers) + 10,754 (Commission-registered investment advisers) + 17,259 (state-registered investment advisers) = 32,645. The Proposal did not include the number of state-registered investment advisers when determining the proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants.

[1455] 670,016 (estimated number of Form U4 registrants) ÷ 32,645 (number of broker-dealers, SEC-registered investment advisers, and state-registered investment advisers) = 20.52.

Commission as investment advisers and/or broker-dealers.[1456] Accordingly, the Commission currently estimates there to be approximately 5,602 individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers for whom a Form MA–I will need to be filed.[1457]

Second, in the Proposal, the Commission estimated the number of individuals who are employed at municipal financial advisors and who would register on Form MA–I. The Commission staff learned from discussions with industry and market participants that it was reasonable to estimate that there is an average of approximately 10 professional employees per financial advisor. According to Form MA–T data that had been collected as of October 2010, the Commission estimated that approximately 450 of 1,000 MA–T registrants would be financial advisors. Thus, in the Proposal, the Commission estimated that approximately 4,500 individuals who are employed at financial advisors would be required to register on Form MA–I.[1458]

The Commission now estimates that approximately 491 of the 910 Form MA registrants will be municipal advisors not otherwise registered with the Commission.[1459] Accordingly, the Commission currently estimates there to be approximately 4,910 individuals employed by a municipal advisor not otherwise registered with the Commission for whom a Form MA–I will need to be filed.[1460]

Third, in the Proposal, the Commission estimated the number of individual solicitors who would register on Form MA–I. The Commission examined the data of all Form MA–T registrants as of October 2010, and estimated that approximately 100 out of 1,000 registrants were solicitors. For purposes of the Proposal's PRA, the Commission assumed that there were five individual solicitors who would register on Form MA–I for every solicitor firm that would register on Form MA.[1461] Thus, in the Proposal, the Commission estimated that approximately 500 individual solicitors would be required to register on Form MA–I.[1462]

The Commission now estimates that approximately 146 of the 910 Form MA registrants will be solicitors.[1463] Accordingly, the Commission currently estimates there to be approximately 730 individuals employed by solicitors for whom a Form MA–I will need to be filed.[1464]

One commenter noted that, for the Proposal's estimate of 21,800 natural persons who will be required to register initially on Form MA–I, the Commission ''completely disregards'' governing body appointees ''who may number in the tens of thousands and will likely require significantly more time and expense per person to ensure compliance than the population of financial professionals assumed in the Proposed Rule.'' [1465] In the Proposal, the Commission stated that it did not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of ''municipal advisor.'' [1466] As discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1467] Therefore, the Commission does not believe that it should increase the current estimated number of Form MA–I to account for appointed board members of governing bodies.

The Commission is not revising its initial estimate of the average number of firms that will newly register as a municipal advisor each year. In the Proposal, the Commission estimated that the average number of new Form MA applicants per year would be approximately 100.[1468] The Commission staff has reviewed Form MA–T data as of December 31, 2012, and estimates that approximately 205 municipal advisors filed an initial Form MA–T in 2011 and approximately 115 filed an initial Form MA–T in 2012. In the Proposal, the Commission stated that it believed that the number of Form MA–T registrants would likely increase beyond 800 because numerous applicants that would have been required to register might have missed the October 30, 2010, deadline for a variety of reasons, such as concluding, based on their interpretation of the Dodd-Frank Act, that they were not required to register as municipal advisors.[1469] The Commission believes

[1456] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 30% of Form MA–T registrants are municipal advisors registered with the Commission as investment advisers and/or broker-dealers (330 municipal advisors registered with the Commission as investment advisers and/or broker-dealers registered on Form MA–T ÷ 1,110 municipal advisors registered on Form MA–T = 29.73%). The Commission assumes that the same percentage of municipal advisors registered with the Commission as investment advisers and/or broker-dealers will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 30% = 273.

[1457] 273 (estimated number of municipal advisors registered with the Commission as investment advisers and/or broker-dealers) × 20.52 (estimated average number of employees per municipal advisor registered with the Commission as an investment adviser and/or broker-dealer) = 5,601.96.

[1458] 450 (total number of independent financial advisor firms registered as municipal advisors) × 10 (estimated average number of professional employees per independent financial advisor firm) = 4,500. *See* Proposal, 76 FR 865.

[1459] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 54% of Form MA–T registrants are municipal advisors not otherwise registered with the Commission (603 municipal advisors not otherwise registered with the Commission registered on Form MA–T ÷ 1,110 municipal advisors registered on Form MA–T = 54.32%). The Commission assumes that the same percentage of municipal advisors not otherwise registered with the Commission will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 54% = 491.4.

[1460] 491 (estimated number of municipal advisors not otherwise registered with the Commission registered as municipal advisors) × 10 (estimated average number of professional employees per municipal advisors not otherwise registered with the Commission) = 4,910.

[1461] *See* letter from Donna DiMaria, President, Third Party Marketers Association, dated August 27, 2009, available at *http://www.sec.gov/comments/s7-18-09/s71809-36.pdf* (commenting on the Commission's proposal to adopt a rule addressing ''pay-to-play'' practices by investment advisers and estimating that the typical solicitor firm consists of 2 to 5 professionals). *See* Proposal, 76 FR 865.

[1462] 100 (estimated number of solicitors) × 5 (estimated number of Form MA–I applicants per solicitor) = 500. *See* Proposal, 76 FR 865.

[1463] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 16% of Form MA–T registrants are solicitors (177 Form MA–T registrants that are solicitors ÷ 1,110 municipal advisors registered on Form MA–T = 15.95%). The Commission assumes that the same percentage of solicitors will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 16% = 145.6.

[1464] 146 (estimated number of solicitors that are registered as municipal advisors) × 5 (estimated average number of professional employees per solicitor) = 730.

[1465] *See* Wayne County Airport Authority Letter.

[1466] *See* Proposal, 76 FR 834. As proposed, to trigger the municipal advisor registration requirement, an appointed member of a governing body would have needed to be engaged in municipal advisory activities, and most appointed members do not engage in such activities.

[1467] *See supra* Section III.A.1.c.i.

[1468] For its estimate of the average annual number of new Form MA applicants, the Commission relied on investment adviser registration data, which indicated that new investment adviser applicants comprise, on average, approximately 10.4% of the total number of registered investment advisers. *See* Proposal, 76 FR 866. 1,000 (all Form MA applicants) × 10.4% = 104 new Form MA applicants per year. *See id.*

[1469] *See id.* at 865.

this could explain the higher number of municipal advisors that filed an initial Form MA–T in 2011 than in 2012. Thus, the Commission believes that, going forward, it is appropriate to estimate approximately 115 new Form MA–T registrations per year (assuming the temporary regime were to continue). Based on the estimate of the number of new Form MA–T registrations per year, the Commission continues to estimate that approximately 100 new municipal advisory firms will register on Form MA each year.[1470]

The Commission, however, is revising its estimate of the average number of individuals for whom municipal advisory firms will need to submit a new Form MA–I. In the Proposal, the Commission estimated that the average number of new Form MA–I applicants per year would be 1,800.[1471] The Commission now estimates that municipal advisors will need to submit a new Form MA–I for approximately 950 individuals annually.[1472]

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Initial Registration Burden

a. Form MA

In the Proposal, the Commission estimated that it would take a municipal advisory firm an average of 3.5 hours to complete Form MA.[1473] This estimate was based on the estimated average amount of time for a municipal advisory firm to complete Form MA–T and the estimated average amount of time for an investment adviser to complete Part 1A of Form ADV. The Commission stated in the Proposal that this estimate would apply to all municipal advisory firms because even those that had already completed Form MA–T under the temporary registration regime would be required to register anew under the permanent registration regime.[1474]

Additionally, the Commission stated in the Proposal that, at the time it initially files Form MA, a municipal advisory firm would be required to conduct an initial review of its business and certify that, among other things, it and every natural person associated with the municipal advisory firm would meet standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. The Commission estimated that the initial burden to comply with the Form MA self-certification requirement would be, on average, approximately 3.0 hours per applicant.[1475] The Commission based this estimate on burden estimates for Form N–CSR (''Certified Shareholder Report of Registered Management Investment Companies'') and Form N–Q (''Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company''), which include similar self-certification requirements.[1476] Thus, the Commission estimated that the total average initial burden for Form MA would be 6.5 hours per applicant.[1477]

As noted above, the Commission is making some revisions to clarify the questions asked in the forms and to elicit additional information. The Commission recognizes that some revisions will increase the burden for municipal advisors to complete the relevant forms, while others will decrease the burden. For example, to reduce the burden for municipal advisory firms with many offices, Form MA will require information pertaining only to the five largest offices. On the other hand, Form MA now requires certain additional information that will result in additional burdens, including additional identifying information and information regarding disciplinary history.

Because of these reasons and because most of the changes to Form MA are clarifications not requiring additional information,[1478] on balance, the Commission does not believe the additional information requirements will impose additional burdens on municipal advisors in the aggregate. As noted in the Proposal, the average time necessary to complete Form MA–T is 2.5 hours, while the average time necessary to complete Part 1A of Form ADV, a lengthier registration form, is 4.32 hours.[1479] Based on the comparative estimated burdens to complete Form MA–T and Part 1A of Form ADV, the Commission continues to believe that its burden estimate for the completion of Form MA is reasonable. As discussed above, however, the Commission is not adopting a self-certification requirement.[1480] Therefore, the Commission estimates that the total average initial burden for Form MA will be 3.5 hours per applicant.

In the Proposal, the Commission estimated that the total initial paperwork burden for completion and submission of Form MA during the first year would be 6,500 hours.[1481] Given its revised estimates for Form MA applicants, as described above, and its decision not to adopt a self-certification requirement, the Commission now estimates that the total initial paperwork burden for completion and submission of Form MA during the first year will be 3,185 hours.[1482]

In the Proposal, the Commission solicited comments on the collection of information burdens associated with the proposed rules and forms.[1483] The Commission received two comment letters that addressed the Commission's burden estimates for Form MA. Both commenters argued that completing Form MA would require significantly more than the estimated 6.5 hours.[1484] One commenter, in particular, asserted that:

> [T]he cost estimates included in the Proposal are grossly underestimated. Rather than the 6.5 hours estimated by the Commission, our members estimate that the initial preparation of Form MA would require significantly greater hours and much higher costs. Annual updates are estimated to require exponentially higher hours to update and maintain the filing. In this regard, some of our members have observed that the time required to prepare the Form MA–T to register under the Commission's temporary rules required well in excess of 6.5 hours.[1485]

However, this commenter did not provide specific figures by which to recalculate the Commission's estimates,

[1470] The Commission estimates that the percentage of Form MA–T registrants that will also be Form MA registrants is 82%, or 910 (estimated number of Form MA registrants) ÷ 1,110 (current Form MA–T registrants). The Commission assumes that this percentage adjustment also applies in connection with its estimate of the number of new municipal advisory firms that will register on Form MA each year. 115 (estimated number of new Form MA–T registrants per year) × 82% = 94.3 new Form MA registrants per year.

[1471] To estimate the average annual number of new Form MA–I applicants, the Commission relied on FINRA registration data, which indicated that new Form U4 applicants that are new to the industry comprise, on average, approximately 8.39% of the total number of Form U4 applicants. *See* Proposal, 76 FR 866. 21,800 (all Form MA–I applicants) × 8.39% = 1,829 new Form MA–I applicants per year. *See id.*

[1472] 11,250 (initial number of individuals for whom municipal advisory firms will need to submit a Form MA–I) × 8.39% = 943.88 individuals for whom municipal advisory firms will need to submit a new Form MA–I.

[1473] *See* Proposal, 76 FR 866.

[1474] *See id.*

[1475] *See id.* at 866–67.

[1476] *See* Securities Exchange Act Release No. 47262 (January 27, 2003), 68 FR 5348 (February 3, 2003); Securities Exchange Act Release No. 49333 (February 27, 2004), 69 FR 11244 (March 9, 2004). *See also* Proposal, 76 FR 866.

[1477] *See* Proposal, 76 FR 867.

[1478] *See supra* Section III.A.2.

[1479] *See* Proposal, 76 FR 866.

[1480] *See supra* Section III.A.2.b.

[1481] 1,000 (persons required to submit Form MA) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 6,500 hours. *Id.*

[1482] 910 (persons required to submit Form MA) × 3.5 hours (average estimated time required to complete Form MA) = 3,185 hours.

[1483] *See* Proposal, 76 FR 872.

[1484] *See, e.g.,* Union Bank Letter; Financial Services Roundtable Letter.

[1485] *See* Financial Services Roundtable Letter.

making it difficult to evaluate these assertions.

While the Commission recognizes that some applicants will require well in excess of 3.5 hours to complete Form MA, the Commission reiterates that the hourly estimate is meant to reflect an average and emphasizes that, as noted in the Proposal, depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA will vary greatly from respondent to respondent.[1486] Factors that will affect the initial burden include the size of the municipal advisory firm, the complexity of its business activities, and the amount and type of information to be included on Form MA. Moreover, as noted above, Form MA generally allows applicants for municipal advisor registration to incorporate by reference information that already has been submitted on other forms under other Commission regulatory requirements.[1487] The Commission believes that the ability of registrants to incorporate by reference will lower the hourly average burden for many applicants. The Commission anticipates that, generally, many smaller municipal advisory firms will require less time than the 3.5 hour average burden estimate, while larger municipal advisory firms that offer a variety of services to municipal entities will require considerably more time since they will have more information to disclose in Form MA.

The collection of information made pursuant to Form MA is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

b. Form MA–I

In the Proposal, the Commission estimated that the average amount of time for a natural person municipal advisor to complete Form MA–I would be 3.0 hours.[1488] The Commission determined this figure by estimating the paperwork burden for Form MA–I compared to that of Form MA–T, which is estimated to be 2.5 hours per applicant.[1489] The Commission believed that the paperwork burden of completing Form MA–I would not be significantly greater than the amount of time required to complete Form MA–T because some of the information required for Form MA–I would have already been gathered to complete Form MA–T.[1490] In the Proposal, the Commission stated that the estimate of 3.0 hours to complete Form MA–I would apply to all natural person municipal advisors because even those that had already completed Form MA–T under the temporary registration regime would be required to register anew under the permanent registration regime.[1491]

As noted above, a natural person municipal advisor who is not a sole proprietor is no longer required to register as a municipal advisor by completing Form MA–I. However, the Commission has determined that a municipal advisory firm must submit Form MA–I to provide information pertaining to each associated person who engages in municipal advisory activities on the firm's behalf. Although the person responsible for submitting Form MA–I has changed since the Proposal, the Commission does not believe that its estimate regarding the number of hours required to complete Form MA–I would materially change. Rather, the Commission believes that it would take an individual and a municipal advisory firm substantially the same number of hours to complete Form MA–I. Similarly, although municipal advisory firms may, over time, become more efficient in completing Form MA–I, the Commission does not believe the time savings would be substantial enough to cause the Commission to revise its estimate.

As discussed above, the Commission is also making some revisions to clarify the questions asked in Form MA–I and to elicit additional information. The Commission recognizes that some revisions will change the estimated burden provided in the Proposal to complete Form MA–I, while others will decrease the burden. For example, to reduce the paperwork burden, an individual's disciplinary history reported on Form MA can be incorporated by reference in Form MA–I. On the other hand, Form MA–I now requires certain additional information that would result in additional burden, including additional identifying information and information regarding disciplinary history.

As with Form MA, because most of the changes to Form MA–I are clarifications not requiring additional information, on balance, the Commission does not believe the additional information requirements will impose additional burdens on municipal advisors in the aggregate.[1492] Moreover, as noted above, Form MA–I generally allows information that already has been submitted on other forms to be incorporated by reference.[1493] Based on the comparative estimated burden to complete Form MA–T and the ability to incorporate by reference, the Commission continues to believe that its hourly burden estimate for the completion of Form MA–I is reasonable and is retaining the estimate as originally proposed. Therefore, the Commission estimates that the average amount of time for a municipal advisory firm to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and who engages in municipal advisory activities on its behalf will be 3.0 hours.

In the Proposal, the Commission estimated that, during the first year, the total paperwork burden for completion and submission of Form MA–I would be 65,400 hours.[1494] Given its revised estimate of the number of individuals for whom municipal advisory firms will need to complete a Form MA–I, as described above, the Commission now estimates that the total initial paperwork burden for completion and submission of Form MA–I during the first year will be 33,750 hours.[1495]

The Commission received two comment letters addressing the estimated burden to complete Form MA–I. One commenter contended that Form MA–I, as proposed, contained many questions that are irrelevant to board trustees who are not involved in investment transactions.[1496] According to the commenter, completion of the form would likely take longer than three hours, would not benefit the Commission, and would impose unnecessary burdens and costs.[1497] Another commenter argued that the registration process would create burdens that would significantly outweigh any benefits created for a citizen to volunteer its services and that the registration requirements, such as paying fees, meeting multiple disclosure requirements, and facing ongoing

[1486] *See* Proposal, 76 FR 867.

[1487] *See supra* Section III.A.2.

[1488] *See* Proposal, 76 FR 867.

[1489] *See* Temporary Registration Rule Release, 75 FR 54473. *See also* Proposal, 76 FR 867.

[1490] *See* Proposal, 76 FR 867.

[1491] *See id.*

[1492] *See supra* Section III.A.2.

[1493] *See supra* Section III.A.2.

[1494] 21,800 (individuals required to submit Form MA–I) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 65,400 hours. *See* Proposal, 76 FR 867.

[1495] 11,250 (individuals for whom municipal advisors will be required to submit Form MA–I) × 3.0 hours (average estimated time required to complete Form MA–I) = 33,750 hours.

[1496] *See* Pennsylvania Public School Employees' Retirement Board Letter.

[1497] *See id.*

potential liabilities, could act as a deterrent for volunteers.[1498]

The Commission stated in the Proposal that it did not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members, such as citizen volunteers, should be excluded from the definition of ''municipal advisor.'' [1499] As discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1500] Accordingly, under the rules that the Commission is adopting today, board trustees are not required to complete Form MA–I. The Commission, therefore, has not included citizen volunteers for purposes of the current PRA hourly burden estimate or the economic analysis cost estimates.

The collection of information made pursuant to Form MA–I is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

c. Total Initial Registration Burden Calculation

The Commission now estimates that the total initial one-time burden for municipal advisors to register with the Commission will be approximately 36,935 hours.[1501]

2. Annual Burden for Newly Registered Municipal Advisors

In the Proposal, the Commission estimated that the annual paperwork burden for firms to newly register as municipal advisors after the first year would be 650 hours for Form MA [1502] and 5,400 hours for Form MA–I.[1503] In light of its decision not to adopt a self-certification requirement, the Commission now estimates that the total ongoing annual burden for firms that will newly register as municipal advisors each year to complete Form MA will be approximately 350 hours.[1504] In addition, given the revised estimate of the average number of individuals for whom municipal advisory firms will need to submit a new Form MA–I, the Commission now estimates that the total annual burden to submit a new Form MA–I will be approximately 2,850 hours.[1505] Thus, the Commission estimates that the annual ongoing registration burden for new municipal advisors after the first year will be approximately 3,500 hours.[1506]

3. Annual Burden for Amendments to Form MA and Form MA–I

In the Proposal, the Commission estimated that the average time necessary to prepare an annual amendment to Form MA would be approximately 1.5 hours because only certain parts of Form MA would need to be amended.[1507] The Commission recognized that, depending on the extent of the amendments, the burden to complete an annual amendment to Form MA may vary greatly from respondent to respondent, and that some municipal advisors would require significantly more time than 1.5 hours, while others would require significantly less time than 1.5 hours.[1508] In addition, the Commission estimated that the annual burden to comply with the Form MA self-certification requirement would be, on average, approximately one hour per respondent. This estimate was based on burden estimates for Form N–CSR and Form N–Q.[1509]

In the Proposal, the Commission estimated that the average amount of time necessary to prepare an interim updating amendment to Form MA (*i.e.,* any additional amendment other than the required annual amendment) would be 0.5 hours.[1510] The Commission based this figure on its estimate for the amount of time required to prepare an interim updating amendment to Form ADV.[1511] The Commission estimated that each municipal advisor would likely amend Form MA two times during the year—one annual amendment and one interim updating amendment—although the Commission recognized that the actual number of amendments per municipal advisor might be higher or lower depending on the circumstances.[1512] Accordingly, the Commission estimated that the total burden to amend Form MA per year, including compliance with the annual self-certification requirement, would be 3,000 hours.[1513]

Given the revised estimate of the number of municipal advisors that will register with the Commission on Form MA initially, as described above, and its decision not to adopt a self-certification requirement, the Commission now estimates that the total annual burden for municipal advisors to amend Form MA will be 1,820 hours.[1514]

In the Proposal, the Commission estimated that the average amount of time to complete an updating amendment to Form MA–I would be 0.5 hours.[1515] The Commission based this figure on its estimate of the amount of time required to prepare an interim updating amendment to Form ADV.[1516] The Commission further estimated that the time required to complete the Form MA–I annual self-certification requirement would be approximately five minutes, or 0.1 hours.[1517] The Commission, relying on FINRA U4 registration data, estimated that a Form MA–I respondent would submit an average of 1.7 updating amendments per year. Therefore, the Commission estimated the total burden to prepare updating amendments to Form MA–I and to complete the annual self-

[1498] *See* National Association of Counties Letter.

[1499] *See* Proposal, 76 FR 834.

[1500] *See supra* Section III.A.1.c.i.

[1501] 3,185 (estimated initial burden for completion and submission of Form MA during the first year) + 33,750 (estimated initial burden for completion and submission of Form MA–I during the first year) = 36,935 hours.

[1502] 100 (new Form MA applicants per year) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 650 hours. *See* Proposal, 76 FR 868.

[1503] 1,800 (new Form MA–I registrants per year) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 5,400 hours. *See id.*

[1504] 100 (new Form MA applicants per year) × 3.5 hours (average estimated time required to complete Form MA) = 350 hours.

[1505] 950 (new Form MA–I filings per year) × 3.0 hours (average estimated time required to complete Form MA–I) = 2,850 hours.

[1506] 350 (estimated annual ongoing burden to complete Form MA) + 2,850 (estimated annual ongoing burden to complete Form MA–I) = 3,200 hours.

[1507] *See* Proposal, 76 FR 868.

[1508] *See id.*

[1509] *See id.*

[1510] *See id.*

[1511] *See id.*

[1512] *See id.*

[1513] (1,000 (persons required to amend Form MA) × 2.5 hours (average estimated time to amend Form MA and complete self-certification annually) × 1.0 (number of annual amendments per year)) + (1,000 (persons required to amend Form MA) × 0.5 hours (average estimated time to prepare an interim updating amendment for Form MA) × 1.0 (number of interim updating amendments per year)) = 3,000 hours per year. *See id.*

[1514] (910 (number of municipal advisors required to submit an annual amendment to Form MA) × 1.5 hours (average estimated time to prepare an annual amendment to Form MA) × 1.0 (number of annual amendments per year)) + (910 (number of municipal advisors required to submit an interim updating amendment to Form MA) × 0.5 hours (average estimated time to prepare an interim updating amendment to Form MA) × 1.0 (number of interim updating amendments per year)) = 1,820 hours per year.

[1515] *See* Proposal, 76 FR 868.

[1516] *See id.*

[1517] *See id.* The Commission stated its belief that this estimate was appropriate given the short time required to read and review the self-certification statement and sign the section.

certification would be approximately 20,700 hours.[1518]

In addition, under the proposed rules and forms, the Commission would have required individuals who register as municipal advisors by completing Form MA–I to file Form MA–W to withdraw from registration. Accordingly, in the proposal, the Commission estimated that the total annual burden to withdraw from MA–I registration would be approximately 1,350 hours.[1519]

As noted above, a natural person municipal advisor who is not a sole proprietor is no longer required to register as a municipal advisor by completing Form MA–I. However, the Commission has determined that municipal advisory firms must submit Form MA–I to provide information pertaining to each associated person who engages in municipal advisory activities on the firm's behalf. In addition, the final rules and forms require municipal advisory firms to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf.

Given the revised estimate of the number of individuals for whom municipal advisory firms will need to submit a Form MA–I, the Commission now estimates that the average number of amendments to Form MA–I that municipal advisory firms will need to submit to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf will be approximately 1,340.[1520] Thus, the total annual ongoing burden for municipal advisory firms to amend Form MA–I for this purpose will be approximately 670 hours.[1521]

Given the change to Form MA–I described above and the overall revised estimate of the number of individuals for whom municipal advisors will be required to submit a Form MA–I, the Commission now estimates that the total annual burden municipal advisors will incur to prepare updating amendments to Form MA–I will be approximately 9,563 hours.[1522] As discussed in Section III.A.2, the final rules do not require an annual self-certification on Form MA–I.

The Commission received one comment that specifically addressed the estimated burden for amendments to Form MA and Form MA–I.[1523] Although the commenter did not provide its own burden estimates, it argued that ''[a]nnual updates are estimated to require exponentially higher hours to update and maintain the filing.'' [1524] This commenter also did not provide specific figures by which to recalculate the estimates, making it difficult to evaluate these assertions.

While the Commission is aware that in some cases (*i.e.,* for some larger municipal advisors with a large number of municipal entity and obligated person clients) annual updates may require significantly more time than estimated in the Proposal, the Commission does not agree that regular updates will generally require ''exponentially higher'' hours. The Commission anticipates that such updates will involve incremental or minor changes in reporting and in most cases will not require large-scale changes to Form MA or Form MA–I. Thus, the Commission believes that its hourly burden estimates for amendments to Form MA and Form MA–I remain reasonable and retains them as originally proposed.

In summary, the Commission estimates that the total annual burden for municipal advisors to complete amendments to Form MA and Form MA–I will be approximately 12,053 hours.[1525]

The collection of information made pursuant to amendments to Form MA and Form MA–I is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

4. Withdrawal From Municipal Advisor Registration

In the Proposal, the Commission estimated that the average time necessary to complete Form MA–W would be approximately 0.5 hours.[1526] The Commission based this estimate on burden estimates for Form ADV–W.[1527] Further, in the Proposal, the Commission estimated that the average number of withdrawals from Form MA registration per year would be 60,[1528] and that the total annual burden would be approximately 30 hours.[1529]

The Commission received no comment letters that specifically addressed the Form MA–W hourly burden estimates. Although the Commission has made modifications to Form MA–W since the Proposal, because those changes are minor,[1530] the Commission is retaining its hourly burden estimates for Form MA–W as originally proposed.

The Commission has reviewed Form MA–T data as of December 31, 2012, and estimates that approximately 22 municipal advisors filed a withdrawal on Form MA–T in 2011 and approximately 24 municipal advisors filed a withdrawal on Form MA–T in 2012. Based on experience with withdrawals on Form MA–T, the Commission now estimates that the average number of withdrawals from Form MA registration per year will be

[1518] (21,800 (persons required to amend Form MA–I during any given year) × 0.5 hours (average estimated time to prepare any updating amendment for Form MA–I) × 1.7 (average number of amendments per year)) + (21,800 (persons required to complete annual self-certification on Form MA–I) × 0.1 hours (average estimated time to complete self-certification)) = 20,710 hours per year. *See id.* at 869.

[1519] The Commission, relying on the proportion of individuals who fully terminated FINRA registration to all Form U4 registrants, estimated that the average number of Form MA–I withdrawals per year would be approximately 2,700. 21,800 (all Form MA–I applicants) × (79,722 ÷ 637,000) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 2,728. *See* Proposal, 76 FR 869. 2,700 (estimated number of persons withdrawing from Form MA–I registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 1,350 hours per year. *Id.*

[1520] 11,250 (estimated number of individuals for whom municipal advisors will be required to submit Form MA–I) × (79,722 ÷ 670,016) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 1,338.6.

[1521] 1,340 (estimated number of persons withdrawing from Form MA–I each year) × 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) 670 hours per year.

[1522] 11,250 (estimated number of individuals who are employed at municipal advisors for whom updating amendments to Form MA–I will need to be filed) × 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × 1.7 (average number of amendments per year) = 9,562.5 hours per year.

[1523] *See* Financial Services Roundtable Letter.

[1524] *See id.*

[1525] 1,820 (estimated annual burden for municipal advisors to amend Form MA) + 670 (estimated annual burden for municipal advisors to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf) + 9,563 (estimated annual burden for municipal advisors to prepare updating amendments to Form MA–I) = 12,053 hours.

[1526] *See* Proposal, 76 FR 869.

[1527] *See id.*

[1528] To estimate the annual number of withdrawals for Form MA registrants, the Commission staff relied on investment adviser registration data, which indicated that, annually, investment adviser withdrawals comprise, on average, approximately 6.4% of the total number of registered investment advisers. 1,000 (all Form MA applicants) × 6.4% = 64 Form MA withdrawals per year. *See id.*

[1529] 60 (estimated number of persons withdrawing from Form MA registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 30 hours per year. *See id.*

[1530] *See supra* Section III.A.4.

30,[1531] and that the total annual burden will be approximately 15 hours.[1532]

The collection of information made pursuant to Form MA–W is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

5. Non-Resident Municipal Advisors

In the Proposal, the Commission estimated that there would be approximately 20 Form MA–NR filers: 16 non-resident general partners or non-resident managing agents [1533] and three non-resident municipal advisory firms.[1534] In the Proposal, the Commission noted that the average time necessary to complete Form ADV–NR, which is similar to Form MA–NR, is approximately one hour.[1535] The Commission estimated that, because of the additional time required to find and designate an agent, the process to complete Form MA–NR would take longer than Form ADV–NR, or approximately 1.5 hours on average.[1536] Thus, the Commission estimated that the total initial burden to complete Form MA–NR would be approximately 30 hours.[1537]

In addition, the Commission estimated that the additional burden to provide an opinion of counsel would add approximately three hours and $900 in outside legal costs per respondent.[1538] To obtain this estimate, the Commission relied on its burden estimates for Form 20–F, a form submitted by certain foreign private issuers, which has a similar opinion of counsel requirement to Rule 15Ba1–6(d).[1539] The Commission estimated that the total initial burden to provide an opinion of counsel would be approximately 9 hours [1540] and that the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel would be approximately $2,700.[1541] Thus, the Commission estimated that the total initial burden to complete Form MA–NR and provide an opinion of counsel would be 39 hours.

The Commission received no comment letters that specifically addressed the Form MA–NR hourly burden estimates. Although the Commission has made modifications to Form MA–NR since the Proposal, because most of the changes are clarifications not requiring additional information, on balance, the Commission does not believe the additional information requirements will impose significant additional burdens on municipal advisors,[1542] and is retaining its hourly burden estimates to complete Form MA–NR as originally proposed.[1543] Given the revised estimate of Form MA applicants as described above, the Commission now estimates that two non-resident municipal advisory firms will need to complete Form MA–NR.[1544] In addition, the Commission estimates that those non-resident municipal advisory firms will need to furnish Form MA–NR for 15 non-resident general partners and non-resident managing agents.[1545]

The final rules and forms will also require each non-resident municipal advisory firm to file Form MA–NR for each non-resident natural person associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor. The Commission estimates that the number of such non-resident natural persons will be the same as the number of non-resident general partners or non-resident managing agents, or 15.[1546] Thus, the total number of Form MA–NR filers will be approximately 32, and the total initial burden to complete Form MA–NR will be approximately 48 hours.[1547]

The Commission also estimates that the total initial burden to provide an opinion of counsel will be approximately 6 hours.[1548] Thus, the Commission estimates that the total initial burden to complete the estimated number of Form MA–NR submissions and provide an opinion of counsel will be 54 hours.[1549] In addition, the Commission now estimates that the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel will be approximately $1,800.[1550]

In the Proposal, the Commission also estimated the ongoing annual number of new Form MA–NR filers that are non-resident general partners or non-resident managing agents. Relying on investment adviser registration data, the Commission estimated that only one municipal advisor respondent per year would have a non-resident general partner or non-resident managing agent that would be required to complete a new Form MA–NR.[1551] This estimate included the ongoing annual number of new Form MA–NR filers that are non-resident municipal advisors since the small initial number of non-resident municipal advisors suggested that, at most, there would be only one new non-resident municipal advisor every several years. Thus, the Commission estimated that the total burden per year to

[1531] This estimate represents an average of the number of withdrawals on Form MA–T in 2011 (22) and 2012 (24) rounded to the nearest higher multiple of ten.

[1532] 30 (estimated number of persons withdrawing from Form MA registration per year) × 0.5 hours (average estimated time to complete Form MA–W) = 15 hours per year.

[1533] 1,000 (all Form MA applicants) × 1.64% (percentage of Form ADV–NR filings to total number of investment adviser applicants) = 16 Form MA–NR filers that are non-resident general partners or non-resident managing agents. *See* Proposal, 76 FR 869–70.

[1534] 1,000 (all Form MA applicants) × (2 ÷ 800) (proportion of non-U.S.-based Form MA–T registrants compared to all Form MA–T registrants) = 2.5 Form MA–NR filers that are non-resident municipal advisors. *See id.* at 870.

[1535] *See id.* at 869.

[1536] *See id.* The burden associated with this process would primarily involve the designation and authorization of a United States person as an agent for service of process.

[1537] 20 (persons expected to file Form MA–NR for the first time) × 1.5 hours (average estimated time to complete Form MA–NR) = 30 hours. *See id.* at 870.

[1538] *See id.* The $900 figure is based on an hourly cost estimate of $400 on average for an outside attorney, which is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See* Investment Advisers Act Release No. 3222 (June 22, 2011), 76 FR 39646 (July 6, 2011). Based on previous burden estimates, the Commission estimated that outside counsel will take, on average, 2.25 hours to assist in preparation of the opinion of counsel, for an average cost of $900 per respondent.

[1539] *See* Proposal, 76 FR 870.

[1540] 3 (non-resident municipal advisory firms expected to provide an opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 9 hours. *See id.*

[1541] 3 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel) = $2,700. *See id.*

[1542] *See supra* Section III.A.6.

[1543] *See supra* note 1536 and accompanying text.

[1544] 910 (all Form MA applicants) × (2 ÷ 900) (proportion of non-U.S.-based Form MA–T registrants compared to all Form MA–T registrants) = 2.02 Form MA–NR filers that are non-resident municipal advisors.

[1545] 910 (all Form MA applicants) × 1.64% (percentage of Form ADV–NR filings to total number of investment adviser applicants) = 14.92 Form MA–NR filers that are non-resident general partners or non-resident managing agents.

[1546] *See supra* note 1545 and accompanying text. The Proposal did not include the number of Form MA–I filers in estimating the burden associated with Form MA–NR.

[1547] 32 (persons expected to file Form MA–NR for the first time) × 1.5 hours (average estimated time to complete Form MA–NR) = 48 hours.

[1548] 2 (non-resident municipal advisory firms expected to provide opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 6 hours.

[1549] 48 hours (total initial burden to complete of Form MA–NR) + 6 hours (total initial burden to provide an opinion of counsel) = 54 hours.

[1550] 2 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel to provide an opinion of counsel) = $1,800.

[1551] 1,000 (all Form MA applicants) × 0.09% (average annual percentage filings of Form ADV–NR) = 0.9 Form MA–NR filers per year; this number was rounded up to 1. *See* Proposal, 76 FR 870.

complete Form MA–NR would be approximately two hours.[1552] For the purposes of the analysis, the Commission assumed that the one new non-resident municipal advisor per year would not be a natural person and would thus be required to provide opinion of counsel. The Commission estimated that the total burden per year to provide opinion of counsel would be approximately three hours[1553] and that the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel would be approximately $900.[1554]

The Commission continues to estimate that only one municipal advisor respondent per year will have a non-resident general partner, non-resident managing agent, or associated person that would be required to complete a new Form MA–NR.[1555] Thus, as in the Proposal, the Commission estimates that the total burden per year to complete a new Form MA–NR will be approximately two hours; [1556] the total burden per year to provide opinion of counsel will be approximately three hours; [1557] and the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel will be approximately $900.[1558]

The Commission notes that filers may incur recurring burdens associated with Form MA–NR, such as costs incurred to monitor and maintain the information required by the form. For the purposes of this analysis, these recurring burdens are included in the estimates noted above. Rule 15Ba1–6 also will require that municipal advisors update the information on Form MA–NR if it becomes inaccurate. Similarly, these burdens are accounted for in the above estimates.

In summary, the Commission now estimates that the total initial burden for Form MA–NR will be approximately 54 hours; [1559] the total ongoing annual burden to complete a new Form MA–NR will be approximately two hours; [1560] the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel will be approximately $1,800; [1561] and the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel will be approximately $900.[1562]

The collection of information made pursuant to Form MA–NR is mandatory and will not be confidential and will be made publicly available.

6. Outside Counsel

In the Proposal, the Commission stated its belief that some municipal advisory firms would seek outside counsel to help them comply with the requirements of the proposed rules, if adopted, and to complete Form MA.[1563] The Commission also stated its belief that it would be unlikely that natural person municipal advisors would obtain or consult with counsel for purposes of completing Form MA–I.[1564] For PRA purposes, the Commission assumed that all 1,000 municipal advisory firms registering on Form MA would, on average, consult with outside counsel for one hour to help them comply with the requirements.[1565] The Commission estimated that the total cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms would be approximately $400,000.[1566] Given the revised estimate of Form MA applicants as described above, the Commission now estimates that such cost will be approximately $364,000.[1567] In addition, firms that seek to register as municipal advisors in each year after the first will likely hire outside counsel to review their compliance with the requirements of the proposed rules and forms. As discussed above, the Commission estimates that approximately 100 new municipal advisory firms will register on Form MA each year.[1568] Accordingly, the Commission estimates that the ongoing cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms would be approximately $40,000.[1569]

As discussed above, the Commission received many comments that opined generally that municipal advisor registration under the proposed rules would be overly burdensome and would impose significant costs that would prove detrimental, especially to smaller ''community banks'' and local and state municipalities.[1570] Among these comments, many noted that local governments would need to hire counsel with expertise in dealing with the Commission to ensure that these officials are properly trained and advised in the intricacies of securities law.[1571]

As already discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1572] Therefore, the concern that local governments would need to hire counsel to assist local government officials that are required to register as municipal advisors, thus raising the annual burden, is no longer warranted.

Another commenter argued that a natural person municipal advisor that registers on Form MA–I would require the assistance of an attorney well-versed

[1552] 1 (persons expected to file Form MA–NR each year) × 1.5 (average estimated time to complete Form MA–NR) = 1.5 hours per year. *See id.*

[1553] 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year. *See id.*

[1554] 1 (persons expected to file Form MA–NR each year) × $900 (average estimated cost to hire outside counsel to provide opinion of counsel) = $900. *See id.*

[1555] 910 (all Form MA applicants) × 0.09% (average annual percentage filings of Form ADV–NR) = 0.82 Form MA–NR filers per year; as in the initial estimate, this number is rounded up to 1.

[1556] 1 (persons expected to file Form MA–NR each year) × 1.5 (average estimated time to complete Form MA–NR) = 1.5 hours per year.

[1557] 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year.

[1558] *See supra* notes 1552–1554.

[1559] *See supra* note 1549 and accompanying text.

[1560] *See supra* note 1552 and accompanying text.

[1561] *See supra* note 1550 and accompanying text.

[1562] *See supra* note 1554 and accompanying text.

[1563] *See* Proposal, 76 FR 871.

[1564] *See id.*

[1565] *See id.*

[1566] 1,000 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $400,000. The hourly cost estimate of $400 on average for an attorney is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See id.*

[1567] 910 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $364,000. The hourly cost estimate of $400 on average for an attorney is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See supra* note 1538 (calculating the hourly rate for an outside attorney).

[1568] *See supra* note 1470 and accompanying text.

[1569] 100 (estimated number of new municipal advisory firms that would hire outside counsel each year) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $40,000. *See supra* note 1538 (calculating the hourly rate for an outside attorney).

[1570] *See, e.g.,* Form Letter A.

[1571] *See, e.g.,* City of St. Petersburg, Florida Letter; City of Yuma, Arizona Letter; Texas Municipal League Letter; Spiroff & Gosselar Letter.

[1572] *See supra* Section III.A.1.c.i.

in the federal securities laws.[1573] As discussed above, it is the obligation of the municipal advisory firm applying for registration with the Commission to complete Form MA–I for each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf. In addition, the Commission notes that the information requested on Form MA–I is similar to the information requested on FINRA's Form U4. The Commission believes that Form MA–I, like Form U4, does not require applicants to possess any specialized knowledge of federal securities laws or retain the services of a securities lawyer. For municipal advisory firms that are not sole proprietors, the Commission does not anticipate that such associated persons will require outside counsel to assist in the completion of Form MA–I. With regard to municipal advisory firms that are sole proprietors, the Commission anticipates that the estimate above regarding firms that would consult with outside counsel to assist in completing Form MA would also include the time required to complete Form MA–I.

One commenter argued that in many cases the Commission's estimate of $400 per hour for outside counsel is too low because applicants would generally seek to retain more experienced counsel when faced with the new registration requirements.[1574] The commenter also stated its belief that, for a financial institution that provides a variety of services to municipal clients, outside legal fees could easily exceed $25,000.[1575] However, this commenter did not provide specific figures by which to recalculate the Commission's estimates.

The Commission recognizes that, for such larger financial institutions offering diversified services, the outside legal fees will likely exceed the $400-per-hour estimate. However, the Commission calculated the estimate as an average cost across all municipal advisory firms, and many smaller firms require far less assistance from outside counsel or, in some cases, none at all. The $400 hourly rate for outside legal counsel, based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters, represents an average from a diverse group of industry sources, reflecting different geographical regions and seniority levels. The Commission notes that, depending on such variables, some outside counsel will charge more than $400 per hour, but many others will charge less. The Commission, therefore, continues to believe that its average hourly cost estimates for all municipal advisory firms to hire outside counsel are accurate and retains them as originally proposed.

7. Consent to Service of Process From Certain Associated Persons

If Form MA–I is being filed by a municipal advisory firm with respect to a natural person engaged in municipal advisory activities on its behalf, the authorized representative of the municipal advisory firm who signs the Execution Page of Form MA–I must attest that the municipal advisory firm has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any proceeding before, the Commission or any SRO in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address given in Item 1 of Form MA–I. If Form MA–I is being filed by a natural person municipal advisor who is a sole proprietor, by signing the Execution Page of Form MA–I, he or she must consent that service of any civil action brought by, or notice of any proceeding before, the Commission or any SRO in connection with the sole proprietor's municipal advisory activities may be given by registered or certified mail to the sole proprietor's address given in Item 1 of Form MA–I.

The Commission estimates that each municipal advisory firm, other than sole proprietors, seeking to register with the Commission following adoption of the final rules and forms will need to obtain and retain [1576] a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf.[1577] The Commission does not have the information necessary to provide a reasonable estimate regarding the number of sole proprietors that will register with the Commission as municipal advisors because this data is not currently available to the Commission and the Commission is unaware of any such data being publicly available. Accordingly, the Commission estimates that all municipal advisory firms seeking to register with the Commission (*i.e.,* 910 applicants) will need to obtain written consents to service of process.[1578] The Commission estimates that each municipal advisory firm would need approximately 1 hour to draft a template document to use in obtaining the written consents to service of process, amounting to an initial, one-time burden of approximately 910 hours.[1579] In addition, as discussed above, the Commission estimates that, during the first year, municipal advisors will need to complete a Form MA–I for approximately 11,250 individuals.[1580] The Commission estimates that, once drafted, each applicant would need approximately 6 minutes, or 0.10 hours, to obtain a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf, amounting to an initial, one-time burden of approximately 1,125 hours.[1581] Accordingly, the Commission estimates that the total initial, one-time burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf will be approximately 2,035 hours.[1582]

In addition, firms that seek to register as municipal advisors in each year after the first will need to obtain a written consent to service of process from each natural person engaged in municipal advisory activities on their behalf. As discussed above, the Commission estimates that approximately 100 new municipal advisory firms will register on Form MA each year.[1583] Accordingly, the Commission estimates that the total ongoing annual burden for

[1573] *See* College Savings Plans of Maryland Letter.

[1574] *See* Financial Services Roundtable Letter.

[1575] *Id.*

[1576] Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such registered municipal advisor.

[1577] Because sole proprietors will consent to service of process by signing the Execution Page of Form MA–I, sole proprietors will not need to obtain a separate consent to service of process. The requirement related to sole proprietors is already accounted for in the Commission's estimated burden to complete Form MA–I. *See supra* Section VII.D.1.b.

[1578] As discussed above, the Commission estimates that 910 municipal advisory firms, including sole proprietors, will register under the permanent registration regime. *See supra* note 1446 and accompanying text.

[1579] 910 (estimated number of applicants for municipal advisor registration during the first year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 910 hours.

[1580] *See supra* note 1448 and accompanying text.

[1581] 11,250 (estimated number of natural persons engaged in municipal advisory activities on behalf of a municipal advisory firm during the first year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 1,125 hours.

[1582] 910 hours (estimated one-time burden for all municipal advisory firms to draft a template to use in obtaining the written consents to service of process) + 1,125 hours (estimated one-time burden for all municipal advisory firms to obtain the written consents to service of process) = 2,035 hours.

[1583] *See supra* note 1470 and accompanying text.

firms that will newly register as municipal advisors each year to draft a template document to use in obtaining the written consents to service of process will be approximately 100 hours.[1584] In addition, as discussed above, the Commission estimates that municipal advisors will need to submit a new Form MA–I for approximately 950 individuals annually.[1585] Accordingly, the Commission estimates that the total ongoing annual burden for firms to obtain written consents to service of process from these persons will be approximately 95 hours.[1586] The Commission estimates that the total ongoing burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf in each year after the first will be approximately 195 hours.[1587]

8. Maintenance of Books and Records

The Commission proposed that all municipal advisory firms would be required, pursuant to proposed Rule 15Ba1–7, to maintain books and records relating to their municipal advisory activities. These books and records requirements were generally based on Exchange Act Rules 17a–3 and 17a–4 and Investment Advisers Act Rule 204–2, which set forth books and records requirements with respect to broker-dealers and investment advisers, respectively.[1588]

In the Proposal, the Commission estimated that the average annual burden for a municipal advisory firm to comply with the proposed recordkeeping requirements would be similar to that of an investment adviser, or 181 hours.[1589] The Commission noted that the proposed recordkeeping requirements would likely impose initial burdens on respondents in connection with necessary updates to their recordkeeping systems, such as systems development or modifications.[1590] For the purposes of the Commission's analysis, these initial burdens were included in the estimate of 181 burden hours per respondent per year. Thus, the Commission estimated the total compliance burden would be approximately 181,000 hours per year.[1591]

The Commission has made two substantive modifications to the recordkeeping requirements since the Proposal. As discussed above, Rule 15Ba1–8(a)(2) will require municipal advisors to maintain general ledgers, a requirement that was inadvertently left out of proposed Rule 15Ba1–7.[1592] In addition, as discussed above, Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.[1593] In light of these changes, the Commission now estimates that the average annual burden for a municipal advisory firm to comply with the recordkeeping requirements will be approximately 182 hours. Given the revised estimates of the number of Form MA applicants, the Commission now estimates that the total compliance burden will be approximately 165,620 hours per year.[1594]

The Commission received two comment letters that specifically addressed the annual books and records burden estimate. One commenter noted that, although the Commission estimated an annual burden of 181 hours for a municipal advisory firm, the estimate was not broken down further to an individual municipal advisor, such as a retirement board trustee.[1595] The Commission notes that, as proposed, the recordkeeping requirement would have applied only to municipal advisory firms and sole proprietors.[1596] For this reason, the Commission estimated the books and records burden for municipal advisory firms and sole proprietors only, and the estimate was not intended to reflect any recordkeeping burden for any other persons. Similarly, Rule 15Ba1–8(a), as adopted, states that the books and records requirement applies to ''[e]very person registered or required to be registered under section 15B of the Act.'' [1597] Because natural person municipal advisors, other than sole proprietors, are not required to register with the Commission under the final rules,[1598] the books and records requirement does not apply to natural person municipal advisors that are not sole proprietors.

Another commenter asserted that the Commission's estimate was ''optimistic,'' and that, although the estimated burden represents nearly ten percent of a full-time person's time, the number of hours did not include the cost of storage, and the actual burden would likely be higher.[1599]

The Commission recognizes that, for larger municipal advisory firms, the annual burden estimate of 182 hours may be low. The Commission anticipates that, for the purposes of calculating the applicable PRA burden, the annual burden for larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records to maintain will be offset in the average by the significantly lower annual burden for smaller firms. As the Commission stated in the Proposal,[1600] given the relatively smaller size of municipal advisory firms compared to investment advisory firms and the fewer books and records requirements imposed by Rule 15Ba1–8, in the Commission's view, the annual hourly burden for smaller municipal advisory firms will likely be lower than 182 hours.

The Commission also believes that variations in the current records storage systems of respondents make it difficult for the Commission to estimate separately the cost of storage for a typical respondent. To the extent that the additional records required by the recordkeeping requirements can be stored and produced for inspection by

[1584] 100 (estimated number of new Form MA applicants per year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 100 hours.

[1585] *See supra* note 1472 and accompanying text.

[1586] 950 (estimated number of new Form MA–I filings per year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 95 hours.

[1587] 100 hours (estimated ongoing annual burden for all firms that will newly register as municipal advisors to draft a template to use in obtaining the written consents to service of process) + 95 hours (estimated ongoing annual burden for municipal advisory firms to obtain written consents to service of process) = 195 hours.

[1588] *See* 17 CFR 240.17a–3 and 17a–4, and 17 CFR 275.204–2. *See also* Proposal, 76 FR 871.

[1589] *See* Proposal, 76 FR 871.

[1590] *Id.*

[1591] 1,000 (estimated number of municipal advisors) × 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 181,000 hours. *Id.*

[1592] *See supra* notes 1359–1360 and accompanying text.

[1593] *See* Proposal, 76 FR 871.

[1594] 910 (estimated number of municipal advisors) × 182 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 165,620 hours.

[1595] *See* Pennsylvania Public School Employees' Retirement Board Letter.

[1596] *See* Proposed Rule 15Ba1–7.

[1597] *See* Rule 15Ba1–8(a).

[1598] Rule 15Ba1–3, as adopted, exempts from the registration requirement a natural person municipal advisor who is an associated person of an advisor that is registered with the Commission pursuant to Section 15B(a)(2) of the Exchange Act (15 U.S.C. 78*o*-4(a)(2)) and the rules and regulations thereunder, and engages in municipal advisory activities solely on behalf of a registered municipal advisor.

[1599] *See* UFS Bancorp Letter.

[1600] *See* Proposal, 76 FR 871. The Commission also addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below. *See infra* Section IX.

electronic means, the additional costs should not be substantial. The Commission also reiterates that the books and records estimate, as originally proposed, included storage costs and any needed technology refinements or upgrades.[1601] Accordingly, the Commission believes that the 182-hour figure, as an average annual hourly burden across all firms regardless of their size is an appropriate estimate.

This collection of information is mandatory. The Commission staff will use the mandatory collection of information for maintenance of books and records in its examinations and oversight program, and the information will be kept confidential subject to applicable law.

9. Exemption When a Municipal Entity or Obligated Person Is Represented by an Independent Registered Municipal Advisor

The Commission believes that underwriters in negotiated deals, because of the services they provide and the nature of negotiated deals,[1602] are the persons most likely to rely on the exemption available to persons engaging in municipal advisory activities where a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. The Commission believes other persons will be less likely to rely on this exemption because the nature of the services they provide may not require a municipal entity or obligated person to engage an independent registered municipal advisor. The determination of whether to rely on this exemption will depend on the facts and circumstances of a particular deal and the parties involved in that deal, as well as the type of entity seeking to rely on the exemption. It is possible that not many persons will seek to rely on the exemption because another exclusion or exemption from the definition of municipal advisor is available. Although the Commission is providing this exemption, any efforts to rely on the exemption in Rule 15Ba1–1(d)(3)(vi) are purely voluntary.

According to available market data for 2012, approximately 204 underwriters participated in negotiated deals of municipal securities in 2012.[1603] The Commission estimates that 210 persons will seek to rely on this exemption.[1604]

A person seeking to rely on the exemption pursuant to Rule 15Ba1–1(d)(3)(vi) must obtain a written representation from the municipal entity or obligated person that it will not rely on the advice of the person seeking to rely on the exemption, and that it will rely on the advice of an independent registered municipal advisor. The Commission estimates that each person seeking to rely on this exemption would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of 210 hours.[1605]

There will also be an ongoing burden each time a person seeks to rely on this exemption. The Commission estimates that, on average, there are approximately 8,770 negotiated deals involving an underwriter each year.[1606] The Commission estimates that a person seeking to rely on this exemption would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from a municipal entity or obligated person, amounting to an annual burden of approximately 2,193 hours.[1607]

In addition, the person seeking to rely on this exemption must make certain disclosures to the municipal entity or obligated person, and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor. With respect to a municipal entity, such person must disclose in writing that, by obtaining the representation discussed above from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in Section 15B(c)(1) of the Exchange Act with respect to municipal financial products or the issuance of municipal securities.[1608] With respect to an obligated person, such person must disclose in writing that, by obtaining the representation discussed above from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[1609] The Commission estimates that each person seeking to rely on this exemption would need approximately 1 hour to draft the required disclosure, amounting to an initial, one-time burden of approximately 210 hours.[1610] The Commission believes that once these disclosures have been drafted, such language would become part of the standard municipal advice documentation and, accordingly, there would be no further ongoing associated burden.

In summary, the Commission estimates that the initial burden related to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor will be 2,613 hours.[1611] In addition, the Commission estimates that the ongoing burden will be 2,193 hours.[1612]

The Commission staff will use the collection of information under the exemption for independent registered municipal advisors in its examinations and oversight program to ensure that unregistered municipal advisors are properly exempt from registration. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow municipal entities and obligated persons to understand whether a person is acting as a municipal advisor, and will allow persons relying on the exemption to demonstrate that registration with the Commission as municipal advisors was not required.

10. Municipal Escrow Investments

Rule 15Ba1–1(h) defines ''municipal escrow investments'' to mean proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and

[1601] *See* Proposal, 76 FR 871.

[1602] *See supra* note 604 and accompanying text (describing typical services provided by an underwriter in a negotiated deal) and note 614 (stating the definition of ''negotiated sale'').

[1603] According to data obtained from Thomson Reuters' SDC Platinum database, in 2012, 156 lead underwriters participated in negotiated deals. Including all underwriters that participated in negotiated deals in 2012, that number increases to 204.

[1604] This estimate rounds to the nearest higher multiple of ten the number of underwriters that participated in negotiated deals of municipal securities. The Commission believes this estimate, which likely overestimates the number of underwriters who are likely to seek to rely on this exemption, is inclusive of other persons who may seek to rely on this exemption.

[1605] 210 (estimated number of persons who will seek to rely on the exemption) × 1.0 hours (estimated time required to draft the written representation) = 210 hours.

[1606] This estimate represents an average of the number of negotiated deals each year from 2009 through 2012 relying upon data obtained from Thomson Reuters' SDC Platinum database.

[1607] 8,770 (estimated number of negotiated deals per year) × 0.25 hours (estimated time required to obtain the written representation) = 2,192.5 hours.

[1608] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[1609] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2). Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities. *See* Rule 15Ba1–1(d)(3)(vi)(C)(3).

[1610] 210 (estimated number of persons who will seek to rely on the exemption) × 1.0 hours (estimated time required to draft the required disclosure) = 210 hours.

[1611] 210 hours (estimated time to draft a template document to use in obtaining the written representation) + 2,193 hours (estimated time to obtain a written representation from a municipal entity or obligated person) + 210 hours (estimated time to draft the required disclosure) = 2,613 hours.

[1612] *See supra* note 1607 and accompanying text.

interest on one or more issues of municipal securities. As discussed above,[1613] in determining whether or not funds to be invested or reinvested constitute municipal escrow investments, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1614]

The Commission believes that state-registered investment advisers with municipal entity clients are the persons most likely to rely on Rule 15Ba1–1(h)(2) for reasonable reliance on representations related to municipal escrow investments. The Commission notes that no entity is required to utilize Rule 15Ba1–1(h)(2) and that any efforts to do so are voluntary.

The Commission estimates that approximately 700 persons may seek to rely on the exception for reasonable reliance on representations related to municipal escrow investments.[1615] The Commission estimates that each person seeking to rely on this exception would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 700 hours.[1616]

In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from its client. The Commission estimates that persons that will seek to rely on this exception have approximately 8,620 clients that are municipal entities.[1617] Thus, the Commission estimates that the burden to obtain the written representation will be 2,155 hours.[1618]

Accordingly, the Commission estimates that the total initial burden for all persons to rely on the exception for reasonable reliance on representations related to municipal escrow investments will be 2,855 hours.[1619] Because the person seeking to rely on this exception only needs to obtain the written representation one time, the Commission does not believe that there will be an ongoing burden.

The Commission staff will use the collection of information under Rule 15Ba1–1(h)(2) in its examinations and oversight program to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow persons relying on Rule 15Ba1–1(h)(2) to demonstrate that registration with the Commission as municipal advisors was not required.

11. Proceeds of Municipal Securities

The definition of ''proceeds of municipal securities'' includes a qualification similar to Rule 15Ba1–1(h)(2) pertaining to municipal escrow investments. Namely, in determining whether or not funds to be invested constitute proceeds of municipal securities, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1620]

The Commission believes state-registered investment advisers with clients that are municipal entities or certain pooled investment vehicles in which municipal entities invest are the persons most likely to rely on Rule 15Ba1–1(m)(3) for reasonable reliance on representations related to proceeds of municipal securities. The Commission notes that no entity is required to utilize Rule 15Ba1–1(m)(3) and that any efforts to do so are voluntary.

The Commission estimates that approximately 880 persons may seek to

[1613] *See supra* notes 383–384 and accompanying text.

[1614] *See* Rule 15Ba1–1(h)(2).

[1615] To calculate this estimate, the Commission staff examined data regarding investment advisers with assets under management under $100 million as of May 3, 2010. Section 410 of the Dodd-Frank Act reallocated primary responsibility for oversight of investment advisers by delegating generally to the states responsibility over certain investment advisers with assets under management between $25 million and $100 million (''mid-sized advisers''). The Commission does not maintain aggregate data regarding state-registered investment advisers, including mid-sized advisers registered with one or more state securities authorities, and is not aware of any publicly available data regarding state-registered investment advisers that could be used to calculate this estimate. As described in the paragraph below, however, the Commission does have such data as of May 3, 2010, which was prior to the passage of the Dodd-Frank Act (and the time those advisers were required to switch to state registration). Given the relatively short period of time that has elapsed since 2010 and the Commission's belief that, for purposes of this analysis, the nature of the investment advisory industry has not changed significantly since that time, the Commission is relying on data from 2010 to calculate these estimates.

According to registration information from the Investment Adviser Registration Depository (''IARD'') as of May 3, 2010, responses to Item 5.F(2)(c) of Part 1 of Form ADV indicate that there were 5,550 investment advisers with less than $100 million in assets under management registered with the Commission. According to responses to Item 5.D(9) of Part 1 of Form ADV, 211 of those investment advisers (or approximately 4%) (211 ÷ 5,550 = 0.038) had clients that were ''state or municipal government entities.''

As of January 1, 2013, there were 17,259 state-registered investment advisers. Using the same percentage of investment advisers with clients that were state or municipal government entities, the Commission staff estimates that approximately 700 state-registered investment advisers have clients that are state or municipal government entities. 17,259 (number of state-registered investment advisers as of January 1, 2013) × 0.04 (estimated percentage of state-registered investment advisers with state or municipal government entity clients) = 690.36. This estimate rounds to the nearest higher multiple of ten the number of state-registered investment advisers that have clients that are state or municipal government entities. The Commission believes this estimate, which likely overestimates the number of state-registered investment advisers who are likely to seek to rely on this exception, is inclusive of other persons who may seek to rely on this exception.

[1616] 700 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 700 hours.

[1617] According to responses to Item 5.D(9) of Part 1 of Form ADV, as of May 3, 2010, the 211 investment advisers identified above (*see supra* note 1615) had approximately 2,770 state or municipal government entity clients. The Commission staff used the midpoint of each range to estimate the number of such clients. The Commission does not have exact data from 2010 on the number of clients of investment advisers that are state or municipal government entities because Form ADV responses are in the format of a range (*e.g.,* 26–100 clients). In addition, the Commission does not have the information necessary to provide another point estimate.

The Commission staff, extrapolating from the ratio of the estimated number of state or municipal government entity clients in May 2010 to the number investment advisers with less than $100 million in assets under management registered with the Commission as of May 2010, estimates that, currently, state-registered investment advisers have approximately 8,620 clients that are state or municipal government entities. (2,770 (approximate number of state or municipal government entity clients of investment advisers having less than $100 million in assets under management that were registered with the Commission as of May 3, 2010) ÷ 5,550 (number of investment advisers with less than $100 million in assets under management that were registered with the Commission as of May 3, 2010)) × 17,259 (number of state-registered investment advisers as of January 1, 2013) = 8,613.95. This estimate rounds to the nearest higher multiple of ten the number of clients of state-registered investment advisers that are state or municipal government entities. The Commission believes this estimate, which likely overestimates the number of clients from which state-registered investment advisers would obtain written representations in reliance on this exception, is inclusive of the clients of other persons who may seek to rely on this exception.

[1618] 8,620 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 2,155 hours.

[1619] 700 hours (estimated time to draft a template document to use in obtaining the written representation) + 2,155 hours (estimated time required to obtain the written representations from clients) = 2,855 hours.

[1620] *See* Rule 15Ba1–1(m)(3). *See also supra* notes 363–365 and accompanying text.

rely on the exception for reasonable reliance on representations related to proceeds of municipal securities.[1621]

The Commission estimates that each person seeking to rely on this exception would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 880 hours.[1622]

In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from its client. The Commission estimates that persons that will seek to rely on this exception have approximately 25,420 clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors.[1623] Thus, the Commission estimates that the burden to obtain the written representation will be 6,355 hours.[1624]

Accordingly, the Commission estimates that the total initial burden for all persons to rely on the exception for reasonable reliance on representations related to proceeds of municipal securities will be 7,235 hours.[1625] Because the person seeking to rely on this exception only needs to obtain the written representation one time, the Commission does not believe that there will be an ongoing burden.

The Commission staff will use the collection of information under the qualification in the definition of proceeds of municipal securities in its examinations and oversight program to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow persons relying on the exception for reasonable reliance on representations related to proceeds of municipal securities to demonstrate that registration with the Commission as municipal advisors was not required.

[1621] As discussed above, as of May 3, 2010, of the 5,550 investment advisers with less than $100 million in assets under management registered with the Commission, 211 (or 4%) had clients that were state or municipal government entities. *See supra* note 1615. So as not to double-count those investment advisers that had clients that were state or municipal government entities, the Commission staff identified 5,339 investment advisers with less than $100 million in assets under management that did not respond that they had clients that were state or municipal government entities (5,550 − 211 = 5,339). Of those, responses to Item 5.D(6) of Part 1 of Form ADV indicate that 713 investment advisers with less than $100 million in assets under management that did not respond that they had clients that were state or municipal government entities responded that they had some clients that were pooled investment vehicles (other than registered investment companies). If the Commission estimates that the same percentage of investment advisers advise pooled investment vehicles (other than registered investment companies) with municipal entity investors as investment advisers that advise state or municipal government entities (*i.e.,* 4%), 29 of these investment advisers would be advisers to pooled investment vehicles (other than registered investment companies) with municipal entity investors (713 × 4% = 28.52). Accordingly, the Commission estimates that approximately 1% of the 5,550 investment advisers with less than $100 million in assets under management registered with the Commission as of May 3, 2010, had clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors (29 ÷ 5,550 = 0.0052). As of January 1, 2013, there were 17,259 state-registered investment advisers. Using the same percentage, the Commission staff estimates that approximately 180 state-registered investment advisers have clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 17,259 (number of state-registered investment advisers as of January 1, 2013) × 1% (estimated percentage of state-registered investment advisers with clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors) = 172.59.

In addition, as discussed above, the Commission staff estimates that 700 state-registered investment advisers have clients that are state or municipal government entities. *See supra* note 1615. Therefore, the Commission staff estimates that 880 state-registered investment advisers have clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 700 (estimated number of state-registered investment advisers with clients that are state or municipal government entities) + 180 (estimated number of state-registered investment advisers with clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors) = 880. This estimate rounds to the nearest higher multiple of ten the estimated number of state-registered investment advisers that have clients that are state or municipal government entities and the estimated number of state-registered investment advisers that have clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. The Commission believes this estimate, which likely overestimates the number of state-registered investment advisers who are likely to seek to rely on this exception, is inclusive of other persons who may seek to rely on this exception.

[1622] 880 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 880 hours.

[1623] According to responses to Item 5.D(6) of Part 1 of Form ADV, as of May 3, 2010, 756 investment advisers registered with the Commission having less than $100 million in assets under management indicated that they had approximately 5,400 clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors. This estimate includes those investment advisers that had clients that were state or municipal government entities that were excluded from the estimate of the number of investment advisers with clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors. *See supra* note 1621. The Commission staff used the midpoint of each range to estimate the number of such clients. The Commission does not have exact data from 2010 on the number of clients of investment advisers because Form ADV responses are in the format of a range (*e.g.,* 26–100 clients). In addition, the Commission does not have the information necessary to provide another point estimate.

The Commission staff, extrapolating from the ratio of the estimated number of pooled investment vehicle (other than registered investment company) clients with municipal entity investors in May 2010 to the number investment advisers with less than $100 million in assets under management registered with the Commission as of May 2010, estimates that, currently, state-registered investment advisers now have approximately 16,800 clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. (5,400 (approximate number of pooled investment vehicle (other than registered investment company) clients with municipal entity investors of investment advisers having less than $100 million in assets under management that were registered with the Commission as of May 3, 2010) ÷ 5,550 (number of investment advisers with less than $100 million in assets under management that were registered with the Commission as of May 3, 2010)) × 17,259 (number of state-registered investment advisers as of January 1, 2013) = 16,792.54.

In addition, as discussed above, the Commission staff estimates that state-registered investment advisers now have approximately 8,620 clients that are state or municipal government entities. *See supra* note 1617. Therefore, the Commission staff estimates that state-registered investment advisers now have 25,420 clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 8,620 (estimated number of state or municipal government entity clients of state-registered investment advisers) + 16,800 (estimated number of clients of state-registered investment advisers that are pooled investment vehicle (other than registered investment company) clients with municipal entity investors) = 25,420. This estimate rounds to the nearest higher multiple of ten the number of clients of state-registered investment advisers that are state or municipal government entities or pooled investment vehicles (other than registered investment companies) with municipal entity clients. The Commission believes this estimate, which likely overestimates the number of clients from which state-registered investment advisers would obtain written representations in reliance on this exception, is inclusive of the clients of other persons who may seek to rely on this exception.

[1624] 25,420 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 6,355 hours.

[1625] 880 hours (estimated time to draft a template document to use in obtaining the written representation) + 6,355 hours (estimated time required to obtain the written representations from clients) = 7,235 hours.

Nature of information collection burden	Total hourly burden estimate	
	Initial	Ongoing
Form MA: Application for Municipal Advisor Registration	3,185	350
Form MA–I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities	33,750	2,850
Form MA–W: Notice of Withdrawal from Registration as a Municipal Advisor	0	15
Rule 15Ba1–5: Amendments to Form MA and Form MA–I	0	12,053
Form MA–NR: Designation of U.S. Agent for Service of Process for Non-Residents	54	5
Consent to Service of Process for Certain Associated Persons	2,035	195
Rule 15Ba1–8: Books and Records to be Made and Maintained by Municipal Advisors	0	165,620
Rule 15Ba1–1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor	2,613	2,193
Rule 15Ba1–1(h)(2): Exception to Definition of Municipal Escrow Investments	2,855	0
Rule 15Ba1–1(m)(3): Exception to Definition of Proceeds of Municipal Securities	7,235	0
Total Burden	51,727	183,281

12. Total Burden

In the Proposal, the Commission estimated that the total initial one-time burden for all respondents would be approximately 71,939 hours,[1626] while the total ongoing annual burden for all respondents would be approximately 212,135 hours.[1627] The total initial outside cost for all respondents would be $402,700,[1628] while the total ongoing outside cost for all respondents would be $900 per year.[1629]

The Commission now estimates that, under the final rules and forms, the total initial burden for all respondents will be approximately 51,727 hours,[1630] while the total ongoing annual burden for all respondents will be approximately 183,281 hours.[1631] The total initial outside cost for all respondents will be $365,800,[1632] while the total ongoing outside cost for all respondents will be $40,900 per year.[1633]

VIII. Economic Analysis

A. Overview

The Commission is sensitive to the costs and benefits of its rules. When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[1634] In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[1635]

In the Proposal, the Commission solicited comment on the costs and benefits of the proposed rule, including the proposed definition of ''municipal advisor'' and related terms; exclusions and exemptions of certain persons from the definition of municipal advisor; registration forms; and recordkeeping requirements.[1636] The Commission also requested comment on the competitive or anticompetitive effects, as well as efficiency and capital formation effects, of the proposed rules and forms on any market participants.[1637] The Commission further encouraged commenters to provide specific data and analysis in support of their views.[1638]

The Commission received approximately 38 letters that addressed the Commission's estimates of the costs and benefits of the proposed rule.[1639]

[1626] 6,500 hours (initial burden for Form MA applicants) + 65,400 hours (initial burden to complete Form MA–I) + 39 hours (initial burden for Form MA–NR filers) = 71,939 hours. *See* Proposal, 76 FR 871.

[1627] 650 hours (annual burden for new Form MA applicants) + 5,400 hours (annual burden to complete new Form MA–I) + 3,000 hours (annual burden for Form MA amendments) + 20,700 hours (annual burden for Form MA–I amendments) + 30 hours (annual burden for Form MA withdrawal) + 1,350 hours (annual burden for Form MA–I withdrawal) + 5 hours (annual burden for Form MA–NR filers) + 181,000 hours (annual burden for books and records requirement) = 212,135 hours. *See id.*

[1628] $2,700 (estimated initial cost to hire outside counsel for providing opinion of counsel) + $400,000 (initial cost for review by outside counsel) = $402,700. *See id.* at 872.

[1629] $900 = estimated ongoing cost to hire outside counsel for providing opinion of counsel. *See id.*

[1630] 36,935 hours (estimated initial burden for Form MA and MA–I) + 54 hours (estimated initial burden for Form MA–NR filers) + 2,035 hours (estimated initial burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf) + 2,613 hours (estimated initial burden for exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor) + 2,855 (estimated initial burden for exception for reasonable reliance on representations related to municipal escrow investments) + 7,235 (estimated initial burden for exception for reasonable reliance on representations related to proceeds of municipal securities) = 51,727 hours.

[1631] 3,200 hours (estimated annual burden for new Form MA and Form MA–I) + 12,053 hours (estimated annual burden for Form MA and Form MA–I amendments) + 15 hours (estimated annual burden for Form MA withdrawal) + 5 hours (estimated annual burden for Form MA–NR filers) + 165,620 hours (estimated annual burden for books and records requirement) + 195 hours (estimated ongoing burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf) + 2,193 (estimated annual burden for exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor) = 183,281 hours.

[1632] $1,800 (estimated initial cost to hire outside counsel for providing opinion of counsel) + $364,000 (estimated initial cost for review by outside counsel) = $365,800.

[1633] $900 (estimated ongoing cost to hire outside counsel for providing opinion of counsel) + $40,000 (estimated ongoing cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms) = $40,900.

[1634] 15 U.S.C. 78c(f).

[1635] 15 U.S.C. 78w(a)(2).

[1636] *See* Proposal, 76 FR 862–863, 878. An economic analysis was included in the proposing release. *See id.* at 872–78.

[1637] *See id.* at 878.

[1638] *See id.* at 863.

[1639] *See, e.g.,* City of St. Petersburg Letter; Dan A. Gray, President, Industrial Development Authority, City of Yuma, AZ; Vosburg Letter; Bill Longley, Texas Municipal League, Austin, TX; Rick Platt, President and CEO, Heath-Newark-Licking County Port Authority, Heath, OH; Nancy K. Kopp, State Treasurer and Board Chair, College Savings Plans of Maryland; Wayne County Airport Authority Letter; Larry E. Naake, Executive Director, National Association of Counties, Washington, DC; Laurie D. Grabow, Executive Vice President/CFO, Old Point National Bank (''Old Point Bank Letter''); National Association of Health & Educational Facilities Finance Authorities Letter; Ranson Financial Consultants Letter; Union Bank Letter; Texas Bankers Association Letter; Harlan Spiroff, Spiroff & Gosselar, Ltd.; Joy Howard WM Financial Strategies Letter; California State Treasurer's Office Letter; NAIPFA Letter; Specialized Public Finance Letter; State of Texas Letter; Pennsylvania Public School Employees' Retirement Board Letter; Ismael Guerrero, Housing Authority of the City and County of Denver; Jean Marie Buckley, President, Tamalpais Advisors, Inc. (''Tamalpais Advisors Letter''); SIFMA Letter I; ACLI Letter; MSRB Letter I; Public FA Letter; Financial Services Roundtable Letter; BMO Capital Markets Letter; Susan Gaffney,

Several commenters opined generally that municipal advisor registration as proposed would be overly burdensome and would impose costs that would be detrimental to the commenters. Further, some commenters criticized the Proposal's economic analysis generally, stating that the expected costs of the permanent registration regime were greatly underestimated.[1640] Other commenters asserted that the economic analysis was ''superficial'' in that it related ''almost entirely to filling out paperwork and hardly scratches the surface of the true regulatory burden'' [1641] and that the cost-benefit analysis was flawed because it only addressed the labor costs directly associated with registration and recordkeeping.[1642] One commenter stated that the Commission did not appear to consider adequately the costs of the proposed rules, particularly implementation costs and costs incurred by municipal entities and obligated persons as a result of increases in the price of advisory services.[1643]

The Commission does not agree that the economic analysis in the Proposal was ''superficial'' or that it focused solely on the registration and recordkeeping burdens. In developing the proposed rules and forms, the Commission considered the costs and benefits of requiring persons to register as municipal advisors, including the costs-benefit tradeoffs implicated in interpreting the definition of ''municipal advisor'' and related terms, interpreting the statutory exclusions, and proposing additional exemptions from the definition of municipal advisor. As stated in the Proposal, in addition to the direct, out-of-pocket costs estimated for PRA purposes, the Commission considered the economic costs of the proposed permanent registration regime.[1644] The Commission also stated its belief that few, if any, of the costs would be passed on to municipal entities or obligated persons in the form of higher fees.[1645]

Similarly, in light of the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities and data currently available to the Commission, in determining the appropriate scope of the final rules and forms the Commission considered the types of persons that should be regulated as municipal advisors under Section 15B of the Exchange Act. The Commission has sought to tailor these rules so as not to impose unnecessary or inappropriate costs and burdens on municipal advisors. As discussed throughout this release, partly in response to comments, the Commission has modified the rules to minimize compliance burdens where consistent with investor protection. In addition, as discussed below, where commenters identified costs the Commission did not consider, the Commission has revised its economic analysis of the final rules to take these costs into account.

As discussed above in Section II.A.2.b, prior to the enactment of the Dodd-Frank Act, municipal advisors were largely unregulated as to their municipal advisory activities. Section 975 of the Dodd-Frank Act amended the Exchange Act to establish a federal regulatory regime that requires municipal advisors to register with the Commission,[1646] grants the MSRB regulatory authority over municipal advisors,[1647] and imposes, among other things, a fiduciary duty on municipal advisors when advising municipal entities.[1648] The Commission recognizes that while the final rules, which define municipal advisor and related terms as well as prescribe the exclusions and exemptions therefrom, are integral in determining which persons will be subject to the regulatory requirements established by Section 975 of the Dodd-Frank Act, the definitions, exclusions, and exemptions do not themselves establish the scope or nature of those substantive requirements or their related costs and benefits. For example, although a municipal advisor is subject to a fiduciary duty when advising a municipal entity client,[1649] the Commission is not interpreting the scope or nature of such duty in this rulemaking. Instead, the Commission notes that the Exchange Act provides that the MSRB shall prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients.[1650]

The Commission anticipates that any additional rules that the Commission adopts to implement the substantive requirements under Section 15B of the Exchange Act will be subject to their own economic analysis. In addition, the Commission has direct oversight authority over the MSRB, including the ability to approve or disapprove the MSRB's rules.[1651]

In adopting the final rules and forms, the Commission has considered the costs and benefits that accrue from subjecting municipal advisors and municipal advisory activities to the regulatory regime created by Section 975 of the Dodd-Frank Act. The Commission refers to those costs and benefits as ''programmatic'' costs and benefits.[1652] The programmatic costs

Government Finance Officers Association; Fieldman Rolapp Letter; UFS Bancorp Letter; John Sullivan (''John Sullivan Letter''); Bradley Payne Letter; William J. Caraway, President, Chancellor Financial Associates (''Chancellor Financial Associates Letter''); Committee of Annuity Insurers Letter I; NAESCO Letter; Solar Energy Industries Association Letter; Cristeena Naser, Senior Counsel, Center for Securities, Trust & Investment, American Bankers Association (''American Bankers Association Letter II'').

[1640] *See, e.g.,* American Counsel of Life Insurers Letter (stating that ''the Commission has significantly underestimated the complexity and costs associated with the proposed rule''); BMO Capital Markets Letter (stating that ''the costs analysis is not even remotely close to reality''); Bradley Payne Letter (stating that ''cost estimates published in the proposed regulations are wild guesses and were obviously generated by analysts who know absolutely nothing about my business'').

[1641] *See* Mintz Levin Letter; and State of California Letter.

[1642] *See* letter from Terry E. Singer, Executive Director, National Association of Energy Service Companies, dated September 26, 2011 (''NAESCO Letter II'').

[1643] *See* SIFMA Letter I. In addition, the Commission's Office of Inspector General prepared a report analyzing the economic analysis of several rule proposals and suggested that the Commission could have provided additional quantitative analyses to derive certain qualitative predictions in connection with the Proposal. *See* Office of Inspector General, Commission, Report of Review of Economic Analyses Performed by the Securities and Exchange Commission in Connection with Dodd-Frank Act Rulemakings, June 13, 2011, available at *http://www.sec-oig.gov/Reports/AuditsInspections/2011/Report_6_13_11.pdf.*

[1644] *See* Proposal, 76 FR 876. *See also* supra note 1643 and accompanying text (discussing comments related to increased prices for municipal entities and obligated persons).

[1645] *See id.*

[1646] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[1647] *See* 15 U.S.C. 78*o*–4(b).

[1648] *See* 15 U.S.C. 78*o*–4(c)(1).

[1649] *See* 15 U.S.C. 78*o*–4(c)(1).

[1650] *See* 15 U.S.C. 78*o*–4(b)(2)(L)(i).

[1651] Section 19(b) of the Exchange Act requires an SRO to file with the Commission any proposed rule change, and provides that a proposed rule change may not take effect unless it is approved by the Commission or becomes immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act. *See* 15 U.S.C. 78s(b). Section 3 of the Exchange Act defines the term ''self-regulatory organization'' to include the MSRB. *See* 15 U.S.C. 78c(a)(26). Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the rules of the MSRB not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78*o*–4(b)(2)(C). In addition, with respect to municipal advisors, MSRB rules shall not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. *See* 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[1652] The Commission expects that the costs and benefits resulting from the municipal advisory regulatory regime will likely accrue primarily at the programmatic level. *See infra* Sections VIII.C.1 and VIII.D.2. To the extent appropriate given the purposes of Section 975 of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities and data currently available to the

Continued

and benefits have informed the Commission's decisions and actions in defining municipal advisor and related terms, its interpretations of the statutory exclusions, and its decision to provide further exemptions from the definition of municipal advisor as described throughout the release. The Commission has also considered the costs that persons will incur to assess whether registration as a municipal advisor is required (*i.e.,* ''assessment'' costs), as well as the costs and benefits that will accrue from the requirement that municipal advisors register with the Commission (*i.e.,* ''registration'' costs and benefits) and maintain the books and records as required by Rule 15Ba1–8 (*i.e.,* ''recordkeeping'' costs and benefits).

In the discussion below, the Commission begins by identifying its motivation for adopting the rules and forms and the baseline against which the Commission considers both the costs and benefits, as well as the effects on efficiency, competition, and capital formation, of the final rules and forms. Next, the Commission discusses broad economic considerations that stem from the final rules and forms, including the assessment costs. The Commission then discusses the potential programmatic, registration, and recordkeeping costs and benefits that the final rules and forms implicate, as well as the effects of the final rules and forms on efficiency, competition, and capital formation. The discussion focuses on the Commission's reasons for adopting the rules and forms, the affected parties, and the costs and benefits of the rules and forms compared to the baseline (*i.e.,* the temporary registration regime and the requirements imposed by the Dodd-Frank Act) and to alternative courses of action the Commission has considered.

B. Motivation for Rules and Forms

The rules and forms adopted today are designed to enhance the Commission's oversight of municipal advisors.[1653] The Commission believes the information provided pursuant to the final rules and forms may aid municipal entities and obligated persons in choosing municipal advisors that help municipal entities and obligated persons engage in issuances of municipal securities as well as investments in municipal financial products. The motivation for the rules and forms, which are discussed throughout this release, are summarized below.

First, the rules are designed to provide guidance related to the definition of municipal advisor and exclusions therefrom, as well as to provide exemptions from the municipal advisor regulatory regime. The statutory definition of municipal advisors is broad and includes persons that have not previously been considered municipal financial advisors.[1654] There are also relevant exclusions from the definition of municipal advisor that limit the scope of persons included in the municipal advisor regulatory regime. The statute, however, leaves undefined or ambiguous certain terms that are critical for market participants to discern who is or is not a municipal advisor.

Second, the final rules and forms establish a permanent mechanism for municipal advisors to register with the Commission. Effective October 1, 2010, the Dodd-Frank Act requires the establishment of a registration regime for municipal advisors.[1655] As discussed above, the Commission adopted a temporary registration regime to allow municipal advisors to satisfy temporarily the statutory registration requirement by submitting certain information electronically through the Commission's public Web site on Form MA–T.[1656] However, as that registration regime was intended to be temporary, the Commission is now establishing a permanent registration regime.

Third, the final rules and forms will expand the amount of publicly available information about municipal advisors, including conflicts of interest and disciplinary history. Because municipal advisors had been largely unregulated as to their municipal advisory activities prior to the Dodd-Frank Act,[1657] apart from information gathered through Form MA–T, there is little publicly and centrally available information about municipal advisors. In addition, although the information submitted on Form MA–T is publicly available on the Commission's Web site, the final rules and forms will require municipal advisors to disclose a greater amount of information, including conflicts of interest and more information pertaining to disciplinary history.[1658] In addition, the final rules and forms will increase the ability of municipal entities and obligated persons to become more fully informed about municipal advisors in a more efficient manner, and thereby, at a lower cost.[1659]

Fourth, the permanent registration regime is designed to enhance the ability of securities regulators to oversee municipal advisors, which could increase the willingness of market participants, specifically municipal entities and obligated persons, to utilize municipal advisors. The Commission staff will review applications for registration and by order grant registration or the Commission will institute proceedings to determine whether registration should be denied.[1660] Requiring municipal advisors to register with the Commission under the permanent registration regime will allow the Commission to collect additional information about municipal advisors that can be used to facilitate examination and enforcement efforts. The Commission believes that its authority to examine and sanction municipal advisors for false and misleading statements submitted by municipal advisors on Form MA or Form MA–I under the permanent registration regime, including the additional information on Form MA that is not required on Form MA–I, may result in increased reliability of the information, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors. Municipal advisors, knowing that additional information about their disciplinary histories must be disclosed pursuant to the final rules, may be further incentivized to avoid engaging in misconduct.

Finally, the permanent registration regime will require municipal advisors to maintain books and records regarding their municipal advisory activities. Recordkeeping requirements are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation and

Commission, the Commission has sought to mitigate the costs entities will incur in connection with the registration and recordkeeping requirements.

[1653] *See supra* notes 101–103 and accompanying text. According to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' *See* S. Rep. No. 111–176, at 38 (2010). Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' *See id.*

[1654] *See supra* text accompanying notes 129–131.

[1655] *See* Section 975(i) of the Dodd-Frank Act.

[1656] *See supra* notes 107–110 and accompanying text.

[1657] *See supra* notes 93–96 and accompanying text.

[1658] *See infra* Section VIII.D.1.a.

[1659] Investors could also benefit to the extent they consider whether a municipal advisor was involved in negotiating a municipal bond offering.

[1660] *See* 78 U.S.C. 78*o*–4(a)(2).

are designed to maintain the efficiency and effectiveness of the Commission's examination program for regulated entities. Rule 15Ba1–8 will assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules.

C. Economic Baseline

The rules and forms adopted today establish a permanent registration regime for municipal advisors. The temporary registration regime, as described below,[1661] serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the final rules and forms are measured. The discussion below includes a description of the costs and benefits of the temporary registration regime (*i.e.,* the programmatic and registration costs and benefits) as well as approximate numbers of municipal advisors that would be affected by the final rules and forms adopted today.

By enacting Section 975 of the Dodd-Frank Act, Congress created a federal regulatory regime for municipal advisors that previously did not exist. In determining the economic baseline, the Commission recognizes that, effective October 1, 2010, any person that meets the statutory definition of municipal advisor [1662] is currently required to register with the Commission, unless a statutory exclusion applies.[1663] As discussed above, the Commission adopted a temporary registration regime to allow municipal advisors to satisfy temporarily the statutory registration requirement by submitting certain information, including disciplinary history of associated municipal advisor professionals, electronically through the Commission's public Web site on Form MA–T.[1664] The Commission does not impose registration or filing fees in connection with municipal advisor registration, either under the temporary registration regime or the permanent registration regime.

In addition to registering with the Commission, every municipal advisor is required to comply with the requirements imposed by Section 15B of the Exchange Act as well as rules established by the MSRB. For example, Section 15B(a)(5) prohibits a municipal advisor from engaging in any fraudulent, deceptive, or manipulative acts or practices when providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or when undertaking a solicitation of a municipal entity or obligated person.[1665] A municipal advisor is also deemed to have a fiduciary duty to its municipal entity clients.[1666]

The Dodd-Frank Act also provided the MSRB with authority to propose and adopt rules related to municipal advisors.[1667] The MSRB has already adopted some rules for municipal advisors.[1668] For example, MSRB Rule G–17 requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. In addition, prior to engaging in municipal advisory activities, a municipal advisor must register with the MSRB and pay a $100 initial fee and a $500 annual fee.[1669]

1. Programmatic Costs and Benefits of the Temporary Registration Regime

Subjecting municipal advisors to the requirements of the temporary registration regime has a number of programmatic costs and benefits. Municipal advisors may have incurred, and would continue to incur, costs to comply with the standards and rules discussed above that are currently applicable to municipal advisors by statute or MSRB rules.[1670] In addition, as discussed above, municipal advisors that have registered with the MSRB have incurred fees assessed by the MSRB and would continue to incur fees in each year registered with the MSRB.[1671]

Municipal advisors may also have incurred, and would continue to incur, costs in association with examinations by Commission staff. Section 15B of the Exchange Act authorizes the Commission, or its designee, to conduct periodic examinations of municipal advisors for compliance with the Exchange Act, the rules and regulations thereunder, and the rules of the MSRB.[1672] Since the beginning of fiscal year 2012 through fiscal year 2013, OCIE completed 19 examinations of municipal advisors. The time and cost involved in an examination varies depending on the size of the municipal advisor; whether the municipal advisor was also registered with the Commission as a broker-dealer and/or investment adviser; and whether Commission staff identified additional risks posed by the municipal advisor while onsite.[1673]

Municipal advisors, faced with the costs imposed by the temporary registration regime, may have responded in a number of ways. Municipal advisors that viewed the costs as too burdensome, or those with extensive disciplinary histories, may have decided to discontinue engaging in activities that

[1661] *See infra* notes 1662–1669 and accompanying text.

[1662] Section 15B(e)(4) of the Exchange Act defines ''municipal advisor'' as a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity. *See* 15 U.S.C. 78*o*–4(e)(4)(A). As discussed above, the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. *See supra* text accompanying notes 129–131. Specifically, the definition of municipal advisor includes ''financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors'' that engage in municipal advisory activities. *See* 15 U.S.C. 78*o*–4(e)(4)(B).

[1663] *See* 15 U.S.C. 78*o*–4(a)(1)(B); 15 U.S.C. 78*o*–4(e)(4)(C).

[1664] *See supra* notes 107–110 and accompanying text. *See also* Form MA–T, Glossary of Terms (defining ''associated municipal advisory professional''). Today, in a separate release, the Commission is extending the expiration date of the temporary registration regime to December 31, 2014. *See supra* note 115 and accompanying text.

[1665] *See* 15 U.S.C. 78*o*–4(a)(5).

[1666] *See* 15 U.S.C. 78*o*–4(c)(1). Section 975 of the Dodd-Frank Act did not define the contours of a municipal advisor's fiduciary duty to its municipal entity clients. Pursuant to Section 15B(b)(2)(L)(i) of the Exchange Act, the MSRB is authorized to prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients. *See* 15 U.S.C. 78*o*–4(b)(2)(L)(i). As discussed above, the Commission has direct oversight authority over the MSRB, including the ability to approve or disapprove the MSRB's rules. *See supra* note 1651 and accompanying text. For purposes of this economic analysis, Congress's imposition of a fiduciary duty on municipal advisors under Section 975 of the Dodd-Frank Act is part of the baseline.

[1667] *See* 15 U.S.C. 78*o*–4(b).

[1668] Although the MSRB has adopted some rules for municipal advisors, the MSRB has yet to detail many of the requirements that will apply to municipal advisors. For example, the MSRB has yet to establish standards of training, experience, competence, and other qualifications (*see* 15 U.S.C. 78*o*–4(b)(2)(A)); prescribe recordkeeping requirements (*see* 15 U.S.C. 78*o*–4(b)(2)(G)); provide continuing education requirements (*see* 15 U.S.C. 78*o*–4(b)(2)(L)(ii)); or provide professional standards (*see* 15 U.S.C. 78*o*–4(b)(2)(L)(iii)).

[1669] *See* MSRB Rule A–12 and MSRB Rule A–14. Section 15B(b)(2)(J) of the Exchange Act permits the MSRB to require municipal advisors to pay reasonable fees and charges. *See* 15 U.S.C. 78*o*–4(b)(2)(J). Other MSRB rules applicable to municipal advisors include MSRB Rules G–5 (Disciplinary Actions by Appropriate Regulatory Agencies; Remedial Notices by Registered Securities Associations), G–40 (Electronic Mail Contacts), and A–15 (requiring that a municipal advisor notify the MSRB if it ceases operations).

[1670] *See supra* notes 1665–1669 and accompanying text.

[1671] *See supra* note 1669 and accompanying text.

[1672] *See* 15 U.S.C. 78o–4(b)(2)(E); 15 U.S.C. 78o–4(c)(7)(A)(iii). *See also supra* note 1386 and accompanying text.

[1673] The onsite portion of an examination lasts approximately three business days.

would require them to register as municipal advisors (hereinafter referred to as ''exiting the market''). Other municipal advisors may have determined to consolidate with other municipal advisory firms to better manage the costs associated with the regulatory regime. Still others may have passed the additional costs of being a registered municipal advisor on to municipal entities and obligated persons in the form of higher fees.[1674] In addition, some persons that may have otherwise newly entered the municipal advisor market may have decided not to enter the market.

The Commission, however, is unable to estimate the number of municipal advisors that may have exited the market or consolidated with other municipal advisory firms as a result of the temporary registration regime because Form MA–T does not require a municipal advisor withdrawing from registration on Form MA–T to indicate the reasons for the withdrawal.[1675] Further, the Commission does not have the information necessary to estimate how many municipal advisors may have chosen to exit the market after the enactment of the Dodd-Frank Act but prior to the commencement of the temporary registration regime because such data is not currently available to the Commission or otherwise publicly available. Similarly, the Commission is unable to estimate the extent to which municipal advisors may have passed on to their clients the costs incurred to comply with the temporary registration regime because such data is not currently available to the Commission or otherwise publicly available. Although commenters asserted that such costs could be passed on to clients,[1676] commenters did not provide specific figures in this regard, making it difficult to evaluate these assertions.

Section 975 of the Dodd-Frank Act includes new investor protections, including protections for municipal entities and obligated persons when issuing, or investing the proceeds of, municipal securities.[1677] For example, municipal advisors are now subject to, among other things, a fiduciary duty to any municipal entity clients and are prohibited from engaging in any act, practice, or course of business which is not consistent with that fiduciary duty.[1678] These investor protections may have incentivized municipal advisors not to engage in misconduct. As discussed above, Section 15B provides the Commission with explicit authority to oversee the activities of municipal advisors, and since the beginning of fiscal year 2012 through fiscal year 2013, OCIE completed 19 examinations of municipal advisors.[1679] Similarly, Section 15B enhances municipal entity and obligated person protections by providing the Commission with explicit authority to bring disciplinary actions against municipal advisors for misconduct, including the ability to censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor.[1680]

2. Registration Costs and Benefits of the Temporary Registration Regime

In the Temporary Registration Rule Release, the Commission identified certain costs and benefits of the temporary registration regime. Municipal advisors that have registered with the Commission on Form MA–T have incurred costs to gather the information required to complete the form and submit that information through the Commission's Web site, as well as to amend Form MA–T as necessary. In the Temporary Registration Rule Release, the Commission estimated that the total labor cost for all municipal advisors to complete Form MA–T would be approximately $735,000.[1681] The Commission also estimated that the total annual labor cost for all municipal advisors to amend Form MA–T would be approximately $147,000.[1682] In addition, the Commission estimated that the total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T would be approximately $400,000.[1683]

In the Temporary Registration Rule Release, the Commission recognized the possibility that the cost of registering could be passed on to municipal entities in the form of higher fees. However, the Commission anticipated that any increase in municipal advisory fees attributable to the temporary registration regime would be minimal given the relatively small magnitude of these costs and the large number of municipal entity issuers.[1684]

Subjecting municipal advisors to the requirements of the temporary registration regime may have had a number of benefits. The temporary registration regime may have enabled municipal entities and obligated persons to become better informed about a municipal advisor, including disciplinary history of associated municipal advisor professionals,[1685] by accessing and reviewing the municipal advisor's Form MA–T on the Commission's Web site. In addition, because information submitted on Form MA–T is consolidated in a single online location, municipal entities and obligated persons may have been able to access this information more efficiently, and thereby, at a lower cost.[1686] In

[1674] The Commission recognized in the Proposal that the cost of becoming subject to registration for the first time could lead some municipal advisors that are not particularly active to leave the business. *See* Proposal, 76 FR 876. The Commission received several comment letters that asserted the costs of the regulatory regime could cause municipal advisors to exit the market, consolidate with other firms, or pass the costs incurred to comply with the regime on to clients. *See, e.g.,* Public FA Letter (''The regulations imposed on small firms like ours could be time consuming and costly enough to either put us out of business or cause small firms to merge with larger firms or to create larger firms.''); Fieldman Rolapp Letter (''Most firms, regardless of revenue amount, are small businesses with insufficient margins to bear excessive regulatory burden''); Ranson Financial Consultants Letter (''Our options [in relation to compliance costs] may include joining another firm or simply go out of business''); UFS Bancorp Letter (''[T]he Proposed Rules will have economic costs. These will either come out of the bottom lines of firms or be passed along to municipal clients in the form of fee increases.'').

The Commission is unable to estimate the number of persons who may have decided not to enter the municipal advisor market because such data is not currently available to the Commission or otherwise publicly available. However, the Commission notes that, as discussed above, approximately 205 municipal advisers filed an initial Form MA–T in 2011 and approximately 115 filed an initial Form MA–T in 2012. *See supra* Section VII.C.

[1675] As discussed above, approximately 22 municipal advisors withdrew from registration on Form MA–T in 2011 and 24 withdrew from registration in 2012. *See supra* Section VII.D.4.

[1676] *See supra* note 1674.

[1677] *See supra* note 1653 and accompanying text.

[1678] *See* 15 U.S.C. 78*o*–4(c)(1).

[1679] *See supra* notes 1672–1673 and accompanying text. The onsite portion of an examination lasts approximately three business days.

[1680] *See* 15 U.S.C. 78o–4(c)(2). The Commission also has the authority to censure or place limitations on the activities or functions of any person associated with a municipal advisor or to suspend or bar any such person from being associated with a municipal advisor. *See* 15 U.S.C. 78o–4(c)(4); Rule 15Bc4–1.

[1681] *See* Temporary Registration Rule Release, 75 FR 54474 (calculating the estimated total labor cost for all municipal advisors to complete Form MA–T). This estimate includes all of the time necessary to research, evaluate, and gather all of the information requested in Form MA–T and all of the time necessary to complete and submit the form. *See id.* at 54473.

[1682] *See id.* at 54474 (calculating the estimated total labor cost for all municipal advisors to amend Form MA–T).

[1683] *See id.* (calculating the estimated total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T).

[1684] *See id.*

[1685] *See id.* at 54469. *See also supra* note 1664 and accompanying text.

[1686] *See* Temporary Registration Rule Release, 75 FR 54474. The Commission is unable to estimate

addition, under the temporary registration regime, municipal advisors are required to disclose disciplinary history on Form MA–T, which disclosure may further deter municipal advisors from engaging in misconduct. As discussed in the Proposal, the information currently required by Form MA–T is not reviewed by the Commission or its staff prior to registration, although the Commission retains full authority to review such information and examine any registered municipal advisor at any time.[1687]

3. Municipal Advisor Market

The discussion below includes approximate numbers of municipal advisors that would be affected by the final rules and forms adopted today. As discussed above, according to MA–T data as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, as of December 31, 2012, approximately 901 were also registered as municipal advisors with the MSRB, as they are required to do prior to engaging in municipal advisory activities.[1688] For the reasons discussed below, the Commission believes that the number of Form MA–T registrants may not be an accurate representation of the number of municipal advisors and that MSRB data represents a better basis on which to estimate the number of municipal advisors active in the market.

The Commission believes that a number of persons, recognizing that the Commission does not impose any fees for registration, may have registered with the Commission as municipal advisors out of an initial overabundance of caution.[1689] Although some current Form MA–T registrants may not have registered with the MSRB because of uncertainty regarding the scope of the temporary registration regime, others may have determined in the intervening time after October 1, 2010, that registration with the MSRB was not required because they were not engaging in municipal advisory activities. The Commission staff understands based on discussions with market participants that these Form MA–T registrants may have retained Commission registration because there are no associated fees to maintain such registration.[1690] Accordingly, based on the MSRB registration data, the Commission now estimates that 910 municipal advisors are currently active in the municipal advisor market.[1691]

MSRB data and MA–T data also provide information regarding the types of services provided by registered municipal advisors.[1692] According to MSRB data,[1693] as of December 31, 2012, 682 municipal advisors identified themselves as financial advisors; 192 identified themselves as guaranteed investment contract brokers or advisors; 272 identified themselves as placement agents; 159 identified themselves as solicitors or finders; 246 identified themselves as swap or derivative advisors; 135 identified themselves as third-party marketers; and 201 indicated they provide other services.[1694] In addition, according to MA–T data, as of December 31, 2012, 226 municipal advisors were also registered with the Commission as broker-dealers; 39 were also registered with the Commission as investment advisers; and 65 were registered with the Commission as both broker-dealers and investment advisers. As discussed above, Form MA–T requires municipal advisors to disclose any disciplinary history of associated municipal advisor professionals.[1695] According to MA–T data, as of December 31, 2012, 169 registered municipal advisors had disclosed prior disciplinary history.

The Commission and the MSRB do not capture data regarding the concentration [1696] of the municipal advisor market. The Commission staff has evaluated data available in Thomson Reuters' SDC Platinum database (''SDC Platinum Database'') [1697] to analyze concentration. To determine the number of issue offerings in 2012, the Commission staff assumed that bonds issued on the same day by the same issuer were part of the same issue.[1698] Under this assumption, and removing any deals for which SDC Platinum Database did not record a CUSIP, the Commission staff found that, in 2012, there were 13,288 municipal bond deals, of which approximately 8,237 used a financial advisor and 3,074 did not use a financial advisor. SDC Platinum Database was not able to provide information regarding the use of a financial advisor for the other 1,977 municipal bond deals. The 8,237 municipal bond deals that used a financial advisor were advised by approximately 318 different financial advisors, with the 50 most-active advisors advising approximately 80% of

the amount of time and money municipal entities may have saved by reviewing Form MA–T rather than engaging in an RFP process or searching other regulatory documents because such data is not currently available to the Commission or otherwise publicly available. The Commission believes that the ability to access information, including disciplinary history, on municipal advisors in a single location benefits municipal entities and obligated persons by reducing the need to search for other regulatory documents of those municipal advisors that are registered, or have associated persons that are registered, in another capacity. In addition, information submitted on Form MA–T may be the only source of information about some municipal advisors.

[1687] *See* Proposal, 76 FR 860. *See also infra* note 1705 and accompanying text.

[1688] The Commission obtained this estimate by comparing the list of MSRB registrants to the Commission's list of Form MA–T registrants as of December 31, 2012.

[1689] As discussed above, prior to engaging in municipal advisory activities, a municipal advisor must register with the MSRB and pay a $100 initial fee and a $500 annual fee. *See supra* note 1669 and accompanying text.

[1690] The Commission staff understands that some municipal advisors may have maintained Form MA–T registration instead of withdrawing to wait and see whether registration would be required under the permanent registration regime, while others may not have realized they could withdraw or may have determined not to withdraw for other reasons.

[1691] This estimate rounds to the nearest higher multiple of ten the number of municipal advisors that are registered with the MSRB to engage in municipal advisory activities.

[1692] The three principal types of municipal advisors are: (1) Financial advisors, including, but not limited to, brokers, dealers, and municipal securities dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products (''municipal financial advisors''); (2) investment advisers that advise municipal entities on the investment of public monies, including the proceeds of municipal securities (''municipal investment advisers''); and (3) third-party marketers and solicitors (''solicitors''). For purposes of this economic analysis, the Commission uses these terms to describe these distinct types of professionals separately, while using the term ''municipal advisor'' to describe all municipal advisors generally. As discussed above, for clarity, the Commission notes that financial advisors as referred to herein also include swap advisors, including some that are registered with the CFTC or the SEC in other capacities, that provide advice to municipal entities on their use of municipal financial products.

[1693] Although municipal advisors registering with the MSRB identify the types of services they provide, the Commission staff understands that the MSRB does not validate this information.

[1694] Some municipal advisors registered with the MSRB provide more than one type of service. According to MA–T data, as of December 31, 2012, 733 municipal advisors provided advice concerning the issuance of municipal securities; 496 provided advice concerning the investment of the proceeds of municipal securities; 322 provided advice concerning guaranteed investment contracts; 365 provided the recommendation and/or brokerage of municipal escrow investments; 365 provided advice concerning the use of municipal derivatives (*e.g.,* swaps); 383 were third-party marketers, placement agents, solicitors, or finders; 470 provided the preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities; and 253 provided other services. The Commission staff has not validated the information provided on Form MA–T.

[1695] *See supra* note 1664 and accompanying text.

[1696] Concentration refers to how many municipal advisors handle a significant percentage of municipal advisory business.

[1697] SDC Platinum is a database that tracks, among other things, information on municipal bond issues, including new municipal bond issues, municipal private placements, and municipal reoffering issues, but not remarketing issues.

[1698] This excludes deals where SDC does not record a CUSIP or an offering date.

the advised deals, or approximately 74% by dollar volume issued of advised deals.

D. Analysis of Final Rules and Forms

Below, the Commission addresses the costs and benefits of the final rules and forms against the context of the economic baseline defined above, both in terms of the specific changes from the baseline as well as in terms of overall impact on the municipal advisor market. The Commission also addresses the costs and benefits of the requirements that municipal advisors register with the Commission and maintain the books and records required by Rule 15Ba1–8. In considering these costs, benefits, and impacts, the Commission addresses, among other things, comments received, modifications made to the proposed rules and forms, and reasonable alternatives, where applicable.

At the outset, the Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from adopting these rules and forms. In many cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate. For example, the Commission does not have the information necessary to provide a reasonable estimate of the willingness of municipal entities and obligated persons to utilize municipal advisors and improvements in investor protection. In general, secondary data regarding the municipal advisory market that would assist the Commission in producing quantitative analyses are largely unavailable, and, other than the academic papers cited in the Proposal and this release, few studies on municipal securities have attempted to undertake the efforts to collect such secondary data. Additionally, the costs incurred by a municipal advisor to comply with the final rules and forms generally will depend on its size and the complexity of its business activities. Because the size and complexity of municipal advisors vary significantly,[1699] their costs to comply with the final rules and forms could also vary significantly.

The Commission received many comments on the proposed rules and forms, and has incorporated many of the suggested alternatives into the final rules and forms and rejected, after careful consideration, other suggested alternatives, as fully discussed in Section III. The policy choices made to accept or reject the alternatives suggested by the commenters have been informed by the costs and benefit considerations. In particular, as stated above, the Commission is mindful of the programmatic, assessment, registration, and recordkeeping costs associated with the municipal advisor regulatory regime.

1. Broad Economic Considerations

a. Benefits of the Final Rules and Forms

The Commission believes that the final rules and forms should result in a number of benefits, including those discussed throughout this economic analysis. As discussed below, the Commission has sought to subject to the municipal advisor regulatory regime those persons that should be regulated as municipal advisors in light of the purposes of the Dodd-Frank Act to regulate those persons that engage in municipal advisory activities. The final rules and forms should increase the amount of publicly available information about municipal advisors and enhance the ability of securities regulators to oversee municipal advisors.

The permanent registration regime will increase the amount of information available about municipal advisors relevant to the baseline.[1700] The forms will require municipal advisors to provide information about their businesses, including disciplinary histories and potential conflicts of interest (as well as information that may be useful in assessing conflicts of interest), beyond what is required to be disclosed on Form MA–T. Although much of the additional information required by Form MA is already publicly available with respect to municipal advisors that are already registered with the Commission as investment advisers or broker-dealers, many municipal advisors that are not registered with the Commission will make this type of information publicly available for the first time.[1701] In addition, while municipal advisors are required to disclose disciplinary history for some associated persons on Form MA–T, municipal advisors will be required to disclose on Form MA disciplinary history for all associated persons.[1702]

To the extent municipal entities and obligated persons consider disciplinary history and conflict of interest information important in selecting a municipal advisor, the permanent registration regime may reduce selection of municipal advisors that have been the subject of disciplinary actions or whose activities or affiliations create, or have the potential to create, conflicts of interest. Moreover, municipal advisors, knowing that more-detailed disciplinary history must now be disclosed, may be further incentivized to avoid engaging in misconduct (or may exit the market).[1703] In addition, municipal advisors, knowing that conflicts of interest must now be disclosed, may also be more likely to avoid associations that create conflicts of interest or may be more likely to avoid recommending financial intermediaries or investments for which conflicts of interest might be present. The increased dissemination of information regarding disciplinary history and conflicts of interest may lead to improved quality-based competition among municipal advisors to the extent municipal advisors rely on this information in the municipal advisor selection process.

The Commission also believes that the permanent registration regime will enhance the ability of the Commission and other regulators to oversee the conduct of municipal advisors, as contemplated by the Dodd-Frank Act, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.[1704] The Commission staff will review applications for registration and by order grant registration or the Commission will institute proceedings

[1699] *See supra* note 1694 and accompanying text.

[1700] As discussed below, the permanent registration regime will also impose registration and recordkeeping costs on municipal advisors. *See infra* Section VIII.D.3–4.

[1701] For example, little is currently known about solicitors, and disciplinary histories and conflicts of interest about many solicitors will be disclosed for the first time.

[1702] Form MA–T requires disclosure of disciplinary information of a subgroup of associated persons who are closely associated with a municipal advisor's municipal advisory activities (*i.e.,* those who are primarily engaged in a municipal advisor's municipal advisory activities, have supervisory responsibilities over those primarily engaged in municipal advisory activities, are engaged in day-to-day management of the conduct of a municipal advisor's municipal advisory activities, or are responsible for executive management of the municipal advisor).

[1703] As discussed below, the Commission is unable to estimate the number of municipal advisors that have exited the market due to the temporary registration regime or that will exit the market due the permanent registration regime because Form MA–T does not require a municipal advisor withdrawing from registration from Form MA–T to indicate the reasons for withdrawal. *See infra* Section VIII.D.1.b. As a result of the requirement that municipal advisors disclose disciplinary histories, those municipal advisors that may discontinue activity in the market may include disproportionately more municipal advisors with disciplinary records. Further, such public disclosure may deter municipal advisors that have significant disciplinary histories from entering the market.

[1704] *See also infra* notes 1758–1759 and accompanying text.

to determine whether registration should be denied.[1705] Because Rule 15Ba1–2 provides that both Form MA and Form MA–I constitute a ''report'' within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act, it is unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of material fact or omit to state a material fact in Form MA and Form MA–I. The Commission believes that a municipal advisor's knowledge of the Commission's authority to examine the municipal advisor and to sanction the municipal advisor for false and misleading statements could help ensure the reliability of the information submitted by municipal advisors under the permanent registration regime, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.

In addition, the Commission's examination staff will be able to use the information provided in Form MA and Form MA–I as a tool to prioritize and plan examinations. By securing information regarding municipal advisors through EDGAR, relative to the baseline, Commission staff should be able to more efficiently retrieve and analyze the data it needs to carry out its mission with respect to municipal advisory activities effectively, such as by identifying potentially violative activities and risky municipal advisory firms.[1706] Moreover, Rule 15Ba1–8 will assist the Commission in evaluating a municipal advisory firm's compliance with Section 15B of the Exchange Act,[1707] rules and regulations promulgated thereunder, and MSRB rules. By requiring that municipal advisory firms maintain specific types of information, the final rules will enhance the ability of regulators to perform more-efficient inspections and examinations and increase the likelihood of identifying improper conduct at earlier stages in an inspection or examination. In addition, municipal advisory firms may benefit from recordkeeping practices developed pursuant to the requirements of Rule 15Ba1–8 by having their operations interrupted for shorter time periods in response to inspections or examinations.

The requirement that a non-resident municipal advisor file Form MA–NR and obtain an opinion of counsel in connection with the municipal advisor's initial application, as well as annual updates to Form MA–NR and the opinion of counsel, will also help to enhance the Commission's oversight of non-resident municipal advisors, which may promote the willingness of municipal entities and obligated persons to utilize municipal advisors. The Commission believes that requiring Form MA–NR and an opinion of counsel could improve the Commission's oversight of municipal advisors by: minimizing any legal or logistical obstacles that the Commission may encounter when attempting to effect service; conserving Commission resources; and avoiding potential conflicts of law. The requirement that a non-resident municipal advisory firm obtain an opinion of counsel that it can provide access to books and records and can be subject to inspection and examination will allow the Commission to better evaluate and monitor a municipal advisory firm's ability to meet the requirements of registration. These benefits will be the same across all types of municipal advisor—municipal financial advisors, municipal investment advisers, and solicitors.

To the extent that the registration and recordkeeping requirements result in more-effective examinations, the enhanced ability to monitor municipal advisors could lead to increased efficiency relative to the baseline. Enhanced oversight of municipal advisors due to the registration and recordkeeping requirements could improve capital formation relative to the baseline to the extent enhanced oversight increases the willingness of municipal entities and obligated persons to utilize municipal advisors, and municipal entities and obligated persons, in turn, issue more debt or debt with better terms.[1708] To the extent that investors decide to make greater investments in the municipal securities market, efficiency could increase as capital is put to a more-efficient use.

b. Potential Changes to the Municipal Advisor Market

The Commission recognizes that the final rules and forms may result in changes to the municipal advisor market. As discussed below, municipal advisors will incur programmatic costs as a result of the statutory municipal advisor regulatory regime.[1709] In addition, municipal advisors will incur the registration and recordkeeping costs that result from the final rules and forms.[1710] The Commission recognizes that, as a result of these costs, municipal advisors may decide to exit the market, consolidate with other firms, or pass the costs on to municipal entities and obligated persons in the form of higher fees.

Some municipal advisors currently registered with the Commission may decide to exit the market or reduce services provided to municipal entities or obligated persons because of the costs associated with the final rules and forms. One commenter believed that the Commission did not address in the Proposal potential public costs from a reduction of services to municipal entities.[1711] While the Commission recognizes that some municipal advisors may exit the market as a result of the costs associated with the final rules and forms relative to the baseline, the Commission believes municipal advisors may exit the market for a number of reasons, including business reasons separate from reasons involving the costs associated with the final rules and forms. The Commission anticipates that some exits will result from municipal advisors' unwillingness to disclose required information to the Commission. The Commission believes that municipal advisors that have been subject to past disciplinary actions may decide to exit the market rather than disclose that information, and that the departure of such ''bad actors'' could improve the quality of the market for municipal advisory services and,

[1705] *See* 78 U.S.C. 78*o*–4(a)(2).

[1706] In addition, municipal entities, obligated persons, and other market participants will be able to perform their own analyses using EDGAR and provide some market monitoring. Information submitted on Form MA and Form MA–I will be tagged in XML format, which may improve the Commission staff's ability to retrieve and analyze data. In addition, tagging information in XML format could allow municipal entities and obligated persons to perform better research into municipal advisors, which could help improve efficiency if this increased monitoring results in greater market discipline of municipal advisors.

[1707] 15 U.S.C. 78*o*–4.

[1708] *See infra* notes 1830–1831 and accompanying text. Investor willingness to invest in municipal bond offerings may increase to the extent that the municipal entity issuing bonds used a municipal advisor and investors understand and consider the benefits of municipal advisor registration.

[1709] *See infra* Section VIII.D.2. The Commission expects that the costs and benefits resulting from the statutory municipal advisory regulatory regime will likely accrue primarily at the programmatic level, and that many of these costs are accounted for in the baseline. *See supra* Sections VIII.C.1.

[1710] *See infra* Section VIII.D.3–4.

[1711] *See* Financial Services Roundtable Letter (''Given the burden of registering as a municipal advisor, particularly for a small bank, we believe that there is a likelihood that smaller banks that offer a few products to a small number of municipal entities providing services in their communities would elect to discontinue serving municipal entities.''). *See also* Public FA Letter; Ranson Financial Consultants Letter.

therefore, benefit municipal entities and obligated persons.[1712]

In addition, the costs associated with the final rules and forms relative to the baseline may lead some municipal advisors to consolidate with other municipal advisors, rather than exit the market.[1713] For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the final rules and forms.

The Commission, however, is unable to estimate the number of municipal advisors that have exited the market or consolidated with other firms as a result of the temporary registration regime because Form MA–T does not require a municipal advisor withdrawing from registration on Form MA–T to indicate the reasons for withdrawal. Similarly, the Commission is unable to estimate the number of municipal advisors that will exit the market or consolidate with other firms as a result of the final rules and forms. In addition, the Commission is not aware of any municipal advisors exiting the market or consolidating with other firms as a result of the temporary registration regime.

The Commission recognizes that some of the municipal advisors that may exit the market could be small entity municipal advisors that exit the market for financial reasons and that such exits from the market may lead to a reduced pool of municipal advisors. In the Final Regulatory Flexibility Analysis below, after comparing the estimated registration costs with a small municipal advisory firm's annual revenue, the Commission discusses alternatives considered to accomplish the objectives of the permanent registration regime while minimizing any significant adverse impact on small municipal advisors.[1714] As discussed in the Final Regulatory Flexibility Analysis, the requirements under the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act. In addition, as discussed below, the Commission believes that the market for municipal advisory services is likely to remain competitive despite the potential exit of municipal advisors, including small entity municipal advisors.[1715]

Some municipal advisors may pass the costs associated with the rules and forms on to municipal entities and obligated persons in the form of higher fees. For example, one commenter argued that the rules will have economic costs that will either come out of the bottom lines of firms or be passed along to municipal clients in the form of fee increases.[1716] Although commenters asserted that such costs could be passed on to clients,[1717] commenters did not provide specific estimates, and the Commission does not have the information necessary to provide a reasonable estimate of the extent to which municipal advisors may pass costs on to clients given the lack of publicly available information on municipal advisory fees.

The Commission believes that the market for municipal advisory services is likely to remain competitive despite the potential exit of municipal advisors, consolidation of municipal advisors, or lack of new entrants into the market.[1718] As discussed above, the Commission estimates that approximately 100 new entrants to the market will register on Form MA each year [1719] and that approximately 30 municipal advisors will withdraw from Form MA registration each year.[1720] Because the Commission expects that new entrants to the municipal advisor market will exceed departures therefrom, the Commission does not expect exits from the market or consolidation of municipal advisors to result in reduced competition.[1721] In addition, the level of competition in the existing markets for each type of municipal advisor—municipal financial advisors, municipal investment advisers, and solicitors—suggests, based on data available to the Commission,[1722] that exits from the market, consolidation, or lack of new entrants into the market are unlikely to lead to market concentration levels at which the remaining municipal advisors are able to increase prices significantly.[1723] Accordingly, the Commission does not expect the departure of municipal advisors from the market to result in a significant increase in the cost of municipal advisory services.

In addition, the registration and recordkeeping costs should not impact efficiency or capital formation because those costs are unlikely to reduce the utilization of municipal advisors by municipal entities and obligated persons. The Commission believes that any increase in municipal advisory fees attributable to the registration and recordkeeping costs of the permanent registration regime will be minimal given the average cost per municipal advisory firm [1724] and the relatively small magnitude of these costs compared to the large number of municipal entity issuers per municipal advisory firm. The Commission recognizes, however, that for smaller municipal advisors with fewer clients the registration and recordkeeping costs may represent a greater percentage of annual revenues, and thus, such advisors may be more likely to pass those costs along to clients.[1725]

c. Assessment Costs

Under the temporary registration regime, market participants may have incurred costs to determine whether their business activities meet the definition of municipal advisor or if a

[1712] The Commission recognizes that municipal advisors that exit the market would lose any revenue that would have accrued from providing municipal advisory services. Municipal entities and obligated persons could benefit, however, from not having municipal advisors who do not want to comply with the regulatory regime or other bad actors in the market.

[1713] *See, e.g.,* Public FA Letter (''The regulations imposed on small firms like ours could be time consuming and costly enough to either put us out of business or cause small firms to merge with larger firms or to create larger firms.''); Ranson Financial Consultants Letter (''Our options [in relation to compliance costs] may include joining another firm or simply go out of business'').

[1714] *See infra* Section IX.D.

[1715] *See infra* notes 1718–1723 and accompanying text.

[1716] *See* UFS Bancorp Letter. *See also* SIFMA Letter I.

[1717] *See, e.g.,* SIFMA Letter I; UFS Bancorp Letter.

[1718] The Commission recognizes that the requirements to register with the Commission and maintain certain books and records, and the associated costs, will increase the burdens on those seeking to enter the municipal advisor market, which may negatively impact competition in the municipal advisor market.

[1719] *See supra* note 1470 and accompanying text.

[1720] *See supra* note 1531 and accompanying text.

[1721] The Commission does not expect an effect on capital formation due to new entrants to the municipal advisor market or from exits from the market.

[1722] As indicated above, as of December 31, 2012, approximately 901 municipal advisors registered with the Commission on Form MA–T were also registered with the MSRB, as they are required prior to engaging in municipal advisory activities. *See supra* note 1688 and accompanying text. With respect to municipal advisors registered with the MSRB, approximately 682 were financial advisors; 192 were guaranteed investment contract brokers or advisors; 272 were placement agents; 159 were solicitors or finders; 246 were swap or derivative advisors; 135 were third-party marketers; and 201 provided other services. *See supra* note 1694 and accompanying text (discussing this data as well as similar MA–T data).

[1723] As discussed above in the economic baseline, the municipal advisor market is not highly concentrated. *See supra* Section VIII.C.3. *See also supra* note 1694 and accompanying text (discussing MSRB and MA–T data regarding services provided by municipal advisors registered with the MSRB and the Commission).

[1724] As discussed above, the Commission estimates that the average cost per municipal advisory firm to register with the Commission will be approximately $8,092. *See infra* note 1813 and accompanying text.

[1725] *See infra* notes 1991–1998 and accompanying text.

statutory exclusion applies, and thus, whether registration with the Commission as a municipal advisor and compliance with the requirements imposed by Section 15B of the Exchange Act as well as rules established by the MSRB was required.[1726] Prior to the enactment of the Dodd-Frank Act and the Commission's adoption of the temporary registration regime, there were no assessment costs with respect to municipal advisor regulation. The Commission received a number of comments in connection with the 2010 interim temporary final rule seeking guidance regarding the scope of the statutory definition of municipal advisor and the statutory exclusions therefrom.[1727]

In the Proposal, the Commission stated its belief that the direct costs for respondents to read and apply the definitions in proposed Rule 15Ba1–1(d) would be minimal.[1728] The Commission received several comments regarding the costs to interpret the proposed definition of municipal advisor, proposed interpretations of the statutory exclusions, and proposed exemptions.[1729] One commenter asserted that ''given that Form MA and the related rules are new, . . . outside legal fees could easily exceed $25,000 for a financial institution that provides a variety of services to municipal clients.'' [1730]

Although the above comment appears to be directed at the Commission's estimate of the costs to engage outside counsel in connection with completing Form MA, the Commission recognizes that many persons will incur assessment costs to determine whether registration as a municipal advisor is required under the final rules. The Commission, therefore, has reconsidered the direct costs for respondents to read and apply the definitions in Rule 15Ba1–1(d). The Commission recognizes that some market participants are likely to seek legal counsel for interpretation of various aspects of the rule, particularly to determine whether the market participant's business activities meet the definition of municipal advisor or whether an exclusion or exemption from the definition of municipal advisor is available. The Commission believes that the assessment costs may vary depending on the relevant facts and circumstances, including the complexity of the market participant's business activities. The Commission also now believes that for larger financial institutions with more complex businesses the assessment costs could range up to $25,500, as indicated by a commenter.[1731]

The Commission does not have the information necessary to provide a point estimate of the potential assessment costs because the Commission believes the assessment costs associated with determining whether a market participant is a municipal advisor under Section 15B of the Exchange Act will vary. However, based on the Commission staff's understanding of the industry and comments received,[1732] the Commission estimates that the costs associated with undertaking this determination may range from $379 to $25,500.[1733] The Commission believes that many entities are clearly municipal advisors and that an in-house attorney, without the assistance of outside counsel, could make such a determination in one hour. If an entity's business is more complex, the Commission estimates the assessment could require approximately 25 hours of in-house counsel time and 40 hours of outside counsel time.

The Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today. The Commission believes the rules adopted today provide extensive guidance to market participants and should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

In particular, to further facilitate market participants' analysis of whether their activities would require them to register as a municipal advisor, the Commission has adopted several definitions that are consistent with existing regulatory definitions. For example, the Commission is adopting a definition of obligated person [1734] that is generally consistent with Rule 15c2–12. This definition will provide further protections for certain entities that participate in borrowing in the municipal securities market, ensure uniformity among rules relating to that market, and provide clearer guidance to market participants. In addition, the consistency with Rule 15c2–12 will likely reduce any confusion and, thus, may reduce the cost of compliance by allowing advisors to more quickly and accurately determine whether their clients are obligated persons. The Commission also believes that the materiality standard for secondary market disclosure in Rule 15c2–12 is an appropriate standard to identify those obligated persons that should have the protections afforded by Section 15B of the Exchange Act.[1735]

Similarly, as discussed above, the Commission is adopting a definition of ''proceeds of municipal securities'' that is similar to the definition of proceeds for purposes of the arbitrage rules, except that it applies to both taxable and tax-exempt municipal securities, which should lead to lower assessment costs

[1726] *See supra* notes 1662–1669 and accompanying text.

[1727] *See* letters from Brad R. Jacobson, dated September 7, 2010; John J. Wagner, Kutak Rock LLP, dated September 28, 2010; Joy A. Howard, Principal, WM Financial Strategies, received October 5, 2010; Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, received October 8, 2010; Amy Natterson Kroll & W. Hardy Callcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated October 13, 2010; Carolyn Walsh, Vice-President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Deputy General Counsel, ABA Securities Association, dated October 13, 2010; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 15, 2010.

[1728] *See* Proposal, 76 FR 873.

[1729] *See, e.g.,* SIFMA Letter I; ACLI Letter; Financial Services Roundtable Letter.

[1730] *See* Financial Services Roundtable Letter.

[1731] *See supra* note 1730. The Commission believes that different market participants will need to undertake different analyses in relation to the definition of municipal advisor and exclusions and exemptions therefrom. The estimate of assessment costs is intended to include analysis of the exclusions and exemptions, although the Commission separately discusses the impacts of the interpretations of the exclusions and exemptions on assessment costs below. *See infra* Section VIII.D.5–6 (discussing the exclusions and exemptions).

[1732] *See supra* note 1730.

[1733] The average cost incurred by market participants is based on the estimated amount of time that the staff believes would be required for both in-house counsel and outside counsel to assess whether a market participant is a municipal advisor, as that term is defined in Section 15B of the Exchange Act (15 U.S.C. 78*o*–4(e)(4)) and the final rules. For the calculation of the hourly rate for an in-house attorney, see *infra* note 1779. The Commission estimates the costs for outside legal services to be $400 per hour. For an explanation of the outside counsel cost estimate, see *supra* note 1538. Accordingly, the Commission estimates the cost on the high end of the range to be $25,475 ($9,475 (based on 25 hours of in-house counsel time × $379) + $16,000 (based on 40 hours of outside counsel time × $400). This estimate is rounded by two significant digits to avoid the impression of false precision of the estimate. In addition, as discussed below, the Commission estimates that the average cost per municipal advisory firm to register with the Commission will be $8,092. *See infra* note 1813.

[1734] *See supra* Section III.A.1.b.iii.

[1735] Similarly, in response to commenters, the Commission is providing exemptions from the definition of municipal advisor for swap dealers that will apply the safe harbor requirements applicable to the parties to such transactions under the existing CFTC regulatory regime and, therefore, will apply consistent and comparable protections to municipal entities and obligated persons as under that regime. *See* Rule 15Ba1–1(d)(3)(v); *supra* Section III.A.1.c.vi.

for many firms.[1736] Because the arbitrage rules are central to tax-exempt municipal securities, the Commission believes that market participants will be familiar with and able to understand easily the scope of ''proceeds of municipal securities.'' [1737] Further, the Commission believes that the definition appropriately limits the time and cost of compliance for a person to determine whether it must register as a municipal advisor because if a person makes a reasonable inquiry of a knowledgeable municipal entity or obligated person official and is informed in writing that monies are not proceeds of municipal securities, then absent reason to know otherwise, they are not proceeds of municipal securities.[1738] While municipal entities and obligated persons generally already track proceeds of tax-exempt municipal securities,[1739] and thus, should not incur additional costs in tracking such monies, municipal entities and obligated persons may incur additional costs in tracking proceeds of taxable municipal securities. However, the Commission believes that these costs will not be substantial because municipal entities currently trace proceeds of taxable bonds for non-tax purposes, such as for compliance with a bond indenture or resolution.

The Commission also believes the interpretations of the statutory exclusions adopted today should reduce assessment costs. For example, the Commission has provided examples of activities outside the scope of serving as an underwriter of municipal securities for purposes of the underwriter exclusion.[1740] Similarly, the Commission has clarified the types of activities that would fall outside of the other statutory exclusions.[1741]

2. Definition of Municipal Advisor and Related Terms

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above, there are programmatic costs and benefits that flow from the statutory municipal advisor regulatory regime. Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with the definition of municipal advisor,[1742] the Commission has considered these costs and benefits primarily in qualitative terms.[1743] In addition, as discussed below, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the statutory requirements of Section 975 of the Dodd-Frank Act were created.[1744]

As previously stated, the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors.[1745] The definition of municipal advisor the Commission is adopting today is designed to provide guidance that parties can use in determining whether registration as a municipal advisor is required. In determining the appropriate scope of the definition of municipal advisor, the Commission considered what types of persons should be regulated as municipal advisors in light of the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities, the overall regulatory framework, and information currently available. The Commission has therefore sought to adopt a definition of municipal advisor that would capture those persons without imposing programmatic, registration, and recordkeeping costs on persons for which regulation currently may not be justified in light of the purposes of the Dodd-Frank Act. The Commission believes that this approach should help maximize the benefits provided by the municipal advisor regulatory regime while minimizing costs imposed on market participants where consistent with investor protection. Further, because the definition of municipal advisor and related terms adopted today are consistent with the definitions in Section 15B(e) of the Exchange Act and the purposes of the Dodd-Frank Act,[1746] the Commission believes that those persons that currently meet the definition of municipal advisor under the final rules and for which a statutory exclusion is not available should already be registered with the Commission and the MSRB under the temporary registration regime.

As discussed in the PRA, the Commission estimates that approximately 910 municipal advisory firms, including sole proprietors, will register with the Commission under the permanent registration regime.[1747] In addition, the Commission anticipates that the exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments [1748] could reduce the estimated number of initial Form MA applicants. Likewise, the Commission anticipates the additional exemptions adopted today could also reduce the estimated number of initial Form MA applicants.[1749]

Because the Commission has interpreted the definition of municipal advisor consistent with the statute, it believes that any differences from the baseline with regard to the number of municipal advisors required to register with the Commission should be minimal as those persons should have already registered under the temporary registration regime. In addition, any

[1736] *See supra* text accompanying note 1733.

[1737] The Commission recognizes that some entities may not be familiar with the arbitrage rules and, thus, that any benefits recognized from the Commission's reliance on the arbitrage rules may be reduced.

[1738] Similarly, the Commission is including a reasonable inquiry qualification in the definition of ''municipal escrow investments.'' *See* Rule 15Ba1–1(h)(2). *See also* notes 383–384 and accompanying text.

[1739] *See supra* notes 361–362 and accompanying text.

[1740] *See supra* Section III.A.1.c.iv.

[1741] For example, an investment adviser that provides advice concerning whether and how to issue municipal securities; advice concerning the structure, timing, and terms of issuances of municipal securities and other similar matters; advice concerning municipal derivatives; or a solicitation would need to register as a municipal advisor. *See* Rule 15Ba1–1(d)(2)(ii); *supra* Section III.A.1.c.v.

[1742] The Commission does not have the information necessary to provide a reasonable estimate for many of the programmatic costs and benefits, in particular when discussing increases in the willingness of municipal entities and obligated persons to utilize municipal advisors and improvements in investor protection. In general, secondary data regarding the municipal advisory market that would assist the Commission in producing quantitative analyses are largely unavailable. Other than the academic papers cited in the Proposal and this release, few studies on municipal securities have attempted to undertake the efforts to collect such secondary data.

[1743] While commenters criticized this qualitative approach, none provided or suggested sources of data that would facilitate a quantitative analysis.

[1744] As indicated throughout this release, and as discussed further below, the Commission is mindful of the programmatic, registration, and recordkeeping costs and has adopted a definition of municipal advisor intended to help minimize compliance burdens consistent with the statutory objectives.

[1745] *See supra* note 1662.

[1746] With regard to terms that are not defined in Section 15B(e) of the Exchange Act, the Commission is defining those terms in a manner consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. *See* 15 U.S.C. 78o–4(e).

[1747] *See supra* note 1446 and accompanying text.

[1748] *See* Rule 15Ba1–1(d)(3)(vii).

[1749] *See supra* Section III.A.1.c.

differences from the baseline with regard to the programmatic costs and benefits related to the statutory requirements and MSRB rules that are currently operative should be minimal because they would have already been incurred under the temporary registration regime.[1750] Similarly, the definition of municipal advisor adopted today should not impact efficiency, competition, or capital formation relative to the baseline because those market participants required to register under the permanent registration regime should already be registered with the Commission and the MSRB under the temporary registration regime and complying with the requirements of Section 15B of the Exchange Act and MSRB rules.[1751]

As discussed above, a person that meets the statutory definition of municipal advisor, and for which a statutory exclusion is not available, is already required to register with the Commission on Form MA–T and is subject to a series of programmatic costs.[1752] These programmatic costs include, among other things, those incurred to comply with applicable provisions of Section 15B of the Exchange Act and MSRB rules. Municipal advisors will continue to be subject to a fiduciary duty to any municipal entity client and be prohibited from engaging in any fraudulent, deceptive, or manipulative acts or practices when providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or when undertaking a solicitation of a municipal entity or obligated person.[1753] Municipal advisors will also continue to be subject to MSRB Rule G–17, which requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. In addition, municipal advisors will still need to register with the MSRB and pay a $100 initial fee and a $500 annual fee.[1754] Because the Commission is adopting a definition of municipal advisor that is consistent with Section 15B(e) of the Exchange Act,[1755] the Commission believes registered municipal advisors would have already incurred these costs under the temporary registration regime. The Commission recognizes, however, that municipal advisors may incur costs to meet standards of training, experience, competence, and other qualifications, as well as continuing education requirements, that the MSRB may establish in the future.[1756]

The Commission believes the municipal advisor regulatory regime should continue to enhance municipal entity and obligated person protections and incentivize municipal advisors not to engage in misconduct.[1757] Municipal advisors will continue to be subject to Commission oversight, including periodic examinations, and may be subject to disciplinary action for misconduct.[1758] In addition, certain municipal advisors will now be subject to periodic examinations by FINRA to evaluate compliance with the Exchange Act, the rules and regulations thereunder, and MSRB rules.[1759]

Market participants will need to interpret a number of related terms to determine whether they are municipal advisors. Market participants will need to determine whether they provide ''advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products.'' [1760] The term ''municipal financial product'' is defined as ''municipal derivatives, guaranteed investment contracts, and investment strategies.'' [1761] As discussed below, although the Exchange Act defines the terms ''guaranteed investment contract'' and ''investment strategies,'' it does not define the term ''municipal derivatives.'' In addition, certain terms important to interpreting the term ''investment strategies'' are undefined (*i.e.,* proceeds of municipal securities and guaranteed investment contracts). As discussed below, the Commission is adopting definitions of these terms that are consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission has adopted several definitions of other related terms that are effectively identical to the statute (*i.e.,* municipal entity, obligated person, and solicitation).[1762]

The Commission is adopting a definition of guaranteed investment contract that applies only to contracts related to investments of proceeds of municipal securities or municipal escrow investments.[1763] The Commission believes that persons that provide advice concerning guaranteed investment contracts should have already registered with the Commission and the MSRB under the temporary registration regime.[1764] The Commission staff understands that most persons that provide advice about guaranteed investment contracts specialize in public finance issues and are unlikely to provide advice only about guaranteed investment contracts that do not relate to investments of proceeds of municipal securities or municipal escrow investments. In addition, a review of MA–T and MSRB data indicates that no municipal advisor registered with the Commission or the MSRB has indicated that it provides advice only about guaranteed investment contracts and not another service that would likely require registration with the Commission under the final rules and forms. Accordingly, the Commission does not believe that the definition of guaranteed investment contract adopted today will result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) in the number of municipal advisors that will register under the permanent registration regime. Similarly, the Commission does not believe there will be a significant change from the baseline with regard to the programmatic costs and benefits due to the definition of ''guaranteed investment contract.''

Although Section 15B of the Exchange Act does not define the term ''municipal derivatives,'' the Commission is adopting a definition that is consistent with the purposes of the Dodd-Frank

[1750] To the extent that the final rules provide guidance to certain market participants that their activities do not cause them to be municipal advisors, those persons would not incur the programmatic costs that flow from the regulatory regime.

[1751] *See supra* Section VIII.C.

[1752] As discussed below, the Commission is providing exemptions from the definition of municipal advisor for persons engaged in certain activities.

[1753] *See* 15 U.S.C. 78*o*–4(c)(1). *See also supra* note 1666 and accompanying text.

[1754] *See* MSRB Rule A–12; and MSRB Rule A–14.

[1755] With regard to terms that are not defined in Section 15B(e) of the Exchange Act, the Commission is defining those terms in a manner consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. *See* 15 U.S.C. 78o–4(e).

[1756] *See supra* note 1668. In addition, as discussed below, the final rules and forms will require every municipal advisor to register with the Commission and satisfy new recordkeeping requirements according to Rule 15Ba1–8.

[1757] *See infra* Section VIII.D.3.b.

[1758] *See supra* note 1680 and accompanying text.

[1759] *See* 15 U.S.C. 78*o*–4(b)(2)(E); 15 U.S.C. 78*o*–4(c)(7)(A)(iii). *See also supra* notes 1672–1673 and accompanying text.

[1760] *See* 15 U.S.C. 78*o*–4(e)(4).

[1761] *See* 15 U.S.C. 78*o*–4(e)(5).

[1762] Because the definitions of municipal entity, obligated person, and solicitation are consistent with the statute, the Commission believes that these definitions will not result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) in the number of registered municipal advisors or in the programmatic costs or benefits. *See supra* text accompanying notes 1750–1751.

[1763] *See* Rule 15Ba1–1(a).

[1764] As of December 31, 2012, approximately 320 municipal advisors registered on Form MA–T and approximately 185 municipal advisors registered with the MSRB indicated that they provide advice concerning guaranteed investment contracts.

Act to regulate persons that engage in municipal advisory activities. As discussed above, with respect to municipal entities, the Commission has determined not to qualify the definition of municipal derivatives as being limited to those entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities.[1765] Accordingly, the Commission does not believe that this definition of municipal derivatives will result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) of the number of municipal advisors that will register under the permanent registration regime.[1766] The Commission is clarifying the application of the definition of municipal derivatives with respect to obligated persons to advice that relates to derivatives entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities or another municipal derivative. The Commission expects that any persons that provide advice about derivatives outside this context would not register with the Commission under the permanent registration regime. The Commission does not believe, however, that this clarification will result in fewer persons registering as municipal advisors because the clarification is limited to instances that would cause a person to be an obligated person as defined in Section 15B(e)(10) of the Exchange Act.[1767]

The Commission recognizes that persons that are required to register as municipal advisors because they provide advice about municipal derivatives will incur the programmatic costs of the municipal advisor regulatory regime. However, the Commission believes that any differences from the baseline with regard to the programmatic costs and benefits due to the definition of ''municipal derivatives'' would be minimal since such advisors would have already incurred these costs under the temporary registration regime.[1768] The Commission believes that municipal entities and obligated persons that receive advice about municipal derivatives should receive the protections of the municipal advisor regulatory regime.[1769] As discussed above, the permanent registration regime will increase the amount of information available about municipal advisors.[1770] The Commission believes that the increased availability of information relative to the baseline about municipal advisors that provide advice about municipal derivatives, including disciplinary history and conflicts of interest, may lead to an improvement in the selection of municipal advisors that provide advice related to municipal derivatives because municipal entities and obligated persons will be able to consult registration information when choosing municipal advisors that specialize in municipal derivatives.[1771] In addition, as discussed above, the Commission believes that the increased public availability of information about municipal advisors who engage in municipal advisory activities pertaining to municipal derivatives may reduce from the baseline instances of misconduct to the extent the increased amount of information disclosed on Form MA as compared to Form MA–T acts as a deterrent against misconduct related to derivatives.[1772]

The Commission has determined not to adopt a separate definition of ''investment strategies,'' which is defined in Section 15B(e)(3) of the Exchange Act to include ''plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.'' [1773] The Commission, however, is adopting definitions of proceeds of municipal securities and municipal escrow investments that are consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission believes that persons that provide advice with regard to proceeds of municipal securities and municipal escrow investments should have already registered with the Commission and the MSRB under the temporary registration regime.[1774] In addition, the exemption in Rule 15Ba1–1(d)(3)(vii) for any person that provides advice to a municipal entity or obligated person with respect to municipal financial products to the extent that such person provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments will provide greater certainty regarding the types of persons who are required to register with the Commission. Accordingly, the Commission believes that the definitions of ''proceeds of municipal securities'' and ''municipal escrow investments'' will not result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) with regard to the number of municipal advisors that register under the permanent registration regime.

In addition, the Commission believes that any differences from the baseline with regard to the programmatic costs due to the adoption of the definitions of ''proceeds of municipal securities'' and ''municipal escrow investments'' should be minimal since such costs would have been incurred under the temporary registration regime. The Commission believes that municipal entities and obligated persons that receive advice concerning proceeds of municipal securities and municipal escrow investments should receive the protections of the municipal advisor regulatory regime, and that the Commission's approach tailors protection to those activities related to the investment of the proceeds of municipal securities and related escrow investments, which have been subject to widespread enforcement activity.[1775]

The Commission also believes the increased public availability of information relative to the baseline about municipal advisors who engage in municipal advisory activities pertaining to proceeds of municipal securities and municipal escrow investments may reduce instances of misconduct to the extent the increased amount of information disclosed on Form MA as compared to Form MA–T acts as a

[1765] *See supra* Section III.A.1.c.

[1766] The Commission believes that persons that provide advice about municipal derivatives to municipal entities should have already registered with the Commission and the MSRB under the temporary registration regime. As of December 31, 2012, more than 350 municipal advisors registered on Form MA–T and more than 230 municipal advisors registered with the MSRB indicated that they provide advice concerning the use of municipal derivatives. *See also infra* VIII.D.6 (discussing the exemption for swap dealers).

[1767] 15 U.S.C. 78*o*–4(e)(10).

[1768] *See supra* text accompanying note 1766.

[1769] *See supra* notes 1752–1756 and accompanying text.

[1770] *See infra* Section VIII.D.1.a.

[1771] *See infra* Section VIII.D.3.b.

[1772] The Commission recognizes, however, that municipal entities and obligated persons will not have registration information for advisors to obligated persons that invest in derivative transactions not connected with municipal securities or other municipal derivatives.

[1773] *See* 15 U.S.C. 78*o*–4(e)(3).

[1774] As of December 31, 2012, nearly 500 municipal advisors registered on Form MA–T indicated that they provide advice concerning the investment of the proceeds of municipal securities and 360 indicated that they provide advice regarding the recommendation and/or brokerage of municipal escrow investments. MSRB data does not separately identify municipal advisors that provide these activities.

[1775] *See supra* note 287.

deterrent against misconduct related to investment strategies.

Persons may incur costs to rely on the provisions regarding reasonable reliance on representations related to proceeds of municipal securities [1776] and municipal escrow investments.[1777] The Commission estimates that the PRA costs [1778] for persons to rely on Rule 15Ba1–1(m)(3) for reasonable reliance on representations related to proceeds of municipal securities will be $733,885.[1779] In addition, the Commission estimates that the PRA costs for persons to rely on Rule 15Ba1–1(h)(2) for reasonable reliance on representations related to municipal escrow investments will be $401,065.[1780] The Commission notes that no entity is required to utilize Rule 15Ba1–1(m)(3) or Rule 15Ba1–1(h)(2) and that any efforts to do so are voluntary.

b. Alternatives

One alternative to the rules the Commission is adopting today relates to the types of monies covered under the final rules. The Commission considered whether the final rules should only apply to the proceeds of municipal securities or whether they should also apply to funds held by, or on behalf of, a municipal entity that do not constitute the proceeds of municipal securities. As discussed above, because the definition of ''investment strategies'' in Section 15B(e)(3) of the Exchange Act [1781] provides that it ''includes'' plans or programs for the investment of the proceeds of municipal securities, the Commission proposed to interpret the term to mean that it includes, without limitation, the investment of proceeds of municipal securities, as well as plans, programs, or pools of assets that invest funds held by, or on behalf of, a municipal entity. Commenters generally opposed the proposed interpretation of investment strategies.[1782]

As noted above, the Commission continues to believe that the term ''includes'' is not limiting, but is persuaded by commenters. Accordingly, the Commission has determined to adopt a definition of ''investment strategies'' that focuses more narrowly on the statutorily identified categories of ''proceeds of municipal securities'' and ''municipal escrow investments.'' [1783] The Commission believes this approach related to investment strategies focuses the protections of the municipal advisor regulatory regime on those activities related to the investment of the proceeds of municipal securities and related escrow investments, which have been subject to widespread enforcement activity.[1784] The Commission believes that a broader approach would likely result in a greater number of persons registering as municipal advisors, which may not be necessary or appropriate in the protection of investors at this time.[1785] In addition, because persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments will not have to register as municipal advisors, the Commission recognizes that such persons will not be subject to the programmatic, registration, and recordkeeping costs of the permanent registration regime.

Another alternative to the rules the Commission is adopting today is for the Commission not to define further ''municipal advisor'' and related terms. The Commission did not estimate the assessment costs market participants would incur to determine whether registration is required under the temporary registration regime and initially believed that the direct costs for respondents to read and apply the definitions in proposed Rule 15Ba1–1(d) would be minimal.[1786] As discussed above, however, in light of comments received,[1787] the Commission now believes that persons may incur costs of up to $25,500 to determine whether their activities require them to register as municipal advisors under the final rules. Nonetheless, the Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today.[1788] Without these rules, market participants would still need to analyze whether their activities fall within the definition of municipal advisor in Section 15B(e)(4) of the Exchange Act and would likely need to request no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission as required.[1789] As discussed above, the Commission estimates that the costs associated with determining whether a market participant is a municipal advisor under Section 15B of the Exchange Act may range from $379 to $25,500, with the high end of the range reflecting the cost for entities with more complex business activities.[1790] Thus, the Commission believes the rules adopted today provide extensive guidance to market participants and should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

3. Rules and Forms Related to Registration of Municipal Advisors

The final rules and forms will create a permanent registration regime for municipal advisors consisting of the

[1776] *See* Rule 15Ba1–1(m).

[1777] *See* Rule 15Ba1–1(h)(2).

[1778] *See* text accompanying *infra* note 1797.

[1779] (880 hours (estimated burden to draft a template to use in obtaining the written representation) × $379 (hourly rate for an in-house attorney)) + (6,355 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $733,885. *See supra* notes 1622–1624 and accompanying text. Staff estimates that the average national hourly rate for an in-house attorney is $379 based on data from SIFMA's *Management & Professional Earnings in the Securities Industry 2012* (modified by Commission staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). The $63-per-hour figure for a Compliance Clerk is from SIFMA's *Office Salaries in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

[1780] (700 hours (estimated burden to draft a template to use in obtaining the written representation) × $379 (hourly rate for an attorney)) + (2,155 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $401,065. *See supra* notes 1616–1618 and accompanying text. *See supra* note 1779 (calculating the hourly rate for an in-house attorney and a Compliance Clerk).

[1781] 15 U.S.C. 78*o*–4(e)(3).

[1782] *See supra* notes 300–324 and accompanying text.

[1783] *See* Rule 15Ba1–1(b). The Commission is also persuaded by commenters that, at this time, it is appropriate to apply the definition of guaranteed investment contract more narrowly. This approach is consistent with the Commission's decision to limit the application of ''investment strategies'' to plans or programs for the investment of proceeds of municipal securities. The Commission expects that most providers of guaranteed investment contracts will not be considered municipal advisors as long as they do not engage in municipal advisory activities.

[1784] *See supra* note 287.

[1785] The Commission is unable to estimate the number of persons who would otherwise need to register as municipal advisors under this alternative approach because it does not have the data necessary to conduct this analysis and the information is not otherwise publicly available.

[1786] *See* Proposal, 76 FR 873.

[1787] *See supra* note 1730.

[1788] For example, one commenter on the Proposal stated that it lacked a clear line between permissible and impermissible conduct that will drive up municipal advisory costs due to cautious efforts to ''over-comply'' and not risk an inadvertent violation. *See* American Council of Life Insurers Letter.

[1789] In addition, without this guidance, a greater number of market participants would likely decide to register as municipal advisors unnecessarily and thereby incur the programmatic, registration, and recordkeeping costs of the municipal advisor registration regime.

[1790] *See supra* note 1733 and accompanying text.

following forms: Form MA, Form MA–I, Form MA–NR, and Form MA–W.[1791] Under Rule 15Ba1–2(a), each person applying for registration with the Commission as a municipal advisor is required to complete Form MA and file the form electronically with the Commission. In addition, each person applying for registration or registered with the Commission as a municipal advisor must complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf and file the form electronically with the Commission.[1792] Each Form MA shall be considered filed with the Commission upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–Is, to the Commission's EDGAR system.[1793] A sole proprietor will have to complete both Form MA and Form MA–I.[1794]

Pursuant to Rule 15Ba1–5(a), a municipal advisory firm that registers on Form MA must amend its Form MA at least annually, within 90 days of the end of the municipal advisor's fiscal year in the case of firms or within 90 days of the end of the calendar year for sole proprietors, and more frequently as required by the General Instructions. In addition, a registered municipal advisor must promptly amend Form MA–I whenever any information previously provided in Form MA–I becomes inaccurate for any reason.[1795] With respect to Form MA–I, all municipal advisory firms will be required to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf. Registered municipal advisors will also report successions of registration on Form MA.[1796]

Pursuant to Rule 15Ba1–4, all registered municipal advisors are required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor. As will be the case with both Form MA and Form MA–I, a municipal advisor must file Form MA–W electronically with the Commission.

In adopting these rules, the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. The rules are based on rules applicable to broker-dealers and investment advisers; similarly, Form MA is based on Form ADV and Form BD, and Form MA–I is based on Form U4. To the extent market participants are familiar with these existing registration processes, the Commission believes that using similar processes to register municipal advisors will create efficiencies for market participants.

The Commission also has sought to ensure that the Commission staff has information sufficient to make a determination as to whether registration should be granted or denied. Thus, Form MA differs from Form ADV and Form BD because it requests information specific to the municipal advisory business. The Commission also has sought to assure that the rules, forms, and process generally are as clear as possible so as to minimize confusion. In addition, the Commission has sought to minimize, to the extent possible, duplication and costs that the rules may impose on firms. Finally, burdens and costs that have been estimated for PRA purposes are included in the broader costs and benefits discussion that follows because the Commission believes, as the registration process would largely be forms-based, it is appropriate to include them.[1797]

a. Registration Costs

The Commission acknowledges that the establishment of a permanent registration regime will impose costs on persons registering as municipal advisors on Form MA. As discussed above, persons meeting the statutory definition of municipal advisor and for whom a statutory exclusion is not available should currently be registered with the Commission on Form MA–T as well as with the MSRB. Thus, such persons would have incurred costs in connection with such registration.[1798] Because of this, the quantitative costs discussed below related to registration on Form MA represent additional costs separate from those incurred to register on Form MA–T. However, for the reasons discussed below, the Commission believes that municipal advisors that have already gathered relevant information to complete Form MA–T or to register with the Commission in another capacity may incur lower permanent registration costs than those that have not registered on Form MA–T (*i.e.,* new entrants to the market) or that have not registered with the Commission in another capacity.

The Commission expects municipal advisors will incur one-time costs to familiarize themselves with the rules and the relevant forms. The paperwork burden of gathering information for the purpose of completing the forms will be reduced to the extent municipal advisors have already gathered some of the information required by the forms in order to register with the Commission on Form MA–T or in another capacity.[1799] In comparison, municipal advisors not otherwise registered with the Commission and solicitors that are not brokers, dealers, or investment advisers, to the extent they need to gather the required information for the first time, may incur higher one-time costs to familiarize themselves with the rules and relevant forms.[1800] In addition, some municipal advisors may incur one-time costs to establish new internal controls, such as procedures for obtaining the information required by the forms, as applicable. These potential one-time burdens are included in the Commission's estimate below.[1801] The Commission believes that these costs will be limited for municipal advisors that are registered with the Commission as investment advisers and/or broker-dealers or that have voluntarily adopted such practices, but will likely be higher for municipal advisors not otherwise registered with the Commission and solicitors to the extent they have not voluntarily adopted such practices.[1802]

The Commission received one comment letter that questioned the need for the proposed self-certification

[1791] The Commission is establishing additional requirements for non-resident municipal advisors. *See supra* Section III.A.6.

[1792] *See* Rule 15Ba1–2(b)(1). As discussed above, natural person municipal advisors who are not sole proprietors no longer need to register with the Commission. However, the Commission is retaining Form MA–I to obtain information about individuals associated with municipal advisory firms engaged in municipal advisory activities on behalf of such firms, which will assist in the Commission's oversight functions. *See supra* Section VIII.D.1.a (discussing the benefits of the permanent registration regime to Commission oversight of municipal advisors). The Commission notes, moreover, that it is the municipal advisory firms, not the individuals, that will be required to file Form MA–I with the Commission.

[1793] *See* Rule 15Ba1–2(c).

[1794] *See* Rule 15Ba1–2(b)(2). The Commission has developed an online filing system to permit municipal advisors to file a completed Form MA and Form MA–I through the EDGAR system. The information filed will be publicly available once registration has been granted.

[1795] *See* Rule 15Ba1–5(b).

[1796] *See* Rule 15Ba1–7.

[1797] *See supra* Section VII.

[1798] *See supra* Section VIII.C.2.

[1799] *See supra* Section VII.D.1.

[1800] *See supra* Section VII.D.1.

[1801] *See supra* Section VII.D.1.

[1802] Some unregulated entities that engage in municipal advisory activities have formed professional associations that have implemented their own voluntary best practices with respect to conflicts of interest, educational standards, and other disclosure of note to their clients. *See, e.g.,* National Association of Independent Public Finance Advisors, *http://www.naipfa.com/.*

requirement.[1803] As discussed above, after careful consideration of comments received, the Commission is not requiring self-certification in Form MA.[1804]

In the Proposal, the Commission estimated that the total initial cost for all municipal advisory firms and all natural person municipal advisors to register with the Commission would be approximately $12,623,000.[1805] Although the Commission received comments suggesting that the Proposal underestimated the hourly burden,[1806] the Commission is not changing its estimate of the time required to register with the Commission (other than to reflect its decision not to adopt a self-certification requirement).[1807] The Commission notes that commenters did not provide specific figures by which to recalculate the Commission's estimate.[1808] As discussed above,[1809] the Commission is making some revisions to clarify the questions asked in Form MA and Form MA–I and to elicit additional information. Because some revisions will increase the hourly burden for municipal advisors to complete the relevant forms, while others will decrease the burden, and because most of the changes to Form MA and Form MA–I are clarifications not requiring additional information, the Commission does not believe the additional information requirements will impose significant additional burdens on municipal advisors and is retaining its original hourly burden estimates as proposed. As discussed above, the Commission estimates that the total average initial burden to complete a single Form MA will be 3.5 hours per applicant,[1810] while the average amount of time for a municipal advisory firm to complete Form MA–I with respect to a natural person municipal advisor will be 3.0 hours.[1811] The Commission now estimates that the total initial PRA cost for all municipal advisory firms to register with the Commission will be approximately $6,910,975,[1812] for an average cost per firm of $7,595.[1813] The Commission believes that the reduction in cost from the Proposal is primarily attributable to a reduction in the estimated number of municipal advisory firms that will initially register with the Commission; a reduction in the estimated number of natural person municipal advisors for which municipal advisory firms and sole proprietors will need to complete Form MA–I; [1814] and the Commission's decision not to adopt a self-certification requirement. The Commission notes that this estimate represents the aggregate cost to the industry. The costs incurred by a specific municipal advisor to register with the Commission will depend on its size and the complexity of its business activity.

The Commission also anticipates that municipal advisors will incur ongoing annual costs to monitor and/or maintain the information required by the registration forms; [1815] to provide updates to the registration forms; and to withdraw from registration with the Commission. In addition, municipal advisors that are new to the market will incur costs to register with the Commission. In the Proposal, the Commission estimated that these ongoing annual costs would be approximately $5,292,100.[1816]

Under the final rules and forms, municipal advisory firms will incur a number of ongoing costs. Municipal

[1803] *See, e.g.,* Costanzo Letter.

[1804] *See supra* Section III.A.2.b.

[1805] $1,105,000 (estimated initial cost for all municipal advisory firms to complete Form MA) + $11,118,000 (estimated initial cost for all natural person municipal advisors to complete Form MA–I) + $400,000 (estimated cost for all municipal advisory firms to hire outside counsel) = $12,623,000. *See* Proposal, 76 FR 871, 875.

[1806] *See* Financial Services Roundtable Letter (asserting that ''initial preparation of Form MA would require significantly greater hours and much higher costs''). *See also supra* Section VII.D.1 (discussing comments regarding the hourly burden estimate from the Proposal).

[1807] *See supra* notes 1486–1487 and accompanying text.

[1808] The Commission received several comment letters that specifically addressed the costs of registration on Form MA and Form MA–I. These commenters generally criticized the cost of municipal advisor registration with both the Commission and the MSRB, including the MSRB's $100 initial fee and $500 annual fee. *See, e.g.,* Texas Bankers Association Letter; State of Texas Letter; John Sullivan Letter. The Commission notes that it does not charge municipal advisors a fee to register with the Commission. For purposes of the economic analysis, the fees imposed by the MSRB are part of the economic baseline. Although the Dodd-Frank Act permits the MSRB to require municipal advisors to pay such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB (*see* 15 U.S.C. 78*o*–4(b)(2)(J)), the Commission does not set or approve fees charged by the MSRB. Instead, the Exchange Act provides that certain designated SRO rules, including fees charged by the MSRB, take effect upon filing with the Commission and may thereafter be enforced by the SRO to the extent not inconsistent with the Exchange Act, the rules and regulations thereunder, and applicable Federal and State law. *See* 15 U.S.C. 78s(b)(3)(A), (C). The Commission has sixty days from the date of filing, however, during which it ''summarily may temporarily suspend'' the fees ''if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act. *See* 15 U.S.C. 78s(b)(3)(C). If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. *See id.* In addition, Section 19(c) of the Exchange Act authorizes the Commission, by rule, to abrogate, add to, and delete from the rules of an SRO (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the SRO, to conform its rules to requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78s(c).

[1809] *See supra* Section VII.D.1.a–b.

[1810] *See supra* Section VII.D.1.a.

[1811] *See supra* Section VII.D.1.b.

[1812] (36,935 hours (total estimated hourly burden under the rules for all municipal advisors to complete Form MA and required number of Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + $364,000 (estimated cost for all municipal advisors to hire outside counsel to assist in completing Form MA) + ((910 hours (estimated one-time burden for all municipal advisory firms to draft a template to use in obtaining the written consents to service of process) × $379 (hourly rate for an attorney)) + (1,125 hours (estimated one-time burden for all municipal advisory firms to obtain the written consents to service of process) × $63 (hourly rate for a Compliance Clerk))) = $6,910,975. *See supra* note 1501 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to complete Form MA and required number of Form MA–I); *supra* note 1567 and accompanying text (estimating the total cost for all municipal advisory firms to hire outside counsel to review their compliance with the final rules and forms); *supra* notes 1579–1581 and accompanying text (estimating the one-time burden to obtain written consents to service of process); *supra* note 1779 (calculating the hourly rate for an in-house attorney and the hourly rate for a Compliance Clerk). The Commission expects that completion of Form MA and Form MA–I will most likely be performed equally by compliance managers and compliance clerks. Dividing the hourly rate evenly between a compliance manager ($269 per hour) and a compliance clerk ($63 per hour) results in a cost per hour of $166. ($269 × 0.5) + ($63 × 0.5) = $166. The $269-per-hour figure for a Compliance Manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. In the Proposal, the combined hourly rate was $170. *See* Proposal, 76 FR 875 n.398. The combined hourly rate for a Compliance Manager and Compliance Clerk is lower than in the Proposal because of a reduction in the rate for a Compliance Manager from $273 per hour to $269 per hour and a reduction in the rate for a Compliance Clerk from $67 per hour to $63 per hour.

[1813] $6,910,975 (estimated total initial labor cost for all municipal advisory firms to register with the Commission) ÷ 910 (estimated number of municipal advisors registered on Form MA) = $7,594.48.

[1814] *See supra* notes 1447–1464 and accompanying text.

[1815] These costs are included in the Commission's estimate below.

[1816] $510,000 (estimated ongoing cost for all municipal advisory firms to amend Form MA and complete the annual self-certification) + $3,519,000 (estimated ongoing cost for all natural person municipal advisors to amend Form MA–I and complete the annual self-certification) + $110,500 (estimated ongoing cost for all new municipal advisory firms to complete Form MA) + $918,000 (estimated ongoing cost for all new natural person municipal advisors to complete Form MA–I) + $5,100 (estimated ongoing annual labor cost for all municipal advisory firms to complete Form MA–W) + $229,500 (estimated ongoing cost for all natural person municipal advisors to withdraw from Form MA–I registration) = $5,292,100. *See* Proposal, 76 FR 875–76.

advisory firms that are new to the market will incur costs to register with the Commission. In addition, municipal advisory firms will incur costs to amend Form MA, amend Form MA–I, and withdraw from registration with the Commission. The Commission now estimates that municipal advisors will incur total ongoing annual PRA costs of approximately $2,618,373.[1817] The Commission notes that this estimate represents the aggregate cost to the industry. The ongoing costs incurred by a specific municipal advisor will depend on its size and the complexity of its business activity. The reduction in cost from the Proposal is primarily attributable to a reduction in the estimated number of municipal advisory firms that will register with the Commission; [1818] a reduction in the estimated number of natural person municipal advisors for which municipal advisory firms and sole proprietors will need to amend Form MA–I; [1819] a reduction in the estimated number of municipal advisory firms that will withdraw from registration; and the Commission's decision not to adopt a self-certification requirement.[1820]

b. Registration Benefits

The Commission believes that the requirements that municipal advisors register with the Commission on Form MA, submit a Form MA–I for each of its natural person municipal advisors, and update the information provided at least annually (or more often as required by the rules) will provide a number of benefits. In addition to the benefits discussed above,[1821] the final rules and forms could improve the process through which municipal entities and obligated persons select municipal advisors (referred to as the ''municipal advisor selection process''), as the disclosures required under the permanent registration regime should allow municipal entities and obligated persons to become better informed about municipal advisors at a lower cost, which could increase the use of municipal advisors. Further, the final rules and forms could incentivize municipal advisors not to engage in misconduct. In addition, Form MA, Form MA–I, and Form MA–NR should enhance the ability of securities regulators to oversee municipal advisors, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.[1822]

The Commission believes that a significant benefit of the final rules and forms is that they could enhance the municipal advisor selection process by increasing the amount of publicly available information about municipal advisors. The rules and forms will allow municipal entities and obligated persons to become better informed about municipal advisors more efficiently, and thereby, at a lower cost.[1823] Municipal advisors will be required to submit, and municipal entities, obligated persons, the general public, and others will be able to access, information through the Commission's EDGAR system. In addition, because municipal advisors that are registered with the Commission as broker-dealers and/or investment advisers will be required to provide their CRD Number and IARD Number, respectively, on Form MA, interested parties will be able to access other publicly available information about the municipal advisor.[1824] As discussed in the Proposal,[1825] research has shown that most municipal entities do not utilize a formalized selection process when selecting municipal advisors.[1826] Because there is little publicly available information about many municipal advisors, municipal entities and obligated persons that do not use a formalized selection process might not have sufficient information when deciding among municipal advisors.[1827] As a result of the public availability of information disclosed in Form MA and Form MA–I, municipal entities and obligated persons may be able to more easily establish objective criteria to use in selecting municipal advisors. In addition, the availability of information required by Form MA and Form MA–I in a uniform, standardized format will likely reduce from the baseline the costs of collecting information and comparing it across municipal advisors. The ease of establishing and verifying compliance

[1817] ((3,200 hours (total estimated hourly burden under the rules for new municipal advisors to complete an initial Form MA and required number of Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + $40,000 (estimated costs for new municipal advisors to hire outside counsel to assist in completing Form MA)) + (12,053 hours (total estimated hourly burden under the rules for all municipal advisors to complete amendments to Form MA and Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + (15 hours (total estimated hourly burden under the rules for all municipal advisors to withdraw from Form MA registration) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((100 hours (estimated ongoing burden for new municipal advisory firms to draft a template to use in obtaining the written consents to service of process) × $379 (hourly rate for an attorney)) + (95 hours (estimated ongoing burden for municipal advisory firms to obtain the written consents to service of process) × $63 (hourly rate for a Compliance Clerk))) = $2,618,373. *See supra* note 1506 and accompanying text (calculating the total estimated hourly burden under the rules for new municipal advisors to complete an initial Form MA and required number of Form MA–I); *supra* note 1525 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to complete amendments to Form MA and Form MA–I); *supra* note 1532 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to withdraw from Form MA registration); *supra* notes 1584–1586 and accompanying text (estimating the ongoing burden to obtain written consents to service of process); *supra* note 1779 (calculating the hourly rate for an in-house attorney and the hourly rate for a Compliance Clerk); *supra* note 1812 (calculating the combined hourly rate).

[1818] *See supra* notes 1442–1446 and accompanying text.

[1819] *See supra* notes 1447–1464 and accompanying text. As discussed above, the Commission is not revising the estimated time to amend Form MA and Form MA–I. *See supra* Section VII.D.3.

[1820] *See supra* Section VII.D.4. Several commenters stated that the Commission did not address the potential liability costs associated with a permanent registration regime. *See* SIFMA Letter I (expressing concerns regarding the self-certification requirement); NAESCO Letter (expressing concerns regarding fiduciary liability). The Commission recognizes that some municipal advisors may incur litigation costs as a result of the final rules and forms, and that to the extent that there are such costs, some of them may be passed on to municipal entities and obligated persons in the form of increased fees. However, commenters did not provide estimates of potential liability costs, and the Commission does not have the information necessary to provide a reasonable estimate of the litigation costs a municipal advisory firm may face because the costs will depend on the facts and circumstances of each matter litigated. In addition, the Commission notes that any litigation costs incurred separate from the registration and recordkeeping requirements are included in the economic baseline as a function of the statutory municipal advisor regulatory regime. Further, the Commission believes the potential liability costs are outweighed by the benefits recognized by Congress in establishing the statutory municipal advisor regulatory regime.

[1821] *See supra* Section VIII.D.1.a.

[1822] *See supra* Section VIII.D.1.a.

[1823] The Commission is unable to estimate the amount of time and money municipal entities may save by reviewing Form MA and Form MA–I rather than engaging in an RFP process or searching for other regulatory documents. The Commission believes that the ability to access information, including disciplinary history and conflicts of interest, on municipal advisors in a single location benefits municipal entities by reducing the need to search for other regulatory documents of those municipal advisors that are registered, or have associated persons that are registered, in another capacity.

[1824] Although EDGAR will not automatically provide an electronic link to the information on the CRD and IARD systems, these systems are nevertheless readily accessible, and with the identifying numbers of the relevant filings provided, interested parties should be able to find the desired information easily.

[1825] *See* Proposal, 76 FR 874.

[1826] According to Mark D. Robbins and Bill Simonsen, 2003, *Financial Advisor Independence and the Choice of Municipal Bond Sale Type,* Municipal Finance Journal 24: 42 (''Robbins and Simonsen''), an RFP had been used only 22.6% of the time by governments in selecting the financial advisor for their last bond sale. *See also* Allen and Dudney, *supra* note 38.

[1827] *See supra* Section VIII.D.1.a.

with such criteria may increase the likelihood that municipal advisors are hired because of their qualifications rather than for other reasons such as political or personal connections to decision-making officials. Further, to the extent that municipal entities and obligated persons have been deterred from engaging a municipal advisor because they were not familiar with the pool of municipal advisors, the permanent registration regime may increase the use of municipal advisors from the baseline.[1828] The reduced information search costs for municipal entities may have an incremental effect of increasing informational efficiency. In addition, an improved municipal advisor selection process may lead to fewer municipal defaults and an increased likelihood that municipal entities issue debt, which could improve efficiency and capital formation.[1829]

With respect to the issuance of municipal securities, the increased likelihood of using a municipal advisor could lead to reduced issuance costs and better financing terms for municipal entity clients, which could improve capital formation and indirectly have a positive impact on taxpayers. As discussed in the Proposal, one empirical study suggests that the use of municipal advisors is associated with better borrowing terms, lower reoffering yields, and narrower underwriter gross spreads,[1830] particularly in instances where the advisors are of a higher quality.[1831] Municipal advisors can play an important role in the issuance process by successfully negotiating to lower these costs. As these studies did not include advisory fees in calculating the cost savings, it is possible that some of these savings may be offset by the fees municipal entities and obligated persons pay to municipal advisors.[1832] Therefore, the Commission believes that the final rules and forms could incentivize municipal entities and obligated persons to use municipal advisors, which could encourage municipal entities to issue debt (as opposed to pursuing other financial options), thereby increasing capital formation.

c. Non-Resident Municipal Advisors

Rule 15Ba1–6 sets forth the general procedures for serving non-residents on Form MA–NR. Pursuant to Rule 15Ba1–6 and the instructions to Form MA–NR, each non-resident municipal advisor applying for registration, at the time of filing of the municipal advisor's application on Form MA, must file with the Commission a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident person. In addition, each municipal advisor applying for registration shall, at the time of filing the relevant Form MA–I, file with the Commission a written irrevocable consent and power of attorney on Form MA–NR for each non-resident general partner, non-resident managing agent, and non-resident natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf.[1833] Rule 15Ba1–6(d) will require each non-resident municipal advisor to provide an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of the municipal advisor and submit to inspection and examination by the Commission.

Pursuant to Rule 15Ba1–6(b), any change to the name or address of each agent for service of process must be communicated promptly to the Commission by filing a new Form MA–NR. Rule 15Ba1–6(c) requires each non-resident municipal advisor, general partner and managing agent of a registered municipal advisor, and each natural person associated with a registered municipal advisor that engages in municipal advisory activities on its behalf to promptly appoint a successor agent for service of process and file a new Form MA–NR if the non-resident municipal advisor, general partner, managing agent, or associated person discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the non-resident municipal advisor, general partner, managing agent, or associated person. Rule 15Ba1–6(d) requires each non-resident municipal advisory firm to provide an opinion of counsel that the non-resident municipal advisory firm can, as a matter of law, provide the Commission with access to its books and records and can, as a matter of law, submit to inspection and examination by the Commission.

Non-resident municipal advisors will incur costs to complete Form MA–NR and obtain an opinion of counsel.[1834] Non-resident municipal advisory firms may incur one-time costs to establish new internal controls, such as procedures for obtaining the information required by Form MA–NR. These one-time costs are included in the estimates below. In the Proposal, the Commission estimated that the initial cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR and for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisory firm can provide prompt access to its books and records and can be subject to onsite inspection and examination would be approximately $8,300.[1835] The Commission did not receive any comments on this estimate. The Commission now estimates the initial PRA cost to complete Form MA–NR and obtain opinions of counsel will be approximately $12,042.[1836] The

[1828] Moreover, public disclosure of the registration information of municipal advisors and their associated persons will make this information available not only to municipal entities and regulators, but also to the general public. Even if a municipal entity or obligated person does not otherwise seek to obtain this information as part of its selection process, the information will be available to interested persons (*e.g.,* the press and concerned citizens) that might directly or indirectly influence the selection of the municipal advisor.

[1829] *See infra* notes 1830–1832 and accompanying text. The final rules and forms could also increase investor willingness to invest in municipal bond offerings to the extent that the municipal entity issuing bonds used a municipal advisor and investors understand and consider the benefits of municipal advisor registration, including disclosure of conflicts of interest and disciplinary history.

[1830] *See generally* Vijayakumar and Daniels, *supra* note 34. *See also* Proposal, 76 FR 874.

[1831] *See generally* Allen and Dudney, *supra* note 38 (''For the $16.8 million mean issue size in our sample, the present value benefits of choosing a high-quality advisor for negotiated issues are estimated to be $63,193 to $116,511 for 20-year term issues ($40,136 to $74,001 for ten-year term issues), depending on the measure of advisor quality used, and $84,915 to $171,805 for revenue issues ($53,933 to $109,121 for ten-year term issues).''). *See also* Proposal, 76 FR 874.

[1832] *But see* Allen and Dudney, *supra* note 38 (''[C]onversations with financial advisors lead us to believe that fee differences between low and high advisors would not be large enough to offset the interest savings from using a quality advisor.'').

[1833] *See* Rule 15Ba1–6(a)(2).

[1834] *See supra* Section VII.D.5 (estimating the number of persons required to complete Form MA–NR).

[1835] $5,100 (estimated cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR) + $3,200 (estimated cost for non-resident municipal advisory firms to obtain an opinion of counsel) = $8,300. *See* Proposal, 76 FR 877.

[1836] (48 hours (estimated initial hourly burden under the rules for all respondents to complete a Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((6 hours (estimated initial hourly burden under the rules for all respondents to obtain opinion of counsel) × $379 (hourly rate for an in-house attorney)) + (2 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel))) = $12,042. *See supra* notes 1544–1548 and accompanying text

Continued

anticipated costs are higher than those estimated in the Proposal because Commission staff is including certain associated persons in this estimate.[1837]

In addition, as discussed below, the Commission anticipates there will be ongoing costs related to filing Form MA–NR.[1838] In the Proposal, the Commission estimated that the ongoing annual costs for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR and for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisory firm can provide prompt access to its books and records and can be subject to onsite inspection and examination would be approximately $1,440.[1839] The Commission did not receive any comments on this estimate. The Commission now estimates that the ongoing annual PRA cost for non-resident municipal advisory firms to update Form MA–NR and/or file a new Form MA–NR and for non-resident municipal advisory firms to obtain new opinions of counsel, as described above, will be approximately $2,369.[1840] The anticipated costs are higher than those estimated in the Proposal due to an increase in the hourly rate of an in-house attorney and inclusion of the cost non-resident municipal advisory firms will incur to hire outside counsel to provide an opinion of counsel.

d. Alternatives

One alternative to the rules and forms adopted today would be for the Commission to make the temporary registration regime permanent. In this alternative, municipal advisors currently registered under the temporary registration regime would not incur the new costs to register with the Commission.[1841] Similarly, new entrants to the municipal advisor market would incur the comparatively lower costs to register under the temporary registration regime.[1842] In establishing the temporary registration regime, however, the Commission intended to adopt a permanent registration regime that would, among other things, require municipal advisors to provide more information on Form MA than that required by Form MA–T, including information regarding conflicts of interest and increased information regarding disciplinary history. By requiring this additional information and requiring submission through the Commission's EDGAR system, Commission staff will be able to retrieve and analyze the data it needs more efficiently, which should enhance the Commission's ability to carry out its mission with respect to municipal advisory activities effectively. In addition, as discussed above, the permanent registration regime could improve the municipal advisor selection process and incentivize municipal advisors not to engage in misconduct.[1843]

Similarly, the Commission believes that to make the temporary registration regime permanent rather than to establish the permanent registration regime adopted today may not enhance competition in the market. As discussed above, the Commission believes that requiring municipal advisors to disclose the information required by the final rules and forms will lead to a number of benefits beyond the temporary registration regime. For example, municipal entities, obligated persons, the general public, and others will be able to access information about municipal advisors electronically through the Commission's EDGAR system and easily cross-reference information submitted through IARD and CRD. Enhancing the ability of municipal entities and obligated persons to compare and consider municipal advisors in the municipal advisor selection process could result in increased quality-based competition relative to the baseline, which could, in turn, lead to reduced issuance costs and better financing terms.[1844]

The Commission also considered whether to provide an alternative registration program for persons that are already registered with the Commission in another capacity. Some commenters indicated that Form MA is largely duplicative of other registration forms (*e.g.,* Form BD, Form ADV) required for other persons (*e.g.,* broker-dealers, investment advisers).[1845] One commenter suggested persons already registered with the Commission could check an additional box on their primary registration forms, or the Commission could provide a short-form registration process.[1846]

As discussed above, the Commission has determined not to create a separate registration program for entities that are already registered with the Commission in another capacity. The Commission does not believe that such an approach would achieve the goal of creating a registration system specific to municipal advisors. Form MA, while modeled primarily on Form ADV and Form BD, is designed to capture information regarding the activities of municipal advisors and the markets that they serve that would not otherwise be captured in other forms. This information will permit the Commission to decide whether to grant or deny an application for registration; to manage the Commission's regulatory and examination programs; and to make such information available to the MSRB to better inform its regulation of municipal advisors. In addition, having information about municipal advisors in a single location could improve the municipal advisor selection process.[1847]

Further, the Commission believes that, based on the expertise and experience of its enforcement and examinations staff, for purposes of regulation, it is appropriate to collect information regarding the financial industry and other activities of associated persons involved in the municipal securities market, including swap dealers, major swap participants,

(estimating the initial hourly burden under the rules for all respondents to complete a Form MA–NR and the initial hourly burden under the rules for all respondents to obtain opinion of counsel); *supra* note 1779 (discussing the hourly rate for an in-house attorney); *supra* note 1812 (calculating the combined hourly rate).

[1837] *See supra* Section III.A.6.a. The estimated costs are also higher due to an increase in the hourly rate of an in-house attorney and inclusion of the cost non-resident municipal advisory firms will incur to hire outside counsel to provide an opinion of counsel.

[1838] Non-resident municipal advisors will incur recurring costs to monitor and maintain the information required by Form MA–NR. These costs are included in the estimates below.

[1839] $340 (estimated ongoing annual cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR) + $1,100 (estimated ongoing annual cost for non-resident municipal advisory firms to obtain an opinion of counsel) = $1,440. *See* Proposal, 76 FR 877.

[1840] (2 hours (estimated ongoing annual hourly burden under the rules for respondents to complete a Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((3 hours (estimated ongoing annual hourly burden under the rules for all respondents to obtain opinion of counsel) × $379 (hourly rate for an in-house attorney)) + (1 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel))) = $2,369. *See supra* note 1556–1558 (estimating the ongoing annual hourly burden under the rules for respondents to complete a Form MA–NR and estimating the ongoing burden to provide an opinion of counsel); *supra* note 1779 (discussing the hourly rate for an in-house attorney); *supra* note 1812 (calculating the combined hourly rate). This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate. *See supra* note 1812 (discussing the reduction in the combined hourly rate).

[1841] *See supra* Section VIII.D.3.b.

[1842] *See supra* Section VIII.C.2.

[1843] *See supra* Section VIII.D.3.b.

[1844] *See supra* notes 1830–1832 and accompanying text.

[1845] *See, e.g.,* SIFMA Letter I; Financial Services Roundtable Letter; NASAA Letter.

[1846] *See* SIFMA Letter I.

[1847] *See supra* Section VIII.D.3.b.

and engineers and engineering firms. The Commission believes that to allow investment advisers to register as municipal advisors using Form ADV would not provide comparable information about certain associated persons of municipal advisors.

In addition, requiring municipal advisors to file a registration form specifically tailored to their municipal advisory activities is consistent with the broader public interest to make available to the public information about municipal advisors. Absent a form specific to municipal advisors, a municipal entity or obligated person seeking information about a municipal advisor may not realize that the data was available on Form BD or Form ADV. The Commission believes that persons seeking to compile, compare, and analyze data pertaining to the entire universe of registered municipal advisors, and regulators overseeing compliance with the rules and regulations applicable to municipal advisors, should be able to access relevant information easily within one system.[1848]

As proposed and adopted, Form MA will permit municipal advisors, to the extent that the disclosures required on Form MA have been disclosed on Form ADV or BD, to incorporate such information by reference.[1849] Specifically, each of the DRPs of Form MA permits incorporation by reference to DRPs with similar disclosure requirements that are already on file with regulators. The disclosures required on the DRPs are generally the disclosures where the most significant amount of detail is requested on Form MA and on which applicants will likely need to expend the most time and effort.[1850] The Commission believes allowing incorporation by reference is appropriate because it will reduce redundancy and costs that some municipal advisors will incur in completing Form MA.[1851]

Another alternative to the rules and forms adopted today would be to require, as the Commission proposed, each natural person municipal advisor to register with the Commission on Form MA–I separately. The Commission received several comments objecting to this requirement. Some commenters argued that there was no statutory justification to register natural persons as municipal advisors separately.[1852] Commenters also stated that registering individuals would be excessively burdensome,[1853] including on small municipal advisors.[1854] Another commenter stated that dual reporting on Form MA and Form MA–I could lead to confusion and inadvertent inconsistencies in the information.[1855] As discussed above, the Commission has decided not to require natural person municipal advisors (other than sole proprietors) to register as municipal advisors (although such persons will be subject to the other requirements of the municipal advisor regulatory regime).[1856] Had the Commission required natural person municipal advisors to register with the Commission, these persons would have incurred aggregate costs of approximately $5,602,500.[1857] The Commission recognizes, however, that municipal advisory firms will now bear this cost to submit Form MA–I for natural person municipal advisors, which as discussed above will be $5,602,500.[1858]

4. Books and Records To Be Made and Maintained by Municipal Advisors (Rule 15Ba1–8)

As part of the permanent registration regime mandated by the Dodd-Frank Act, Rule 15Ba1–8 sets forth requirements for books and records relating to the business of municipal advisors. Among other things, the rule requires that municipal advisory firms maintain and preserve all books and records required to be made and kept under the rule for a period of not less than five years, the first two years in an easily accessible place.[1859]

a. Recordkeeping Costs and Benefits

Municipal advisors are likely to incur a number of costs in connection with the recordkeeping requirements, including recurring costs related to the maintenance and storage of books and records, as required by the rule. Municipal advisory firms will also need to provide applicable training to ensure compliance with the recordkeeping requirements. In the Proposal, the Commission estimated that the ongoing annual labor cost for all municipal advisory firms to comply with the recordkeeping requirement would be approximately $9,050,000.[1860] The Commission now estimates that the annual labor cost for all municipal advisory firms to comply with the recordkeeping requirement will be approximately $8,777,860.[1861]

Municipal advisors should already maintain books and records as part of their day-to-day operations. The recordkeeping requirement, however, provides specific parameters relating to the retention and maintenance of certain books and records that may be more extensive than current market practices. Nevertheless, the Commission does not believe that currently operating municipal advisory firms that already keep business records similar to those required by the rule will be subject to significant additional recordkeeping costs as a result of the rule. For example, municipal advisors already registered with the Commission as broker-dealers and/or investment advisers likely already retain this type of information.

As noted above, the Commission recognizes that these costs may impact those municipal advisory firms that are not already registered under another

[1848] The ability to incorporate by reference any required information about the disciplinary history of an applicant or associated person from a DRP or other disclosure that already has been filed relieves the regulatory burden on applicants who can do so. However, the Commission recognizes that such incorporation by reference may make it somewhat more difficult for regulators and other market participants to compile, compare, and analyze data regarding municipal advisors within one system.

[1849] *See supra* Section III.A.2.

[1850] *See supra* Section III.A.2.b.

[1851] As discussed above, the Commission's estimates of the time required to complete Form MA and Form MA–I represent averages. The Commission emphasizes that, depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA and Form MA–I will vary greatly from respondent to respondent given uncertainty about the number of municipal advisors that will incorporate by reference and the extent of information that will be incorporated by reference. Accordingly, although Form MA and Form MA–I generally allow incorporation by reference of certain information, the Commission does not have the information necessary to provide a reasonable estimate of the extent to which the ability to incorporate by reference will reduce the burden estimates for Form MA and MA–I for a particular firm.

[1852] *See, e.g.,* SIFMA Letter I; MSRB Letter.

[1853] *See, e.g.,* SIFMA Letter I; Deloitte Letter.

[1854] *See, e.g.,* Acacia Financial Group Letter.

[1855] *See* Deloitte Letter.

[1856] *See supra* Section III.A.2.a.

[1857] 33,750 (estimated initial burden for completion and submission of Form MA–I during the first year) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,602,500. *See supra* note 1495 and accompanying text; *supra* note 1812 (calculating the combined hourly rate).

[1858] *See supra* note 1857 and accompanying text.

[1859] *See supra* Section III.C.

[1860] *See* Proposal, 76 FR 878.

[1861] 910 (number of Form MA applicants) × 182 hours (estimated average hourly burden for municipal advisory firms to comply with the books and records requirement) × $53 (hourly rate for a General Clerk) = $8,777,860. *See supra* notes 1688–1691 and accompanying text. The $53 per hour figure for a General Clerk is from the SIFMA's *Office Salaries in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead. The Commission is updating the hourly rate for a General Clerk from $50 to $53 to conform to SIFMA's *Office Salaries in the Securities Industry 2012.* This estimate is lower than the estimate in the Proposal because the Commission estimates there will be fewer initial Form MA applicants than was estimated in the Proposal. *See supra* notes 1442–1446 and accompanying text.

regulatory regime to a greater degree than they would impact municipal advisory firms that have previously registered as investment advisers or brokers-dealers. With respect to the books and records requirements of Rule 15Ba1–8, the Commission currently anticipates that municipal advisory firms may incur one-time costs in establishing the new internal controls and systems necessary to comply with the recordkeeping requirements of the rule. The Commission believes that the costs to establish new internal controls will be less for municipal advisory firms that are currently regulated with respect to their other activities because the final rule allows some records to be maintained in compliance with those other regulations.[1862] The Commission does not have the information necessary to provide a reasonable estimate of the difference in costs for firms that already have internal controls and systems because these internal controls and systems vary from firm to firm. The Commission believes that these costs may also be reduced for municipal advisory firms that have voluntarily adopted similar recordkeeping practices.[1863] The Commission anticipates, however, that these costs may be higher for solicitors and for other municipal advisory firms that are not otherwise regulated or have not voluntarily adopted similar recordkeeping practices.

The Commission has made two substantive modifications to the recordkeeping requirements since the Proposal. As discussed above, Rule 15Ba1–8(a)(2) will require municipal advisors to maintain general ledgers, a requirement that was inadvertently left out of proposed Rule 15Ba1–7.[1864] In addition, as discussed above, Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such registered municipal advisor.[1865] In light of these changes, the Commission now estimates that the average annual burden for a municipal advisory firm to comply with the recordkeeping requirements will be approximately 182 hours.

One commenter argued that the information technology and storage facilities required for all email or similar electronic communications is expensive. The commenter believed that, regardless of whether a firm were to develop a technology solution in-house or hire an IT professional, the cost would be significant to firms, especially those with limited revenue.[1866] This commenter, however, did not provide specific figures by which to recalculate the Commission's estimate, making it difficult to evaluate these assertions.

As stated above, the books and records estimate, as proposed, was meant to include storage costs and any needed technology refinements or upgrades. The Commission staff understands based on discussions with market participants that, although larger financial institutions may generally need to invest in more expensive technology solutions to manage their recordkeeping, smaller municipal advisory firms with smaller clienteles may not require significant expenditures on storage and technology to the extent they retain most of their records in their existing email systems.[1867] Furthermore, the Commission staff understands that many of the smallest municipal advisory firms and sole proprietors may use third-party electronic mail systems that offer free and effectively unlimited cloud storage and would be less likely to incur significant storage costs. For these reasons, the Commission believes that the variety of technology and storage solutions, and their resulting costs, are properly accounted for in the cost estimates.

Another commenter asserted that the Commission used an hourly rate for the books and records cost that was too low for small entity municipal advisors. The commenter argued, ''[t]he figure [of 181 hours] was based on record keeping by 'General Clerks' at $50 per hour. If similar rules are imposed on Small Entity Municipal Advisors (many of whom are solo practitioners) that do not typically have 'General Clerks,' the correct hourly rate should be $170 per hour (a figure frequently used by the Commission in the Release), which would equate to $30,770 per advisor.''[1868]

While the Commission acknowledges that small municipal advisors do not typically employ General Clerks and that, in many cases, the municipal advisory professional himself may be responsible for maintaining the books and records of the firm, the Commission does not believe that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors for several reasons. The 182-hour estimate is an average annual hourly burden across all firms regardless of their size, and is based on the Commission's experience with other regulatory regimes. The Commission anticipates that larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records will incur an annual burden greater than 182 hours, while smaller municipal advisory firms that have significantly lower volumes of books and records will incur an annual burden lower than 182 hours. Similarly, the $53 figure is an average hourly rate across all firms regardless of their size and is inclusive of the variability of costs across municipal advisors. The Commission does not have the information necessary to provide reasonable estimates of the differences in hourly burden among firms of various sizes, a separate average hourly burden for small entity municipal advisors, or the differences in hourly rates among firms of various sizes. The Commission is also unaware of any such data being publicly available. The Commission staff also understands that some small municipal advisors employ part-time staff to perform certain business and clerical functions and that the costs of such employees are less likely to reflect the costs for compliance personnel at larger municipal advisory firms or the hourly rate suggested by the commenter. The Commission assumes that municipal advisors will use the most cost-effective approach available, depending on their size and specific circumstances, to comply with the recordkeeping requirement. Accordingly, the Commission does not believe that it should use a higher hourly rate to estimate the

[1862] *See* Rule 15Ba1–8(e)(1). The Commission's estimated average burden to comply with the recordkeeping requirements includes the costs to establish new internal controls and systems necessary to comply with the recordkeeping requirements. However, the Commission recognizes that those firms should realize reduced costs by leveraging the existing internal controls and systems, as well as familiarity with books and records requirements under other regulatory regimes.

[1863] The Commission does not have the information necessary to provide a reasonable estimate of the difference in costs for firms that already have voluntarily adopted similar recordkeeping practices because these recordkeeping practices vary from firm to firm. However, the Commission recognizes that to the extent these recordkeeping practices are already in place, certain municipal advisors should incur lower costs to comply than those that do not have recordkeeping practices in place.

[1864] *See supra* notes 1359–1360 and accompanying text.

[1865] *See supra* Section VII.D.7.

[1866] *See* NAIPFA Letter.

[1867] Larger firms that already have technology solutions in place would likely incur lower costs than those that need to develop new technology solutions.

[1868] *See* Joy Howard WM Financial Strategies Letter.

recordkeeping burden for small municipal advisors.

However, as stated above, the Commission believes that small municipal advisory firms will likely incur lower annual costs for maintaining books and records than larger firms. The Commission recognizes that, although small municipal advisory firms and solo practitioners may maintain their books and records without a general clerk or additional staff assistance, such activity would not be costless. The Commission believes that it is appropriate to assume that, because small firms will utilize the most cost-effective approach available, per-hour costs attributable to the books and records requirements will be, at most, equivalent to the hourly rate for a General Clerk. Therefore, the Commission uses the hourly rate for a General Clerk to estimate the average cost across all municipal advisory firms, regardless of size. The Commission also addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below.[1869]

Despite these costs, as discussed above, the recordkeeping requirements will benefit the municipal securities market by enhancing the Commission's ability to oversee municipal advisors.[1870] Recordkeeping requirements are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation, and are designed to maintain the efficiency and effectiveness of the Commission's examination program for regulated entities, which facilitates the Commission's review of their compliance with statutory mandates and with Commission rules.

b. Alternatives

As an alternative to the recordkeeping requirement adopted today, the Commission considered creating a unique recordkeeping requirement for municipal advisors different from the standard recordkeeping practices under federal securities law. The Commission has determined not to create a unique recordkeeping requirement because it expects that many entities already registered with the Commission in another capacity, such as investment advisers and broker-dealers, would likely incur higher, and in many ways redundant, costs to comply with this type of regime. As discussed above, the Commission estimates that the average hourly burden for municipal advisory firms to comply with the books and records requirement will be approximately 182 hours per year.[1871] The Commission anticipates that the average hourly burden estimate would be higher to the extent the alternative recordkeeping requirement did not allow entities to maintain books and records in a manner consistent with other regulations under the securities laws. As discussed above, with respect to the recordkeeping requirement adopted today, the Commission believes costs may be reduced for firms that are currently registered with the Commission with respect to their other activities (because the final rule allows some records to be maintained in compliance with those other regulations) and for firms that have voluntarily adopted similar recordkeeping practices.[1872] If the Commission established a unique recordkeeping requirement for municipal advisors, the Commission believes that many municipal advisors would incur higher costs due to the inability to leverage experience, systems, and practices developed to comply with the similar recordkeeping practices under federal securities law.

5. Exclusions From the Definition of Municipal Advisor

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above,[1873] the Dodd-Frank Act included a number of statutory exclusions from the definition of municipal advisor.[1874] The Commission is adopting interpretations of these statutory exclusions that are consistent with the Commission's understanding of Congress's intent not to provide blanket exclusions from the municipal advisor regulatory regime for underwriters, registered investment advisers, commodity trading advisors, attorneys, and engineers, regardless of the activities in which they are engaged. In adopting these interpretations, the Commission has considered the programmatic, registration, and recordkeeping costs that these persons would incur absent an exclusion from the definition of municipal advisor.

Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with interpreting the statutory exclusions,[1875] the Commission has considered the programmatic costs and benefits primarily in qualitative terms. In addition, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying primarily on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the other statutory requirements of Section 975 of the Dodd-Frank Act were not intended.

As discussed above, persons subject to the municipal advisor regulatory regime are subject to programmatic, registration, and recordkeeping costs. As indicated throughout this release, and as discussed further below, the Commission is mindful of these costs and has interpreted the statutory exclusions in a manner that is consistent with the purposes of Section 15B of the Exchange Act to regulate persons that engage in municipal advisory activities and that is intended to help minimize compliance burdens. The Commission's interpretations of the statutory exclusions are designed to reduce redundant regulation of entities engaged in activities related to municipal entities that are appropriately regulated under another regime. Accordingly, the Commission is adopting an interpretation of the statutory exclusion for underwriters that applies only to those underwriters that engage in municipal advisory activities that are within the scope of an underwriting.[1876] The Commission is also adopting an interpretation of the statutory investment adviser exclusion that would permit a registered investment adviser to provide advice concerning the investment of proceeds of municipal securities, but not advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and

[1869] *See infra* Section IX.

[1870] *See supra* Section VIII.D.1.a.

[1871] *See supra* Section VII.D.8.

[1872] *See supra* note 1862–1863 and accompanying text.

[1873] *See supra* Section III.A.1.c.

[1874] Section 15B(e)(4)(C) of the Exchange Act provides that the term municipal advisor does not include (1) a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act); (2) any investment adviser registered under the Investment Advisers Act, or persons associated with such investment advisers who are providing investment advice; (3) any commodity trading advisor registered under the CEA or persons associated with a commodity trading advisor who are providing advice related to swaps; (4) attorneys offering legal advice or providing services that are of a traditional legal nature; or (5) engineers providing engineering advice. *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[1875] *See supra* note 1742.

[1876] *See* Rule 15Ba1–1(d)(2)(i). In response to comments, the Commission is also providing lists of activities that the Commission would consider to be within or outside the scope of an underwriting. *See supra* Section III.A.1.c.iv.

other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person, without registering as a municipal advisor.[1877] Similarly, the Commission is adopting an interpretation of the statutory commodity trading advisor exclusion that is limited to registered commodity trading advisors and associated persons thereof providing advice related to swaps in the capacity as a registered commodity trading advisor that is subject to the Commodity Exchange Act.[1878] The interpretations of the statutory attorney exclusion and the statutory engineering exclusion the Commission is adopting today are designed to permit attorneys to offer legal advice or provide services that are of a traditional legal nature [1879] and engineers to provide engineering advice [1880] without having to register with the Commission as a municipal advisor. The Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on the persons described above would provide benefits that would justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of municipal advisor regulation.

Because the Commission's interpretations of the statutory exclusions are consistent with Section 15B(e) of the Exchange Act, the Commission believes that those persons that do not currently qualify for a statutory exclusion should already be registered with the Commission and the MSRB under the temporary registration regime. Accordingly, because the Commission has interpreted the statutory exclusions consistent with the statute, the number of persons for which a statutory exclusion is available should not change significantly and any differences from the baseline with regard to the number of municipal advisors required to register with the Commission and the MSRB should be minimal. The Commission also believes that any differences from the baseline with regard to the programmatic costs and benefits related to the statutory requirements and MSRB rules that are currently operative should be minimal because they would have already been incurred under the temporary registration regime. In addition, there should be no significant impact on efficiency, competition, and capital formation relative to the baseline because those market participants for which an exclusion is not available should have already registered with the Commission and the MSRB under the temporary registration regime and be complying with the requirements of Section 15B of the Exchange Act and MSRB rules.

Those persons who provide municipal advisory services and are not excluded from the definition of municipal advisor as described above, however, will incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime. Accordingly, underwriters that engage in municipal advisory activities outside the scope of underwriting an issuance of municipal securities; investment advisers that provide advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of issuances of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation; commodity trading advisors that are not a registered commodity trading advisor or that provide advice with respect to an issuance of municipal securities or any municipal financial product other than a swap; attorneys that represent themselves as financial advisors or financial experts in connection with the issuance of municipal securities or municipal financial products and engage in municipal advisory activities; and engineers that provide municipal advisory activities beyond engineering advice, will incur the programmatic, registration, and recordkeeping costs discussed throughout this release.

The Commission believes such persons should continue to be subject to the municipal advisor regulatory regime, including a fiduciary duty to municipal entity clients and the standards of conduct, training, and testing as may be required by the Commission or the MSRB, and other requirements as may be imposed by the MSRB.[1881] As discussed above, the Commission believes that the municipal advisor regulatory regime could incentivize municipal advisors not to engage in misconduct relative to the baseline because of the enhanced disclosure requirements of the permanent registration regime.[1882] Municipal advisors will continue to be subject to Commission oversight, including periodic examinations, and may be subject to disciplinary action for misconduct.[1883] In addition, certain municipal advisors will now be subject to periodic examinations by FINRA to evaluate compliance with the Exchange Act, the rules and regulations thereunder, and MSRB rules.[1884]

b. Alternatives

One alternative to the rules adopted today would be for the Commission not to engage in additional rulemaking, and thus, not to further clarify the statutory exclusions from the definition of municipal advisor. As discussed above,[1885] the Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today. Without these rules, market participants would still need to analyze whether their activities fall within a statutory exclusion and would likely need to seek no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission as required.[1886] The Commission believes that the final rules provide extensive guidance to market participants that should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.[1887]

The Commission also considered whether to interpret the statutory exclusions using a status-based approach, as suggested by commenters, rather than an activity-based approach. For example, some commenters called for an exclusion for broker-dealers that would exclude broker-dealers based on their status as a regulated entity.[1888] Similarly, some commenters argued that the statute excludes any registered

[1877] *See* Rule 15Ba1–1(d)(2)(ii).

[1878] *See* Rule 15Ba1–1(d)(2)(iii). Under this exclusion, a registered commodity trading advisor could provide advice relating to swaps without registering as a municipal advisor.

[1879] *See* Rule 15Ba1–1(d)(2)(iv).

[1880] *See* Rule 15Ba1–1(d)(2)(v).

[1881] While the underwriting activities of brokers, dealers, and municipal securities dealers in connection with an issuance of municipal securities are currently subject to MSRB rules, those rules generally do not apply to municipal advisory activities that are outside the scope of an underwriting.

[1882] *See supra* Section VIII.D.1.a.

[1883] *See supra* note 1680 and accompanying text.

[1884] *See* 15 U.S.C. 78*o*–4(b)(2)(E); 15 U.S.C. 78*o*–4(c)(7)(A)(iii).

[1885] *See supra* Section VIII.D.1.c.

[1886] In addition, without this guidance, a greater number of market participants would likely decide to register as municipal advisors unnecessarily and thereby incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime.

[1887] *See supra* Section VIII.D.1.c.

[1888] *See supra* note 580 and accompanying text.

investment adviser, without limitation.[1889]

Although persons excluded under a status-based approach would not incur the programmatic, registration, and recordkeeping costs of the regulatory regime, the Commission has determined that to provide status-based exclusions would be inconsistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission believes that a status-based approach would permit many persons to provide municipal advisory services without being subject to the regulatory regime, which could cause municipal entities and obligated persons to receive municipal advice without the protections of the regime and limit the Commission's ability to oversee the municipal advisory activities of those excluded persons. The Commission believes these other regimes are not designed to address directly municipal advisory activities and may not provide similar protections to municipal entities and obligated persons. In addition, persons excluded under a status-based approach would not be required to register with the Commission, which would reduce any benefits of the permanent registration regime to the municipal advisor selection process.[1890] The Commission is also concerned that interpreting the exclusions using a status-based approach could create inappropriate competitive advantages for covered categories of market participants.

Another alternative the Commission considered was to interpret some of the statutory exclusions in a manner that would allow otherwise regulated persons to engage in municipal advisory activities that are solely incidental to their regulated activities. Some commenters stated that the Commission should exclude from registration broker-dealers that provide advice that is solely incidental to a transaction, similar to the broker-dealer exclusion under Section 202(a)(11)(C) of the Investment Advisers Act.[1891] Another commenter expressed concern that commodity trading advisers that provide ancillary services in connection with advice related to swaps would need to register as municipal advisors if the ancillary services fall within the scope of municipal advisory activities and are not deemed to be the type of advice described in the commodity trading advisor exclusion.[1892]

The Commission does not believe it is necessary to interpret the statutory exclusions in a manner that would permit municipal advisory activities that are solely incidental to other regulated activities, and believes that the result would be substantially similar to a status-based approach.[1893] Interpreting the statutory exclusions in this manner could result in a difficult facts-and-circumstances analysis to determine whether the exclusions apply, which is unlikely to result in any assessment savings. In addition, the Commission has provided additional exemptions that would limit the circumstances under which a person could be considered a municipal advisor and the range of municipal financial products to which duplicative regulation could apply.[1894]

6. Exemptions From the Definition of Municipal Advisor

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above,[1895] the Dodd-Frank Act granted the Commission authority to conditionally or unconditionally exempt, by rule or order, upon its own motion or upon application, any municipal advisor or class of municipal advisors from any provision of Section 15B of the Exchange Act or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B.[1896] The final rules provide exemptions from the definition of municipal advisor, subject to specified conditions, for (1) public officials and employees of municipal entities and obligated persons; (2) banks; (3) swap dealers; (4) accountants; (5) persons engaging in municipal advisory activities with a municipal entity or obligated person that is represented by an independent registered municipal advisor; and (6) persons responding to RFPs or RFQs. As discussed below, the Commission believes that these exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 15B. In providing these exemptions, the Commission has considered the programmatic, registration, and recordkeeping costs, which are discussed throughout the economic analysis, that these persons would incur absent an exemption from the definition of municipal advisor. The Commission has designed these exemptions to provide that municipal entities and obligated persons receive municipal advisory services with the protections of the municipal advisor regulatory regime.

Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with providing these exemptions,[1897] the Commission has considered these costs and benefits primarily in qualitative terms. In addition, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying primarily on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the other statutory requirements of Section 975 of the Dodd-Frank Act were not intended.

The Commission is exempting from the definition of municipal advisor: (1) Any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity; and (2) any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.[1898] The Commission believes that this exemption will significantly reduce the number of individuals who would otherwise have needed to register as municipal advisors. Some commenters

[1889] *See, e.g.,* Vanguard Letter; IAA Letter; ICI Letter.

[1890] *See supra* Section VIII.D.3.b.

[1891] *See supra* note 580 and accompanying text.

[1892] *See* MFA Letter.

[1893] *See supra* notes 1888–1890 and accompanying text.

[1894] For example, the Commission is providing an exemption for any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. *See* Rule 15Ba1–1(d)(3)(vi). In addition, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. *See* Rule 15Ba1–1(d)(3)(vii).

[1895] *See supra* Section III.A.1.c.

[1896] *See* 15 U.S.C. 78*o*–4(a)(4).

[1897] *See supra* note 1742.

[1898] *See* Rule 15Ba1–1(d)(3)(ii). *See also supra* note 507 and accompanying text (discussing the Commission's interpretation of the statutory exclusion from the definition of ''municipal advisor'' for employees of municipal entities by exempting such employees ''to the extent that such person is acting within the scope of such person's employment'').

asserted that, as proposed, thousands of board members would be required to register as municipal advisors.[1899]

The Commission believes the programmatic, registration, and recordkeeping costs such board members would incur would not justify the benefits of registration for a number of reasons. The Commission believes that individuals who engage in deliberative and decision-making functions with respect to municipal financial products or the issuance of municipal securities as part of their duties as members of a governing body should not have to register as municipal advisors because they are agents of the municipal entity that is the intended recipient of the protections of the municipal advisor regulatory regime. Board members and other officials (appointed and elected alike, as well as their duly appointed designees) may be subject to state and local law, including fiduciary duties and ethics laws, and the statutory qualifications for such members' board position may be significant to the mission of the municipal entity. In addition, as noted by commenters, there would be costs to municipal entities as the requirement to register as a municipal advisor could reduce the number of persons willing to volunteer for boards or could limit what volunteers would say. The Commission believes this exemption appropriately balances consideration of the need to protect municipal entities with the preservation of volunteer services by not requiring board members to register as municipal advisors.

The Commission is also providing exemptions from the definition of municipal advisor for certain market participants: banks, accountants, and swap dealers. As discussed above, persons subject to the municipal advisory regulatory regime are subject to a series of programmatic, registration, and recordkeeping costs. The Commission is exempting from the definition of municipal advisor banks engaging in certain municipal activities,[1900] certain swap dealers, and certain accountants.[1901] These exemptions are designed to reduce redundant regulation of entities engaged in activities related to municipal entities that are appropriately regulated under another regime. The Commission does not have the information necessary to provide a reasonable estimate of the number of persons who will rely on these exemptions because Form MA–T does not collect data on banks, swap dealers, or accountants. To the extent these entities are not required to register as municipal advisors because of an exemption, they will not incur the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis, and thus, will realize cost savings.

The Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on these persons would provide benefits that would justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of municipal advisor regulation.[1902] Those persons that provide municipal advisory services beyond the activities described above, and thus, that do not qualify for one of the exemptions, however, will incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime. The Commission believes that the exemption for banks will help ensure that parties engaging in key municipal advisory activities are registered, while permitting banks to continue to provide banking services to municipal entities and obligated persons for which they are currently subject to regulation.[1903] Similarly, the final rule provides exemptions for registered swap dealers that are consistent with the exemptions promulgated under Title VII of the Dodd-Frank Act.[1904] The Commission believes it is appropriate to provide an accountant exemption that includes accountants providing audit or other attest services since both audit and other attest services are generally subject to regulation and professional standards (including independence requirements) [1905]—requirements that could potentially conflict with a municipal advisor's fiduciary duty to its municipal entity clients.[1906]

The Commission is also exempting from the definition of municipal advisor any persons engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor [1907] with respect to the same aspects of a municipal financial product or an issuance of municipal securities, subject to certain requirements.[1908] As long as a municipal entity is represented by an independent registered municipal advisor, the Commission believes it is desirable to allow municipal entities to receive as much advice and information as possible from a variety of sources, even if the providers of such advice are not subject to a fiduciary duty, because such advice could lead to better

[1899] *See, e.g.,* Bachus Letter; Marchant Letter.

[1900] *See* Rule 15Ba1–1(d)(3)(iii). Because the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to ''investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments'' (*see* Rule 15a1–1(d)(2)(vii)), the Commission believes that the performance of many of the bank activities and services about which commenters were concerned will not require banks to register as municipal advisors.

[1901] The Commission is exempting from the definition of municipal advisor any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. *See* Rule 15Ba1–1(d)(3)(i).

[1902] The Commission received a number of comments about the costs that would be imposed on banks under the Proposal. *See, e.g.,* Old Point Bank Letter; Union Bank Letter; Texas Bankers Association Letter; American Bankers Association Letter II. These comment letters are discussed extensively earlier in this release.

[1903] To the extent a bank provides advice with respect to a municipal derivative or engages in any other non-exempted municipal advisory activity through a SID, Rule 15Ba1–1(d)(4) will permit the SID to register as a municipal advisor rather than the bank itself. The Commission believes that permitting SIDs to register instead is in the public interest in that it will ensure that municipal entities and obligated persons receive the regulatory protection intended by the statute while not imposing the burdens of the municipal advisor regulatory regime (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) on the bank as a whole.

[1904] The final rule exempts any registered swap dealer to the extent that such dealer recommends a municipal derivative or a trading strategy that involves a municipal derivative for sale by such dealer or an affiliated registered swap to a municipal entity or obligated person, provided that the dealer meets any applicable safe harbor requirements for parties to such transactions under the CFTC's regulatory regime. *See supra* Section III.A.1.c.vi. The Commission notes that swap dealers will incur costs to qualify for the exemption under the applicable regulatory regime, and that these costs will likely be lower than the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime.

[1905] *See* AICPA Code of Professional Conduct ET 201.01, 202.01. *See also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance'').

[1906] *See* AICPA Attestation Standards AT § 101.35, 101.36. Accountants providing attest services are also required to meet general standards related to adequate technical training and proficiency; adequate knowledge of subject matter; suitability and availability of criteria; and the exercise of due professional care. *See* AICPA Attestation Standards AT § 101.19 to 101.41.

[1907] The term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder, and that is not, and within the past two years was not, associated with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi). *See* Rule 15Ba1–1(d)(3)(vi)(A).

[1908] *See* Rule 15Ba1–1(d)(3)(vi). *See also supra* notes 564–572 and accompanying text (discussing the requirements for the exemption).

decision making where the municipal entity or obligated person also receives the advice of an independent registered municipal advisor.[1909] The Commission, therefore, does not believe at this time that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on persons providing advice to a municipal entity that is otherwise represented by an independent municipal advisor would provide benefits that justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of registration.

As discussed above, the Commission believes that underwriters in negotiated deals are the persons most likely to rely on this exemption.[1910] The Commission estimates the total initial PRA burden to rely on this exemption in the first year will be $297,339.[1911] The Commission estimates that the ongoing PRA burden to rely on this exemption in each year after the first will be $138,159.[1912] In comparison to the registration and recordkeeping costs, estimated above, the Commission believes that these costs will be minimal, and that persons relying on this exemption will realize cost savings by not being subject to the municipal advisor regulatory regime.

The Commission is also exempting from the definition of municipal advisor any person providing a response in writing or orally to an RFP or RFQ from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities, provided that such person does not receive separate direct or indirect compensation for advice provided as part of such a response.[1913] The Commission believes that responses to RFPs and RFQs by themselves do not constitute municipal advisory activities, and thus, that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on persons responding to RFPs and RFQs would provide benefits that justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of registration. The Commission does not have the information necessary to provide a reasonable estimate of the number of persons who may rely on this exemption because the Commission does not have data regarding the number of persons who respond to RFPs and RFQs, and is unaware of such data being publicly available. The Commission staff understands based on discussions with market participants, however, that a significant number of persons respond to RFPs and RFQs, some of which would be registered municipal advisors; others may be already-regulated entities, such as Commission-registered investment advisers and broker-dealers, whose responses may be subject to fair dealing, suitability, fiduciary, or other standards.

The exemptions adopted today could allow for more-efficient use of resources by persons that are no longer required to register with the Commission as a municipal advisor pursuant to one of the exemptions in the final rules because such persons will now be able to put to use the resources that would otherwise have been spent registering. However, to the extent that such persons were registered under the temporary registration regime, the absence of current information about such persons on Form MA and increased difficulty in finding information about such persons could reduce informational efficiency relative to the baseline. The exemptions could also improve competition relative to the baseline among exempted persons engaging in those activities that are consistent with the relevant exemption to the extent they remain in their respective industry as a result of an exemption.[1914]

b. Alternatives

One alternative to the rules adopted today would be for the Commission not to engage in additional rulemaking, and thus, not to provide any exemptions from the definition of municipal advisor. As discussed above, the Commission does not believe that the benefits that would accrue if the Commission did not provide the exemptions would justify the costs that would accrue from subjecting certain market participants to potentially conflicting and redundant obligations under the municipal advisor regulatory regime. In addition, the Commission believes the exemptions provide greater clarity to market participants by delineating the types of activities that are not subject to the municipal advisor regulatory regime. To the extent that a person can determine that registration as a municipal advisor is not required based solely on the availability of an exemption, the Commission believes the exemptions adopted today should lead to lower assessment costs for many firms. For example, board members should be able to determine relatively easily whether registration as a municipal advisor is required. Absent these rules, it is likely that market participants would need to seek no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission, if required. The Commission believes the final rules provide greater clarity to market participants that should allow them to make determinations without requesting interpretations from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

The Commission also considered whether to provide exemptions using a status-based approach rather than an activity-based approach. For example, some commenters called for a blanket exemption for swap dealers, arguing that registration as a municipal advisor would be duplicative.[1915] Similarly, some commenters recommended that municipal advisor regulation should not apply to banks since they are already regulated.[1916]

[1909] The Commission staff understands based on discussions with market participants that market participants and others, including underwriters, often are aware of important facts and are in a position to offer valuable advice and information to municipal entities and obligated persons. The Commission does not want to curtail the receipt of such advice and information so long as the municipal entities and obligated persons are represented by independent registered municipal advisors who are subject to a fiduciary and other duties and who can help the municipal entities and obligated persons evaluate the advice and identify potential conflicts of interest.

[1910] *See supra* Section VII.D.9.

[1911] ((210 hours (estimated burden to draft the written representation) + 210 hours (estimated burden to draft the required disclosure) × $379 (hourly rate for an in-house attorney)) + (2,193 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $297,339. *See supra* note 1611 and accompanying text; *supra* note 1779 (calculating the hourly rates for an in-house attorney and for a Compliance Clerk).

[1912] 2,193 hours (estimated initial burden to rely on exemption) × $63 (hourly rate for a Compliance Clerk) = $138,159. *See supra* note 1612 and accompanying text; *supra* note 1779 (calculating the hourly rate for a Compliance Clerk).

[1913] *See* Rule 15Ba1–1(d)(3)(iv).

[1914] For example, if swap dealers were required to register as municipal advisors, some might determine to no longer sell swaps to municipal entities and obligated persons. The exemption may incentivize such swap dealers to stay in the market and compete with each other.

[1915] *See supra* note 748 and accompanying text. Commenters also requested an exemption for security-based swap dealers. The Commission is not adopting an exemption for security-based swap dealers at this time. *See supra* notes 763–765 and accompanying text.

[1916] *See supra* notes 875–878 and accompanying text. Although the Commission is providing exemptions for certain banking activities, it has determined not to exempt banks entirely solely because of their status as otherwise regulated entities.

Although persons exempt under a status-based approach would not incur the programmatic, registration, and recordkeeping costs of the regulatory regime, the Commission believes that to provide status-based exemptions would be inconsistent with Congress's intent to regulate persons that engage in municipal advisory activities. The Commission believes that since the exclusions for regulated entities in Section 975 of the Dodd-Frank Act are limited in scope to certain regulated activity, any exemptions the Commission provides should be similarly limited. For example, the Commission believes that a bank that provides advice with respect to municipal derivatives or the issuance of municipal securities should not be exempt unless the bank qualifies for another exclusion or exemption. Similarly, the Commission believes that a registered swap dealer should be exempt only if it meets the requirements of Rule 15Ba1–1(d)(3)(v). The Commission believes that a status-based approach would permit many persons to provide municipal advisory services without being subject to the regulatory regime, which could cause municipal entities and obligated persons to receive municipal advice without the investor protections of the regime. The Commission also believes such an approach could limit the Commission's ability to oversee the municipal advisory activities of those exempt persons. The Commission believes these other regimes are not designed to address directly municipal advisory activities and may not provide similar protections to municipal entities and obligated persons. In addition, persons exempt under a status-based approach would not be required to register with the Commission, which would reduce any benefits of the regime to the municipal advisor selection process.[1917] The Commission is also concerned that providing status-based exemptions could create inappropriate competitive advantages for covered categories of market participants.

IX. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 4(a) of the Regulatory Flexibility Act (''RFA'').[1918] This FRFA relates to Rules 240.15Ba1–1 through 240.15Ba1–8 under the Exchange Act, which set forth the requirements for municipal advisors to register with the Commission and the books and records that registered municipal advisory firms must make and keep. The Commission prepared an Initial Regulatory Flexibility Analysis (''IFRA'') in conjunction with the Proposal.[1919]

A. Need for and Objectives of the Rules

The final rules and forms establish a permanent registration regime for municipal advisors in accordance with Section 975 of the Dodd-Frank Act. Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, is intended generally to strengthen oversight of the municipal securities markets and to broaden current municipal securities market protections to cover, among other things, previously unregulated market activity. The rules and forms are designed to meet this mandate by requiring each municipal advisor to provide basic identifying information, a description of its activities, and facts regarding disciplinary history and conflicts of interest, if any.

The Commission believes that the information provided pursuant to these rules and forms will aid municipal entities, obligated persons, and others in choosing municipal advisors or engaging in transactions with municipal advisors, including participating in transactions of municipal securities offerings in which a municipal advisor provided municipal advisory services. In addition, the information disclosed pursuant to the rules and forms will provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets.

B. Significant Issues Raised by Public Comment

In the Proposal, the Commission solicited comment on the IRFA. In particular, the Commission sought comment on the number of small entities that would be subject to the proposed rules and forms; compliance burdens and how they would affect small entities; and whether the proposed rules and forms would have any effects that have not been discussed.[1920] In addition, the Commission requested that commenters describe the nature of any effects on small entities subject to the rule and provide empirical data to support the nature and extent of such effects.[1921]

The Commission received approximately ten comment letters that provided specific evaluative comments about the IRFA and the potential effect of the rules on small businesses. Most of the commenters were concerned that the requirements of the permanent registration regime would be too costly and burdensome for small entity municipal advisors.[1922] Several commenters emphasized in particular that the Small Business Act (''SBA'') threshold of $7 million in revenues that the Commission estimated for small businesses was too high.[1923]

Many commenters recommended that the Commission create exemptions for small independent advisors.[1924] Two commenters suggested exempting from registration municipal advisors involved in transactions below a debt financing limit.[1925] One commenter suggested the Commission allow small municipal advisors to convert their temporary registration to permanent status by agreeing to observe a fiduciary duty to clients and filing Form ADV (Part 1) with FINRA.[1926] Another commenter recommended small firms be allowed to pay lower registration fees to the MSRB.[1927] The Commission addresses these comments below.[1928]

The Commission recognizes that small municipal advisors are concerned with the potential burdens that the permanent registration regime may impose. The Commission recognizes that some municipal advisory firms, including some smaller municipal advisory firms and sole proprietors, may exit the market for various reasons, including the costs related to the registration and recordkeeping

[1917] *See supra* notes 1823–1832 and accompanying text.

[1918] 5 U.S.C. 604(a).

[1919] *See* Proposal, 76 FR 878–81.

[1920] *See id.* at 881.

[1921] *See id.*

[1922] *See, e.g.,* Fieldman Rolapp Letter; MSRB Letter; NAIPFA Letter; Public FA Letter; Ranson Financial Consultants Letter; Tamalpais Advisors Letter.

[1923] *See, e.g.,* Chancellor Financial Associates Letter; Fieldman Rolapp Letter; NAIPFA Letter; Public FA Letter; Ranson Financial Consultants Letter; Tamalpais Advisors Letter; Joy Howard WM Financial Strategies Letter (''[B]y establishing a threshold of $7 million in annual receipts, the Commission is likely to determine that there are few, if any, rules that would 'impose a regulatory burden on small entities.' Such a conclusion would likely be true for firms that have millions of dollars in annual receipts; however, most independent financial advisor firms have significantly lower revenues.'').

[1924] *See, e.g.,* Bradley Payne Letter; Chancellor Financial Associates Letter; Ranson Financial Associates Letter; Specialized Public Finance Letter; Sullivan Letter; Tamalpais Advisors Letter.

[1925] *See* Chancellor Financial Associates Letter (suggesting ''a limit predicated on the Internal Revenue Code's $10 million limit (during a calendar year) in order for an issuer's bonds to be bank-qualified''); Ranson Financial Associates Letter (suggesting ''that if a debt financing does not exceed a certain size or is of a certain nature, that a firm would not have to register'').

[1926] *See* Specialized Public Finance Letter.

[1927] *See* Sullivan Letter.

[1928] *See infra* Section IX.C.3.

requirements in the final rules and forms. The requirements under the final rules and forms were designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act. The Commission continues to believe that the costs associated with municipal advisor registration generally will not be overly burdensome for small firms, and notes that small municipal advisory firms and sole proprietors may exit the market for a number of reasons, including business reasons separate from the costs incurred with respect to the permanent registration regime.

C. Small Entities Subject to the Rule

In developing the final rules and forms, the Commission has considered their potential impact on small entities to which they will apply. The final rules and forms will affect municipal advisors required to register with the Commission, including small municipal advisors. Under Section 601(3) of the RFA, the term ''small business'' is defined as having ''the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' [1929] The Commission's rules do not define ''small business'' or ''small organization'' for purposes of municipal advisors. The SBA defines ''small business,'' for purposes of entities that provide financial investments and related activities, as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[1930]

As stated above, several commenters emphasized in particular that the SBA threshold of $7 million in revenues that the Commission used for purposes of estimating the number of small businesses was too high.[1931] For example, one commenter countered that the median annual revenue of a four-person financial advisory firm was closer to $800,000, and thus, that the majority of such small advisory firms would earn annual revenue far below the $7 million threshold.[1932] This commenter and two others recommended a $1 million threshold for annual revenue as a more realistic number for small municipal advisors.[1933] Another commenter argued that, as a sole proprietorship, his firm has never generated more than $1 million in total revenue in any given year, and that for the past two years, his firm's gross revenue has never been over $350,000.[1934] This commenter suggested that, as an alternative to using the SBA threshold of $7 million, municipal advisors involved in transactions below a debt financing limit should be exempt from municipal advisor regulation.[1935]

The Commission has considered all public comments relating to the IRFA included in the Proposal. After considering these comments, the Commission has determined to continue to use the SBA threshold of $7 million in revenues to denote small businesses. The Commission did not have sufficient data regarding municipal advisors to propose a definition of ''small business'' or ''small entity'' for purposes of the municipal advisor regulatory regime. The Commission believes that it will benefit from analyzing data submitted on Form MA over time, as well as data others may collect once the permanent registration regime is in place, before deciding whether to establish a separate definition of ''small business'' or ''small organization'' in Rule 0–10 under the Exchange Act [1936] for purposes of municipal advisors.[1937] As the Commission obtains additional information about municipal advisory firms after the commencement of the permanent registration regime, the Commission may reevaluate the appropriateness of the annual receipt threshold. The Commission may then determine, if appropriate, to promulgate a definition of ''small business'' or ''small entity'' for purposes of municipal advisors, as it has done in other contexts.[1938]

In the Proposal, the Commission estimated that approximately 1,000 municipal advisory firms, including sole proprietors, would be required to complete Form MA.[1939] For purposes of the IRFA, the Commission believed that the proportion of small municipal advisory firms subject to the proposed rules compared to all Form MA applicants would be similar to the proportion of small registered broker-dealers compared to all registered broker-dealers.[1940] The Commission had previously estimated that approximately 17% of all broker-dealers are ''small'' for the purposes of the RFA.[1941] Thus, the Commission estimated that approximately 170 municipal advisory firms that would be required to register with the Commission would be small entities subject to the rules.[1942]

In connection with the Proposal, commenters did not provide estimates of how many municipal advisory firms would be small businesses or small organizations. One commenter asserted that ''the large majority of [independent public finance advisory firms] would fall within the definition of 'small business' that the SEC has proposed it adopt; indeed, a high percentage of [independent public finance advisory] firms likely generate revenue in amounts substantially less than $7 million per year.'' [1943] Other commenters, as noted above, also argued that most independent financial advisory firms earn annual revenues far less than $7 million.[1944]

With respect to municipal advisors registered with the Commission as investment advisers and/or broker-dealers, commenters did not provide, and the Commission is not aware of, any alternative reliable estimates for the percentage of small entities. The Commission continues to believe that the percentage of ''small'' broker-dealers (*i.e.,* 17%) is a reasonable estimate of the number of small entity municipal advisors that are registered with the Commission as investment advisers and/or broker-dealers. As discussed above, the Commission estimates that approximately 273 Form MA registrants will be municipal advisors registered with the Commission as investment advisers and/or broker-dealers.[1945] Thus, the Commission estimates that approximately 46 municipal advisors registered with the Commission as

[1929] 5 U.S.C. 601(3).

[1930] *See* 13 CFR 121.201.

[1931] *See supra* note 1923.

[1932] *See* NAIPFA Letter.

[1933] *See id.;* Tamalpais Advisors Letter; Fieldman Rolapp Letter.

[1934] *See* Chancellor Financial Associates Letter.

[1935] *See supra* note 1925.

[1936] 17 CFR 240.0–10.

[1937] Form MA, Item 10, will ask municipal advisors to indicate whether they meet the definition of ''small business'' or ''small organization.'' In addition, the Commission will leverage data collected by others (*e.g.,* the MSRB) to determine whether it should re-assess its determination of who is a small municipal advisor. As a result, in the future the Commission will have information it can use to reevaluate estimates of the number of small municipal advisors subject to its rules.

[1938] *See* 17 CFR 240.0–10.

[1939] *See* Proposal, 76 FR 864–65.

[1940] *See id.* at 879.

[1941] *See* Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456, 21483 (April 23, 2010). *See also* Proposal, 76 FR 879.

[1942] 1,000 (estimated number of municipal advisors subject to the Rule) × 0.17 (Proposal's estimated percentage of municipal advisors that are small entities) = 170 small entity municipal advisors. *See* Proposal, 76 FR 879.

[1943] *See* NAIPFA Letter I.

[1944] *See supra* notes 1931–1934 and accompanying text.

[1945] *See supra* note 1456 and accompanying text.

investment advisers and/or broker-dealers will be small entities.[1946]

The Commission recognizes, however, as suggested by commenters, that a significant majority of municipal advisors not otherwise registered with the Commission and solicitors that will be required to register with the Commission may be small entities subject to the final rules and forms. Therefore, the Commission is revising its estimate to reflect its belief that approximately 90% of municipal advisors not otherwise registered with the Commission and solicitors earn annual revenue less than $7 million.[1947]

As discussed above, the Commission estimates that approximately 491 Form MA registrants will be municipal advisors not otherwise registered with the Commission [1948] and 146 will be solicitors.[1949] Thus, the Commission estimates that 573 municipal advisors not otherwise registered with the Commission and solicitors will be small entities.[1950] In total, the Commission estimates that approximately 619 municipal advisory firms will be small entities.[1951]

In the Proposal, the Commission also estimated that, with respect to Form MA–I, only those that are sole proprietors and meet the annual receipts threshold would be considered small entities subject to the proposed rules.[1952] The Commission stated in the Proposal that, because all sole proprietors would be required to complete Form MA in addition to Form MA–I, sole proprietors that would be small entities subject to the proposed rules (*i.e.,* that are under the ''small entities'' annual receipts threshold) were already counted among the original estimate of 170 small entities calculated in the Proposal.[1953]

Although, as discussed above, the Commission is revising its estimate of the total number of municipal advisory firms that will be considered to be small entities, the Commission did not receive comment regarding, and is not revising its approach regarding, the estimate of the number of small entities with respect to Form MA–I. The Commission continues to believe that, because all sole proprietors must complete both Form MA and Form MA–I, those sole proprietors that will be considered small entities are already counted among the new estimate of 619 small entities. Thus, the Commission maintains that it will not be necessary to further estimate the number of small entities with respect to Form MA–I.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The final rules and forms establish a permanent registration regime for municipal advisors, including small municipal advisors, which consists of Form MA, Form MA–I, Form MA–W, and Form MA–NR. The final rules also establish recordkeeping requirements for registered municipal advisors, including small municipal advisors.[1954] These requirements and the burdens on small municipal advisors are discussed below. The Commission received several comment letters that addressed the Commission's burden estimates.[1955]

Rule 15Ba1–2 imposes costs on all municipal advisors, including small municipal advisors, by requiring each person applying for registration with the Commission as a municipal advisor to complete Form MA and file the form electronically with the Commission. In addition, a person applying for registration as a municipal advisor must complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf and file each Form MA–I electronically with the Commission.[1956] Each Form MA will be considered filed with the Commission upon acceptance of Form MA, together with all additional required documents, including all required Form MA-Is, by the Commission's EDGAR system.[1957]

In the Proposal, the Commission estimated that the average initial cost per applicant to complete Form MA and the initial self-certification would be approximately $1,110,[1958] and the average initial cost per applicant to complete Form MA–I and the initial self-certification would be approximately $510.[1959] The Commission received comment letters that addressed the Commission's burden estimates for Form MA [1960] and Form MA–I.[1961] The Commission now estimates that the average initial PRA cost per applicant to complete Form MA will be approximately $581.[1962] The Commission also estimates that the average initial PRA cost for a municipal advisory firm to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf will be approximately $498.[1963] The total initial cost incurred by a municipal advisor to register with the Commission as a municipal advisor will depend on a number of factors,

[1946] 273 (estimated number of municipal advisors registered with the Commission as investment advisers and/or broker-dealers) × 0.17 (estimated percentage of municipal advisors registered with the Commission as investment advisers and/or broker-dealers that are small entities) = 46.41 small entity municipal advisors registered with the Commission as investment advisers and/or broker-dealers.

[1947] *See, e.g.,* NAIPFA Letter I (indicating that smaller financial advisory firms' average revenue of approximately $200,000 per natural person municipal advisor). As discussed above, the Commission estimates that firms not otherwise registered with the Commission and solicitors will have, respectively, an average of ten and five natural person employees who engage in municipal advisory activities on the firm's behalf. *See supra* text accompanying notes 1458 and 1461. Assuming average revenues of $200,000 per natural person municipal advisor, such entities would likely have revenues far below $7 million. However, the Commission believes a small number of such firms are likely to have revenues in excess of $7 million. For these reasons, the Commission estimates that approximately 90% of municipal advisors not otherwise registered with the Commission and solicitors earn annual revenue less than $7 million.

[1948] *See supra* note 1459 and accompanying text.

[1949] *See supra* note 1463 and accompanying text.

[1950] 637 (estimated number of municipal advisors not otherwise registered with the Commission and solicitors) × 0.90 (estimated percentage of municipal advisors not otherwise registered with the Commission and solicitors that are small entities) = 573.3 small entity municipal advisors not otherwise registered with the Commission and small entity solicitors.

[1951] 573 small entity municipal advisors not otherwise registered with the Commission and small entity solicitors + 46 small entity municipal advisors registered with the Commission as investment advisers and/or broker-dealers = 619 small entity municipal advisory firms.

[1952] In the proposal, the Commission noted that individuals who are not sole proprietors (*i.e.,* employees of municipal advisors) and must register on Form MA–I do not fall within the definitions of ''small business'' or ''small organization'' because only those businesses and organizations that are ''independently owned'' may qualify as small entities pursuant to the definitions contained in the RFA. *See* 5 U.S.C. 601(4) and 15 U.S.C. 632(a)(1). *See also* Proposal, 76 FR 879. As discussed in this release, such individuals will no longer be required to register as a municipal advisor.

[1953] *See* Proposal, 76 FR 879.

[1954] *See* Rule 15Ba1–8.

[1955] *See, e.g.,* Ranson Financial Consultants Letter; Joy Howard WM Financial Strategies Letter; NAIPFA Letter I; Specialized Public Finance Letter.

[1956] *See* Rule 15Ba1–2(b)(1).

[1957] *See* Rule 15Ba1–2(c).

[1958] *See* Proposal, 76 FR 880 n. 426 and accompanying text.

[1959] *See id.* at 880 n. 427 and accompanying text.

[1960] *See supra* notes 1483–1485 and accompanying text.

[1961] *See supra* notes 1496–1498 and accompanying text.

[1962] 3.5 hours (estimated hourly burden for one municipal advisor to complete a Form MA) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $581. This estimate is lower than the estimate in the Proposal due to the Commission's decision not to adopt a self-certification requirement and a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1963] 3.0 hours (estimated time required to complete Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $498. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

including the size of the municipal advisory firm; the complexity of its business activities; the amount and type of information to be included on Form MA and Form MA–I; and the number of natural persons municipal advisors for whom the municipal advisory firm will need to submit Form MA–I. The Commission estimates that the average initial registration burden across all firms will be approximately $7,595 per applicant.[1964]

The Commission notes that the estimated $166 hourly rate for compliance personnel that the Commission uses to estimate calculations with respect to certain figures [1965] will be less likely to apply to small entities and solo practitioners because they will be less likely than larger firms to employ highly compensated compliance professionals. In the case of such entities, the Commission's per-applicant cost estimates represent the upper range of potential registration costs, and the Commission expects that the actual registration costs for small entities will be significantly lower.

In addition, municipal advisors will use Form MA and Form MA–I to amend information previously reported to the Commission.[1966] Under Rule 15Ba1–5 and the General Instructions, a registered municipal advisor must amend Form MA at least annually and whenever a material event has occurred that changes the information provided in the form.[1967] As a result of certain changes to the final rule, a registered municipal advisor must also promptly amend the information contained in Form MA–I by filing an amended Form MA–I whenever the information contained in the form becomes inaccurate for any reason.[1968] Municipal advisors will also need to submit an amendment to Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf.[1969]

In the Proposal, the Commission estimated that the average ongoing annual cost per applicant to amend Form MA and complete a self-certification would be approximately $510,[1970] and the average ongoing annual cost per applicant to amend Form MA–I and complete a self-certification would be approximately $160.[1971] The Commission received one comment letter that addressed the Commission's burden estimates for amendments to Form MA and Form MA–I.[1972] The Commission now estimates that the average annual PRA cost per registered municipal advisor to amend Form MA will be approximately $332.[1973] The Commission also now estimates that the average annual PRA cost per registered municipal advisor to prepare updating amendments to Form MA–I for each of its natural person municipal advisors will be approximately $141,[1974] and that the average PRA cost per registered municipal advisor to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf will be approximately $83.[1975]

Municipal advisors will also file a notice of withdrawal from registration as a municipal advisor on Form MA–W.[1976] In the Proposal, the Commission estimated that the average cost per registrant to complete Form MA–W would be approximately $85.[1977] The Commission now estimates that the average PRA cost per registered municipal advisor to complete Form MA–W will be approximately $83.[1978]

Non-resident municipal advisors will incur costs to complete Form MA–NR and provide an opinion of counsel. In the Proposal, the Commission estimated that the average cost per filer to complete Form MA–NR would be approximately $255 [1979] and that the average cost per non-resident municipal advisory firm to obtain an opinion of counsel, including the cost to hire outside counsel, would be approximately $1,960.[1980] The Commission now estimates the average PRA cost to complete a single Form MA–NR will be approximately $249.[1981] The Commission also estimates that the average PRA cost per non-resident municipal advisor to obtain an opinion of counsel, including the cost to hire outside counsel, will be approximately $2,037.[1982]

The Commission also believes that some municipal advisory firms will incur costs associated with hiring outside counsel to help them comply with the requirements of the final rules and to complete Form MA. In the Proposal, the Commission estimated that the average cost per municipal advisory firm to hire outside counsel would be approximately $400.[1983] The Commission continues to estimate that the average cost per municipal advisory firm to hire outside counsel will be approximately $400.[1984]

[1964] *See supra* note 1813.

[1965] *See supra* note 1812 (calculating the combined hourly rate).

[1966] *See* Rule 15Ba1–5.

[1967] Municipal advisors will also report successions of registration on Form MA. *See* Rule 15Ba1–6.

[1968] *See* Rule 15Ba1–5(b).

[1969] *See* Instructions to Form MA–I.

[1970] *See* Proposal, 76 FR 880 n. 428 and accompanying text.

[1971] *See id.* at 880 n. 429 and accompanying text.

[1972] *See supra* notes 1523–1524 and accompanying text.

[1973] ((1.5 hours (average estimated time to prepare an annual amendment to Form MA) × 1.0 hours (number of annual amendments per year)) + (0.5 hours (average estimated time to prepare an interim updating amendment to Form MA) × 1.0 (number of interim updating amendments per year))) x $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $332. This estimate is lower than the estimate in the Proposal due to the Commission's decision not to adopt a self-certification requirement and a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1974] (0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × 1.7 hours (average number of amendments per year)) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $141.10. This estimate is lower than the estimate in the Proposal because natural person municipal advisors are not required to complete a self-certification under the final rules and the combined hourly rate for a Compliance Manager and Compliance Clerk has been reduced from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1975] 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $83. *See supra* note 1812 (calculating the combined hourly rate).

[1976] *See* Rule 15Ba1–4.

[1977] *See* Proposal, 76 FR 880 n. 430 and accompanying text.

[1978] 0.5 hours (average estimated time to complete Form MA–W) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $83. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1979] *See* Proposal, 76 FR 880 n. 431 and accompanying text.

[1980] *See id.* at 880 n. 432 and accompanying text.

[1981] 1.5 hours (average estimated time to complete Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $249. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1982] 3.0 hours (average estimated time to obtain an opinion of counsel) × $379 (hourly rate for an internal attorney) = $1,137. *See supra* note 1779 (calculating the hourly rate for an in-house attorney). $900 = average estimated cost to hire outside counsel to provide opinion of counsel. $1,137 + $900 = $2,037. This estimate is higher than the estimate in the Proposal due to an increase in the hourly rate for an internal attorney from $354 to $379. *See supra* note 1538 (explaining the outside counsel cost estimate).

[1983] *See* Proposal, 76 FR 880 n. 433 and accompanying text.

[1984] 1.0 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $400. *See supra* note 1538 (explaining the outside counsel cost estimate).

Rule 15Ba1–8 will require all registered municipal advisors to maintain true, accurate, and current books and records relating to their municipal advisory activities. Generally, Rule 15Ba1–8 will require such books and records to be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place. In the Proposal, the Commission estimated that the average cost per municipal advisory firm to comply with the proposed recordkeeping requirement would be approximately $9,050.[1985]

The Commission estimates that, on average, the annual hourly burden for each municipal advisory firm to comply with the recordkeeping requirements will be 182 hours.[1986] Thus, the Commission estimates that the average PRA cost per municipal advisory firm to comply with the recordkeeping requirements will be approximately $9,646 each year.[1987] In addition, the Commission continues to believe that it is appropriate to assume that, for small firms, the per-hour costs attributable to the recordkeeping requirements will be, at most, equivalent to the hourly rate for a General Clerk.[1988] Thus, the Commission estimates that the average PRA cost per small entity municipal advisory firm to comply with the recordkeeping requirements will be approximately $9,646 each year.[1989] The Commission believes that for many small entity municipal advisory firms the actual cost will likely be lower for a number of reasons, including differences in the variety of services offered to municipal entities and the number of municipal entity clients, but is using a conservative estimate of such costs.

As discussed above, one commenter asserted that the Commission used an hourly rate for the books and records estimate that was too low for small entity municipal advisors since they often do not employ General Clerks.[1990] While the Commission acknowledges that small municipal advisors do not typically employ General Clerks and that, in many cases, the municipal advisory professional himself may be responsible for maintaining the books and records of the firm, the Commission does not agree that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors for several reasons. The 182-hour estimate is an average annual hourly burden across all firms regardless of their size, and is based on the Commission's experience with other regulatory regimes. The Commission anticipates that larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records will incur an annual burden greater than 182 hours, while smaller municipal advisory firms that have significantly lower volumes of books and records will incur an annual burden lower than 182 hours. Similarly, the $53 figure is an average hourly rate across all firms regardless of their size and is inclusive of the variability of costs across municipal advisors. The Commission does not have the information necessary to provide reasonable estimates of the differences in hourly burden among firms of various sizes, a separate average hourly burden for small entity municipal advisors, or the differences in hourly rates among firms of various sizes. The Commission is also unaware of any such data being publicly available. The Commission staff also understands that some small municipal advisors employ part-time staff to perform certain business and clerical functions and that the costs of such employees are less likely to reflect the costs for compliance personnel at larger municipal advisory firms or the hourly rate suggested by the commenter. The Commission assumes that municipal advisors will use the most cost-effective approach available, depending on their size and specific circumstances, to comply with the recordkeeping requirement. Accordingly, the Commission does not believe that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors.

Further, as stated above, the Commission believes that small municipal advisory firms will likely incur lower annual costs for maintaining books and records than larger firms. The Commission recognizes that, although small municipal advisory firms and solo practitioners may maintain their books and records without a general clerk or additional staff assistance, such activity would not be costless. The Commission believes that it is appropriate to assume that, because small firms will utilize the most cost-effective approach available, per-hour costs attributable to the books and records requirements will be, at most, equivalent to the hourly rate for a General Clerk. Therefore, the Commission uses the hourly rate for a General Clerk to estimate the average cost across all municipal advisory firms, regardless of size.

The Commission recognizes that such compliance burdens and expenses may cause some smaller municipal advisory firms and sole proprietors to exit the market or consolidate with other municipal advisory firms. The Commission estimates that, at the upper range of annual costs, a small entity municipal advisory firm will incur approximately $17,241 in PRA costs during the first year[1991] and $11,721 each subsequent year to maintain its registration and books and records.[1992] The Commission estimates that sole proprietors will incur a lower PRA cost of approximately $11,125 during the first year[1993] and $10,119 each subsequent year.[1994]

One sole proprietor has asserted that his annual revenue during the past two years has not exceeded $350,000,[1995] while another commenter estimated that the median annual revenue for a four-person municipal advisory firm was $800,000.[1996] Such comments indicate that registration costs could comprise approximately 2% of a sole proprietor's[1997] or a four-person

[1985] *See* Proposal, 76 FR 88 n. 434 and accompanying text.

[1986] *See supra* Section VII.D.8.

[1987] 182 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) × $53 (hourly rate for a General Clerk) = $9,646. *See supra* note 1861 (calculating the hourly rate for a General Clerk). This estimate is higher than in the Proposal because of an increase in the hourly rate for a General Clerk from $50 per hour to $53 per hour.

[1988] *See supra* note 1861 (calculating the hourly rate for a General Clerk).

[1989] *See supra* note 1987 and accompanying text.

[1990] *See* Joy Howard WM Financial Strategies Letter. *See also supra* text accompanying note 1867.

[1991] $7,595 (estimated average initial registration burden for a single municipal advisory firm) + $9,646 (estimated cost to maintain books and records) = $17,241. *See supra* note 1813 (calculating the estimated average initial registration burden for a single municipal advisory firm).

[1992] $332 (estimated annual cost for one municipal advisor to amend Form MA) + ((11,250 (estimated number of individuals for whom municipal advisory firms will need to complete a Form MA–I) ÷ 910 (estimated number of municipal advisors registered on Form MA)) × $141 (estimated annual cost to complete updating amendments to Form MA–I for each natural person municipal advisor)) + $9,646 (estimated cost to maintain books and records) = $11,721.13.

[1993] $581 (estimated initial cost for one municipal advisor to complete a Form MA) + (1.0 (sole proprietor required to complete a Form MA–I) × $498 (estimated initial cost to complete a Form MA–I)) + $400 (estimated cost to hire outside counsel) + $9,646 (estimated cost to maintain books and records) = $11,125.

[1994] $332 (estimated annual cost for one municipal advisor to amend Form MA) + (1.0 (sole proprietor required to complete a Form MA–I) × $141 (estimated annual cost to complete updating amendments to Form MA–I for each natural person municipal advisor)) + $9,646 (estimated cost to maintain books and records) = $10,119.

[1995] *See supra* note 1934 and accompanying text.

[1996] *See supra* note 1932 and accompanying text.

[1997] $6,877 (estimated registration cost for a sole proprietor during the first year) ÷ $350,000

municipal advisory firm's [1998] annual revenue. Nevertheless, the Commission acknowledges that some small firms and sole proprietors will not consider the annual cost to be trivial and may discontinue providing municipal advisory services or consolidate with other municipal advisory firms as a result. The requirements under the final rules and forms were designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act.

E. Agency Action to Minimize Effects on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small advisors.[1999] In considering whether to adopt the final rules and forms, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipal advisors; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small advisors; (iii) the use of performance rather than design standards; [2000] and (iv) an exemption from coverage of the rules, or any part thereof, for such small advisors.

The Commission received several comments recommending that the Commission create exemptions for small independent advisors.[2001] Two commenters suggested exempting from registration municipal advisors involved in transactions below a debt financing limit.[2002]

The Commission does not believe differing compliance or reporting requirements or an exemption from coverage of the final rules and forms, or any part thereof, for small municipal advisors (*i.e.,* the first and fourth alternatives) would be appropriate or consistent with investor protection or with the Commission's understanding of Congress's intent to have the Commission register municipal advisors and oversee their activities. Because the Commission believes the protections of Section 15B of the Exchange Act, as amended by Section 975 of the Dodd-Frank Act, are intended to apply equally to clients of both large and small municipal advisory firms, the Commission believes it would be inconsistent with the purposes of the Exchange Act to specify different requirements for small municipal advisors under the final rules and forms. In addition, the requirements under the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act.

As discussed above, the Commission believes that the requirement that municipal advisors register with the Commission on Form MA and update the information provided at least annually (or more often as required by the rules) will provide a number of benefits.[2003] For example, the final rules and forms should allow municipal entities and obligated persons to become better informed about municipal advisors at a lower cost, which could increase the use of municipal advisors. In addition, the permanent registration regime and recordkeeping requirements should enhance the ability of Commission and other securities regulators to oversee municipal advisors and monitor compliance with the requirements of the Exchange Act and MSRB rules. The Commission believes that requiring less information about small municipal advisors would be insufficient for these purposes.

Regarding the second alternative, the Commission does not believe it is necessary to clarify, consolidate, or simplify the registration or recordkeeping requirements for small municipal advisors. In developing the rules and forms, the Commission considered requiring additional information from municipal advisors and using different submission mechanisms. The Commission decided that the information in the forms and the submission requirements are simple and straightforward, and that they take into account the resources available to all municipal advisors, including small municipal advisors. The Commission believes that small advisors will incur less cost to complete Form MA than larger municipal advisory firms with more complex businesses because certain disclosures, for example disclosures related to Item 6 and the number of DRPs required, will be less complicated and require less time to complete.

One commenter suggested the Commission allow small municipal advisors to convert their temporary registration to permanent status by agreeing to observe a fiduciary duty to clients and filing Form ADV (Part 1) with FINRA.[2004] The Commission acknowledges that this approach would expedite the registration process for those municipal advisors that currently file Form ADV, but also notes that this approach would result in a registration process with multiple formats that may become difficult to track over time. In addition, the information required to be disclosed on Form ADV would not provide comparable information about municipal advisory activities. The Commission continues to believe that the collection of information in a uniform, standardized format from all municipal advisors will facilitate consistent public disclosure of municipal advisor registration information to municipal advisors, municipal entities, obligated persons, the Commission, and other interested persons.

Another commenter recommended small firms be allowed to pay lower registration fees to the MSRB.[2005] As discussed above,[2006] the Commission does not charge municipal advisors a fee to register with the Commission. Although the Dodd-Frank Act permits the MSRB to require municipal advisors to pay such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB,[2007] the Commission does not set or approve fees charged by the MSRB. Instead, the Exchange Act provides that certain designated SRO rules, including fees charged by the MSRB, take effect upon filing with the Commission [2008] and may thereafter be enforced by the SRO to the extent not inconsistent with the Exchange Act, the rules and regulations thereunder, and applicable

(estimated annual revenue for a sole proprietor) = 1.96%.

[1998] $16,598 (estimated registration cost for a municipal advisor registered with the Commission as an investment adviser and/or broker-dealer during the first year) ÷ $800,000 (estimated annual revenue for a four-person municipal advisory firm) = 2.07%.

[1999] *See* 5 U.S.C. 603(c).

[2000] The Commission does not consider using performance rather than design standards to be consistent with the Commission's understanding of Congress's intent to have the Commission register municipal advisors and oversee their activities or with other registration regimes under Commission rules.

[2001] *See, e.g.,* Bradley Payne Letter; Chancellor Financial Associates Letter; Ranson Financial Associates Letter; Specialized Public Finance Letter; Sullivan Letter; Tamalpais Advisors Letter.

[2002] *See* Chancellor Financial Associates Letter (suggesting ''a limit predicated on the Internal Revenue Code's $10 million limit (during a calendar year) in order for an issuer's bonds to be bank-qualified''); Ranson Financial Associates Letter (suggesting ''that if a debt financing does not exceed a certain size or is of a certain nature, that a firm would not have to register'').

[2003] *See supra* Section VIII.D.3.b.

[2004] *See* Specialized Public Finance Letter.

[2005] *See* Sullivan Letter.

[2006] *See supra* note 1808.

[2007] *See* 15 U.S.C. 78*o*-4(b)(2)(J).

[2008] *See* 15 U.S.C. 78s(b)(3)(A).

Federal and State law.[2009] The Commission notes, however, that the MSRB is required to consider the effects of its rules on small municipal advisors.[2010]

One commenter suggested that the Commission could provide meaningful relief by waiving small firms from the requirement to provide audited financial reports.[2011] The Commission notes that the final rules and forms do not require audited or other financial reports as part of the recordkeeping requirement. The preparation of audited financial reports is at the discretion of the municipal advisor, and the Commission expects that municipal advisors will generally utilize the most cost-effective solution to comply with the requirements of the permanent registration regime.

X. Statutory Basis and Text of Amendments

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78*o*-4, 78q, and 78mm, respectively), the Commission is adopting § 200.19d, § 200.30–3a, §§ 240.15Ba1–1 through 240.15Ba1–8, § 240.15Bc4–1, and §§ 249.1300 through 249.1330 (Form MA, Form MA–I, Form MA–W, and Form MA–NR), and the Commission is amending §§ 200.19c and 200.30–18.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Municipal advisors, Registration requirements.

Text of Rules and Forms

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The general authority citation for part 200, subpart A, is revised to read as follows:

Authority: 15 U.S.C. 77*o*, 77s, 77sss, 78d, 78d-1, 78d-2, 78*o*-4, 78w, 78*ll*(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Section 200.19c is revised to read as follows:

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations (''OCIE'') is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, municipal advisors, transfer agents, investment companies, and investment advisers, under Sections 15B, 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4, 78*o*-5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4).

■ 3. Section 200.19d is added to read as follows:

§ 200.19d Director of the Office of Municipal Securities.

The Director of the Office of Municipal Securities is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the registration and regulation of municipal advisors. The functions involved in the regulation of such entities include recommending the adoption and amendment of Commission rules, and responding to interpretive and no-action requests.

■ 4. Section 200.30–3a is added to read as follows:

§ 200.30–3a Delegation of authority to Director of the Office of Municipal Securities.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of Municipal Securities to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) Pursuant to section 15B of the Act (15 U.S.C. 78*o*-4):

(i) To authorize the issuance of orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents); and

(ii) To authorize the issuance of orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.

(b) Notwithstanding anything in the foregoing, in any case in which the Director of the Office of Municipal Securities believes it appropriate, he may submit the matter to the Commission.

■ 5. Section 200.30–18 is amended by adding paragraphs (j)(7) and (j)(8) to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

* * * * *

(j) * * *

(j) * * *

(7) Under section 15B(a) of the Act (15 U.S.C. 78*o*-4(a)):

(i) To authorize the issuance of orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents); and

(ii) To grant registration of municipal advisors sooner than 45 days after the filing of an application for registration.

(8) Under section 15B(c) of the Act (15 U.S.C. 78*o*-4(c)):

(i) To authorize the issuance of orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor; and

[2009] *See* 15 U.S.C. 78s(b)(3)(C). The Commission has sixty days from the date of filing, however, during which it ''summarily may temporarily suspend'' the fees ''if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act. *See id.* If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. *See id.* In addition, Section 19(c) of the Exchange Act authorizes the Commission, by rule, to abrogate, add to, and delete from the rules of an SRO (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the SRO, to conform its rules to requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78s(c).

[2010] *See* 15 U.S.C. 78*o*-4(b)(2)(L)(iv) (providing that an MSRB rule may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud'').

[2011] *See* Tamalpais Advisors Letter.

(ii) To determine whether notices of withdrawal from registration on Form MA–W shall become effective sooner than the 60-day waiting period.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The general authority citation for part 240 is revised, and sectional authorities for §§ 240.15Ba1–1 through 240.15Ba1–8 and § 240.15Bc4–1 are added, to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l,* 78m, 78n, 78n-1, 78*o,* 78*o*-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll,* 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

Sections 240.15Ba1–1 through 240.15Ba1–8 are also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010).

Section 240.15Bc4–1 is also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010).

* * * * *

■ 7. Sections 240.15Ba1–1 through 240.15Ba1–8 are added to read as follows:

SEC.

* * * * *

§ 240.15Ba1–1 Definitions.
§ 240.15Ba1–2 Registration of municipal advisors and information regarding certain natural persons.
§ 240.15Ba1–3 Exemption of certain natural persons from registration under section 15B(a)(1)(B) of the Act.
§ 240.15Ba1–4 Withdrawal from municipal advisor registration.
§ 240.15Ba1–5 Amendments to Form MA and Form MA–I.
§ 240.15Ba1–6 Consent to service of process to be filed by non-resident municipal advisors; legal opinion to be provided by non-resident municipal advisors.
§ 240.15Ba1–7 Registration of successor to municipal advisor.
§ 240.15Ba1–8 Books and records to be made and maintained by municipal advisors.

§ 240.15Ba1–1 Definitions.

As used in the rules and regulations prescribed by the Commission pursuant to section 15B of the Act (15 U.S.C. 78*o*-4) in §§ 240.15Ba1–1 through 240.15Ba1–8 and 240.15Bc4–1:

(a) *Guaranteed investment contract* has the same meaning as in section 15B(e)(2) of the Act (15 U.S.C. 78*o*-4(e)(2)); *provided, however,* that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.

(b) *Investment strategies* has the same meaning as in section 15B(e)(3) of the Act (15 U.S.C. 78*o*-4(e)(3)), and includes plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.

(c) *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(d)(1) *Municipal advisor.*

(i) *In general.* Except as otherwise provided in paragraphs (d)(2) and (d)(3) of this section, the term *municipal advisor* has the same meaning as in section 15B(e)(4) of the Act (15 U.S.C. 78*o*-4(e)(4)). Under section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*-4(e)(4)(A)), the term *municipal advisor* means a person (who is not a municipal entity or an employee of a municipal entity) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertakes a solicitation of a municipal entity or an obligated person. Under section 15B(e)(4)(C) of the Act (15 U.S.C. 78*o*-4(e)(4)(C)) and paragraph (d)(2) of this section, a *municipal advisor* does not include a person that engages in specified excluded activities.

(ii) *Advice standard.* For purposes of the municipal advisor definition under paragraph (d)(1)(i) of this section, advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues).

(iii) *Certain types of municipal advisors.* Under section 15B(e)(4)(B) of the Act (15 U.S.C. 78*o*-4(e)(4)(B)), *municipal advisors* include, without limitation, financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, to the extent that such persons otherwise meet the requirements of the municipal advisor definition in this paragraph (d)(1).

(2) *Exclusions from municipal advisor definition.* Pursuant to section 15B(e)(4)(C) of the Act (15 U.S.C. 78*o*-4(e)(4)(C)), the term *municipal advisor* excludes the following persons with respect to the specified excluded activities:

(i) *Serving as an underwriter.* A broker, dealer, or municipal securities dealer serving as an underwriter of a particular issuance of municipal securities to the extent that the broker, dealer, or municipal securities dealer engages in activities that are within the scope of an underwriting of such issuance of municipal securities.

(ii) *Registered investment advisers—In general.* Any investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) or any person associated with such registered investment adviser to the extent that such registered investment adviser or such person is providing investment advice in such capacity. Solely for purposes of this paragraph (d)(2)(ii), investment advice does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person.

(iii) *Registered commodity trading advisors.* Any commodity trading advisor registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or person associated with a registered commodity trading advisor, to the extent that such registered commodity trading advisor or such person is providing advice that is related to swaps (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and section 3(a)(69) of the Act (15 U.S.C. 78c(a)(69)), and any rules and regulations thereunder).

(iv) *Attorneys.* Any attorney to the extent that the attorney is offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products to a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction. To the extent an attorney represents himself or herself as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, however, the attorney is not excluded with respect to such financial activities under this paragraph (d)(2)(iv).

(v) *Engineers.* Any engineer to the extent that the engineer is providing engineering advice.

(3) *Exemptions from municipal advisor definition.* The Commission exempts the following persons from the definition of municipal advisor to the

extent they are engaging in the specified activities:

(i) *Accountants.* Any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.

(ii) *Public officials and employees.* (A) Any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity.

(B) Any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.

(iii) *Banks.* Any bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), to the extent the bank provides advice with respect to the following:

(A) Any investments that are held in a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(B) Any extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account;

(C) Any funds held in a sweep account that meets the requirements of section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)); or

(D) Any investment made by a bank acting in the capacity of an indenture trustee or similar capacity.

(iv) *Responses to requests for proposals or qualifications.* Any person providing a response in writing or orally to a request for proposals or qualifications from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities; *provided, however,* that such person does not receive separate direct or indirect compensation for advice provided as part of such response.

(v) *Swap dealers.*

(A) A swap dealer (as defined in Section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) and the rules and regulations thereunder) registered under the Commodity Exchange Act or associated person of the swap dealer recommending a municipal derivative or a trading strategy that involves a municipal derivative, so long as the registered swap dealer or associated person is not *acting as an advisor* to the municipal entity or obligated person with respect to the municipal derivative or trading strategy pursuant to Section 4s(h)(4) of the Commodity Exchange Act and the rules and regulations thereunder.

(B) For purposes of determining whether a swap dealer is *acting as an advisor* in this paragraph (d)(3)(v), the municipal entity or obligated person involved in the transaction will be treated as a *special entity* under Section 4s(h)(2) of the Commodity Exchange Act and the rules and regulations thereunder (even if such municipal entity or obligated person does not satisfy the definition of *special entity* under those provisions).

(vi) *Participation by an independent registered municipal advisor.* Any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that the following requirements are met:

(A) *Independent registered municipal advisor.* An independent registered municipal advisor is providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities. For purposes of this paragraph (d)(3)(vi), the term *independent registered municipal advisor* means a municipal advisor registered pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated (as defined in section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)) of the Act) with the person seeking to rely on this paragraph (d)(3)(vi).

(B) *Required representation.* A person seeking to rely on this paragraph (d)(3)(vi) receives from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor, provided that the person receiving such representation has a reasonable basis for relying on the representation.

(C) *Required disclosures.*

(*1*) With respect to a municipal entity, such person discloses in writing to the municipal entity that, by obtaining such representation from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in section 15B(c)(1) of the Act (15 U.S.C. 78*o*–4(c)(1)) with respect to the municipal financial product or issuance of municipal securities, and provides a copy of such disclosure to the independent registered municipal advisor.

(*2*) With respect to an obligated person, such person discloses in writing to the obligated person that, by obtaining such representation from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities, and provides a copy of such disclosure to the independent registered municipal advisor.

(*3*) Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities.

(vii) *Persons that provide advice on certain investment strategies.* A person that provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(viii) *Certain solicitations.* A person that undertakes a solicitation of a municipal entity or obligated person for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(4) *Special rule for separately identifiable departments or divisions of banks for municipal advisory purposes.* If a bank engages in municipal advisory activities through a separately identifiable department or division that meets the requirements of this paragraph (d)(4), the determination of whether those municipal advisory activities cause any person to be a municipal advisor may be made separately for such department or division. In such event, that department or division, rather than the bank itself, shall be deemed to be the municipal advisor.

(i) *Separately identifiable department or division.* For purposes of this paragraph (d)(4), a *separately identifiable department or division* of a bank is that unit of the bank which conducts all of the municipal advisory activities of the bank, provided that the following requirements are met:

(A) *Supervision.* Such unit is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, including the supervision of all bank employees engaged in the performance of such activities.

(B) *Separate records.* All of the records relating to the bank's municipal advisory activities are separately maintained in, or extractable from, such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Municipal Securities Rulemaking Board relating to municipal advisors.

(ii) [Reserved]

(e) *Municipal advisory activities* means the following activities specified in section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*–4(e)(4)(A)) and paragraph (d)(1) of this section that, absent the availability of an exclusion under paragraph (d)(2) of this section or an exemption under paragraph (d)(3) of this section, would cause a person to be a municipal advisor:

(1) Providing advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

(2) Solicitation of a municipal entity or an obligated person.

(f) *Municipal derivatives* means any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and section 3(a)(69) of the Act (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which:

(1) A municipal entity is a counterparty; or

(2) An obligated person, acting in such capacity, is a counterparty.

(g) *Municipal entity* means any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including:

(1) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(2) Any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

(3) Any other issuer of municipal securities.

(h) *Municipal escrow investments.*

(1) *In general.* Except as otherwise provided in paragraph (h)(2) of this section, *municipal escrow investments* means proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

(2) *Reasonable reliance on representations.* In determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of this section, a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

(i) *Municipal financial product* has the same meaning as in section 15B(e)(5) of the Act (15 U.S.C. 78*o*–4(e)(5)).

(j) *Non-resident* means:

(1) In the case of an individual, one who resides in or has his principal office and place of business in any place not subject to the jurisdiction of the United States;

(2) In the case of a corporation, one incorporated in or having its principal office and place of business in any place not subject to the jurisdiction of the United States; or

(3) In the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not subject to the jurisdiction of the United States.

(k) *Obligated person* has the same meaning as in section 15B(e)(10) of the Act (15 U.S.C. 78*o*–4(e)(10)); *provided, however,* that the term *obligated person* shall not include:

(1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;

(2) A person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or

(3) The federal government.

(l) *Principal office and place of business* means the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor.

(m)(1) *Proceeds of municipal securities—In general.* Except as otherwise provided in paragraphs (m)(2) and (m)(3) of this section, *proceeds of municipal securities* means monies derived by a municipal entity from the sale of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds, and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds. When such monies are spent to carry out the authorized purposes of municipal securities, they cease to be proceeds of municipal securities.

(2) *Exception for Section 529 college savings plans.* Solely for purposes of this paragraph (m), monies derived from a municipal security issued by an education trust established by a State under Section 529(b) of the Internal Revenue Code (26 U.S.C. 529(b)) are not proceeds of municipal securities.

(3) *Reasonable reliance on representations.* In determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of this section, a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

(n) *Solicitation of a municipal entity or obligated person* has the same meaning as in section 15B(e)(9) of the Act (15 U.S.C. 78*o*–4(e)(9)); *provided, however,* that a solicitation does not include:

(1) Advertising by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser; or

(2) Solicitation of an obligated person, if such obligated person is not acting in the capacity of an obligated person or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to municipal financial products.

§ 240.15Ba1–2 Registration of municipal advisors and information regarding certain natural persons.

(a) *Form MA.* A person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in the Form and file the Form electronically with the Commission.

(b) *Form MA–I.* (1) A person applying for registration or registered with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA–I (17 CFR 249.1310) with respect to each natural person who is a person associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf in accordance with the instructions in the Form and file the Form electronically with the Commission.

(2) A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a) of this section, must complete Form MA–I (17 CFR 249.1310) in accordance with the instructions in the Form and file the Form electronically with the Commission.

(c) *When filed.* Each Form MA (17 CFR 249.1300) shall be considered filed with the Commission upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310), to the Commission's Electronic Data Gathering, Analysis, and Retrieval system.

(d) *Form MA and Form MA–I are reports.* Each Form MA (17 CFR 249.1300) and Form MA–I (17 CFR 249.1310) required to be filed under this section shall constitute a report within the meaning of sections 15B(c), 17(a), 18(a), 32(a) of the Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–3 Exemption of certain natural persons from registration under section 15B(a)(1)(B) of the Act.

A natural person municipal advisor shall be exempt from section 15B(a)(1)(B) of the Act (15 U.S.C. 78*o*–4(a)(1)(B)) if he or she:

(a) Is an associated person of an advisor that is registered with the Commission pursuant to section 15B(a)(2) of the Act (15 U.S.C. 78*o*–4(a)(2)) and the rules and regulations thereunder; and

(b) Engages in municipal advisory activities solely on behalf of a registered municipal advisor.

§ 240.15Ba1–4 Withdrawal from municipal advisor registration.

(a) *Form MA–W.* Notice of withdrawal from registration as a municipal advisor shall be filed on Form MA–W (17 CFR 249.1320) in accordance with the instructions to the Form.

(b) *Electronic filing.* Any notice of withdrawal on Form MA–W (17 CFR 249.1320) must be filed electronically.

(c) *Effective date.* A notice of withdrawal from registration shall become effective for all matters on the 60th day after the filing thereof, within such longer period of time as to which the municipal advisor consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15B(c) of the Act (15 U.S.C. 78*o*–4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, the municipal advisor, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (c), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (c) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) *Form MA–W is a report.* Each Form MA–W (17 CFR 249.1320) required to be filed under this section shall constitute a report within the meaning of sections 15B(c), 17(a), 18(a), 32(a) of the Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–5 Amendments to Form MA and Form MA–I.

(a) *When amendment is required—Form MA.* A registered municipal advisor shall promptly amend the information contained in its Form MA (17 CFR 249.1300):

(1) At least annually, within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for a sole proprietor; and

(2) More frequently, if required by the General Instructions (17 CFR 249.1300), as applicable.

(b) *When amendment is required—Form MA–I.* A registered municipal advisor shall promptly amend the information contained in Form MA–I (17 CFR 249.1310) by filing an amended Form MA–I whenever the information contained in the Form MA–I becomes inaccurate for any reason.

(c) *Electronic filing of amendments.* A registered municipal advisor shall file all amendments to Form MA (17 CFR 249.1300) and Form MA–I (17 CFR 249.1310) electronically.

(d) *Amendments to Form MA and Form MA–I are reports.* Each amendment required to be filed under this section shall constitute a report within the meaning of sections 15B(c), 17(a), 18(a), 32(a) of the Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–6 Consent to service of process to be filed by non-resident municipal advisors; legal opinion to be provided by non-resident municipal advisors.

(a)(1) Each non-resident municipal advisor applying for registration pursuant to section 15B(a) of the Act (15 U.S.C. 78*o*–4(a)) shall, at the time of filing of the municipal advisor's application on Form MA (17 CFR 249.1300), file with the Commission a written irrevocable consent and power of attorney on Form MA–NR (17 CFR 249.1330) to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor to enforce this chapter.

(2) Each municipal advisor applying for registration pursuant to or registered under section 15B of the Act (15 U.S.C. 78*o*–4) shall, at the time of filing the relevant Form MA (17 CFR 249.1300) or Form MA–I (17 CFR 249.1310), file with the Commission a written irrevocable consent and power of attorney on Form MA–NR (17 CFR 249.1330) to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the municipal advisor's non-resident general partner or non-resident managing agent, or non-resident natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal

advisory activities on its behalf, to enforce this chapter.

(b) The registered municipal advisor shall communicate promptly to the Commission by filing a new Form MA–NR (17 CFR 249.1330) any change to the name or address of the agent for service of process of each such non-resident municipal advisor, general partner, managing agent, or natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf.

(c)(1) Each registered non-resident municipal advisor must promptly appoint a successor agent for service of process and file a new Form MA–NR (17 CFR 249.1330) if the non-resident municipal advisor discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the non-resident municipal advisor.

(2) Each registered municipal advisor must require each of its non-resident general partners or non-resident managing agents, or non-resident natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf, to promptly appoint a successor agent for service of process and the registered municipal advisor must file a new Form MA–NR (17 CFR 249.1330) if such non-resident general partner, managing agent, or associated person discharges the identified agent for service of process or if the agent for service of process is unwilling or unable to accept service on behalf such person.

(d) Each non-resident municipal advisor applying for registration pursuant to section 15B(a) of the Act (15 U.S.C. 78*o*–4(a)) shall provide an opinion of counsel on Form MA (17 CFR 249.1300) that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of the municipal advisor as required by law and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.

(e) Form MA–NR (17 CFR 249.1330) must be filed electronically.

§ 240.15Ba1–7 Registration of successor to municipal advisor.

(a) In the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to section 15B(a) of the Act (15 U.S.C. 78*o*–4(a)), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after the succession, files an application for registration on Form MA (17 CFR 249.1300), and the predecessor files a notice of withdrawal from registration on Form MA–W (17 CFR 249.1320); *provided, however,* that the registration of the predecessor municipal advisor will cease to be effective as the registration of the successor municipal advisor 45 days after the application for registration on Form MA is filed by the successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal advisor succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA (17 CFR 249.1300) to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba1–8 Books and records to be made and maintained by municipal advisors.

(a) Every person registered or required to be registered under section 15B of the Act (15 U.S.C. 78*o*-4) and the rules and regulations thereunder shall make and keep true, accurate, and current the following books and records relating to its municipal advisory activities:

(1) Originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications;

(2) All check books, bank statements, general ledgers, cancelled checks and cash reconciliations of the municipal advisor;

(3) A copy of each version of the municipal advisor's policies and procedures, if any, that:

(i) Are in effect; or

(ii) At any time within the last five years were in effect, not including those in effect prior to January 13, 2014;

(4) A copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person or that memorializes the basis for that recommendation;

(5) All written agreements (or copies thereof) entered into by the municipal advisor with any municipal entity, employee of a municipal entity, or an obligated person or otherwise relating to the business of such municipal advisor as such;

(6) A record of the names of persons who are currently, or within the past five years were, associated with the municipal advisor, not including persons associated with the municipal advisor prior to January 13, 2014;

(7) Books and records containing a list or other record of:

(i) The names, titles, and business and residence addresses of all persons associated with the municipal advisor;

(ii) All municipal entities or obligated persons with which the municipal advisor is engaging or has engaged in municipal advisory activities in the past five years, not including those prior to January 13, 2014;

(iii) The name and business address of each person to whom the municipal advisor provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and

(iv) The name and business address of each person that provides or agrees to provide, directly or indirectly, payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and

(8) Written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.

(b)(1) All books and records required to be made under this section shall be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the municipal advisor and of any predecessor, excluding those that were only in effect prior to January 13, 2014, shall be maintained in the principal office of the municipal advisor and preserved until at least three years after termination of the business or withdrawal from registration as a municipal advisor.

(c) A municipal advisor subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as a municipal advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved

under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office in Washington, DC, of the exact address where such books and records will be maintained during such period.

(d) *Electronic storage permitted.*

(1) *General.* The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time on:

(i) Electronic storage media, including any digital storage medium or system that meets the terms of this section; or

(ii) Paper documents.

(2) *General requirements.* The municipal advisor must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its staff or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the municipal advisor must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the Commission (including its staff and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic record on electronic storage media is complete, true, and legible when retrieved.

(e)(1) Any book or other record made, kept, maintained, and preserved in compliance with §§ 240.17a–3 and 240.17a–4, rules of the Municipal Securities Rulemaking Board, or § 275.204–2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), which is substantially the same as a book or other record required to be made, kept, maintained, and preserved under this section, shall satisfy the requirements of this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section that contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provisions of paragraph (a) of this section.

(f)(1) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor registered or applying for registration pursuant to section 15B of the Act (15 U.S.C. 78*o*-4) and the rules and regulations thereunder shall keep, maintain, and preserve, at a place within the United States designated in a notice from such municipal advisor as provided in paragraph (f)(2) of this section, true, correct, complete, and current copies of books and records that such municipal advisor is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Act.

(2) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor subject to paragraph (f)(1) of this section shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept, maintained, and preserved by such municipal advisor pursuant to paragraph (f)(1) of this section are located. Each non-resident municipal advisor registered or applying for registration when this paragraph becomes effective shall file such notice within 30 calendar days after this paragraph becomes effective. Each non-resident municipal advisor that files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (f)(1) and (2) of this section, a non-resident municipal advisor need not keep, maintain, or preserve within the United States copies of the books and records referred to in paragraphs (f)(1) and (2) of this section, if:

(i) Such non-resident municipal advisor files with the Commission, at the time or within the period provided by paragraph (f)(2) of this section, a written undertaking, in a form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of the books and records which such municipal advisor is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records that may be specified in such demand. Such undertaking shall be in substantially the following form:

> The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at the Commission's principal office in Washington, DC or at any Regional Office of the Commission specified in a demand for copies of books and records made by or on behalf of the Commission, true, correct, complete, and current copies of any or all, or any part, of the books and records that the undersigned is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Securities Exchange Act of 1934. This undertaking shall be suspended during any period when the undersigned is making, keeping current, maintaining, and preserving copies of all of said books and records at a place within the United States in compliance with 17 CFR 240.15Ba1–7(f)(1) and (2). This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners, and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce the same.

and

(ii) Such non-resident municipal advisor furnishes to the Commission, at such municipal advisor's own expense 14 calendar days after written demand therefor forwarded to such municipal advisor by registered mail at such municipal advisor's last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete, and current copies of any or all books and records which such municipal advisor is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records that may be specified in said written demand. Such copies shall be furnished to the Commission at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission which may be specified in said written demand.

■ 8. Section 240.15Bc4–1 is added to read as follows:

§ 240.15Bc4–1 Persons associated with municipal advisors.

A person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal advisor, shall be subject to a

Commission order that censures or places limitations on the activities or functions of such person, or suspends for a period not exceeding twelve months or bars such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b) of the Act (15 U.S.C. 78*o*(b)(4)(A), 78*o*(b)(4)(D), 78*o*(b)(4)(E), 78*o*(b)(4)(H), 78*o*(b)(4)(G)), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) (15 U.S.C. 78*o*(b)(4)(B)) within 10 years of the commencement of the proceedings under section 15B(c)(4) (15 U.S.C. 78*o*–4(c)(4)), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4) (15 U.S.C. 78*o*(b)(4)(C)). It shall be unlawful for any person as to whom an order entered pursuant to section 15B(c)(4) of the Act (15 U.S.C. 78*o*–4(c)(4)) or section 15B(c)(5) of the Act (15 U.S.C. 78*o*–4(c)(5)) suspending or barring him from being associated with a municipal advisor is in effect willfully to become, or to be, associated with a municipal advisor without the consent of the Commission, and it shall be unlawful for any municipal advisor to permit such a person to become, or remain, a person associated with it without the consent of the Commission, if such municipal advisor knew, or, in the exercise of reasonable care should have known, of such order.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Subpart N is revised to read as follows:

Subpart N—Forms for Registration of Municipal Advisors and for Providing Information Regarding Certain Natural Persons

Sec.

249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration.
249.1300T Form MA–T, for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.
249.1310 Form MA–I, for providing information regarding natural person municipal advisors, and for amendments to such information.
249.1320 Form MA–W, for withdrawal from registration as a municipal advisor.
249.1330 Form MA–NR, for appointment of agent for service of process by non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, and non-resident natural person associated with a municipal advisor.

Subpart N—Forms for Registration of Municipal Advisors and for Providing Information Regarding Certain Natural Persons

§ 249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration.

The form shall be used for registration as a municipal advisor pursuant to section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4) and for amendments to registrations.

§ 249.1300T Form MA–T, for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.

The form shall be used for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration pursuant to Section 15B of the Exchange Act, (15 U.S.C. 78*o*-4).

§ 249.1310 Form MA–I, for providing information regarding natural person municipal advisors, and for amendments to such information.

The form shall be used for providing information regarding natural person municipal advisors, and for amendments to such information.

§ 249.1320 Form MA–W, for withdrawal from registration as a municipal advisor.

The form shall be used for filing a notice of withdrawal from registration as a municipal advisor pursuant to section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4).

§ 249.1330 Form MA–NR, for appointment of agent for service of process by non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, and non-resident natural person associated with a municipal advisor.

The form shall be used to furnish information pertaining to the appointment of agent for service of process by a non-resident municipal advisor and by registered municipal advisors to furnish the same for each of its non-resident general partner or managing agent, or non-resident natural person associated with a municipal advisor pursuant to section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4).

§ 249.1300T [Removed]

■ 11. Effective January 1, 2015, § 249.1300T is removed.

[**Note:** The following Forms will not appear in the Code of Federal Regulations.]

Instructions for the Form MA Series

Form MA: Application for Municipal Advisor Registration
Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities
Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Residents
Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor

General Instructions

Read these General Instructions carefully before filing Form MA, Form MA-I, Form MA-NR, or Form MA-W. Specific instructions for certain items in Forms MA and MA-I, and General Instructions to Form MA-NR appear after these General Instructions. Failure to follow instructions or properly complete any of the forms may result in your registration being delayed or your application rejected.

Italicized terms are defined or described in the Glossary of Terms appended at the end of these instructions.

1. Where can an applicant obtain more information on Form MA, Form MA-I, Form MA-NR, Form MA-W, and electronic filing of these forms with the *SEC*?

The *Commission* provides information about its rules with respect to *municipal advisors* and the Securities Exchange Act of 1934, as well as the submission of these forms, on its website at: http://www.sec.gov/info/municipal.shtml. A comprehensive explanation of the requirements in these forms is provided in the release issued by the *Commission* on _____, 2013, in adopting the rules relating to *municipal advisor* registration, which can be viewed at http://www.sec.gov.

2. Who should file these forms?

a. Form MA

A partnership, corporation, trust, limited liability company, limited liability partnership, sole proprietorship, or other organized entity that engages in *municipal advisory activities* (*i.e.*, a *municipal advisory firm*) must register with the *Commission* on Form MA. The same form is also used to amend a previously submitted Form MA, and to file the required *annual update* described in General Instruction 8 below.

b. Form MA-I

A *municipal advisory firm* must complete and file Form MA-I with respect to each natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf, including *employees* of the firm. Independent contractors are included in the definition of "employee" for these purposes. The same form is also used to amend a previously submitted Form MA-I. A natural person doing business as a sole proprietor

must complete and file Form MA-I in addition to Form MA and must amend each form whenever applicable, as described below.

c. Form MA-NR

Every *municipal advisory firm* that is a *non-resident* of the United States must file a completed and executed Form MA-NR together with its initial application for registration on Form MA and submit a new Form MA-NR when required by filing an amendment to Form MA with the new Form MA-NR attached. See "General Instructions to Form MA-NR," Instruction 4, below. A sole proprietor should file Form MA-NR as an attachment to his or her Form MA.

In addition, a *municipal advisory firm* must file a separately completed and executed Form MA-NR for (i) every general partner and/or *managing agent* of the firm that is a *non-resident*, and (ii) every *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf. Form MA-NR must be completed and executed by these *persons* regardless of whether the firm itself is domiciled in the United States or is a *non-resident* filing a Form MA-NR on its own behalf. Form MA-NR for general partners and/or *managing agents* is filed by the firm together with the firm's Form MA. Form MA-NR for natural persons associated with the firm and engaged in *municipal advisory activities* on the firm's behalf is filed by the firm together with the Form MA-I relating to the natural person associated with the firm.

Unlike the other forms in the Form MA series, which are completed online and signed electronically, Form MA-NR must be printed out and signed manually by both the *non-resident* and the *person* designated as agent for service of process. Each of the signatures must be separately notarized, and a scanned copy of the signed and notarized form must then be attached as a PDF file to the Form MA or Form MA-I being submitted. However, it is the obligation of the *municipal advisory firm*, not the obligation of the general partner, *managing agent*, or natural person associated with the firm, to file the executed Form MA-NR with the *Commission* as an attachment to Form MA or Form MA-I, as applicable.

Failure to attach a signed and notarized Form MA-NR, where required, for a non-resident municipal advisor or for any non-resident general partner or managing agent of a municipal advisory firm or non-resident natural person associated with the municipal advisory firm and engaged in municipal advisory activities on behalf of the firm, may delay SEC consideration of the municipal advisor's application for registration.

d. Form MA-W

A business entity (including a sole proprietorship) that is registered as a *municipal advisor* but is no longer required to be registered must file Form MA-W to withdraw its registration. Specific instructions for completing Form MA-W are included on the form. (When a natural person with respect to whom a *municipal advisory firm* filed Form MA-I

is no longer associated with the firm or no longer engaged in *municipal advisory activities* on behalf of the firm, the firm must file an amendment to the Form MA-I to indicate this change.)

3. How is Form MA organized?

The main body of Form MA asks a number of questions about the *municipal advisor*, the *municipal advisor*'s business practices, the *persons* who own and *control* the *municipal advisor*, and the *persons* who engage in *municipal advisory activities* on behalf of the *municipal advisor*. All items must be completed except where otherwise indicated.

Form MA also contains several supplemental schedules that must be completed where applicable:

- Schedule A asks for information about the *municipal advisor*'s direct owners and executive officers.
- Schedule B asks for information about the *municipal advisor*'s indirect owners.
- Schedule C is used to amend information on either Schedule A or Schedule B.
- Schedule D asks for additional information on certain items and provides space for explanations.

Form MA also contains Disclosure Reporting Pages ("DRPs"), which require further details about events and *proceedings involving* the *municipal advisor* and/or the *municipal advisor*'s *associated persons* that the applicant was required to report on the main body of the form. These include Criminal Action DRPs, Regulatory Action DRPs, and Civil Judicial Action DRPs.

Form MA also includes an "Execution Page" where the form is signed. More detail on the Execution Page is provided below.

4. How is Form MA-I organized?

The main body of Form MA-I asks a number of questions about a sole proprietor and natural person associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on the firm's behalf, including the residential history and employment history, and other businesses in which such *person* is engaged. All items must be completed except where otherwise indicated.

Form MA-I also contains DRPs that require further details of events and *proceedings involving* the sole proprietor and natural person associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on the firm's behalf that the filer was required to report on the main body of the form. These include DRPs for reportable instances of Criminal Action, Regulatory Action, *Investigations*, Terminations,

Judgments/Liens, Civil Judicial Action, and Customer Complaint/Arbitration/Civil Litigation.

5. Who must sign Form MA or MA-I?

The individual who signs the form depends upon the *municipal advisor*'s form of organization:

- For a sole proprietorship, the sole proprietor (both forms);
- For a partnership, a general partner;
- For a corporation, an authorized principal officer; or
- For all others, an authorized individual who participates in managing or directing the *municipal advisor*'s affairs.

For purposes of these electronic forms, the signature is a typed name.

6. Where does an applicant sign Form MA?

The *municipal advisor* must sign the appropriate Execution Page – either the:

- Domestic Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is a resident of the United States; or

- Non-Resident Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is not a resident of the United States. *Non-Resident municipal advisors* must also file Form MA-NR as specified in General Instruction 2.c. above.

7. Where does a *municipal advisory firm* sign Form MA-I?

The *municipal advisory firm* must sign Form MA-I in Item 7 of the form.

8. When does Form MA need to be updated or amended?

Every *municipal advisory firm* must renew Form MA each year by filing an *annual update* within 90 days after the end of its fiscal year (calendar year for sole proprietors).

In addition to the *annual update*, a *municipal advisor* must promptly file an amendment to its Form MA whenever a material event has occurred that changes the information provided in the form.

Each time a firm accesses its Form MA after its initial filing of the form, the information from the firm's most recent previous filing will appear. Only the information that has changed will need to be amended; the applicant will not need to complete the entire form again.

For purposes of Form MA, a material event will be deemed to have occurred if:

- Information provided in response to Item 1 (Identifying Information), Item 2 (Form of Organization), or Item 9 (Disclosure Information) becomes inaccurate in any way; or

- Information provided in response to Item 3 (Successions), Item 7 (Participation or Interest of Applicant or *Associated Persons* of Applicant in *Municipal Advisory Client* or *Solicitee* Transactions), or Item 8 (Owners, Officers, and Other *Control Persons*) becomes materially inaccurate.

Note: If submitting an amendment between *annual updates*, a *municipal advisor* is not required to update the responses to Item 4 (Information About Applicant's Business), Item 5 (Other Business Activities), Item 6 (Financial Industry and Other Related *Affiliations* of *Associated Persons*), or Item 10 (Small Businesses) even if the responses to those items have become inaccurate.

A *non-resident municipal advisory firm* must promptly file an amendment to Form MA to attach an updated opinion of counsel – see General Instruction 13 below – after any changes in the legal or regulatory framework or the firm's physical facilities that would impact the ability of the *municipal advisory firm*, as a matter of law, to provide the *Commission* with access to its books and records or to inspect and examine the *municipal advisory firm*.

Failure to amend or update Form MA as required by this instruction is a violation of SEC rule 15Ba1-5 and could lead to the revocation of registration. See Securities Exchange Act of 1934 section 15B(c)(2), 15 U.S.C. 78o-4(c)(2).

9. When does Form MA-I need to be updated or amended?

Form MA-I must promptly be amended whenever any information previously provided on Form MA-I becomes inaccurate.

10. How does a *municipal advisor* file a Form MA, MA-I, MA-NR, or MA-W?

A *municipal advisor* must complete and submit the relevant form, including any required attachments, electronically. Form MA is considered "filed" with the *Commission* upon submission of a completed Form MA, together with all required additional documents, including required filings of Form MA-I, to the *Commission*'s Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. See more at General Instruction 14 below.

When a *municipal advisor's* submitted Form MA is accepted by the *Commission*, the *municipal advisor* will receive an *SEC* file number with an 867- prefix. As used in the forms, the terms "MA Registration Number" and "*Municipal Advisor* Registration Number" refer to this same *SEC* file number.

Form MA-NR, which must be printed out, signed, and notarized before being filed, is submitted in PDF format as an attachment to Form MA or Form MA-I, as applicable.

11. How does an applicant start the process of filing electronically?

Each form of the Form MA series, to be filed, must be submitted electronically to EDGAR. General information about EDGAR is available at http://www.sec.gov/info/edgar.shtml, where the EDGAR Filer Manual can also be accessed. We recommend that applicants read this filer manual before they begin using the system.

If you are already a filer on the EDGAR system: You may proceed directly to the *Commission*'s primary EDGAR filing website at https://www.edgarfiling.sec.gov and navigate the links to the Form MA series. Then, you will be given a choice of which form in the series to access and complete.

If you are new to EDGAR: Before you can electronically file with the *SEC* on EDGAR, you must become an EDGAR filer with authorized access codes. To do so, log on to the following website: https://www.filermanagement.edgarfiling.sec.gov/. Through this website, you will be able to create a "Form ID" and submit it to the *SEC* for authorization.

Upon accessing the site, you will see a screen with a warning about use of government websites for unauthorized purposes, followed by some brief instructions. At the bottom of the screen, you will see a button that says "Press Here to Begin," through which you can access Form ID. Make sure that you specify *municipal advisors*, where indicated, when accessing the form. Complete the form online and submit it to the *SEC*. When the form is accepted, you will receive, via e-mail, a unique CIK (Central Index Key) number.

After receiving your CIK number, return to the same website (https://www.filermanagement.edgarfiling.sec.gov/). Use your CIK and a passphrase to create your EDGAR access codes. Once you have your access codes, you will be able to use EDGAR. Log on to the primary EDGAR filing website at https://www.edgarfiling.sec.gov/ and navigate the links to the Form MA series. Then, you will be given a choice of which form in the series to access and complete.

12. What other legal designations and representations are made in signing the Execution Page of Form MA and Form MA-I?

Form MA: By signing the Execution Page of Form MA, if you are an authorized signatory of a domestic *municipal advisory firm* (see General Instruction 5 above), you are appointing on behalf of your firm the Secretary of State or other legally designated officer of the state in which the firm maintains its *principal office and place of business* as the firm's agent to receive service of process. You are also attesting to the truth and correctness of the information provided in the form. In addition, you are declaring on behalf of the firm that the firm's books and records will be preserved and available for

inspection and that any *person* having custody of the books and records is authorized to make them available to federal regulators.

If you are signing Form MA on behalf of a *non-resident municipal advisory firm*, you must use the version of the Execution Page that is specifically required for such firms. (See General Instruction 6.) On this page, you are attesting to the truth and correctness of the information the firm is providing on the form and making the same representations as a U.S. firm regarding books and records. Additionally, the signatory is agreeing on behalf of the firm to provide, at the firm's own expense, current, correct, and complete copies of the firm's books and records to the *SEC* upon request. A *non-resident municipal advisory firm* must designate its agent for service of process, however, on a separate form, Form MA-NR.

Form MA-I: If you are an authorized signatory of a domestic *municipal advisory firm* filing Form MA-I with respect to a natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm, by signing the Execution Page of Form MA-I, you are attesting to the truth and correctness of the information provided in the form. You are also attesting that the *municipal advisory firm* has obtained and retained written consent from the natural person associated with the firm that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1 of the form.

If you are filing Form MA-I as a sole proprietor, by signing the Execution Page of Form MA-I, you are consenting that service of process may be given to you by registered or certified mail to the address you have supplied in Item 1of the form. You are also attesting to the truth and correctness of the information you have provided in the form.

13. What is the opinion of counsel that is required to be filed by a *non-resident municipal advisory firm*?

A *non-resident municipal advisory firm* must attach to the Execution Page of its Form MA an opinion of counsel that the *municipal advisor* can, as a matter of law, provide the *Commission* with access to its books and records and that the *municipal advisor* can, as a matter of law, submit to inspection and examination by the *Commission*.

14. In what circumstances must additional documents be attached to Form MA or Form MA-I?

As already noted, an applicant filing a Form MA or a *municipal advisory firm* filing Form MA-I must complete the entire form online, including, where applicable, Schedules A, B, C, and D (in the case of Form MA) and any DRPs that are required. Note that these schedules and the DRPs comprise the form itself, and are not considered attachments. The signatures that are required on Form MA and Form MA-I are executed electronically; thus no paper document must be copied and attached to evidence a signature.

In certain circumstances, however, a filing requires the attachment of a copy (or copies) of an additional document (or documents) when the online Form MA or Form MA-I is submitted. Such copies must be filed in PDF format. Filers will be prompted to attach each such document at the appropriate place in the relevant online form. Filings that require such PDF attachments include:

- Documents relating to criminal actions. The Criminal Action DRPs of Form MA and Form MA-I require that applicable court documents (*e.g.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) and other supporting documentation must be attached to, and filed electronically with, the form in conjunction with the DRPs.

- Manually-signed Form MA-NR (for *non-residents*). Form MA-NR is accessed electronically via links within Form MA and Form MA-I, and the information requested by the form may be entered online. However, the form must be printed out and signed manually – both by the *non-resident* (an authorized signatory in the case of a firm) and by the designated agent for service of process – and each of the signatures must be notarized. After the signatures and notarizations are completed, Form MA-NR must be attached in PDF format to the Form MA or Form MA-I.

- Written authorization to sign a Form MA-NR. When a Form MA-NR is signed on behalf of a *municipal advisory firm* or a natural person (whether a general partner, *managing agent*, or person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf) pursuant to a written authorization (*e.g.*, a board resolution or power of attorney), a copy of the authorization must be attached in PDF format together with the signed and notarized Form MA-NR.

- Written contractual agreements relating to a Form MA-NR. When a written contractual agreement or other written document exists that evidences (a) the designation and appointment of the U.S. agent for service of process by the *non-resident* for whom a Form MA-NR is being filed, and/or (b) the agent's acceptance of such designation and appointment, a copy of the document must also be attached in PDF format together with the signed and notarized Form MA-NR.

- Opinion of Counsel for *non-resident municipal advisory firms*. As described in General Instruction 13, a *non-resident municipal advisory firm* must attach to its Form MA an opinion of counsel that the *municipal advisor* can comply with certain requirements. A copy of the opinion must be attached in PDF file format.

15. What if the deadline for submitting an initial filing, an annual update, or amendment to a form falls on a day on which the *Commission* is not open for business?

If the deadline for submitting an initial filing, annual update, or amendment to a form occurs on a Saturday, Sunday, or holiday on which the *Commission* is not open for business, then the deadline shall be the next business day.

Section 15B(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-4(a)] authorizes the *SEC* to collect the information required by Forms MA, MA-I, MA-NR, and MA-W. The *SEC* collects the information for regulatory purposes. Filing Form MA and Form MA-I (where applicable) is mandatory for *municipal advisors* who are required to register with the *SEC*. Filing Form MA-W is mandatory for a *municipal advisor* that has a Form MA on file but is no longer required to be registered. Filing Form MA-NR is mandatory for each *non-resident municipal advisor*, *non-resident* general partner or *non-resident managing agent* of a *municipal advisor*, and *non-resident* natural person who is a person *associated* with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. The *SEC* maintains the information submitted on these forms and, unless otherwise specified, makes it publicly available. The *SEC* will not accept forms that do not include the required information.

***SEC*'s Collection of Information**

An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. The Securities Exchange Act of 1934 authorizes the *SEC* to collect the information on Form MA from applicants and on Form MA-I from *municipal advisory firms*. See 15 U.S.C. 78o-4. Filing of the form is mandatory.

The main purpose of Form MA is to enable the *SEC* to register *municipal advisors*. Every applicant for registration with the *SEC* as a *municipal advisor* must file Form MA electronically with the *SEC*. See 17 CFR 240.15Ba1-2(a). The purpose of Form MA-I is to enable the *SEC* to collect information about natural persons associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on behalf of the firm.

When an applicant for registration successfully transmits a Form MA and/or Form MA-I to the *SEC*'s electronic systems, the *SEC* does not make a finding that the form has been completed or submitted correctly. Form MA must be updated annually by every *municipal advisory firm*, no later than 90 days after the end of its fiscal year (calendar year for sole proprietors). Form MA also must be amended promptly during the year to reflect changes as described in these instructions. Form MA-I must be filed by every *municipal advisory firm* with respect to each natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm. Form MA-I also must be amended promptly whenever any information previously provided becomes inaccurate. The *SEC* maintains the information on the forms and, unless otherwise specified, makes it publicly available through the *SEC* website.

Anyone may send the *SEC* comments on the accuracy of the burden estimate on page 1 of the forms, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. 3507.

The information contained in the forms is part of a system of records subject to the Privacy Act of 1974, as amended. The *SEC* has published in the Federal Register the Privacy Act System of Records Notice for these records.

Intentional misstatements or omissions of fact constitute federal criminal violations.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

Specific Instructions for Certain Items in Form MA

These instructions provide further detail and explain how to complete certain items in Form MA.

1. Item 3: Successions

If the applicant (i) is not currently registered as a *municipal advisor* and has taken over the business of a registered *municipal advisor* or (ii) was registered as a *municipal advisor* but has changed its structure or legal status (*e.g.*, form of organization, composition of a partnership, or date or state of incorporation), a new organization has been created that has its own registration obligations under the Exchange Act. The applicant in these situations must file in accordance with the instructions below. In addition, the applicant may rely on special registration provisions in the *SEC*'s rules for "successors" to registered *municipal advisors* that are designed to ease the transition to the successor *municipal advisor*'s registration.

In situation (i), follow the instructions below under: "Succession by Application." In situation (ii), follow the instructions below under "Succession by Amendment."

a. Succession by Application. If the applicant is not registered with the *SEC* as a *municipal advisor*, and is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered *municipal advisor*, file a new initial application for registration on Form MA. The applicant will receive a new *SEC* file number. The applicant must file the new application within 30 calendar days after the succession. On the application, make sure to check "Yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D.

Until the *SEC* declares the new registration effective, the applicant may rely on the registration of the acquired *municipal advisor*, but only if the acquired *municipal advisor* is no longer engaged in *municipal advisory activities*. Once the new registration is effective, a Form MA-W must be filed with the *SEC* to withdraw the registration of the acquired *municipal advisor*.

b. Succession by Amendment. If a new *municipal advisor* is formed solely as a result of a change in form of organization, composition of a partnership, or date or state of incorporation of an existing registered *municipal advisor*, and there has been no practical change in *control* or management, the new *municipal advisor* may file an amendment to the Form MA of the predecessor *municipal advisor* to reflect these changes rather than file a new, initial application. The new *municipal advisor* will keep the same *SEC* file number, and no Form MA-W should be filed. On the amendment, make sure to check "Yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D. The amendment must be submitted within 30 calendar days after the change or reorganization.

2. Item 4: Information About Applicant's Business

Guidance for Newly-Formed *Municipal Advisors*: Several questions in Item 4 that ask about *municipal advisory activities* assume that the *municipal advisor* has been in existence for some time. For newly-formed *municipal advisors*, responses to these questions should reflect the applicant's current *municipal advisory activities* (*i.e.*, activities at the time of filing of the Form MA), with the following exceptions:

- Applicant should base responses to Item 4-I, J, and K on the types of compensation the applicant expects to accept; and

- Applicant should base responses to Item 4-L on the types of *municipal advisory activities* in which the applicant expects to engage during the next year.

3. Additional Information

Complete the final section of Schedule D – "Miscellaneous" – if any response to an item in Form MA requires further explanation or if the applicant wishes to provide additional information.

Specific Instructions for Certain Items in Form MA-I

These instructions provide further detail and explain how to complete certain items in Form MA-I.

1. Item 1: Identifying Information

A. The Individual

***CRD* Number.** Some individuals may have an assigned number, known as a CRD Number, in the *CRD* system for the registration of broker-dealers and broker-dealer representatives or in the *IARD* system for *investment advisers* and investment adviser representatives. You are not required to provide an individual's *CRD* number if the individual does not have one.

Social Security Number. A social security number is needed for regulatory purposes. However, the version of completed Form MA-I that will be available for viewing by the public will not show a social security number.

B. *Municipal Advisory Firms* Where the Individual Is Employed

Office. The phrase "office from which the individual is or will be supervised" in subsection (2) of Item 1-B requires you to provide the information requested even if the individual does not work at that location.

2. Item 2: Other Names

This item requires you to enter – besides the full legal name you provided in Item 1 – any other name that the individual has used or is using, or by which the individual is known

or has been known, since the age of 18. Be certain to include, for example, nicknames, aliases, and names used before or after marriage.

3. Item 3: Residential History

You must provide all the addresses at which the individual has resided for the past 5 years, leaving no gaps greater than 3 months between addresses. Post office boxes are not acceptable. This information is needed for regulatory purposes. However, the version of completed Form MA-I that will be available for viewing by the public will not show the private residential addresses that you enter.

4. Item 4: Employment History

You must provide the individual's entire employment history for the past 10 years, leaving no gap greater than 3 months between entries. All entries must include beginning and end dates of employment. Account for full-time and part-time employment, self-employment, military service, and homemaking. Unemployment, full-time education, extended travel, and other, similar statuses must also be included, and entered on the line provided for "Name of *Municipal Advisor* or Company."

5. Item 5: Other Business

Provide information regarding any other business in which the individual is currently engaged, whether as a proprietor, partner, officer, director, *employee* (including independent contractor), trustee, agent, or otherwise. If you do not know exactly the number of hours the individual devotes to this business, give a reasonable estimate. If the number of hours per week or month varies, provide an average.

6. Item 6: Disclosure Questions

Note that an affirmative answer to certain disclosure questions may make an individual subject to statutory disqualification as defined in Section 3(a)(39) and Section 15B(c) of the Securities Exchange Act of 1934.

7. Item 7: Signature

Signature is effected by typing a name in the designated signature field. By typing a name in this field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature. Submit the signed form electronically with the *Commission*. Note that if the individual is a *non-resident*, you must attach a manually-signed Form MA-NR to the form.

General Instructions to Form MA-NR

1. When must a Form MA-NR be filed?

Form MA-NR must be filed for each *non-resident municipal advisory firm* and each *non-resident* general partner and/or *managing agent* of a *municipal advisor* at the time of the *municipal advisory firm*'s initial application for registration on Form MA as an attachment to the form. In addition, a *municipal advisory firm* must file Form MA-NR as an attachment to each Form MA-I filed by the firm for a *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf when the firm initially files the Form MA-I.

2. Must more than one Form MA-NR be filed per *municipal advisory firm*?

In certain circumstances, yes. When you are filing a Form MA on behalf of a *municipal advisory firm*, and one or more general partners and/or *managing agents* of the firm is a *non-resident*, you must attach a separate Form MA-NR designating an agent for U.S. service of process for each such person, signed by that person and the designated agent. This requirement applies even when the firm itself is a *non-resident* and you are attaching a Form MA-NR on the firm's own behalf. You must attach a Form MA-NR for each such other person even if the person has previously designated an agent for service of process on a Form MA-NR filed by another *municipal advisor*. If you are filing Form MA-I, you must attach a Form MA-NR for every *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm.

3. Must a Form MA-NR be filed at any time other than a *municipal advisor*'s initial registration?

Yes. An *SEC*-registered *municipal advisory firm* that becomes a *non-resident* after the *municipal advisor firm*'s initial application has been submitted must file a Form MA-NR within 30 days of becoming a *non-resident*. The same applies when a general partner or *managing agent* of a *municipal advisory firm* becomes a *non-resident*. A *municipal advisory firm* must also file Form MA-NR within 30 days of the date that a *non-resident* becomes a general partner or *managing agent* of a *municipal advisory firm* if this occurs after the firm initially registers on Form MA. In such cases, the *municipal advisor* must file an amendment to Form MA, with the new Form MA-NR attached.

A *municipal advisory firm* must file a Form MA-NR together with Form MA-I if, after the firm's initial registration, a *non-resident* natural person becomes associated with the firm and engages in *municipal advisory activities* on the firm's behalf. In addition, a *municipal advisory firm* must file a Form MA-NR if a natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm becomes a *non-resident* after the firm has filed a Form MA-I relating to that individual. The firm must file the Form MA-NR within 30 days of such individual becoming a *non-resident*.

Note: As discussed elsewhere in these instructions, a *non-resident municipal advisory firm* that is filing a Form MA must also comply with two further requirements. In addition to completing Form MA-NR, the firm must (a) complete the special execution page of Form MA required for *non-residents*, which includes an undertaking regarding books and records (see General Instruction 12); and (b) attach to Form MA an opinion of

counsel that the *municipal advisory firm*, as a matter of law, can provide the *Commission* with access to its books and records and can submit to inspection and examination by the *Commission* (see General Instruction 13).

4. When must a new Form MA-NR be filed?

A new Form MA-NR must be filed promptly if a previously-filed Form MA-NR becomes invalid or the information in it becomes inaccurate. (This is accomplished by submitting an amendment to Form MA with the new MA-NR attached. No other changes to any information in Form MA need be made in the amendment if not otherwise required.) This includes any change to the name or address of the *non-resident municipal advisory firm*, general partner, *managing agent*, or natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf, as well as any change to the name or address of the agent for service of process of the *municipal advisory firm*, general partner, *managing agent*, or natural person associated with the firm. Each *non-resident municipal advisory firm*, general partner, *managing agent*, and natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf must promptly appoint a successor agent for service of process and the *municipal advisor* must file a new Form MA-NR if the *non-resident municipal advisor*, general partner, *managing agent*, or natural person associated with the firm discharges its identified agent for service of process or if its agent for service of process becomes unwilling or unable to accept service on behalf of the *non-resident municipal advisor*, general partner, *managing agent*, or natural person associated with the firm.

GLOSSARY OF TERMS

1. **Affiliate, affiliated, affiliation:** An affiliate of a *person* is (i) all the *person*'s officers, partners, or directors (or any *person* performing similar functions); (ii) all *persons* directly or indirectly *controlling* or *controlled* by the *person*; and (iii) all of the *person*'s current *employees* (other than *employees* performing only clerical, administrative, support or similar functions).

2. **Annual Update:** Within 90 calendar days after a *municipal advisory firm*'s fiscal year end (calendar year for sole proprietors), the *municipal advisory firm* must file an "*annual update*," which is an amendment to the *municipal advisor firm*'s Form MA that updates the responses to any item for which the information is no longer accurate.

3. **Associated Person** or **Associated Person of a Municipal Advisor:** Any partner, officer, director, or branch manager of a *municipal advisor* (or any *person* occupying a similar status or performing similar functions); any other *employee* of such *municipal advisor* who is engaged in the management, direction, supervision, or performance of any *municipal advisory activities* relating to the provision of advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities (other than *employees* who are performing solely clerical, administrative, support or similar functions); and any *person* directly or indirectly *controlling*, *controlled* by, or under common *control* with such *municipal advisor*.

4. **Charge, charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal criminal charge).

5. **CFTC:** Commodity Futures Trading Commission.

6. **Chief Compliance Officer:** The officer in charge of the *municipal advisor*'s compliance program.

7. **Client** or **Municipal Advisory Client:** Any of the *municipal advisor*'s clients. This term includes clients from which the *municipal advisor* receives no compensation. If the *municipal advisor* also engages in activities that are not *municipal advisory activities*, this term does not include clients on behalf of whom those activities are conducted.

8. **Contingent Fees:** Any fee or payment for services provided where the fee is payable upon a condition to be satisfied.

9. **Control:** The power, directly or indirectly, to direct the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise.

    - Each of the *municipal advisor*'s officers, partners, or directors exercising executive responsibility (or *persons* having similar status or functions) is presumed to control the *municipal advisor*.

- A *person* is presumed to control a corporation if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

- A *person* is presumed to control a partnership if the *person* has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

- A *person* is presumed to control a limited liability company ("LLC") if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.

- A *person* is presumed to control a trust if the *person* is a trustee or *managing agent* of the trust.

10. **CRD:** The Web Central Registration Depository ("CRD") system operated by *FINRA* for the registration of broker-dealers and broker-dealer representatives.

11. **Discretionary Authority:** The *municipal advisor* has discretionary authority or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for a *client*. The *municipal advisor* also has discretionary authority if it has the authority to decide which *investment advisers* to retain on behalf of a *client*.

12. **Employee:** This term includes an independent contractor who engages in *municipal advisory activities* on the *municipal advisor*'s behalf.

13. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining *order*.

14. **Federal Banking Agency:** This term includes any Federal banking agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).
15. **Federal Regulatory Agency:** This term includes any *Federal banking agency* and the National Credit Union Administration.

16. **Felony:** For jurisdictions that do not differentiate between a felony and a *misdemeanor*, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. This term also includes a general court martial.

17. **FINRA:** Financial Industry Regulatory Authority.

18. **Foreign Financial Regulatory Authority:** This term includes (i) a foreign securities regulatory authority; (ii) another governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *municipal advisor-related* activities; and (iii) a foreign membership organization, a function of which is to regulate the participation of its members in the *municipal advisor-related activities*.

19. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

20. **Guaranteed Investment Contract:** This term includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract; provided, however, that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.

21. **IARD:** The Investment Adviser Registration Depository ("IARD") system operated by *FINRA* for the registration of *investment advisers* and investment adviser representatives.

22. **Investigation:** This term includes: (i) Grand jury investigations; (ii) *SEC* investigations after the "Wells" notice has been given; (iii) *FINRA* investigations after the "Wells" notice has been given or after a "*person* associated with a member," as such term is defined by The *FINRA* By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action; (iv) *NYSE Regulation* investigations after the "Wells" notice has been given or after a *person* over whom *NYSE Regulation* has jurisdiction, as defined in the applicable rules, has been advised by *NYSE Regulation* that it intends to recommend formal disciplinary action; (v) formal investigations by other *SROs*; or (vi) actions or procedures designated as investigations by other federal, state, or local jurisdictions. The term investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

23. **Investment Adviser:** As defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

24. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an *investment adviser*, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association).

25. **Investment Strategies:** The term includes plans or programs for the investment of proceeds of municipal securities that are not *municipal derivatives* or *guaranteed investment contracts*, and the recommendation of and brokerage of municipal escrow investments.

26. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in an act.

27. **Managing Agent:** Any *person*, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

28. **Minor Rule Violation:** A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the *SEC*. A rule violation may be

designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned *person* does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes.)

29. **Misdemeanor:** For jurisdictions that do not differentiate between a *felony* and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. This term also includes a special court martial.

30. **MSRB** or **Board:** Municipal Securities Rulemaking Board.

31. **Municipal Advisor:** Absent the availability of an exclusion under 17 CFR 240.15Ba1-1(d)(2) or an exemption under 17 CFR 240.15Ba1-1(d)(3), this term means a *person* (who is not a *municipal entity* or an *employee* of a *municipal entity*) that (i) provides advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a *solicitation of a municipal entity or obligated person*.

32. **Municipal Advisor-Related:** Conduct that pertains to *municipal advisory activities* (including, but not limited to, acting as, or being an *associated person* of, a *municipal advisor*).

33. **Municipal Advisory Activities:** This term means the following activities that, absent the availability of an exclusion under 17 CFR 240.15Ba1-1(d)(2) or an exemption under 17 CFR 240.15Ba1-1(d)(3) to the definition of *municipal advisor*, would cause a person to be a *municipal advisor*: (i) providing advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) *solicitation of a municipal entity or obligated person* acting in such capacity.

34. **Municipal Advisory Firm:** Any organized entity that is a *municipal advisor*, including sole proprietors.

35. **Municipal Derivatives:** Any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68), including any rules and regulations thereunder) to which (i) a *municipal entity* is a counterparty; or (ii) an *obligated person*, acting in such capacity, is a counterparty.

36. **Municipal Entity:** Any State, political subdivision of a State, or municipal corporate instrumentality of a State, including (i) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (ii) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (iii) any other issuer of municipal securities.

37. **Municipal Financial Products:** *Municipal derivatives*, *guaranteed investment contracts*, and *investment strategies*.

38. **Non-Resident:** (i) In the case of an individual, one who resides in or has his *principal office and place of business* in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or that has its *principal office and place of business* in any place not subject to the jurisdiction of the United States; or (iii) in the case of a partnership or other unincorporated organization or association, one having its *principal office and place of business* in any place not subject to the jurisdiction of the United States.

39. **NYSE Regulation:** NYSE Regulation, Inc.

40. **Obligated Persons:** Any *person*, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such *person*, committed by contract or other arrangement to support payment of all or part of the obligations of the municipal securities to be sold in an offering of municipal securities. This term does not include: (i) Providers of municipal bond insurance, letters of credit, or other liquidity facilities; (ii) a *person* whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (iii) the federal government.

41. **Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an *order*, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity, or other restrictions.

42. **Person:** An individual, sole proprietorship, or a firm. A firm includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), or other organization.

43. **Principal Place of Business** or **Principal Office and Place of Business:** The executive office of the *municipal advisor* from which the officers, partners, or managers of the *municipal advisor* direct, *control*, and coordinate the activities of the *municipal advisor*.

44. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal *charge*); or a *misdemeanor* criminal information (or equivalent formal *charge*). This term does not include other civil litigation, *investigations*, arrests or similar *charges* effected in the absence of a formal criminal indictment or information (or equivalent formal *charge*).

45. **Resign:** relates to separation from employment with any employer, is not restricted to *municipal advisor-related* or *investment-related* employments, and would include any termination in which allegations are a proximate cause of separation, even if the individual initiated the separation.

46. **Self-Regulatory Organization** or **SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago

Board of Trade ("CBOT"), *FINRA*, *MSRB*, and *NYSE Regulation* are self-regulatory organizations.

47. **SEC** or **Commission:** Securities and Exchange Commission.

48. **Solicitation** or **Solicitation of a Municipal Entity or Obligated Person:** A direct or indirect communication with a *municipal entity* or *obligated person* made by a *person*, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, *municipal advisor*, or *investment adviser* that does not *control*, is not *controlled* by, or is not under common *control* with the *person* undertaking such solicitation for the purpose of obtaining or retaining an engagement by a *municipal entity* or *obligated person* of a broker, dealer, municipal securities dealer, or *municipal advisor* for or in connection with *municipal financial products*, the issuance of municipal securities, or of an *investment adviser* to provide investment advisory services to or on behalf of a *municipal entity* or *obligated person*. The term does not include advertising by a broker, dealer, municipal securities dealer, *municipal advisor*, or *investment adviser*, or solicitation of an *obligated person*, if such *obligated person* is not acting in the capacity of an *obligated person* or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to *municipal financial products*.

49. **Solicitee:** A *person* whom another *person* has *solicited* or intends to *solicit*.

50. **State Regulatory Agency:** This term includes any State securities commission (or any agency or officer performing like functions); State authority that supervises or examines banks, savings associations, or credit unions; or State insurance commission (or any agency or office performing like functions to the above).

51. **Supervised Person:** Any of the *municipal advisor*'s officers, partners, directors (or other *persons* occupying a similar status or performing similar functions), or *employees*, or any other *person* who engages in *municipal advisory activities* on the *municipal advisor*'s behalf and is subject to the *municipal advisor*'s supervision or *control*.

FORM MA

APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION
ANNUAL UPDATE OF MUNICIPAL ADVISOR REGISTRATION
AMENDMENT OF A PRIOR APPLICATION FOR REGISTRATION

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "Specific Instructions for Certain Items in Form MA," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

PART I

This form must be completed by *municipal advisors* that are organized entities, including sole proprietors (referred to herein as "*municipal advisory firms*" or "firms," unless the context indicates otherwise).

WARNING: Complete this form truthfully. False statements or omissions may result in denial of application, revocation of registration, administrative or civil action, or criminal prosecution. Form MA must be amended promptly upon the occurrence of certain material events, and updated at least annually, within 90 days of the end of the *municipal advisor*'s fiscal year, or, if a sole proprietor, the *municipal advisor*'s calendar year. See General Instruction 8.

Type of Filing: This is an (check the appropriate box):

☐ Initial application to register as a *municipal advisor* with the *SEC*.

Execution Page: After completing this form, you must complete the Execution Page.

Supporting Documentation: If you are required to make reportable disclosures in the Disclosure Reporting Pages, you must attach the supporting documentation.

Non-Resident Applicants: If you are a *non-resident* of the United States, certain additional requirements must be met at the time of filing your application, ***or processing of your application may be delayed***. See General Instruction 2.c. and subsection "General Instructions to Form MA-NR" of the General Instructions.

☐ *Annual update* of *municipal advisor*'s Form MA, for fiscal year ended _____, or, if a sole proprietor, for calendar year ended December 31, _____.

Execution Page: After completing this form, you must complete the Execution Page.

Changes: Are there changes in this *annual update* to information provided in the *municipal advisor*'s most recent Form MA, other than the updated Execution Page? ☐Yes ☐No

☐ Amendment (other than *annual update*) to any part of the *municipal advisor*'s most recent Form MA.

Execution Page: After completing this form, you must complete the Execution Page.

Item 1 Identifying Information

A. Full Legal Name of the Firm:

(1) Firm Name: _____
Organization *CRD* No., if any: _____

(2) Sole Proprietor: If the applicant is a sole proprietor, check the box below, and provide full last name, first name, middle name, and suffix, if any:

☐ Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Individual CRD No., if any: _____

(3) Name Change: If full legal name has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous full legal name.
☐ _____

B. Doing-Business-As (DBA) Name:

(1) If the name under which *municipal advisor-related* business is primarily conducted is different from Item 1-A., check here and provide the DBA name.
☐ _____

(2) Previous DBA Name:

If name under which *municipal advisor-related* business is primarily conducted has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous name under which the *municipal advisor-related* business was primarily conducted.
☐ _____

(3) Additional Names:

(a) Is *municipal advisor-related* business conducted under any additional names? ☐Yes ☐No
(b) If "Yes," list any additional names on Section 1-B of Schedule D.

C. (1) IRS Employer Identification Number: _____

(2) If the applicant (such as a sole proprietor) has no employer identification number, provide the applicant's Social Security Number:

_____

The Social Security Number will not be included in publicly available versions of this registration form.

D. Registrations

(1) Form MA-T Registration: Was the applicant previously registered on Form MA-T as a *municipal advisor*?

☐ Yes If "Yes," enter the *SEC* File No. MA-T: _____
☐ No

(2) Other Registrations: Is the applicant registered as or with any of the following?

Check all that apply. For each registration box you check, provide the requested file number(s). *An applicant firm should NOT provide the organization CRD number, or other specified number, of any of its organizational affiliates, or the individual CRD number of its officers, employees, or natural person affiliates.*

☐ *Municipal Advisor* *SEC* File No.: _____
☐ Municipal Securities Dealer *SEC* File No.: _____
☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
☐ *Investment Adviser*
  ☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
  ☐ Exempt Reporting Adviser *SEC* File No.: _____ Organization *CRD* No.: _____

Investment Adviser Registration in a US State or Other US Jurisdiction: If applicant is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below and enter the organization *CRD* Number. In the table below, check the box for each US state or jurisdiction in which the applicant is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____

Check All That Apply	US State or Jurisdiction	Code		Check All That Apply	US State or Jurisdiction	Code
	Alabama	AL			Montana	MT
	Alaska	AK			Nebraska	NE
	Arizona	AZ			Nevada	NV
	Arkansas	AR			New Hampshire	NH
	California	CA			New Jersey	NJ
	Colorado	CO			New Mexico	NM
	Connecticut	CT			New York	NY
	Delaware	DE			North Carolina	NC
	District of Columbia	DC			North Dakota	ND
	Florida	FL			Ohio	OH
	Georgia	GA			Oklahoma	OK
	Guam	GU			Oregon	OR
	Hawaii	HI			Pennsylvania	PA
	Idaho	ID			Puerto Rico	PR
	Illinois	IL			Rhode Island	RI
	Indiana	IN			South Carolina	SC
	Iowa	IA			South Dakota	SD

	Kansas	**KS**			**Tennessee**	**TN**
	Kentucky	**KY**			**Texas**	**TX**
	Louisiana	**LA**			**Utah**	**UT**
	Maine	**ME**			**Vermont**	**VT**
	Maryland	**MD**			**Virgin Islands**	**VI**
	Massachusetts	**MA**			**Virginia**	**VA**
	Michigan	**MI**			**Washington**	**WA**
	Minnesota	**MN**			**West Virginia**	**WV**
	Mississippi	**MS**			**Wisconsin**	**WI**
	Missouri	**MO**				

☐ Government Securities Broker-Dealer
SEC File No.: _____ Bank Identifier: _____

☐ Other *SEC* Registration (Specify): _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____

☐ Another federal or state regulator (Specify): _____
Registration No. (if any): _____

(3) Additional Registrations

(a) Does the applicant have any additional registrations that are not listed in subsection (2)? ☐Yes ☐No

(b) If "Yes," list such additional registrations on **Section 1-D of Schedule D**.

E. ***Principal Office and Place of Business***

(1) Address: (*Do not use a P.O. Box.*)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number)
Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

(2) Additional Offices:

(a) Is *municipal advisor-related* business conducted at any office(s) other than applicant's principal office and place of business listed above? ☐Yes ☐No

(b) If "Yes," list the five largest such additional offices on **Section 1-E of Schedule D**.

(3) Mailing Address:

Complete this item only if mailing address is different from principal office and place of business address in Item 1-E.(1):

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

F. Website

(1) Provide the address of the applicant's principal website (if any):
(specify) _____

(2) Does the applicant have additional websites? ☐Yes ☐No

(3) If "Yes," how many?
(specify) ____

If "Yes," list all additional website addresses on **Section 1-F of Schedule D**.

G. If the applicant has a *Chief Compliance Officer*, provide his or her name and contact information:

Please note that the applicant must provide name and contact information for either a *Chief Compliance Officer* in this Question 1-G., or another contact person in Question 1-H below. Both may be provided.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

_____
(other title(s), if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

_____@_____
(E-mail address of *Chief Compliance Officer*)

H. Contact Person: If a *person* other than the *Chief Compliance Officer* is authorized to receive information and respond to questions about this form, provide the name and contact information for that *person*:

Please note that the applicant must provide name and contact information for either a *Chief Compliance Officer* in Question 1-G. above, or another contact person in this Question 1-H. Both may be provided.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

_____
(other title(s), if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
(area code) (telephone number) (area code) (fax number)
For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.
_____@_____
(E-mail address of Contact Person)

I. Location of Books and Records

(1) Does the applicant maintain, or intend to maintain, some or all of the books and records required to be kept under *MSRB* rules and *SEC* rules at a location other than the principal office and place of business address listed in Item 1-E? ☐Yes ☐No

(2) If "Yes," list all such locations in Section 1-I of Schedule D.

J. *Foreign Financial Regulatory Authorities*

(1) Is the applicant registered with a *foreign financial regulatory authority*? Answer "no" even if *affiliated* with a business that is registered with a *foreign financial regulatory authority*. ☐Yes ☐No

(2) If "Yes," list all such registrations in **Section 1-J of Schedule D.**

K. Business *Affiliates* of the Applicant

(1) Is the applicant *affiliated* with any other domestic or foreign business entity? ☐Yes ☐No

(2) If "Yes," provide the names of all such *affiliates* and any applicable registrations in **Section 1-K of Schedule D.**

Item 2 Form of Organization

A. Applicant's Form of Organization

If this is not an initial application, and the applicant's form of organization has changed since the applicant's most recent Form MA, see Instruction 8 of the General Instructions.

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP)
☐ Other (specify):_____

B. Month of Applicant's Annual Fiscal Year End _____

(*Sole proprietors are not required to complete this subpart B.*)

C. State, Other US Jurisdiction, or Foreign Jurisdiction Under Which Applicant is Organized

If the applicant is a corporation or limited liability company, indicate the state or jurisdiction where the applicant is incorporated. If the applicant is a partnership, indicate the name of the state or jurisdiction under the laws of which the partnership was formed. If applicant is a sole proprietor, indicate the state or jurisdiction in which applicant resides.

If this is not an initial application for registration, and the applicant's information has changed since the applicant's most recent Form MA, see General Instruction 8.

Enter the full name of the state or other US jurisdiction, or the full name, in English, of the foreign jurisdiction: _____

D. Date of Organization: _____

E. Public Reporting Company

(1) Is the applicant a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934? ☐Yes ☐No

(2) If "Yes," provide applicant's EDGAR CIK number: _____

Item 3 Successions

A. Is the applicant, at the time of this filing, succeeding to the business of a registered *municipal advisor*?

If this succession was previously reported on Form MA, do not report the succession again. Instead, check "No." See Instruction 1 of the Specific Instructions for Certain Items in Form MA included in the General Instructions.

☐ Yes If "Yes," enter the Date of Succession: _____
(mm/dd/yyyy)

☐ No

B. If "Yes" in Item 3-A., complete Section 3 of Schedule D.

Item 4 Information About Applicant's Business

Note: Instruction 2 of the Specific Instructions for Certain Items in Form MA included in the General Instructions provides guidance for newly formed municipal advisors completing this Item 4.

Employees

If the applicant is organized as a sole proprietorship, include the sole proprietor as an employee.

A. Number of *Employees*: Approximate number of *employees* of applicant. Include full- and part-time *employees,* but do not include clerical, administrative, or support workers (or workers performing similar functions): _____ (If none, enter a zero.)

B. *Municipal Advisory Activities*: Approximately how many of these *employees* engage in *municipal advisory activities*? (*Include such employees even if they perform other functions in addition to engaging in municipal advisory activities*.) _____ (If none, enter a zero.)

C. Registered Representatives

(1) Approximately how many of the *employees* who are included in the response to part B are registered representatives of a broker-dealer? _____ (If none, enter a zero.)

(2) Approximately how many are investment adviser representatives? _____ (If none, enter a zero.)

D. Firms and Other *Persons* that *Solicit* on Behalf of the Applicant

Approximately how many firms and other *persons* who are not employed by the applicant and who are not otherwise *associated persons* of the applicant *solicit clients* on the applicant's behalf? (*Count a firm only once; do not count each of the firm's employees that solicits on the applicant's behalf.*)

_____ (If none, enter a zero.)

Please list the names of these firms and other *persons* on **Section 4-D of Schedule D.**

E. *Employees* Also Acting as *Affiliates* of the Applicant

(1) Does the applicant have any *employees* that also do business independently on the applicant's behalf as *affiliates* of the applicant? ☐Yes ☐No

(2) If "Yes," provide the total number of such *employees*: _____

(3) List the names of these *employees* on **Section 4-E of Schedule D**.

Clients

F. Types of *Clients*: Approximately how many *clients* did the applicant serve in the context of its *municipal advisory activities* during its most-recently completed fiscal year? _____ (If none, enter a zero and check box 5 below.)

The applicant has the following types of *clients*:

Check all that apply.

☐ (1) *Municipal entities*
☐ (2) Non-profit organizations (*e.g.*, 501(c)(3) organizations) who are *obligated persons*
☐ (3) Corporations or other businesses not listed above who are *obligated persons*
☐ (4) Other: _____
☐ (5) Not applicable - applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities*.

G. *Solicitations* of *Municipal Entities* and *Obligated Persons*

Approximately how many *municipal entities* and *obligated persons* were *solicited* by the applicant on behalf of a third-party during its most-recently completed fiscal year? (*If the applicant solicits its clients in addition to serving these clients in the context of its municipal advisory activities, the clients should be counted in the response to this Part G even if counted in Part F.*)

☐ (1) *Municipal Entities*: _____ (If none, enter a zero.)
☐ (2) *Obligated Persons*: _____ (If none, enter a zero.)
☐ (3) Total: _____

H. Types of *Persons Solicited*

The applicant *solicits* the following types of *persons*:

Check all that apply.

☐ (1) Public pension funds
☐ (2) 529 Plans
☐ (3) Local government investment pools
☐ (4) State government investment pools
☐ (5) Hospitals
☐ (6) Colleges
☐ (7) Other: _____
☐ (8) Not applicable – applicant only serves *clients*; does not engage in *solicitation* in the context of its *municipal advisory activities*.

Compensation Arrangements

I. Applicant is compensated for its advice to or on behalf of *municipal entities* or *obligated persons* with respect to *municipal financial products* or the issuance of municipal securities by:

Check all that apply.

☐ (1) Hourly charges
☐ (2) Fixed fees (not contingent on the issuance of municipal securities)
☐ (3) *Contingent fees*
☐ (4) Subscription fees (for a newsletter or other publications)
☐ (5) Other (specify): _____
☐ (6) Not applicable – applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities*.

J. Applicant is compensated for its *solicitation* activities by:

Check all that apply.

☐ (1) Hourly charges
☐ (2) Fixed fees (not contingent on the success of *solicitations*)
☐ (3) *Contingent fees*
☐ (4) Subscription fees (for a newsletter or other publications)
☐ (5) Other (specify): _____
☐ (6) Not applicable; applicant only serves *clients*; does not engage in *solicitation* as part of its *municipal advisory activities*.

K. Does the applicant receive compensation, in the context of its *municipal advisory activities*, from anyone other than *clients*? ☐Yes ☐No

If "Yes," please explain:

_____
_____
_____

Applicant's Business Relating to Municipal Securities

L. Applicant is engaged in the following types of activities:

Check all that apply.

☐ (1) Advice concerning the issuance of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters, such as the preparation of feasibility studies, tax rate studies, appraisals and similar documents, related to an offering of municipal securities)
☐ (2) Advice concerning the investment of the proceeds of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments)
☐ (3) Advice concerning municipal escrow investments (including, without limitation, advice concerning their structure, timing, terms and other similar matters)

☐ (4) Advice concerning the investment of other funds of a *municipal entity* (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments)

☐ (5) Advice concerning *guaranteed investment contracts* (including, without limitation, advice concerning their structure, timing, terms and other similar matters)

☐ (6) Advice concerning the use of *municipal derivatives* (including, without limitation, advice concerning their structure, timing, terms and other similar matters)

☐ (7) *Solicitation* of investment advisory business from a *municipal entity* or *obligated person* (including, without limitation, municipal pension plans) on behalf of an unaffiliated broker, dealer, *municipal advisor* or *investment adviser* (*e.g.*, third party marketers, placement agents, solicitors, and finders)

☐ (8) *Solicitation* of business other than investment advisory business from a *municipal entity* or *obligated person* on behalf of an unaffiliated *person* or firm (*e.g.*, third party marketers, placement agents, solicitors, and finders)

☐ (9) Advice or recommendations concerning the selection of other *municipal advisors* or underwriters with respect to *municipal financial products* or the issuance of municipal securities

☐ (10) Brokerage of municipal escrow investments

☐ (11) Other (specify):_____

Item 5 Other Business Activities

A. Applicant is actively engaged in business in or as a:

Other Business		**(i) Is Applicant Actively Engaged?** Check all that apply.	**(ii) Is this Applicant's Primary Business(es)?** Check all that apply.	**(iii) Jurisdiction(s) where licensed:**
1.	Broker-dealer, municipal securities dealer or government securities broker or dealer	☐	☐	
2.	Registered representative of a broker-dealer	☐	☐	
3.	Commodity pool operator (whether registered or exempt from registration)	☐	☐	
4.	Commodity trading advisor (whether registered or exempt from registration)	☐	☐	
5.	Futures commission merchant	☐	☐	
6.	Major swap participant	☐	☐	
7.	Major security-based swap participant	☐	☐	
8.	Swap dealer	☐	☐	
9.	Security-based swap dealer	☐	☐	
10.	Trust company	☐	☐	
11.	Real estate broker, dealer, or agent	☐	☐	
12.	Insurance company, broker, or agent	☐	☐	
13.	Banking or thrift institution (including a separately identifiable department or division of a bank)	☐	☐	
14.	*Investment adviser* (including financial planners)	☐	☐	

15.	Attorney or law firm	☐	☐	_____
16.	Accountant or accounting firm	☐	☐	_____
17.	Engineer or engineering firm	☐	☐	
18.	Other financial product advisor (specify): _____	☐	☐	

B. Other Business:

(1) Is applicant actively engaged in any other business not listed in Part A of this Item (other than engaging in *municipal advisory activities*)? ☐Yes ☐No

(2) If "Yes" to Part B-1., is this other business applicant's primary business? ☐Yes ☐No

(3) If "Yes" to Part B-2., describe the other business on **Section 5-B of Schedule D**.

Item 6 Financial Industry and Other Activities of *Associated Persons*

A. Applicant has one or more *associated persons* that is a:

Check all that apply.

"Associated Person" herein refers to a person who is an associated person of a municipal advisor. Note that "associated person" includes employees and persons with control over the municipal advisor that do not themselves engage in municipal advisory activities, but does not include employees that are performing solely clerical, administrative, support or other similar functions. Note also that more than one box may be applicable to any such associated person. For example, if an associated person is both a swap dealer and security-based swap dealer, check both boxes (4) and (5) below.

☐ (1) Broker-dealer, municipal securities dealer, or government securities broker or dealer
☐ (2) Investment company (including mutual funds)
☐ (3) *Investment adviser* (including financial planners)
☐ (4) Swap dealer
☐ (5) Security-based swap dealer
☐ (6) Major swap participant
☐ (7) Major security-based swap participant
☐ (8) Commodity pool operator (whether registered or exempt from registration)
☐ (9) Commodity trading advisor (whether registered or exempt from registration)
☐ (10) Futures commission merchant
☐ (11) Banking or thrift institution
☐ (12) Trust company
☐ (13) Accountant or accounting firm

☐ (14) Attorney or law firm
☐ (15) Insurance company or agency
☐ (16) Pension consultant
☐ (17) Real estate broker or dealer
☐ (18) Sponsor or syndicator of limited partnerships
☐ (19) Engineer or engineering firm
☐ (20) Other *municipal advisor*

Total *Associated Persons*: Provide the total number of all such *associated persons*: _____

Provide the total number of such associated persons, not the number of boxes checked. For example, if the applicant's associated persons are 2 broker-dealers, 1 investment company, and 2 pension consultants, then 3 boxes would be checked in Item 6-A.1 to 20, while the total number of such associated persons entered in Item 6-A, Total Associated Persons, would be 5. If there are no associated persons, enter 0.

B. Applicant must list all such *associated persons*, including foreign *associated persons*, on Section 6 of Schedule D.

If Item 6-A, Total Associated Persons, is 2 or more, the applicant must complete a separate Section 6 of Schedule D for each associated person.

Item 7 Participation or Interest of Applicant, or of *Associated Persons* of Applicant, in *Municipal Advisory Client* or *Solicitee* Transactions

Proprietary Interest in Municipal Advisory Client or Solicitee Transactions

A. Does applicant or any *associated person*:

(1) buy securities or other investment or derivative products for itself from *clients* or *solicitees* in the context of its *municipal advisory activities*, or sell securities it owns to such *clients* or *solicitees*? ☐Yes ☐No

(2) buy or sell for itself securities (other than shares of mutual funds) or other investment or derivative products that the applicant also recommends to such *clients* or *solicitees*? ☐Yes ☐No

(3) enter into derivatives contracts with such *clients* or *solicitees*? ☐Yes ☐No

(4) recommend securities or other investment or derivative products to such *clients* or *solicitees* in which applicant or any *associated person* has some other proprietary (ownership) interest (other than those mentioned in Items 7-A(1), (2) or (3) above)? ☐Yes ☐No

Sales Interest in Client or Solicitee Transactions

B. Does applicant or any *associated person*:

(1) recommend purchases of securities or derivatives to *clients* or *solicitees* that are served by the applicant or *associated person*, for which the applicant or any *associated person* serves as underwriter, general or managing partner, or purchaser representative? ☐Yes ☐No

(2) recommend purchases or sales of securities or derivatives to such *clients* or *solicitees* in which applicant or any *associated person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? ☐Yes ☐No

Investment or Brokerage Discretion

C. Does applicant or any *associated person* have *discretionary authority* to determine the:

(1) securities or other investment or derivative products to be bought or sold for the account of a *client* or *solicitee*? ☐Yes ☐No

(2) amount of securities or other investment or derivative products to be bought or sold for the account of such a *client* or *solicitee*? ☐Yes ☐No

(3) (a) broker or dealer to be used for a purchase or sale of securities or other investment or derivative products for the account of such a *client* or *solicitee*? ☐Yes ☐No

(b) If "Yes," are any of the brokers or dealers *associated persons*? ☐Yes ☐No

(4) commission rates or other fees to be paid to a broker or dealer for such a *client*'s or *solicitee*'s securities transactions or transactions in other investment or derivative products? ☐Yes ☐No

D. (1) Does applicant or any *associated person* recommend brokers, dealers or *investment advisers* to *clients* or *solicitees* in the context of its *municipal advisory activities*? ☐Yes ☐No

(2) If "Yes," is any such broker, dealer, or *investment adviser* an *associated person*? ☐Yes ☐No

In responding to Items 7-E and 7-F below, consider all cash and non-cash compensation that the applicant or an associated person gave or received from any person in exchange for referrals of such clients or solicitees, including any bonus that is based, at least in part, on the number or amount of such referrals.

E. Does the applicant or any *associated person*, directly or indirectly, compensate any *person* for referrals of *clients* or *solicitees* in connection with *municipal advisory activities*? ☐Yes ☐No

F. Does the applicant or any *associated person*, directly or indirectly, receive compensation from any *person* for referrals of *clients* or *solicitees* in connection with *municipal advisory activities*? ☐Yes ☐No

Item 8 Owners, Officers, and Other *Control Persons*

A. Identifying Owners, Officers, and Other *Control Persons*

(1) In this Item, identify every *person* that, directly or indirectly, *controls* the applicant, or that the applicant directly or indirectly *controls*.

(a) If this is an initial application, the applicant must complete Schedule A and Schedule B. Schedule A asks for information about direct owners and executive officers. Schedule B asks for information about indirect owners.

(b) If this is an amendment updating information reported on either the Schedule A or Schedule B (or both) filed with the applicant's initial application, the applicant must also complete Schedule C.

(2) Does any *person* not named in Item 1-A or Schedules A, B, or C, directly or indirectly, *control* the applicant's management or policies? ☐Yes ☐No

(3) If "Yes" to Item 8-A.2. above, complete **Section 8-A of Schedule D**.

B. Public Reporting Companies

(1) Is any *person* in Schedules A, B, or C, or in Section 8-A of Schedule D a public reporting company under
Sections 12 or 15(d) of the Securities Exchange Act of 1934? ☐Yes ☐No

(2) If "Yes" to Item 8-B.1. above, complete **Section 8-B of Schedule D**.

Item 9 Disclosure Information

In this Item, provide information about the criminal, regulatory, and judicial history, if any, of the applicant and each associated person of the applicant.

This information is used to determine whether to approve an application for registration, to decide whether to revoke registration, or to place limitations on the applicant's activities as a municipal advisor, and to identify potential problem areas on which to focus during on-site examinations. One event may result in the requirement to answer "Yes" to more than one question below.

Refer to the Glossary of Terms for explanations of italicized terms, such as associated person.

Criminal Action Disclosure

If the answer is "Yes" to any question below in Part A or B below, complete a ***Criminal Action DRP****.*

Disclosure of any event listed in this Criminal Action Disclosure section is not required if the date of the event was more than ten years ago. For purposes of calculating this ten-year period, the date of an event is the date that the final order, judgment, or decree was entered, or the date that any rights of appeal from preliminary orders, judgments, or decrees lapsed.

Check all that apply:

A.In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony*, in a domestic, foreign, or military court? ☐Yes ☐No

(2) been *charged* with any *felony*? ☐Yes ☐No

The response to Item 9-A(2) may be limited to charges that are currently pending.

B. In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *misdemeanor*, or pled guilty or nolo contendere ("no contest"), in a domestic, foreign, or military court to any *charge* of a *misdemeanor* in a case *involving*: *municipal advisor-related* business, investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐Yes ☐No

(2) been *charged* with a *misdemeanor* of the kind listed in Item 9-B(1)? ☐Yes ☐No

The response to Item 9-B(2) may be limited to charges that are currently pending.

Regulatory Action Disclosure

If the answer is "Yes" to any question in Parts C-G below, complete a ***Regulatory Action DRP****.*

Check all that apply:

C. Has the *SEC* or the *CFTC* ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐Yes ☐No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been a cause of the denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the applicant or any *associated person* in connection with *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) imposed a civil money penalty on the applicant or any *associated person*, or *ordered* the applicant or any *associated person* to cease and desist from any activity? ☐Yes ☐No

D. Has any other *federal regulatory agency*, any *state regulatory agency*, or any *foreign financial regulatory authority* ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission, or been dishonest, unfair, or unethical? ☐Yes ☐No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulations or statutes? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the applicant or any *associated person* in connection with a *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) denied, suspended, or revoked the registration or license of the applicant or that of any *associated person*, or otherwise prevented the applicant or any *associated person*, by *order*, from associating with a *municipal advisor-related* or *investment-related* business or restricted the activities of the applicant or any *associated person*? ☐Yes ☐No

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐Yes ☐No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of its rules (other than

a violation designated as a "*minor rule violation*" under a plan approved by the *SEC*)? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) disciplined the applicant or any *associated person* by expelling or suspending the applicant or the *associated person* from membership, barring or suspending the applicant or the *associated person* from association with other members, or by otherwise restricting the activities of the applicant or the *associated person*? ☐Yes ☐No

F. Revocation or Suspension: Has the applicant or any *associated person* ever had an authorization to act as an attorney, accountant, or federal contractor revoked or suspended? ☐Yes ☐No

G. Regulatory *Proceedings*: Is the applicant or any *associated person* currently the subject of any regulatory *proceeding* that could result in a "Yes" answer to any part of Item 9-C, 9-D, or 9-E? ☐Yes ☐No

Civil Judicial Disclosure

If the answer is "Yes" to a question below, complete a ***Civil Judicial Action DRP***.

Check all that apply:

H. (1) Has any domestic or foreign court ever:

(a) *enjoined* the applicant or any *associated person* in connection with any *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(b) *found* that the applicant or any *associated person* was *involved* in a violation of any *municipal advisor-related* or *investment-related* statute(s) or regulation(s)? ☐Yes ☐No

(c) dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against the applicant or any *associated person* by a state or other US jurisdiction or a *foreign financial regulatory authority*? ☐Yes ☐No

(2) Current *Proceedings*: Is the applicant or any *associated person* the subject of any currently pending civil *proceeding* that could result in a "Yes" answer to any part of Item 9-H(1)? ☐Yes ☐No

Item 10 Small Businesses

The *SEC* is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, the *SEC* needs to determine whether you meet the Small Business Administration's definition of "small business" for purposes of entities that provide investment and related activities. Accordingly, answer "Yes" or "No," as appropriate, to the questions below:

A. Did the applicant have annual receipts of less than $7 million during its most recent fiscal year (or during the time the applicant has been in business, if it has not completed its first fiscal year in business)? ☐Yes ☐No

B. Is the applicant *affiliated* with any business or organization that had annual receipts of $7 million or more during its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business)? ☐Yes ☐No

FORM MA
SCHEDULE A

Direct Owners and Executive Officers of the Applicant

1. **Complete Schedule A only if submitting an initial application.** Schedule A asks for information about the applicant's direct owners and executive officers. Use Schedule C to amend this information. To determine direct ownership and executive officer status, see instruction 2 below.

   Separate subparts of Schedule A must be completed for: (1) direct owners that are business entities, and (2) direct owners and executive officers who are natural persons, as follows:

   - **Complete Schedule A-1: "Direct Owners of Applicant – Business Entities,"** for owners that are organized as a business or other legal entity, such as a corporation, partnership, trust, or limited liability company.

   - **Complete Schedule A-2: "Direct Owners and Executive Officers of Applicant – Natural Persons,"** for owners who are individuals, including sole proprietors, and for executive officers.

2. **List in either Schedule A-1 or Schedule A-2 below, or both, as applicable, the full names of:**

   (a) If applicant is organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of the applicant's voting securities, unless applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act). Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of the applicant's voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security;

   (b) If the applicant is organized as a partnership, all general partners and each limited and special partner that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital;

   (c) In the case of a trust, a *person* that directly owns 5% or more of a class of the applicant's voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, the trust and each trustee;

   (d) If the applicant is organized as a limited liability company ("LLC"), (i) each member that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, and (ii) if managed by elected managers, all elected managers; and

   (e) Each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, *Chief Compliance Officer*, director and any other individuals with similar status or functions (applies in Schedule A-2 only).

3. **In the DE/FE column of Schedule A-1 below**, enter "DE" if the owner is a domestic entity, or "FE" if the owner is an entity organized, incorporated or domiciled in a foreign country.

4. **Complete the Title or Status column** by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member. For shareholders or members, indicate the class of securities owned (if more than one is issued). In the next column, indicate the date that the title or status was

acquired.

5. **Ownership codes are:**

NA - less than 5%
A - 5% but less than 10%
B - 10% but less than 25%
C - 25% but less than 50%
D - 50% but less than 75%
E - 75% or more

6. (a) **In the *Control Person* column**, enter "Yes" in the first sub-column if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) **In the PR sub-column (Schedule A-1 only)** enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

7. (a) **For Schedule A-1,** enter the organization *CRD* number. If not registered with the *CRD*, then enter the IRS Tax Number, Employer Identification Number ("EIN"), or Foreign Business Number.

(b) **For Schedule A-2,** enter the individual *CRD* number. If not registered with the *CRD*, then enter the Social Security Number ("SSN") or Foreign Identity Number; and enter the Date of Birth ("DOB"). Social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated.

8. **Does applicant have any indirect owners to be reported on Schedule B?** ☐Yes ☐No

Schedule A-1: Direct Owners of Applicant – Business Entities

BUSINESS ENTITY FULL LEGAL NAME	DE/FE	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
			MM	YYYY		Yes/No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule A-2: Direct Owners and Executive Officers of Applicant – Natural Persons

NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.				Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB, or Foreign ID No. and DOB)			
Last Name	First Name	Middle Name			MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE B

Indirect Owners of the Applicant

1. **Complete Schedule B only if applicant is submitting an initial application.** Schedule B asks for information about the applicant's indirect owners. The applicant must first complete Schedule A, which asks for information about direct owners. For purposes of Schedule B, an "indirect owner" includes any owner of 25% or more of any direct owner listed in Schedule A, and any owner of 25% or more of each such indirect owner going up the chain of ownership. Use Schedule C to amend the information in this schedule. To determine indirect ownership, see instructions 2 and 3 below.

   Separate subparts of Schedule B must be completed for: (1) Indirect owners that are business entities, and (2) indirect owners who are natural persons, as follows:

   - **Complete Schedule B-1: "Indirect Owners of Applicant – Business Entities,"** for owners who are organized as business or other legal entities, such as a corporation, partnership, trust, or limited liability company.

   - **Complete Schedule B-2: "Indirect Owners of Applicant – Natural Persons,"** for individuals and sole proprietors.

2. **With respect to each direct owner listed on Schedule A-1 (business entities), list in either Schedule B-1 or Schedule B-2 below, as applicable:**

   (a) in the case of a direct owner listed on Schedule A-1 that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of a direct owner listed on Schedule A-1 that is a partnership, all general partners and each limited and special partner that has the right to receive upon dissolution, or has contributed, 25% or more of the partnership's capital;

   (c) in the case of a direct owner listed on Schedule A-1 that is a trust, the trust and each trustee; and

   (d) in the case of a direct owner listed on Schedule A-1 that is a limited liability company ("LLC"), (i) each member that has the right to receive upon dissolution, or has contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, each elected manager.

3. **Continue up the chain of indirect ownership listing all 25% shareholders at each level.** Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. **In the DE/FE column in Schedule B-1 below,** enter "DE" if the indirect owner is a domestic entity, or "FE" if the owner is an entity organized, incorporated or domiciled in a foreign country. Complete the next column by indicating the entity in the chain of ownership in which this indirect owner has an interest.

5. **Complete the Status column** by entering the indirect owner's status as partner, trustee, elected manager, shareholder, or member. For shareholders or members, indicate the class of securities owned (if more than one is issued).

6. **Ownership codes are:**

   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   F - Other (general partner, trustee, or elected manager)

7. **(a) In the *Control Person* column**, enter "Yes" in the first sub-column if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

   (b) In the PR sub-column, for Schedule B-1 only, enter "PR" if the indirect owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

8. **(a) For Schedule B-1,** enter the organization *CRD* number. If not registered with the *CRD*, then enter the IRS Tax Number, Employer Identification Number ("EIN"), or Foreign Business Number.

   (b) For Schedule B-2, enter the individual *CRD* number. If not registered with the *CRD*, then enter the Social Security Number ("SSN") or Foreign Identity Number; and enter the Date of Birth ("DOB"). Social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated.

Schedule B-1: Indirect Owners of Applicant – Business Entities

BUSINESS ENTITY FULL LEGAL NAME	DE/FE	Entity In Which Interest Is Owned	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
				MM	YYYY		Yes/No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule B-2: Indirect Owners of Applicant – Natural Persons

NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.				Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB, or Foreign ID No. and DOB)			
Last Name	First Name	Middle Name				MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE C

Amendments to Schedules A and B

1. **Use Schedule C only to amend information requested on either Schedule A or Schedule B.** Refer to instructions in Schedule A and Schedule B, which also apply for this Schedule C.

2. **In the Type of Amendment column,** indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. **Ownership codes are:**

   NA - less than 5%
   A - 5% but less than 10%
   B - 10% but less than 25%
   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   F - Other (general partner, trustee, or elected member)

4. **List below all changes to Schedule A:**

Schedule A-1: Direct Owners of Applicant – Business Entities

TYPE OF AMEND-MENT	BUSINESS ENTITY FULL LEGAL NAME	DE/ FE	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
				MM	YYYY		Yes/ No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule A-2: Direct Owners and Executive Officers of Applicant – Natural Persons

TYPE OF AMEND-MENT	NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.			Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB or Foreign ID No. and DOB)			
	Last Name	First Name	Middle Name		MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

5. List below all changes to Schedule B:

Schedule B-1: Indirect Owners of Applicant – Business Entities

TYPE OF AMED-MENT	BUSINESS ENTITY FULL LEGAL NAME	DE /FE	Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Owner-ship Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)
					MM	YYYY		Yes/ No	PR	

Schedule B-2: Indirect Owners of Applicant – Natural Persons

TYPE OF AMEND-MENT	NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.			Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB or Foreign ID No. and DOB			
	Last Name	First Name	Middle Name			MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE D

Certain items in Part I of Form MA require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an: ☐ **INITIAL** or ☐ **AMENDED Schedule D** or ☐ ***ANNUAL UPDATE***

SECTION 1-B Other Names under which *Municipal Advisor-Related* Business is Conducted

List the applicant's other business names and the jurisdictions in which they are used. A separate Schedule D must be completed for each business name and the jurisdictions where that name is used.

Select only one: ☐ Add ☐ Delete ☐ Amend
Name _____ Jurisdictions: _____
(List all jurisdictions.)

SECTION 1-D Additional Registrations of the Applicant

Indicate any additional registrations with federal or state regulators, and the relevant registration number. A separate Schedule D must be completed for each such registration.
Name _____ Registration No. _____

SECTION 1-E Additional Offices at which the Applicant's *Municipal Advisor-Related* Business is Conducted

Provide the location of the largest five additional offices (in terms of numbers of *employees*) at which the applicant's *municipal advisor-related* business is conducted other than applicant's *principal office and place of business*. A separate Schedule D must be completed for each such office.

Select only one: ☐ Add ☐ Delete ☐ Amend

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number) | Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 1-F Additional Website Addresses

List any additional website addresses of the applicant. A separate Schedule D must be completed for each such website address.

Select only one: ☐ Add ☐ Delete ☐ Amend
Website Address: _____

SECTION 1-I Location of Books and Records

Complete the following information for each location at which the applicant keeps books and records, other than its *principal office and place of business*. A separate Schedule D must be completed for each location.

Select only one: ☐ Add ☐ Delete ☐ Amend

Name of entity where books and records are kept: _____

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number)

Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

This is (select only one):
☐ one of applicant's branch offices or *affiliates*
☐ a third-party unaffiliated recordkeeper
☐ other

Briefly describe the books and records kept at the location(s) you checked. If you checked "other," describe additionally all such location(s).

_____
_____
_____
_____

SECTION 1-J Registration with *Foreign Financial Regulatory Authorities*

List the full name, in English, of each *foreign financial regulatory authority*, provide the foreign registration number (if any), and list the full name, in English, of the country with which the applicant is registered. A separate Schedule D must be completed for each *foreign financial regulatory authority* with whom the applicant is registered.

Select only one: ☐ Add ☐ Delete ☐ Amend

_____ _____ _____
English Name of *Foreign Financial Regulatory Authority* | Foreign Registration No. (if any) | English Name of Country

SECTION 1-K Business *Affiliates* of the Applicant

Provide the name of any domestic or foreign business *affiliate* of the applicant, and any federal, state, or foreign registration of such *affiliate* and the registration number. A separate Schedule D must be completed for each such *affiliate*.

Name of *Affiliate*: _____

1. Does the *affiliate* have an applicable federal, state, or foreign registration? ☐Yes ☐No

2. If "Yes" to Section 1-K (1) above, provide the:

   (a) Name of Agency Issuing Registration (in English): _____
   (b) Registration No., if any: _____
   (c) Provide the jurisdiction (check the appropriate box, and if a US state or other jurisdiction, or a foreign country, provide the name of the jurisdiction):

   ☐ US Federal
   ☐ US State or Other US Jurisdiction: _____
   ☐ Foreign Country Name (in English): _____

SECTION 3 Successions

Complete the following information if succeeding to the business of a currently-registered *municipal advisor*. If the applicant succeeded more than one *municipal advisory firm* in the succession being reported on this Form MA, a separate Schedule D must be completed for each predecessor firm. See Instruction 1 of the Specific Instructions for Certain Items in Form MA included in the General Instructions.

Name of Predecessor *Municipal Advisory Firm*: _____

☐ *Municipal Advisor* *SEC* File No.: _____
☐ Municipal Securities Dealer *SEC* File No.: _____
☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
☐ *Investment Adviser*
  ☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
  ☐ Exempt Reporting Adviser *SEC* File No.: _____ Organization *CRD* No.: _____

Investment Adviser Registration in a US State or Other US Jurisdiction: If predecessor *municipal advisory firm* is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below and enter the organization *CRD* Number. In the table below, check the box for each US jurisdiction in which the applicant is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____

Check All That Apply	US State or Jurisdiction	Code	Check All That Apply	US State or Jurisdiction	Code
	Alabama	AL		Montana	MT
	Alaska	AK		Nebraska	NE
	Arizona	AZ		Nevada	NV

	Arkansas	**AR**		**New Hampshire**	**NH**
	California	**CA**		**New Jersey**	**NJ**
	Colorado	**CO**		**New Mexico**	**NM**
	Connecticut	**CT**		**New York**	**NY**
	Delaware	**DE**		**North Carolina**	**NC**
	District of Columbia	**DC**		**North Dakota**	**ND**
	Florida	**FL**		**Ohio**	**OH**
	Georgia	**GA**		**Oklahoma**	**OK**
	Guam	**GU**		**Oregon**	**OR**
	Hawaii	**HI**		**Pennsylvania**	**PA**
	Idaho	**ID**		**Puerto Rico**	**PR**
	Illinois	**IL**		**Rhode Island**	**RI**
	Indiana	**IN**		**South Carolina**	**SC**
	Iowa	**IA**		**South Dakota**	**SD**
	Kansas	**KS**		**Tennessee**	**TN**
	Kentucky	**KY**		**Texas**	**TX**
	Louisiana	**LA**		**Utah**	**UT**
	Maine	**ME**		**Vermont**	**VT**
	Maryland	**MD**		**Virgin Islands**	**VI**
	Massachusetts	**MA**		**Virginia**	**VA**
	Michigan	**MI**		**Washington**	**WA**
	Minnesota	**MN**		**West Virginia**	**WV**
	Mississippi	**MS**		**Wisconsin**	**WI**
	Missouri	**MO**			

☐ Government Securities Broker-Dealer
SEC File No.: _____ Bank Identifier: _____

☐ Other *SEC* Registration (Specify): _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____

☐ Another federal or state regulator (Specify): _____
Registration No. (if any): _____

SECTION 4-D Firms and Other *Persons* that *Solicit Municipal Advisor Clients* on the Applicant's Behalf

Provide the name, address, and phone number of any firm or other *person* that is not otherwise an *associated person* of the applicant that *solicits municipal advisor clients* on the applicant's behalf. A separate Schedule D must be completed for each such firm or natural person.

Name: _____

_____ _____
EDGAR CIK No. (if any) Individual *CRD* No. (if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location Fax number (if any) at this location
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 4-E *Employees* That Also Do Business Independently on the Applicant's Behalf as *Affiliates* of the Applicant

Name of *Employee*:

Enter all the letters of each name and initials or other abbreviations. If no middle name, enter NMN on that line.

Last Name _____ First Name _____ Middle Name _____

EDGAR CIK No. (if any) _____ Individual *CRD* No. (if any) _____

(number and street) _____

(city) _____ (state) _____ (country) _____ (postal code) _____

Telephone number at this location (area code) (telephone number) _____

Fax number (if any) at this location (area code) (fax number) _____

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 5-B Description of Primary Business (for businesses not listed in Part A of Item 5)

If you checked Item 5-B.2., describe the applicant's primary business (not the applicant's *municipal advisor-related* business):

_____

_____

_____

_____

SECTION 6 Financial Industry and Other Activities of *Associated Persons*

The following information must be completed for each *associated person* in every category you checked in Item 6-A. This section must be completed separately for each such *associated person*.

Select only one: ☐ Add ☐ Delete ☐ Amend

Legal Name of *Associated Person*: _____

Primary Business Name of *Associated Person*:

_____

A. *Associated person* is a:
Check all that apply.

☐ (1) Broker-dealer, municipal securities dealer, or government securities broker or dealer
☐ (2) Investment company (including mutual funds)
☐ (3) *Investment adviser* (including financial planners)

☐ (4) Swap dealer
☐ (5) Security-based swap dealer
☐ (6) Major swap participant
☐ (7) Major security-based swap participant
☐ (8) Commodity pool operator (whether registered or exempt from registration)
☐ (9) Commodity trading advisor (whether registered or exempt from registration)
☐ (10) Futures commission merchant
☐ (11) Banking or thrift institution
☐ (12) Trust company
☐ (13) Accountant or accounting firm
☐ (14) Attorney or law firm
☐ (15) Insurance company or agency
☐ (16) Pension consultant
☐ (17) Real estate broker or dealer
☐ (18) Sponsor or syndicator of limited partnerships
☐ (19) Engineer or engineering firm
☐ (20) Other *municipal advisor*

B. Control Relationships and Foreign Registrations

(1) Control Relationships

(a) Does the applicant *control* or is it *controlled* by the *associated person*? ☐Yes ☐No
(b) Are the applicant and the *associated person* under common *control*? ☐Yes ☐No

(2) *Foreign Financial Regulatory Authority* Registration

(a) Is the *associated person* registered with a *foreign financial regulatory authority*? ☐Yes ☐No
(b) If the answer to (2)(a) is "Yes," list in English the name of each *foreign financial regulatory authority*, the *associated person*'s registration number with that authority (if any), and the country in which the authority has jurisdiction.

English Name of *Foreign Financial Regulatory Authority*	Registration Number (if any)	English Name of Country
English Name of *Foreign Financial Regulatory Authority*	Registration Number (if any)	English Name of Country

SECTION 8 ***Control Persons (on a basis other than 25% ownership or executive officer status)***

Section 8-A. A separate Schedule D must be completed for each *control person* not named in Item 1-A or Schedules A, B, or C that directly or indirectly *controls* the applicant's management or policies.

Select only one: ☐ Add ☐ Delete ☐ Amend
The *control person* is a (select only one): ☐ Firm or organization. You must complete Section 8-A (1).
☐ Natural person. You must complete Section 8-A (2).

(1) <u>If the *control person* is a firm or organization</u>:

Name_____

☐ *Municipal Advisor*
☐ Form MA-T Registration *SEC* File No.: _____
Effective Date: _____ Termination Date: _____

mm/dd/yyyy mm/dd/yyyy

☐ Form MA Registration *SEC* File No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Municipal Securities Dealer *SEC* File No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ *Investment Adviser*
☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Exempt Reporting Adviser *SEC* File No.: _____Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Investment Adviser Registration in a US State or Other US Jurisdiction: If *control person* is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below, and enter the organization *CRD* Number and other information requested. In the table below, check the box for each US state or jurisdiction in which the *control person* is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Check All That Apply	US State or Jurisdiction	Code		Check All That Apply	US State or Jurisdiction	Code
	Alabama	**AL**			**Montana**	**MT**
	Alaska	**AK**			**Nebraska**	**NE**
	Arizona	**AZ**			**Nevada**	**NV**
	Arkansas	**AR**			**New Hampshire**	**NH**
	California	**CA**			**New Jersey**	**NJ**
	Colorado	**CO**			**New Mexico**	**NM**
	Connecticut	**CT**			**New York**	**NY**
	Delaware	**DE**			**North Carolina**	**NC**
	District of Columbia	**DC**			**North Dakota**	**ND**
	Florida	**FL**			**Ohio**	**OH**
	Georgia	**GA**			**Oklahoma**	**OK**
	Guam	**GU**			**Oregon**	**OR**
	Hawaii	**HI**			**Pennsylvania**	**PA**
	Idaho	**ID**			**Puerto Rico**	**PR**
	Illinois	**IL**			**Rhode Island**	**RI**

	Indiana	**IN**			**South Carolina**	**SC**
	Iowa	**IA**			**South Dakota**	**SD**
	Kansas	**KS**			**Tennessee**	**TN**
	Kentucky	**KY**			**Texas**	**TX**
	Louisiana	**LA**			**Utah**	**UT**
	Maine	**ME**			**Vermont**	**VT**
	Maryland	**MD**			**Virgin Islands**	**VI**
	Massachusetts	**MA**			**Virginia**	**VA**
	Michigan	**MI**			**Washington**	**WA**
	Minnesota	**MN**			**West Virginia**	**WV**
	Mississippi	**MS**			**Wisconsin**	**WI**
	Missouri	**MO**				

☐ Government Securities Broker-Dealer *SEC* File No.: _____ Bank Identifier: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Other *SEC* Registration (Specify) _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Another Federal or State Regulator (Specify) _____
Registration No. (if any): _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Business Address

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location Fax number (if any) at this location
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

Briefly describe the nature of the *control*:

_____
_____
_____

(2) <u>If *control person* is a natural person</u>:

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

EDGAR CIK No. (if any)

Individual *CRD* No. (if any) Effective Date Termination Date

(number and street)

(city) (state) (country) (postal code)

Telephone number at this location
(area code) (telephone number)

Fax number (if any) at this location
(area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

Briefly describe the nature of the *control*:

Section 8-B. If any *person* named in Schedules A, B, or C or in Section 8-A of this Schedule D is a public reporting company under Section 12 or 15(d) of the Securities Exchange Act of 1934, provide the information below. A separate Section 8-B of Schedule D must be completed for each public reporting company.

1. Full legal name of the public reporting company: _____

2. The public reporting company's EDGAR CIK number: _____

3. The Schedules where the public reporting company was reported:

   Check all that apply.

   ☐ Schedule A
   ☐ Schedule B
   ☐ Schedule C, Section 4
   ☐ Schedule C, Section 5
   ☐ Schedule D, Section 8-A

Schedule D: MISCELLANEOUS

The space below may be used to explain a response to an Item or to provide any other information.

FORM MA

PART II:
DISCLOSURE REPORTING PAGES (DRPs)

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (MA)

CRIMINAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative response**(s)** to ***Items 9-A or 9-B*** of Form MA.

Check item(s) in Form MA for which this DRP is providing details:
☐ **9-A(1)** ☐ **9-A(2)** ☐ **9-B(1)** ☐ **9-B(2)**

How to Report an Event or *Proceeding* on a Criminal Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to **Items 9-A(1), 9-A(2), 9-B(1), and/or 9-B(2).** Use this DRP to report all *charges*, including multiple counts of the same *charge,* arising out of the same event and filed in one criminal action. Separate criminal actions arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.

Requirement to Provide Court Documents: Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be attached to, and filed electronically with, this DRP (if not previously submitted).

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) concerning whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No
(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or has submitted an application for registration that is currently pending and the event or *proceeding* previously reported was resolved in the applicant's favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Does this DRP concern one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such *associated person* by checking below either the box for firm or for natural person, as appropriate, and provide the requested information:

☐ **Firm**

Full legal name of the *associated person:*

_____

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____
_____

Provide the information for each additional firm below:
_____
_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

CRIMINAL ACTION DRP – PART 2

1. Firm or Organization

A. Were *charge*(s) brought against a firm or organization over which the applicant or an *associated person* exercise(s)(d) *control*? ☐ **Yes** ☐ **No**

B. If "Yes," provide the following information:

(1) Enter the firm or organization name: _____

(2) Was the firm or organization engaged in a *municipal advisor-related* or *investment-related* business? ☐ Yes ☐ No

(3) What was the relationship of the applicant or the *associated person* with the firm or organization? (Include any position or title with the firm or organization.)

_____

2. Court Where Formal *Charge*(s) Were Brought: (*File a separate Criminal Action DRP for charges brought in separate courts and/or separate cases in the same court. If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other : _____

A. Name of the Court: _____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Number and Case Name:_____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Details of Event: Report all *charges* separately. For each *charge,* provide all of the following information.

(1) First *Charge*

(a) List the *charge*/*charge* description:

_____
_____
_____
_____
_____
_____

(b) Number of counts: ___

(c) Check the applicable box: ☐ *Felony* ☐ *Misdemeanor*

(d) Plea for this *charge*:

_____

(e) (i) Is the *charge municipal advisor-related?* ☐ Yes ☐ No
(ii) If "Yes," what is the product type?

_____

(f) (i) Is the *charge investment-related?* ☐ Yes ☐ No
(ii) If "Yes," what is the product type?

_____

(g) (i) Amended *Charge*: Indicate if the original *charge* was amended or reduced:
☐ Yes ☐ No
(ii) If "Yes," provide the date the *charge* was amended or reduced (MM/DD/YYYY):

_____

Report the information for each additional *charge* below:
_____
_____

C. *Felony Charge*(s): Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

4. Current Status of the Event: ☐ Pending ☐ On Appeal ☐ Final

5. Event Status Date (Complete unless status is pending) (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

6. On Appeal – Judicial Review: **If Item 4 On Appeal is checked, to whom was the criminal action appealed?** (*If brought in a foreign jurisdiction, provide all the information below in English.)*

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other (specify): _____

Provide the name and location of the court, docket/case number, and case name:

_____

Date appeal filed (MM/DD/YYYY): _____

For Item 7: If Item 4 Final or On Appeal is checked, complete Item 7.
For Pending Actions, skip to Item 8.

7. Disposition Disclosure Detail (For each *charge* provide the following information):

(a) First *Charge*

(1) Disposition of the *Charge*

(Check all that apply to this *charge*.)

☐ Acquitted
☐ Amended
☐ Convicted
☐ Deferred Adjudication
☐ Dismissed
☐ *Found* not guilty
☐ Pled guilty
☐ Pled nolo contendere
☐ Pled not guilty
☐ Pretrial diversion/intervention
☐ Reduced
☐ Other (specify) _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (specify) _____

Explanation: *If more than one disposition is checked, and/or Other is checked, or the above otherwise does not adequately summarize the disposition of the charge, provide an explanation.*

_____
_____
_____
_____

(2) Date (MM/DD/YYYY): _____

(3) Sentence/Penalty: Is a sentence or other penalty *ordered*? ☐ Yes ☐ No

If "Yes," list each type (*e.g.,* prison, jail, probation, community service, counseling, education, other - specify):

_____
_____
_____

(4) Is there an incarceration in connection with this sentence? ☐ Yes ☐ No

If "Yes," provide the following details:

(i) Duration (length of the sentence): ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iii) End Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iv) Is the sentence to be served concurrently with any other sentence? ☐ Yes ☐ No

If yes, indicate the end date of the concurrent sentence (MM/DD/YYYY):

_____

(v) Explanation (Optional):

_____

_____

(5) Monetary Penalty/Fine:

(i) Was a monetary penalty/fine imposed? ☐ Yes ☐ No
If "Yes," provide the following details in (ii) and (iii) below:

(ii) Total Penalty/Fine Amount: $_____

(iii) Was any portion suspended/reduced?

☐ Yes If "Yes," how much? $_____
☐ No

(iv) Final Amount: $_____

(v) Was the final amount paid in full?

☐ Yes If "Yes," date paid in full (MM/DD/YYYY):_____
☐ No
If "No," indicate the amount unpaid: $_____
And explain the circumstances:

_____

_____

Report the disposition(s) of each additional *charge* below:

_____

_____

8. Summary of Circumstances: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (MA)

REGULATORY ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative responses to **Items 9-C, 9-D, 9-E, 9-F or 9-G** of Form MA.
Check item(s) being responded to:

☐ **9-C(1)** ☐ **9-C(2)** ☐ **9-C(3)** ☐ **9-C(4)** ☐ **9-C(5)**
☐ **9-D(1)** ☐ **9-D(2)** ☐ **9-D(3)** ☐ **9-D(4)** ☐ **9-D(5)**
☐ **9-E(1)** ☐ **9-E(2)** ☐ **9-E(3)** ☐ **9-E(4)**
☐ **9-F** ☐ **9-G**

How to Report an Event or *Proceeding* on a Regulatory Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to **Items 9-C, 9-D, 9-E, 9-F, and/or 9-G.** If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment filed for the applicant that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No

(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Is this DRP being filed for one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such associated firm and/or natural person in the space below:

☐ **Firm**

Full name of the *associated person:*

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional firm below:

_____

_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____

CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____

MA Registration Number: _____

Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____

MA-I File Number: _____

Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided.
If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

REGULATORY ACTION DRP – PART 2

1. Regulatory Action was initiated by:

A. Select the Appropriate Item.

Select only one box below. A separate Regulatory Action DRP is required for each such regulator or other authority.

☐ *SEC*
☐ *CFTC*
☐ *Federal Banking Agency*
☐ National Credit Union Administration
☐ Other Federal Authority
☐ State
☐ *SRO*
☐ *Foreign Financial Regulatory Authority*
☐ Other: _____

B. Full name of the individual regulator (if not fully identified in Item 1-A) or other authority that initiated the action. For a *foreign financial regulatory authority*, please provide the full name in English.

_____

2. Sanction(s) Sought:

Check all that apply.

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil and Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Disgorgement
☐ Expulsion
☐ Injunction
☐ Prohibition
☐ Reprimand
☐ Rescission
☐ Restitution
☐ Requalification
☐ Revocation
☐ Suspension
☐ Undertaking

☐ **Other Sanction(s) Sought** (list each such additional sanction):

_____
_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

4. Regulatory Action was brought in (*if brought in a foreign jurisdiction, provide all the information below in English):*

A. Name of the Administrative *Proceeding*, *Commission*/Agency Hearing, or other regulatory *proceeding* or forum: _____

B. Location of the *Proceeding* / Hearing:

Street Address: _____
City or County: _____ State/Country: _____

Postal Code: _____

C. Docket/Case Number: _____

5. A. Principal Product Type (check appropriate item):

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

6. Allegations: Describe the allegations related to this regulatory action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

7. Current Status: ☐ Pending ☐ On Appeal ☐ Final

8. Pending: If you checked Item 7 Pending, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?
☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

9. **On Appeal – Administrative or Judicial Review of the Regulatory Action:** If you appealed, provide the following information.

   A. **Name of Regulator or Court Action Appealed To:** *Provide the name of the US regulator (i.e., the SEC, an SRO, other), federal court, state court or state regulator, or a foreign or international court or regulator to whom you appealed. If brought in a foreign jurisdiction, provide all the information below in English.*

   _____

   B. **Location of the Regulator or Judicial Court to Whom You Appealed:**

   Street Address: _____
   City or County: _____ State/Country: _____
   Postal Code: _____

   C. **Docket/Case Name:** _____

   D. **Docket/Case Number:**_____

   E. **Date Appeal filed** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
   If not exact, provide explanation:

   _____

   _____

   F. **Appeal Details (including status):**

   _____

   _____

   _____

   _____

   _____

   _____

   G. **Limitation or Restrictions:** Are there any limitations or restrictions currently in effect while on appeal?
   ☐ Yes ☐ No

   If the answer is "Yes," provide details:

   _____

   _____

If you checked Item 7 Final or On Appeal, complete Items 10 through 13.
For Pending Actions, skip to Item 13.

10. A. **Resolution:** How was the action resolved? (*Check all the applicable boxes that reflect the most recent resolution of the action by a regulator or a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 10-B which part is currently on appeal.*)

☐ Acceptance, Waiver & Consent (AWC)	☐ Dismissed	☐ Stipulation and Consent
☐ Consent	☐ Judgment Rendered	☐ Withdrawn
☐ Decision	☐ *Order*	☐ Other (requires explanation)

☐ Decision & *Order* of Offer of Settlement ☐ Settled
- ☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ab initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation)

B. Explanation: *If more than one box in Item 10-A is checked, or Other is checked, or Item 10-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if you appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____
_____
_____
_____
_____
_____

C. *Order:* If *Order* is checked above in Item 10-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐Yes ☐No

11. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator (reviewing a decision by an SRO or an Administrative Law Judge) or a court provided its resolution.*)

If not exact, provide explanation:

_____
_____
_____
_____
_____
_____

12. Resolution Detail

A. Sanction(s): Were any Sanctions *Ordered*? ☐ Yes
☐ No, none were *ordered.*

B. If "Yes," check each individual sanction below that was *ordered*:

☐ Bar (Permanent)	☐ Disgorgement*	☐ Restitution*
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Requalification
☐ Cease and Desist	☐ Injunction	☐ Revocation
☐ Censure	☐ Prohibition	☐ Suspension
☐ Civil and Administrative Penalty(ies)/Fine(s)*	☐ Reprimand	☐ Undertaking
☐ Denial	☐ Rescission	

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No
If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanction(s) *Ordered* (list each such additional sanction):**

_____
_____
_____
_____
_____
_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 12-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 12-B. above, check the applicable box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more bars from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(b) *Enjoined*

(i) Duration (length of time):

☐ Permanent (not limited by length of time).

☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more injunctions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more suspensions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction? ☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____
(2) If "No," explain the circumstances:

_____

_____

If the applicant or an *associated person* received in the above action one or more requalifications in connection with registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 12-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against:

☐ **Applicant**

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

☐ ***Associated Person***

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes _____
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

Provide the information for each additional *associated person* below:
_____
_____

13. **Summary of Circumstances**: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (MA)

CIVIL JUDICIAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative responses to Item 9-H. of Form MA.

Check item(s) being responded to: ☐ **9-H(1)(a)** ☐ **9-H(1)(b)** ☐ **9-H(1)(c)** ☐ **9-H(2)**

How to Report an Event or *Proceeding* on a Civil Judicial Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to Item 9-H. Separate cases arising out of the same event, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment filed for the applicant that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No

(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Is this DRP being filed for one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such associated firm and/or natural person in the space below:

☐ **Firm**

Full name of the *associated person:*

_____

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____
_____

Provide the information for each additional firm below:
_____
_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

CIVIL JUDICIAL ACTION DRP – PART 2

1. Court Action was initiated by:

A. Select the Appropriate Item(s).

Check all that apply.

☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
☐ *CFTC* ☐ *SRO* ☐ *Municipal Advisory Firm*
☐ Other Federal Authority ☐ Commodities Exchange ☐ Private Plaintiff

☐ Other: _____

B. Plaintiff(s): Enter the full name(s) of the plaintiff(s), unless only *SEC* and/or *CFTC* is/are checked above. For a *foreign financial regulatory authority*, please provide the full name in English.

_____
_____
_____
_____
_____
_____

Were all plaintiffs fully identified in the space provided? ☐ Yes ☐ No

2. Defendant(s):

A. Enter the full name(s) of the defendant(s). For foreign defendant(s), please provide the full name(s) in English:

_____
_____
_____
_____
_____
_____

B. Are you a named defendant? ☐ Yes ☐ No If "No," describe how this action involves you:

_____
_____
_____
_____
_____
_____

3. Sanction(s) or Relief Sought (check appropriate items):

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil /Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Exemption
☐ Expulsion
☐ Injunction
☐ Money Damage(s) (Private/Civil Complaint)
☐ Prohibition
☐ Rescission
☐ Restitution
☐ Restraining Order
☐ Requalification
☐ Revocation
☐ Suspension

☐ Disgorgement ☐ Reprimand ☐ Undertaking

☐ **Other Sanction(s) or Relief Sought:**

_____
_____
_____
_____
_____
_____

4. A. **Filing Date of Court Action** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

B. **Date Notice/Process was served** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

5. **Formal Action was brought in** (*If brought in a foreign jurisdiction, provide all the information below in English):*

Check the applicable box:

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. **Name of the Court:**_____

B. **Location of the Court**

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. **Docket/Case Number and Case Name:**_____

6. A. **Principal Product Type (check appropriate item):**

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Oil & Gas
☐ Options
☐ Penny Stock

☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

7. Allegations: Describe the allegations related to this civil action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

8. Current Status: ☐ Pending ☐ On Appeal ☐ Final

9. Pending: If you checked Item 8 Pending, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?
☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

10. On Appeal – Judicial Review: If you appealed, provide the following information.
(If brought in a foreign jurisdiction, provide all the information below in English):

A. Action Appealed to: *(Provide the name of the federal, state, foreign, or international court to whom you appealed.)* _____

B. Location of the Court:

Street Address: _____

City or County: _____ State/Country: _____
Postal Code: _____

C.Docket/Case Name: _____

D.Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

_____

If you checked Item 8 Final or On Appeal, complete Items 11 through 14. For Pending Actions, skip to Item 14.

11. A. Resolution: How was the action resolved? *Check all the applicable boxes that reflect the most recent resolution of the action by a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 11-B which part is currently on appeal.*

☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ Opinion
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Withdrawn

☐ Other: _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ab initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other: _____

B. Explanation: *If more than one box in Item 11-A is checked or Item 11-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if you appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____

_____

C. *Order:* If *Order* is checked above in Item 11-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

12. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator or court provided its resolution.*)

If not exact, provide explanation:

_____

_____

13. Resolution Detail

A. Sanction(s): Were any Sanctions *Ordered* or Relief Granted?
☐ Yes
☐ No, none were *ordered*, or granted.

B. If "Yes," check each individual sanction *ordered* and/or relief granted below:

☐ Bar (Permanent)	☐ Exemption	☐ Rescission
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Restitution*
☐ Cease and Desist	☐ Injunction	☐ Restraining Order
☐ Censure	☐ Money Damage(s) (Private/Civil Complaint)*	☐ Requalification
☐ Civil /Administrative Penalty(ies)/Fine(s)*		☐ Revocation
☐ Denial	☐ Prohibition	☐ Suspension
☐ Disgorgement*	☐ Reprimand	☐ Undertaking

* **Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No
If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanctions *Ordered* or Relief Granted** (list each such additional sanction or relief):

_____

_____

_____

_____

_____

_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 13-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 13-B. above, check the applicable box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more bars from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(b) ***Enjoined***

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more injunctions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more suspensions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction? ☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____

(2) If "No," explain the circumstances:

_____

_____

If the applicant or an *associated person* received in the above action one or more requalifications in connection with registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 13-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against:

☐ **Applicant**

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes _____
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

☐ ***Associated Person***

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?
☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?
☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

Provide the information for each additional *associated person* below:
_____
_____

14. Summary of Circumstances: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____
_____
_____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

DOMESTIC MUNICIPAL ADVISOR EXECUTION

You must complete the following execution page to Form MA. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form MA, you, the undersigned advisor, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business*, as your agents to receive service, and agree that such *persons* may be served any process, pleadings, subpoenas, or other papers in (a) any *investigation* or administrative *proceeding* conducted by the *Commission* that relates to the applicant or about which the applicant may have information; and (b) any civil suit or action brought against the applicant or to which the applicant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States of America or of any of its territories or possessions or of the District of Columbia, where the *investigation*, *proceeding* or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor*. The applicant stipulates and agrees that any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the advisor's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives.

Signature: _____ Date: _____

Printed Name: _____ Advisor *CRD* Number (if any): _____

Title: _____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

NON-RESIDENT MUNICIPAL ADVISOR EXECUTION

Instructions: If you are a *non-resident*, you must complete these steps:

1. **Execution Page:** You must complete the following *non-resident* execution page to Form MA. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

2. **Opinion of Counsel:** You must also attach to Form MA an Opinion of Counsel. See General Instructions.

3. **Form MA-NR:** You must also attach to Form MA one or more executed Form MA-NR(s) for the *non-resident municipal advisor* applicant, and, if any, the *non-resident* general partner(s) and/or *non-resident managing agents*. See General Instructions for Form MA-NR.

Non-Resident Municipal Advisor Undertaking Regarding Books and Records

By signing this Form MA, you agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the *Commission*, or at any one of its offices in the United States, as specified by the *Commission*, correct, current, and complete copies of any or all records that you are required to maintain by law. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *non-resident municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the *municipal advisor*'s books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives. Further, attached to this Form MA as an exhibit is an opinion of counsel that the *municipal advisor* can, as a matter of law, provide the *Commission* with access to the books and records of such *municipal advisor*, as required by law, and that the *municipal advisor* can, as a matter of law, submit to inspection and examination by the *Commission*. Finally, attached to this Form MA is one or more executed Form MA-NR(s) for the *non-resident municipal advisor* applicant, and, if any, the *non-resident* general partner(s) and/or *non-resident managing agents*.

Signature: _____ Date: _____

Printed Name: _____ Advisor *CRD* Number (if any): _____

Title: _____

FORM MA-I

INFORMATION REGARDING NATURAL PERSONS WHO ENGAGE IN MUNICIPAL ADVISORY ACTIVITIES

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "Specific Instructions for Form MA-I," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

PART I

This form must be completed by:

- Every *municipal advisory firm* applying for registration or registered as a *municipal advisor* on Form MA, to provide information regarding each natural person who is an *associated person* of the firm and engages in *municipal advisory activities* on the firm's behalf (for purposes of Form MA-I, the "individual"); and
- Every natural person (sole proprietor) applying for registration as a *municipal advisor* on Form MA, to provide additional personal information.

WARNING: Complete this form truthfully. False statements or omissions may result in denial of a *municipal advisor*'s application or revocation or suspension of such registration, administrative or civil action, or criminal prosecution. Form MA-I must be amended promptly whenever any information previously provided becomes inaccurate. See General Instruction 9.

Type of Filing:
This is an (check the appropriate box):

☐ Initial Form MA-I

Execution Pages: Before submitting this form, you must complete the Execution Page.

Supporting Documentation: If you are required to make reportable disclosures in the Disclosure Reporting Pages, you must attach the supporting documentation.

Non-Resident Individuals: If the individual is a *non-resident* of the United States, you must attach a completed Form MA-NR signed by the individual to this Form MA-I at the time of the initial filing of Form MA-I See the General Instructions.

☐ Amendment to the most recent Form MA-I

☐ Amendment to indicate that the individual is no longer an *associated person* of the *municipal advisory firm* or no longer engages in *municipal advisory activities* on its behalf. (*If you check this box, complete only Item 1-A and Item 7 below.*)

Item 1 Identifying Information

Is this an amendment to change identifying information regarding the individual named in part A below? ☐ *Yes* ☐ *No*

A. The Individual

Full Legal Name:
Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter

NMN on that line.

Last Name	First Name	Middle Name	Suffix

Individual *CRD* No. (if any): _____

Social Security No.: _____ _____ The Social Security Number will not be included in publicly available versions of this form.

B. *Municipal Advisory Firms* Where the Individual Is Employed

In providing your responses, please note that the definition of "employee" for purposes of this form includes an independent contractor who engages in municipal advisory activities on behalf of a municipal advisory firm. See Glossary of Terms.

Is the individual *employed* at more than one *municipal advisory firm*? ☐ Yes ☐ No

If the answer is "Yes," enter the number of *municipal advisory firms* the individual is employed with (sole proprietors not employed with any other firm enter 1): ____

(For individuals who are employed with more than one firm, provide the information required by this Item 1-B for each such firm. For sole proprietors, enter the legal name under which you conduct your *municipal advisor-related* activities, and skip to Item 1-B.1.)

Full Legal Name of *municipal advisory firm* with which the individual is employed:

_____

Name under which *municipal advisor-related* business is primarily conducted, if different from above:

_____

Date that the individual's most recent employment with this *municipal advisory firm* commenced (MM/DD/YYYY): _____

Does the individual have an independent contractor relationship with the above-named firm? ☐ Yes ☐ No

(1) *Municipal Advisory Firm's* Registration Information:

Is the *municipal advisory firm* currently registered on Form MA as a *municipal advisor*? (Answer "Yes" if you have already filed Form MA and your application for registration on that form has been approved. Otherwise, answer "No.")

☐ Yes *SEC* File No. _____

☐ No

If "No," has the *municipal advisory firm* filed a Form MA application?

☐ Yes Form MA Filing Date: _____ (MM/DD/YYYY) EDGAR CIK No.: _____

☐ No

If "No," please provide an explanation:

_____

_____

(2) Office

Enter the following information for each office of the *municipal advisory firm* where the individual is or will be physically located, and each office from which the individual is or will be supervised:

☐ Located At: ☐ Supervised From:
Start Date: _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

If the office where the individual is or will be physically located is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this form.

Item 2 Other Names

Enter the following information for all other names that the individual has used or is using, or by which the individual is known or has been known, other than the individual's legal name, since the age of 18. This space should include, for example, nicknames, aliases, and names used before or after marriage.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Item 3 Residential History

Starting with the current address, enter the following information for all the individual's residential addresses for the past 5 years. Leave no gaps greater than three months between addresses. Report changes in an amendment to this form as they occur in the future. Private residential addresses will not be included in publicly available versions of this form.

Current Address:

From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Prior Address:

From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Item 4 Employment History

Provide complete employment history of the individual for the past 10 years. Include the *municipal advisory firm(s)* entered in Item 1-B. Enter the following information for each employer. Account for all time, leaving no gaps

longer than three months. Include full- and part-time employment, self-employment, military service, and homemaking. Also include statuses such as unemployed, full-time education, extended travel, or other similar statuses. Such statuses should be entered in the space provided below for "Name of *Municipal Advisory Firm* or Company."

Current Employer:

From (MM/YYYY): _____ To (MM/YYYY): _____
Name *of Municipal Advisory Firm* or Company:
_____
City: _____ State: _____ Country: _____ Postal Code: _____
Municipal Advisor-Related Business? ☐ Yes ☐ No
Investment-Related Business? ☐ Yes ☐ No
Position Held: _____

Prior to the Above:

From (MM/YYYY): _____ To (MM/YYYY): _____
Name of *Municipal Advisory Firm* or Company:
_____
City: _____ State: _____ Country: _____ Postal Code: _____
Municipal Advisor-Related Business? ☐ Yes ☐ No
Investment-Related Business? ☐ Yes ☐ No
Position Held: _____

Item 5 Other Business

Is the individual currently engaged in any other business either as a proprietor, partner, officer, director, *employee,* trustee, agent or otherwise? ☐ Yes ☐ No

If "Yes," please enter the following details for each other business below:

Other Business:

Start Date (MM/YYYY): _____
Name of Business:
_____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Is this a *municipal advisor-related* business? ☐ Yes ☐ No
Is this an *investment-related* business? ☐ Yes ☐ No

Nature of Business: _____
Position/Title/Relationship: _____
Approximate No. of Hours / Month Devoted to This Business: _____
Description of Duties: _____

Item 6 Disclosure Information

If the answer to any of the questions in Items 6A–6J and 6M is "Yes," provide details of all events or *proceedings* on the appropriate Disclosure Reporting Pages ("DRPs") in Part II.

One event or proceeding may result in the requirement to answer "Yes" to more than one question below. Refer to the Glossary of Terms for definitions or descriptions of italicized terms.

CRIMINAL ACTION DISCLOSURE

If the answer is "Yes" to any question below in Item 6A or 6B, complete a ***Criminal Action DRP****.*

Item 6A.

(1) Has the individual ever:

(a) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony* in a domestic, foreign, or military court? ☐Yes ☐No

(b) been *charged* with any *felony?* ☐Yes ☐No

(2) Based upon activities that occurred while the individual exercised *control* over it, has an organization ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *charge* of a *felony?* ☐Yes ☐No

(b) been *charged* with any *felony?* ☐Yes ☐No

Item 6B.

(1) Has the individual ever:

(a) been convicted of any *misdemeanor* or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *charge* of a *misdemeanor involving: municipal advisory activities* or a *municipal advisor-related* or *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐Yes ☐No

(b) been *charged* with any *misdemeanor* of the kind described in 6B(1)(a)? ☐Yes ☐No

(2) Based upon activities that occurred while the individual exercised *control* over it, has an organization ever:

(a) been convicted of any *misdemeanor* or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *charge* of a *misdemeanor* of the kind specified in 6B(1)(a)? ☐Yes ☐No

(b) been *charged* with any *misdemeanor* of the kind specified in 6B(1)(a)? ☐Yes ☐No

REGULATORY ACTION DISCLOSURE

If the answer is "Yes" to any question below in Items 6C-6G(1), complete a ***Regulatory Action DRP****.*

Item 6C.

Has the *SEC* or the *CFTC* ever:

(1) *found* the individual to have made a false statement or omission? ☐Yes ☐No

(2) *found* the individual to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute? ☐Yes ☐No

(3) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* business or *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the individual in connection with *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) imposed a civil money penalty on the individual, or *ordered* the individual to cease and desist from any activity? ☐Yes ☐No

(6) *found* the individual to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*, or *found* the individual to have been unable to comply with any provision of such Acts, rules or regulations? ☐Yes ☐No

(7) *found* the individual to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

(8) *found* the individual to have failed reasonably to supervise another *person* subject to his or her supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

Item 6D.

(1) Has any other *federal regulatory agency* or any *state regulatory agency* or *foreign financial regulatory authority* ever:

(a) *found* the individual to have made a false statement or omission or to have been dishonest, unfair or unethical? ☐Yes ☐No

(b) *found* the individual to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulation(s) or statute(s)? ☐Yes ☐No

(c) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐Yes ☐No

(d) entered an *order* against the individual in connection with a *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(e) denied, suspended, or revoked the individual's registration or license or otherwise, by *order,* prevented the individual from associating with a *municipal advisor-related* or *investment-related* business or restricted his or her activities? ☐Yes ☐No

(2) Has the individual ever been subject to any final *order* of a state securities commission (or any agency or office performing like functions), a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission (or any agency or office performing like functions), a *federal banking agency,* or the National Credit Union Administration, that:

(a) bars the individual from association with an entity regulated by such commission, authority, agency, or office, or from engaging in the business of securities, insurance, banking, savings association activities, or

credit union activities; or ☐Yes ☐No

(b) is based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? ☐Yes ☐No

Item 6E.
Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* the individual to have made a false statement or omission? ☐Yes ☐No

(2) *found* the individual to have been *involved* in a violation of its rules (other than a violation designated as a *"minor rule violation"* under a plan approved by the *SEC*)? ☐Yes ☐No

(3) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐Yes ☐No

(4) disciplined the individual by expelling or suspending him or her from membership, barring or suspending the individual's association with its members, or restricting the individual's activities? ☐Yes ☐No

(5) *found* the individual to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*, or *found* the individual to have been unable to comply with any provision of such Acts, rules or regulations? ☐Yes ☐No

(6) *found* the individual to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

(7) *found* the individual to have failed reasonably to supervise another *person* subject to his or her supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

Item 6F.

Has the individual ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended? ☐Yes ☐No

Item 6G.
Has the individual been notified, in writing, that he or she is currently the subject of any:

(1) regulatory complaint *or proceeding* that could result in a "Yes" answer to any part of 6C, D or E? ☐Yes ☐No

INVESTIGATION DISCLOSURE

If the answer is "Yes" to Item 6G(2) below, complete an ***Investigation DRP****.*

(2) *investigation* that could result in a "Yes" answer to any part of 6A, B, C, D or E? ☐Yes ☐No

CIVIL JUDICIAL ACTION DISCLOSURE

If the answer is "Yes" to a question below in Item 6H, complete a ***Civil Judicial Action DRP****.*

Item 6H.

(1) Has any domestic or foreign court ever:

(a) *enjoined* the individual in connection with any *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(b) *found* that the individual was *involved* in a violation of any *municipal advisor-related* or *investment-related* statute(s) or regulation(s)? ☐Yes ☐No

(c) dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against the individual by a domestic jurisdiction or *foreign financial regulatory authority?* ☐Yes ☐No

(2) Is the individual named in any currently pending civil *proceeding* that could result in a "Yes" answer to any part of 6H(1)? ☐Yes ☐No

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DISCLOSURE

If the answer is "Yes" to a question below in Item 6I, complete a ***Customer Complaint / Arbitration / Civil Litigation DRP.***

Item 6I.

(1) Has the individual ever been the subject of a *municipal advisor-related* or *investment-related,* customer-initiated (written or oral) complaint that alleged that he or she was *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or dishonest, unfair or unethical practices, which:

(a) is still pending, or; ☐Yes ☐No

(b) was settled? ☐Yes ☐No

(2) Has the individual ever been the subject of a *municipal advisor-related* or *investment-related,* customer-initiated arbitration or civil litigation that alleged that he or she was *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or dishonest, unfair or unethical practices, which:

(a) is still pending, or; ☐Yes ☐No

(b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or; ☐Yes ☐No

(c) was settled? ☐Yes ☐No

TERMINATION DISCLOSURE

If the answer is "Yes" to a question below in Item 6J, complete a ***Termination DRP****.*

Item 6J.
Has the individual ever voluntarily *resigned,* been discharged or permitted to *resign* after allegations were made that accused him or her of:

(1) violating *municipal advisor-related* or *investment-related* statutes, regulations, rules, or industry standards of conduct? ☐Yes ☐No

(2) fraud or the wrongful taking of property? ☐Yes ☐No

(3) failure to supervise in connection with *municipal advisor-related* or *investment-related* statutes, regulations, rules or industry standards of conduct? ☐Yes ☐No

FINANCIAL DISCLOSURE

Item 6K.
Within the past 10 years:

(1) has the individual made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition? ☐Yes ☐No

(2) based upon events that occurred while the individual exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition? ☐Yes ☐No

(3) based upon events that occurred while the individual exercised *control* over it, has a broker or dealer been the subject of an involuntary bankruptcy petition, had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act? ☐Yes ☐No

Item 6L.
Has a bonding company ever denied, paid out on, or revoked a bond for the individual? ☐Yes ☐No

JUDGMENT / LIEN DISCLOSURE

If the answer is "Yes" to a question below in Item 6M, complete a ***Judgment/Lien DRP****.*

Item 6M. Are there currently any unsatisfied judgments or liens against the individual? ☐Yes ☐No

Item 7 Signature

NOTE: In addition to completing Item 7, to the extent that the individual is a *non-resident*, a Form MA-NR completed and signed by the individual must be attached as an exhibit to this Form MA-I.

Complete either Subpart A or Subpart B:

By typing a name in the signature field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

A. For *Municipal Advisory Firms* filing this form:

The *municipal advisory firm* has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1.

I, the undersigned, sign this Form MA-I on behalf of, and with the authority of, the *municipal advisory firm* that is filing this form. The *municipal advisory firm* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-I, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA-I as a free and voluntary act.

Date: _____

By: _____
(*signature*)
Title: _____

B. For Natural Person *Municipal Advisors* (Sole Proprietors) filing this form:

The individual named below consents that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1.

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-I, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA-I Execution Page as a free and voluntary act.

Date: _____

Full Legal Name of the Individual
Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Individual *CRD* No. (if any):_____

By: _____
(*signature*)

Warning: Intentional misstatements or omissions of fact constitute Federal criminal violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).12.

FORM MA-I

PART II:
DISCLOSURE REPORTING PAGES (DRPs)

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (MA-I)

CRIMINAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6A and 6B*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6A(1)(a)** ☐ **6A(1)(b)** ☐ **6A(2)(a)** ☐ **6A(2)(b)**

☐ **6B(1)(a)** ☐ **6B(1)(b)** ☐ **6B(2)(a)** ☐ **6B(2)(b)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Criminal Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to Items **6A(1)(a), 6A(1)(b), 6A(2)(a), 6A(2)(b), 6B(1)(a), 6B(1)(b), 6B(2)(a) and/or 6B(2)(b).** Use this DRP to report all *charges*, including multiple counts of the same *charge,* arising out of the same event and filed in one criminal action. Separate cases arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.

How to Provide Court Documents: Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be attached as an exhibit if not previously submitted.

DRP On File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CRIMINAL ACTION DRP – PART 2

1. Firm or Organization

A. Were *charge(s)* brought against a firm or organization over which the individual exercise(d) *control*?

☐ **Yes** ☐ **No**

B. If "Yes," provide the following information:

(1) Enter the firm or organization name: _____

(2) Was the firm or organization engaged in a *municipal advisor-related* or *investment-related* business? ☐ Yes ☐ No

(3) What was the individual's position, title, or relationship with the firm or organization?

_____

2. Court Where Formal *Charge(s)* Were Brought: (*File a separate Criminal Action DRP for charges brought in separate courts and/or separate cases in the same court. If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other : _____

A. Name of the Court:_____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Details of Event: Report all *charges* separately. For each *charge,* provide the following information.

(1) First *Charge*

(a) List the *charge/charge* description:

_____
_____
_____
_____
_____
_____

(b) Number of counts: ___

(c) Check the appropriate box: ☐ *Felony* ☐ *Misdemeanor*

(d) Plea for this *charge*:

_____

(e) (i) Is the *charge municipal advisor-related?* ☐ Yes ☐ No

(ii) If "Yes," what is the product type?

_____

(f) (i) Is the *charge investment-related?* ☐ Yes ☐ No

(ii) If "Yes," what is the product type?

_____

(g) (i) Amended *Charge*: Indicate if the original *charge* was amended or reduced:

☐ Yes ☐ No

(ii) If "Yes," provide the date the *charge* was amended or reduced (MM/DD/YYYY):

_____

Report each additional *charge* below:
_____
_____

C. *Felony Charge(s)*: Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

4. Current Status of the Event: ☐ Pending ☐ On Appeal ☐ Final

5. Event Status Date (Complete unless status is pending) (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

6. On Appeal – Judicial Review: If you checked "On Appeal" in Item 4, to whom was the criminal action appealed? (*If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other (specify): _____

A. Name of the Court: _____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____

For Item 7: If you checked "Final" or "On Appeal" in Item 4, complete Item 7. For actions that are "Pending," skip to Item 8.

7. Disposition Disclosure Detail (For each *charge*, provide the following information):

(a) First *Charge*

(1) Disposition of the *Charge:*
Check all that apply.

☐ Acquitted
☐ Amended
☐ Convicted
☐ Deferred Adjudication
☐ Dismissed

☐ *Found* not guilty
☐ Pled guilty
☐ Pled nolo contendere
☐ Pled not guilty

☐ Pre-trial diversion/intervention
☐ Reduced
☐ Other (requires explanation) _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation) _____

Explanation: *If more than one disposition is checked, and/or "Other" is checked, or the above otherwise does not adequately summarize the disposition of the charge, provide an explanation.*

_____
_____

_____

(2) Date (MM/DD/YYYY): _____

(3) Sentence/Penalty: Is a sentence or other penalty *ordered*? ☐ **Yes** ☐ **No**

If "Yes," list each type (*e.g.,* prison, jail, probation, community service, counseling, education, other - specify):

_____
_____
_____
_____

(4) Was or is the individual incarcerated in connection with this sentence? ☐ **Yes** ☐ **No**
If "Yes," provide the following details:

(i) Duration (length of the sentence): ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iii) End Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iv) Is the sentence to be served concurrently with any other sentence? ☐ Yes ☐ No

If "Yes," indicate the end date of the concurrent sentence (MM/DD/YYYY):
_____

(v) Explanation (Optional):
_____
_____

(5) Monetary Penalty/Fine:

(i) Was a monetary penalty/fine imposed? ☐ Yes ☐ No
If "Yes," provide the following details in (ii) and (iii) below:

(ii) Total Penalty/Fine Amount: $_____

(iii) Was any portion suspended/reduced?

☐ Yes If "Yes," how much? $_____
☐ No

(iv) Final Amount: $_____

(v) Was the final amount paid in full?

☐ Yes If "Yes," date paid in full (MM/DD/YYYY):_____
☐ No

If "No," indicate the amount unpaid: $_____
And explain the circumstances:

_____

Report the disposition(s) of each additional *charge* below:

_____

_____

8. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the *charge*(s), as well as the current status or final disposition, if any. Include the relevant dates when the conduct which was the subject of the *charge*(s) occurred, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (MA-I)

REGULATORY ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6C, 6D, 6E, 6F and 6G(1)*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6C(1)**	☐ **6D(1)(a)**	☐ **6E(1)**	☐ **6F**	☐ **6G(1)**
☐ **6C(2)**	☐ **6D(1)(b)**	☐ **6E(2)**		
☐ **6C(3)**	☐ **6D(1)(c)**	☐ **6E(3)**		
☐ **6C(4)**	☐ **6D(1)(d)**	☐ **6E(4)**		
☐ **6C(5)**	☐ **6D(1)(e)**	☐ **6E(5)**		
☐ **6C(6)**	☐ **6D(2)(a)**	☐ **6E(6)**		
☐ **6C(7)**	☐ **6D(2)(b)**	☐ **6E(7)**		
☐ **6C(8)**				

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Regulatory Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to the above items. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

DRP On File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____

CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

REGULATORY ACTION DRP – PART 2

1. Regulatory Action was initiated by:

A. Select the Appropriate Item.
Select only one box below. A separate Regulatory Action DRP is required for each such regulator or other authority.

☐ *SEC*
☐ *CFTC*
☐ *Federal Banking Agency*
☐ National Credit Union Administration
☐ Other Federal Authority
☐ State
☐ *SRO*
☐ *Foreign Financial Regulatory Authority*
☐ Other: _____

B. Full name of the individual regulator (if not fully identified in Item 1-A.) or other authority that initiated the action. For a *foreign financial regulatory authority*, please provide the full name in English.

_____

2. Sanction(s) Sought
Select all that apply.

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil and Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Disgorgement
☐ Expulsion
☐ Injunction
☐ Prohibition
☐ Reprimand
☐ Requalification
☐ Rescission
☐ Restitution
☐ Revocation
☐ Suspension
☐ Undertaking

☐ **Other Sanction(s) Sought** (list each such additional sanction):

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

4. Regulatory Action was brought in (*if brought in a foreign jurisdiction, provide all the information below in English*):

A. Name of the Administrative *Proceeding*, *Commission*/Agency Hearing, or Other Regulatory *Proceeding* or Forum: _____

B. Location of the *Proceeding* / Hearing:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Number: _____

5. **Employing Firm:** Provide the full legal name of the individual's employing firm, if any, when the activity occurred which led to the regulatory action (if there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. Employing Firm: _____

B. *Municipal Advisor* Registration Number, if any: _____

C. *CRD* Number, if any: _____

6. **A. Principal Product Type**
Check appropriate item.

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**
_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:
_____
_____

7. **Allegations:** Describe the allegations related to this regulatory action. (The response must fit within the space provided.)
_____
_____
_____
_____
_____
_____

8. **Current Status:** ☐ Pending ☐ On Appeal ☐ Final

9. Pending: If you checked "Pending" in Item 8, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

10. On Appeal – Administrative or Judicial Review of the Regulatory Action: If the individual appealed, provide the following information.

A. Name of Regulator or Court Action Appealed To: *Provide the name of the US regulator (i.e., the SEC, an SRO, other), federal court, state court or state regulator, or a foreign or international court or regulator to whom the individual appealed. If brought in a foreign jurisdiction, provide all the information below in English.*

_____

B. Location of the Regulator or Judicial Court to Whom the Individual Appealed:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

If you checked "Final" or "On Appeal" in Item 8, complete Items 11 through 13, and consider Item 14. For actions that are "Pending," skip to Item 14.

11. A. Resolution: How was the matter resolved?
Check all the applicable boxes that reflect the most recent resolution of the matter by a regulator or a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 11-B which part is currently on appeal.

☐ Acceptance, Waiver & Consent (AWC)
☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Withdrawn
☐ Other (requires explanation)

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ad initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation)

B. Explanation: *If more than one box in Item 11-A is checked, or Other is checked, or Item 11-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if the individual appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____

_____

_____

_____

_____

_____

C. *Order:* If *Order* is checked above in Item 11-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

12. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator (reviewing a decision by an SRO or an Administrative Law Judge) or a court provided its resolution.*)

If not exact, provide explanation:

_____

_____

13. Resolution Detail

A. Sanction(s): Was/were any Sanction(s) *Ordered*? ☐ Yes
☐ No, none were *ordered.*

B. If "Yes," check each individual sanction below that was *ordered*:

☐ Bar (Permanent)	☐ Disgorgement*	☐ Restitution*
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Requalification
☐ Cease and Desist	☐ Injunction	☐ Revocation
☐ Censure	☐ Prohibition	☐ Suspension
☐ Civil and Administrative Penalty(ies)/Fine(s)*	☐ Reprimand	☐ Undertaking
☐ Denial	☐ Rescission	

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?

☐ Yes ☐ No

If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanction(s) *Ordered* (list each such additional sanction):**

_____

_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 13-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 13-B. above, check the appropriate box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____

_____

_____

_____

_____

_____

If, in the above action, the individual received one or more bars from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(b) ***Enjoined***

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____

_____

_____

_____

_____

_____

If, in the above action, the individual received one or more injunctions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____
_____
_____

If, in the above action, the individual received one or more suspensions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction?

☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____
_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____
(2) If "No," explain the circumstances:

_____
_____

If, in the above action, the individual received one or more requalifications in connection with registration capacities, associations, and/or other activities, and the terms specify different time periods,
report the additional details below:

_____

(3) Monetary Sanction(s): If you indicated in Item 13-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against the individual:

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

14. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____
_____
_____
_____

INVESTIGATION DISCLOSURE REPORTING PAGE (MA-I)

INVESTIGATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details **for an affirmative response to *Question 6G(2)* on Form MA-I.**

Check the question(s) to which this DRP pertains:

☐ **6G(2) *Investigation* that could result in a "Yes" answer to any part of:**
Check all that apply.

- ☐ **6A (Criminal Action Disclosure – *Felony*)**
- ☐ **6B (Criminal Action Disclosure – *Misdemeanor*)**
- ☐ **6C (Regulatory Action Disclosure – *SEC* or *CFTC*)**
- ☐ **6D (Regulatory Action Disclosure – Other Federal, State, Foreign)**
- ☐ **6E (Regulatory Action Disclosure – *SRO*)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Investigation* on an *Investigation* DRP: Complete this *Investigation* DRP only if you are answering "yes" to Item 6G(2), *i.e.,* that the individual has been notified, in writing, that he or she is currently the subject of an *investigation*. (If you answered "yes" to Item 6G(1), *i.e.,* that the individual has been notified in writing that he or she is currently the subject of a regulatory complaint or *proceeding,* complete the Regulatory Action DRP.) Use a separate *Investigation* DRP for each event or *investigation.* One event may result in more than one *investigation.* If an event gives rise to more than one authority *investigating* the individual, provide the details of each *investigation* on a separate DRP.

***Investigation* Concluded Without Formal Action:** If the individual has been notified that the *investigation* has been concluded without formal action, complete items 4 and 5 of this DRP to update.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

INVESTIGATION DRP – PART 2

1. ***Investigation* was initiated by:**

   A. **Notice Received From (select appropriate item):**

   Select only one box below. A separate *Investigation* DRP is required for each notice received from a regulator or other authority.

   ☐ **Criminal *Investigation***

   ☐ Federal ☐ Military ☐ State ☐ Foreign Country ☐ International Authority
   ☐ Other: _____

   ☐ **Regulatory or Other Civil Authority *Investigation***

   ☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
   ☐ *CFTC* ☐ *SRO* ☐ Other Foreign Authority
   ☐ Other Federal Authority
   ☐ Other: _____

   B. **Full name of the criminal, regulatory or other civil authority that initiated the *investigation* (unless *SEC* or *CFTC* is checked above).** For a foreign *investigation*, please provide the full name in English.

   _____

2. **Notice Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

3. **Description:**

   A. **Does the individual know the nature of the *investigation*?** ☐ **Yes** ☐ **No**

   B. **If the answer is "Yes," describe the nature of the *investigation:***

   _____

   _____

4. **Product Type(s):** (Select all that apply.)

   ☐ No Product

   ☐ Annuity – Charitable
   ☐ Annuity – Fixed
   ☐ Annuity – Variable
   ☐ Banking Product (other than CD)
   ☐ CD
   ☐ Commodity Option
   ☐ Direct Investment – DPP & LP Interest
   ☐ Equipment Leasing
   ☐ Equity Listed (Common & Preferred Stock)
   ☐ Equity OTC
   ☐ Futures – Commodity
   ☐ Futures – Financial
   ☐ Index Option
   ☐ Oil & Gas
   ☐ Options
   ☐ Penny Stock
   ☐ Prime Bank Instrument
   ☐ Promissory Note
   ☐ Real Estate Security
   ☐ Security Futures

☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Product Type:**

_____

5. **Current Status:** Is the *investigation* pending? ☐ Yes **If "Yes," skip to Item 7.** ☐ No **If "No," complete Item 6.**

6. **Resolution Details:**

A. **Date Closed/Resolved** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

_____

_____

B. **How was the *investigation* resolved?** (select appropriate item):

☐ Closed Without Further Action ☐ Closed - Regulatory Action Initiated
☐ Other (Explain):

_____

_____

If you checked "Closed - Regulatory Action Initiated" in Item 6-B, you must promptly complete and file an accurate and up-to-date Regulatory Action DRP (MA-I).

7. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the *investigation*, as well as the current status or final disposition and/or finding(s), if any. Include any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

TERMINATION DISCLOSURE REPORTING PAGE (MA-I)

TERMINATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question 6J*** on Form MA-I;

Check the question(s) to which this DRP pertains:

☐ **6J(1)** ☐ **6J(2)** ☐ **6J(3)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report a Termination on a Termination DRP: One termination may result in more than one affirmative answer to the above items. Use only one Termination DRP to report details about the same termination. Use a separate Termination DRP for each termination reported.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

TERMINATION DRP – PART 2

1. **Name of Employing Firm:**_____

   MA Registration Number, if any: _____ ***CRD* Number, if any:** _____

2. **Termination Type:** ☐ Discharged ☐ Permitted to *Resign* ☐ Voluntary *Resignation*

3. **Termination Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
   If not exact, provide explanation:

   _____

   _____

4. **Allegation(s):**

   _____

   _____

   _____

   _____

   _____

   _____

5. **Product Type(s):** (Select all that apply.)

   ☐ No Product

   ☐ Annuity – Charitable
   ☐ Annuity – Fixed
   ☐ Annuity – Variable
   ☐ Banking Product (other than CD)
   ☐ CD
   ☐ Commodity Option
   ☐ Debt – Asset Backed
   ☐ Debt – Corporate
   ☐ Debt – Government
   ☐ Debt – Municipal
   ☐ Derivative
   ☐ Direct Investment – DPP & LP Interest
   ☐ Equipment Leasing
   ☐ Equity Listed (Common & Preferred Stock)
   ☐ Equity OTC
   ☐ Futures – Commodity
   ☐ Futures – Financial
   ☐ Index Option
   ☐ Insurance
   ☐ Investment Contract
   ☐ Money Market Fund
   ☐ Mutual Fund
   ☐ Oil & Gas
   ☐ Options
   ☐ Penny Stock
   ☐ Prime Bank Instrument
   ☐ Promissory Note
   ☐ Real Estate Security
   ☐ Security Futures
   ☐ Security-based Swap
   ☐ Swap
   ☐ Unit Investment Trust
   ☐ Viatical Settlement

   ☐ **Other Product Type:**

   _____

6. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the termination, including any relevant information. The information must fit within the space provided.

   _____

   _____

   _____

   _____

   _____

   _____

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (MA-I)

JUDGMENT / LIEN DISCLOSURE DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for an affirmative response to ***Question 6M*** on Form MA-I.

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or a Judgment/Lien on a Judgment/Lien DRP: If multiple, unrelated events result in the same affirmative answer, details relating to each separate event must be provided on a separate Judgment/Lien DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

JUDGMENT / LIEN DISCLOSURE DRP – PART 2

1. **Judgment/Lien Amount:** $_____

2. **Judgment/Lien Holder:** _____

3. **Judgment/Lien Type:** ☐ Civil ☐ Tax

4. **Date Filed** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

5. **Formal Action Was Brought In:** (*If brought in a foreign jurisdiction, provide all the information below in English*):

   ☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

   ☐ Other : _____

   A. **Name of the Court:**_____

   B. **Location of the Court**

   Street Address: _____
   City or County: _____ State/Country: _____
   Postal Code: _____

   C. **Docket/Case Name:** _____

   D. **Docket/Case Number:**_____

6. **Is Judgment/Lien outstanding?** ☐ Yes **If "Yes," skip to item 8.**
   ☐ No **If "No," complete item 7.**

7. **If Judgment/Lien is not outstanding, provide:**

   A. **Status Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

   B. **How was matter resolved? (select appropriate item):**

   ☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

   ☐ Other (provide explanation):

   _____

8. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the action as well as the current status or final disposition. Include any other relevant information. The information must fit within the space provided.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (MA-I)

CIVIL JUDICIAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6H*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6H(1)(a)** ☐ **6H(1)(b)** ☐ **6H(1)(c)** ☐ **6H(2)**

Is this DRP an amendment filed for the individual that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Civil Judicial Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to Item 6H. Separate cases arising out of the same event, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CIVIL JUDICIAL ACTION DRP – PART 2

1. Court Action initiated by:

A. Select the Appropriate Item(s).
Check all that apply.

☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
☐ *CFTC* ☐ *SRO* ☐ *Municipal Advisory Firm*
☐ Other Federal Authority ☐ Commodities Exchange ☐ Private Plaintiff

☐ Other: _____

B. Plaintiff(s): Enter the full name(s) of the plaintiff(s), unless only *SEC* and/or *CFTC* is/are checked above. For a *foreign financial regulatory authority*, please provide the full name in English.

_____
_____
_____
_____

Were all plaintiffs fully identified in the space provided? ☐ Yes ☐ No

2. Defendant(s):

A. Enter the full name(s) of the defendant(s). For foreign defendant(s), please provide the full name(s) in English:

_____
_____
_____
_____
_____
_____

B. Is the individual a named defendant? ☐ Yes ☐ No If "No," describe how this action involves the individual:

_____
_____
_____
_____
_____
_____

3. Sanction(s) or Relief Sought:
Check appropriate items.

☐ Bar (Permanent) ☐ Exemption ☐ Requalification
☐ Bar (Temporary / Time Limited) ☐ Expulsion ☐ Rescission
☐ Cease and Desist ☐ Injunction ☐ Restitution
☐ Censure ☐ Money Damage(s) (Private/Civil Complaint) ☐ Restraining *Order*
☐ Civil /Administrative Penalty(ies)/Fine(s) ☐ Revocation

☐ Denial ☐ Prohibition ☐ Suspension
☐ Disgorgement ☐ Reprimand ☐ Undertaking

☐ **Other Sanction(s) or Relief Sought:**

_____
_____
_____
_____
_____

4. A. **Filing Date of Court Action** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

B. **Date Notice/Process was served** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

5. **Formal Action was brought in** (*If brought in a foreign jurisdiction, provide all the information below in English*):
Check the appropriate box.

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. **Name of the Court:**_____

B. **Location of the Court**

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. **Docket/Case Name:** _____

D. **Docket/Case Number:**_____

6. **Employing Firm:** Provide the full legal name of the individual's employing firm, if any, when the activity occurred which led to the civil judicial action. (If there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. **Employing Firm:** _____

B. ***Municipal Advisor* Registration Number, if any:** _____

C. *CRD* Number, if any: _____

7. A. Principal Product Type:
Check appropriate item.

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

8. Allegations: Describe the allegations related to this civil action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

9. Current Status: ☐ Pending ☐ On Appeal ☐ Final

10. Pending: If you checked "Pending" in Item 9, provide the following information:

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

11. On Appeal – Judicial Review: If the individual appealed, provide the following information. (*If brought in a foreign jurisdiction, provide all the information below in English.*):

A. Action Appealed to: (*Provide the name of the federal, state, foreign, or international court to whom the individual appealed.*):

_____

B. Location of the Court:

Street Address: _____

City or County: _____ State/Country: _____

Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

If you checked "Final" or "On Appeal" in Item 9, complete Items 12 through 14. For Pending Actions, skip to Item 15.

12. A. Resolution: How was the action resolved?

Check all the applicable boxes that reflect the most recent resolution of the action by a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 12-B which part is currently on appeal.

☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ Stipulation and Consent
☐ Opinion
☐ *Order*
☐ Settled
☐ Withdrawn

☐ Other: _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ad initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other: _____

B. Explanation: *If more than one box in Item 12-A is checked or Item 12-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if the individual appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____
_____
_____

C. ***Order:*** If *Order* is checked above in Item 12-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

13. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator or court provided its resolution.*)

If not exact, provide explanation:

_____
_____

14. Resolution Detail

A. Sanctions(s): Was/were any Sanction(s) *Ordered* or Relief Granted?

☐ Yes
☐ No, none were *ordered* or granted.

B. If "Yes," check each individual sanction *ordered* and/or relief granted below:

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil /Administrative Penalty(ies)/Fine(s)*
☐ Denial
☐ Disgorgement*
☐ Exemption
☐ Expulsion
☐ Injunction
☐ Money Damage(s) (Private/Civil Complaint)*
☐ Prohibition
☐ Reprimand
☐ Requalification
☐ Rescission
☐ Restitution*
☐ Restraining *Order*
☐ Revocation
☐ Suspension
☐ Undertaking

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No

If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanctions *Ordered* or Relief Granted** (list each such additional sanction or relief):

_____
_____
_____
_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 14-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 14-B. above, check the appropriate box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____
_____
_____

If, in the above action, the individual received one or more bars from registration capacities, associations, and/or other activities, and the terms specify different time periods,
report the additional details below:

_____
_____

(b) *Enjoined*

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____

If, in the above action, the individual received one or more injunctions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____

If, in the above action, the individual received one or more suspensions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction?

☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

If "Yes," provide the date (MM/DD/YYYY): _____
If "No," explain the circumstances:

_____

_____

If, in the above action, the individual received one or more requalifications in connection with registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 14-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against the individual:

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

15. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE REPORTING PAGE (MA-I)

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6I*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6I(1)(a)** ☐ **6I(2)(a)** ☐ **6I(2)(c)**
☐ **6I(1)(b)** ☐ **6I(2)(b)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report a Matter or a *Proceeding* on this DRP: Use a separate DRP for each matter or *proceeding*. One matter may result in more than one affirmative answer to the above items. Use a single DRP to report details relating to a particular matter (i.e., a customer complaint, arbitration, *CFTC* reparation, or civil litigation). If an event gives rise to separate *proceedings* by more than one regulator or other authority, or other plaintiff, provide details for each *proceeding* on a separate DRP. Separate cases arising out of the same matter, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DRP – PART 2

Disclosure Instructions and the Individual's Status: You must indicate the individual's status in Items II and III below:

I. All Matters: Items 1-6. Complete Items 1-6 for all matters, whether or not the individual is named as a party, including:

A. Customer complaints, arbitrations/*CFTC* reparations and civil litigation in which the individual is not named as a party, as well as,

B. Arbitrations/*CFTC* reparations and civil litigation in which the individual is named as a party.

II. If the individual is not named as a party, check here: ☐ And complete Items 7-11.

A. If the matter *involves* a customer complaint, or an arbitration/*CFTC* reparation or civil litigation in which the individual is not named as a party, complete Items 7-11 as appropriate.

B. If a customer complaint has evolved into an arbitration/*CFTC* reparation or civil litigation, amend the existing Disclosure Form by completing Items 9 and 10.

III. If the individual is named as a party, check here: ☐ And check the appropriate boxes below:

A. Arbitration/*CFTC* Reparation: If the matter *involves* an arbitration/*CFTC* reparation in which the individual is a named party, **check here: ☐ And complete Items 12-16, as appropriate.**

B. Civil Litigation: If the matter *involves* a civil litigation in which the individual is a named party, **check here: ☐ And complete Items 17-23.**

IV. Summary of the Circumstances: Item 24. This is an optional space and applies to all event types (i.e., customer complaint, arbitration/*CFTC* reparation, civil litigation).

Complete Items 1-6 for all matters (i.e., customer complaints, arbitrations/*CFTC* reparations, civil litigation).

1. Customer Name(s):_____

2. A. Customer(s) State of Residence or domicile, if applicable:

_____

B. Does/do the customer(s) have other state(s) of residence or domicile, if applicable? ☐ Yes ☐ No
If "Yes," provide the information:

_____

3. Employing Firm: Provide the full legal name of the individual's employing firm, if any, when activities occurred which led to the customer complaint, arbitration, *CFTC* reparation or civil litigation. (If there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. Employing Firm: _____

B. *Municipal Advisor* Registration Number, if any: _____

C. *CRD* Number, if any: _____

4. Product Type(s): (select all that apply)

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Product Type?** ☐ Yes ☐ No If "Yes," describe each additional product type:

_____
_____

5. Allegation(s): Describe the allegation(s) and provide a brief summary of events related to the allegation(s), including dates when activities leading to the allegation(s) occurred:

_____
_____
_____
_____
_____
_____

6. Alleged Compensatory Damage(s)

A. Do the allegations include any amount(s) for compensatory damage(s)? ☐ Yes ☐ No

B. If "Yes," indicate the amount: $_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

<u>If the Individual Is Not a Named Party</u>: If the matter *involves* a customer complaint, arbitration/*CFTC* reparation or civil litigation in which the individual is not named as a party, complete items 7-11 as appropriate.

<u>If the Individual Is a Named Party</u>: Report in Items 12-16, or 17-23, as appropriate, only arbitrations/*CFTC* reparations or civil litigation in which the individual is named as a party.

7. A. Is this an oral complaint? ☐ Yes ☐ No

B. Is this a written complaint? ☐ Yes ☐ No

C. Is this an arbitration/*CFTC* reparation or civil litigation? ☐ Yes ☐ No

If "Yes," provide:

(1) Arbitration/reparation forum or court name: _____

(2) Location of the Forum or Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

(3) Docket/Case Name: _____

(4) Docket/Case Number: _____

(5) Filing date of arbitration/*CFTC* reparation or civil litigation (MM/DD/YYYY):_____

D. Date received by/served on firm (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

8. Pending: Is the complaint, arbitration/*CFTC* reparation or civil litigation pending? ☐ Yes ☐ No
If "No," complete item 9.

9. Final: If the complaint, arbitration/*CFTC* reparation or civil litigation is not pending, provide status:

☐ Closed/No Action ☐ Withdrawn ☐ Denied ☐ Settled
☐ Arbitration Award/Monetary Judgment (for claimants/plaintiffs)
☐ Arbitration Award/Monetary Judgment (for respondents/defendants)
☐ Evolved into Arbitration/*CFTC* reparation (individual is a named party): **Complete Items 12-16.**
☐ Evolved into Civil litigation (individual is a named party): **Complete Items 17-23.**

Status:

<u>If the Individual Is Not a Named Party</u>: If the status is arbitration/*CFTC* reparation in which the individual is not a named party, provide details in Item 7C.

<u>If the Individual Is a Named Party</u>: If the status is arbitration/*CFTC* reparation in which the individual is a named party, complete Items 12-16. If the status is civil litigation in which the individual is a named party, complete Items 17-23.

10. Status Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

11. Settlement/Award/Monetary Judgment:

A. Is there a Settlement/Award/Monetary Judgment? ☐ Yes ☐ No
If "Yes," provide the details below in Item 11-B. and Item 11-C.

B. Settlement/Award/Monetary Judgment Amount: $_____

C. Was the individual required to pay any portion of the total amount? ☐ Yes ☐ No

If "Yes," indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

If the matter *involves* an arbitration or *CFTC* reparation in which the individual is a named respondent, complete Items 12-16, as appropriate.

12. A. Arbitration/*CFTC* reparation claim filed with (*FINRA*, AAA, *CFTC*, etc.):

_____

B. Location of the Forum

Street Address: _____
City or County: _____ State/Region: _____
Country: _____ Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date notice/process was served (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

13. Pending: Is arbitration/*CFTC* reparation pending? ☐ Yes ☐ No
If "No," complete Items 14 and 15.

14. Final: If the arbitration/*CFTC* reparation is not pending, what was the disposition?

☐ Award to the Individual (Agent/Representative)
☐ Award to Customer
☐ Denied
☐ Dismissed
☐ Judgment (other than monetary)
☐ No Action
☐ Settlement that includes a monetary payment to customer
☐ Settlement without a monetary payment to customer
☐ Withdrawn

☐ Other:_____

15. Disposition Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

16. Monetary Compensation Details (If you checked "Award to Customer," or "Settlement that includes a monetary payment to customer" in Item 14, or otherwise a payment of money must be made to the customer, provide the following information.)

A. Total Amount: $_____

B. The Individual's Portion: Was the individual required to pay any portion of the total amount?
☐ **Yes** ☐ **No**

C. If you answered "Yes," to Item 16-B, indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

If the matter *involves* a civil litigation in which the individual is a defendant, complete items 17-23.

17. Court in which case was filed (*if brought in a foreign jurisdiction, provide all the information below in English*):

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. Name of the Court:_____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

18. Date received by/served on firm (MM/DD/YYYY):_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

19. Current Status of the Civil Litigation:

☐ **Pending (Skip to Item 24.)**
☐ **On Appeal (Complete Items 20-23; and consider Item 24.)**
☐ **Final (Complete Items 20-22; and Item 23 if applicable; and consider Item 24.)**

20. Resolution:

☐ Denied
☐ Dismissed
☐ Judgment (other than monetary)
☐ Monetary Judgment to the Individual (Agent/Representative)
☐ Monetary Judgment to Customer
☐ No Action
☐ Settlement that includes a monetary payment to customer
☐ Settlement without a monetary payment to customer
☐ Withdrawn

☐ Other:

_____

_____

21. Disposition Date (MM/DD/YYYY):_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

22. Monetary Compensation Details (If you checked "Monetary Judgment to Customer" or "Settlement that includes a monetary payment to customer" in Item 20, or otherwise a payment of money must be made to the customer, provide the following information.)

A. Total Amount: $_____

B. Was the individual required to pay any portion of the total amount? ☐ **Yes** ☐ **No**

C. If you answered "Yes" to Item 22-B, indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

23. On Appeal – Judicial Review: If the individual appealed, provide the following information. (*If brought in a foreign jurisdiction, provide all the information below in English*):

A. Action Appealed to: (*Provide the name of the federal, military, state, foreign, or international court to which the individual appealed.*)

_____

B. Location of the Court:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

F. Appeal Details (including status):

_____
_____
_____
_____
_____

24. Summary of the Circumstances (Optional). You may use this space to provide a brief summary of the circumstances leading to the customer complaint, arbitration/*CFTC* reparation and/or civil litigation as well as the current status or final disposition(s). The information must fit within the space provided.

_____
_____
_____
_____

Form MA-NR

DESIGNATION OF U.S. AGENT FOR SERVICE OF PROCESS FOR NON-RESIDENTS

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "General Instructions to Form MA-NR," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

Purpose: Each *non-resident municipal advisor, non-resident* general partner or *non-resident managing agent* of a *municipal advisor*, and *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf must execute a written irrevocable consent and power of attorney on Form MA-NR to appoint an agent in the United States, upon whom may be served any process, pleadings, or other papers in any action brought against such *non-resident municipal advisor*, general partner, *managing agent* or natural person associated with the *municipal advisor*.

Instructions to Complete this Form:

1. This power of attorney, consent, stipulation, and agreement shall be signed and notarized by the *non-resident municipal advisor*, *non-resident* general partner or *managing agent*, or *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf, as applicable, in Section A of Form MA-NR. The form must be signed by the authorized agent for service of process in the United States in Section B of Form MA-NR.

2. The name of each *person* who signs this Form MA-NR must be typed or printed beneath the *person*'s signature.

3. Any *person* who occupies more than one of the specified positions must indicate each capacity in which the *person* is signing the form.

4. Section C Documentation: If any *person* signs this form pursuant to a written authorization – *e.g.*, a board resolution or power of attorney – an accurate and complete copy of each such document must be included with the Form MA-NR.

5. Attachment to Form MA or Form MA-I:

   a) Complete and execute a printed Form MA-NR, including signatures and notarization. Then scan the original completed and executed form to create a PDF file. Please consult the instructions for uploading PDF files into EDGAR, found in the EDGAR Filer's Manual, available at http://www.sec.gov/info/edgar.shtml.

   b) If any other documents are required, as specified in Section C of the form, include these documents in the same PDF file or create a separate one(s).

   c) Attach the PDF file(s) to the Form MA or Form MA-I, as appropriate, where prompted in the form.

Power of Attorney, Consent, Stipulation, and Agreement

A. Designation and Appointment of Agent for Service of Process

Identify the agent for service of process for the *non-resident municipal advisor*, for the *non-resident* general partner or *managing agent* of a *municipal advisor*, or for the *non-resident* natural person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. Fill in all lines.

1. Name of United States *person* designated and appointed as agent for service of process.
   Enter all the letters of each name and not initials or other abbreviations.
   (*If no middle name, enter NMN on that line.*)

   _____
   (name)

2. Mailing Address of United States *person* designated and appointed as agent for service of process.
   Do not use a P.O. Box. Do not use a foreign address.

   _____
   (number and street; office suite or room number)

   _____ _____ _____
   (city) (state) (U.S. postal code: zip+4)

   _____
   (area code) (telephone number)

By signing this Form MA-NR or authorizing the signatory below to sign on your behalf, you – the *non-resident municipal advisor*, *non-resident* general partner or *non-resident managing agent* of a *municipal advisor,* or *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf (hereinafter, "the Designator") – irrevocably designate and appoint the above United States *person* as your Agent for Service of Process, and agree that such *person* may be served on your behalf, of any process, pleadings, subpoenas, or other papers, and you further agree that such service may be made by registered or certified mail, in:

(a) *any investigation* or administrative *proceeding* conducted by the *Commission* (i) that relates to you or (as applicable) to the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* or (ii) with respect to which you may have information; and

(b) any civil suit or action brought against you or (as applicable) the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* or to which you, or (as applicable) the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state, or of the United States or of any of its territories or possessions or of the District of Columbia, where the *investigation, proceeding*, or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor.*

The Designator stipulates and agrees that: any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, the above-named Agent for Service of Process; and that service as aforesaid shall be taken and

held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made. Such person cannot be a *Commission* member, official, or employee.

Appointment and Consent: Effect on Partnerships. If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

Certification:

The undersigned certifies under penalty of perjury under the laws of the United States of America, that the information contained in this Form MA-NR is true and correct and that this Form MA-NR is signed as a free and voluntary act.

Unless the Designator is a natural person signing on his or her own behalf, the undersigned further certifies that the Designator has duly caused this power of attorney, consent, stipulation, and agreement to be signed on the Designator's behalf by the undersigned, thereunto duly authorized:

Signature of Designator or Person Signing on Behalf of Designator:

_____ Date: _____

Printed Name: _____ Title: _____

In the City of: _____ In the Country of: _____

The Designator is executing this Form MA-NR as a:
(*Check all that apply.*)

___ *Non-resident municipal advisory firm*, other than a sole proprietor
___ *Non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf
___ *Non-resident municipal advisor* sole proprietor
___ *Non-resident* general partner of a *municipal advisor*
Name of *municipal advisor* _____
___ *Non-resident managing agent* of a *municipal advisor*
Name of *municipal advisor* _____

The Designator is executing this Form MA-NR in connection with a(n):
(*Check all that apply.*)

___Initial application on Form MA of the Designator for registration as a *municipal advisor*
___Initial application on Form MA of the *municipal advisor* of which the Designator is a general partner or *managing agent*
___Initial submission on Form MA-I filed regarding a natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf
___Change of status of Designator from a resident to a *non-resident*
___Amendment to information supplied on a previous Form MA-NR

Mailing Address of the Designator
Do not use a P.O. Box.

_____
(number and street)

_____ _____ _____ _____
(city) (state/region) (country) (postal code)

_____
(country code) (area code) (telephone number)

For a telephone number outside of the U.S., provide the country code with the area code and number.

EDGAR CIK No. (if any)_____ *SEC* File No. (if any): _____

Notary Public Signature and Information:

Signature: _____ [PLACE SEAL HERE]

Subscribed and sworn to me this ____ day of _____, _____

My commission expires on _____ County of _____
State/Region of _____ Country of _____

B. Acceptance of the Above Designation and Appointment as Agent for Service of Process.

The United States *person* identified in Section A above as the agent for service of process hereby accepts this designation and appointment as agent for service of process, under the terms set forth in this Form MA-NR. By signing below, the signatory certifies that the *person* identified in Section A above as the agency for service of process has duly caused this power of attorney, consent, stipulation, and agreement to be signed on its behalf by the undersigned, thereunto duly authorized:

Signature of U.S. Agent for Service of Process:

_____ Date: _____

Printed Name: _____ Title: _____

C. Attached Documents

1. Is any name signed above pursuant to a written authorization, such as a board resolution or power of attorney? ☐Yes ☐No

2. Is there a written contractual agreement or other written document evidencing the designation and appointment of the above named U.S. agent for service of process and/or the agent's acceptance? ☐Yes ☐No

If "Yes" to Section C-1 and/or Section C-2., identify each such document on a separate line below, and include an accurate and complete copy of each such document as part of the PDF file in which the Form MA-NR is attached to the Form MA or Form MA-I, or attach each such document as a separate PDF to the relevant Form MA or Form MA-I.

_____

FORM MA-W

NOTICE OF WITHDRAWAL FROM REGISTRATION AS A MUNICIPAL ADVISOR

Please refer to the General Instructions for forms in the MA series before completing this form. All italicized terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

A municipal advisor must complete this Form MA-W to withdraw its municipal advisor registration with the SEC.

WARNING: Complete this form truthfully. False statements or omissions may result in administrative or civil action or criminal prosecution.

Item 1 Identifying Information

A. Full Legal Name:

The name entered here must be the same as the name entered on the registrant's most recent Form MA. Do not report a name change on this Form MA-W.

_____

B. *SEC* File Number: _____

Item 2 Contact Person (for *Municipal Advisory Firms*)

The registrant's contact person must be a principal or employee (not outside counsel) of the municipal advisor authorized to receive information and respond to questions about this Form MA-W.

Name, title, and contact information:

_____
(name) (title)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

_____@_____
(E-mail address)

Item 3 Money Owed to *Clients*

Has the registrant:

A. Received any pre-paid municipal advisory fees for *municipal advisory activities*, including subscription fees for publications, that have not been delivered? ☐Yes ☐No

If "yes," what is the amount owed for these pre-paid services (including subscriptions)? $_____.00

B. Borrowed any money from *clients* that has not been repaid? ☐Yes ☐No

If "yes," what is the amount owed for these borrowed funds? $_____.00

Item 4 Advisory Contract Assignments

Has the registrant assigned any municipal advisory contracts to another *person* that engages in *municipal advisory activities*? ☐Yes ☐No

If yes, list on Section 4 of Schedule W1 each *person* to whom the registrant has assigned any such municipal advisory contracts and provide the requested information.

Item 5 Judgments and Liens

Are there any unsatisfied judgments or liens against the registrant? ☐Yes ☐No

Item 6 Books and Records

NOTE: Rule 15Ba1-8 under the Exchange Act requires a municipal advisor to preserve its books and records after the municipal advisor ceases to conduct or discontinues business as a municipal advisor.

Provide in Schedule W1 the name and address of each *person* who has or will have custody or possession of the *municipal advisor*'s books and records and each location at which any of such books and records are or will be kept.

Item 7 Statement of Financial Condition

If registrant answered "yes" to Item 3A, Item 3B, or Item 5, complete Schedule W2, disclosing the nature and amount of the registrant's assets and liabilities and net worth as of the last day of the month prior to the filing of this Form MA-W.

Execution

For a Sole Proprietor:

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true. I further certify that the books and records of my *municipal advisor-related* business will be preserved and available for inspection as required by law, and that all information submitted on my most recent Form MA and Form MA-I is accurate and complete as of this date. I understand that if any information contained in this Form MA-W is different from the information contained on my Form MA and Form MA-I, the information on this Form MA-W will replace the corresponding entry on my Form MA and Form MA-I. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

For a *Municipal Advisory Firm*:

I, the undersigned, have signed this Form MA-W on behalf of, and with the authority of, the *municipal advisor* withdrawing its registration. The advisor and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true. I further certify that the *municipal advisor's* books and records will be preserved and available for inspection as required by law, and that all information submitted on the *municipal advisor*'s most recent Form MA is accurate and complete as of this date. The *municipal advisor* and I understand that if any information contained in this Form MA-W is different from the information contained on Form MA, the information on this Form MA-W will replace the corresponding entry on the *municipal advisor*'s Form MA. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

FORM MA-W
Schedule W1

Certain items in Form MA-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

SECTION 4 Advisory Contract Assignments

Check here if this section is being completed: ☐

Complete the following information for each *person* to whom the registrant has assigned any advisory contract to provide *municipal advisor-related* services. Complete a separate Schedule W1 for each *person* to whom the registrant has assigned such a contract.

Name and business address of the *person* to whom advisory contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

SECTION 6 Books and Records

***Person* with Custody**
Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in this Section 6 of this Schedule. A separate Schedule W1 must be completed for each *person* that has or will have custody of any of the registrant's books and records. If the *person* listed below has or will have custody of any of the registrant's books and records at any other location, a separate Schedule W1 must be completed listing this *person* and each other location where the *person* has custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

Location
Complete the following information for the location where the books and records of which the *person* listed in this Section 6 of this Schedule has or will have custody or possession. A separate Schedule W1 must be completed for each location at which the registrant's records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, a separate Schedule W1 must be completed listing this location and each other *person* that has or will have custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

Briefly describe the books and records kept at this location. _____

FORM MA-W
Schedule W2

If the registrant answered "yes" to Item 3A, 3B, or 5 of Form MA-W, complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

SECTION 7 STATEMENT OF FINANCIAL CONDITION

I. Assets

Current Assets

Cash	_____
Securities at Market	_____
Non-Marketable Securities	_____
Other Current Assets	_____
Total Current Assets	**$** _____

Fixed Assets

Total Fixed Assets	**$** _____

TOTAL ASSETS	$_____

II. Liabilities & Shareholders' Equity

Current Liabilities

Prepaid Advisory Fees	_____
Short-Term Loans from *Clients*	_____
Other Short-Term Loans	_____
Other Current Liabilities	_____
Total Current Liabilities	$ _____

Fixed Liabilities

Long-Term Debt Owed to *Clients*	_____
Other Long-Term Debt	_____
Other Long-Term Liabilities	_____
Total Fixed Liabilities	$ _____

Shareholders' Equity

Total Shareholders' Equity (or Deficit)	**$** _____

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$_____

By the Commission.

Date: September 20, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–23524 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–C

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 218 November 12, 2013

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2008–0677; Amdt. No. 121–366]

RIN 2120–AJ00

Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the training requirements for pilots in air carrier operations. The regulations enhance air carrier pilot training programs by emphasizing the development of pilots' manual handling skills and adding safety-critical tasks such as recovery from stall and upset. The final rule also requires enhanced runway safety training and pilot monitoring training to be incorporated into existing requirements for scenario-based flight training and requires air carriers to implement remedial training programs for pilots. The FAA expects these changes to contribute to a reduction in aviation accidents. Additionally, the final rule revises recordkeeping requirements for communications between the flightcrew and dispatch; ensures that personnel identified as flight attendants have completed flight attendant training and qualification requirements; provides civil enforcement authority for making fraudulent statements; and, provides a number of conforming and technical changes to existing air carrier crewmember training and qualification requirements. The final rule also includes provisions that provide opportunities for air carriers to modify training program requirements for flightcrew members when the air carrier operates multiple aircraft types with similar design and flight handling characteristics.

DATES: Effective March 12, 2014.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general questions contact Nancy Lauck Claussen, email: *Nancy.l.Claussen@faa.gov*; for flightcrew member questions, contact Robert Burke, email: *Robert.Burke@faa.gov*; Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166. For legal questions, contact Sara Mikolop, email: *Sara.Mikolop@faa.gov* or Bonnie Dragotto, email: *Bonnie.Dragotto@faa.gov*; Office of Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules, and 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Also, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216) specifically required the FAA to conduct rulemaking to ensure that all flightcrew members receive ground training and flight training in recognizing and avoiding stalls, recovering from stalls, and recognizing and avoiding upset of an aircraft, as well as the proper techniques to recover from upset of an aircraft. Public Law 111–216 also directed the FAA to require air carriers to develop remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment. In addition, Public Law 111–216 directed the FAA to issue a final rule with respect to the notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 12, 2009 (74 FR 1280).

List of Acronyms

To assist the reader, the following is a list of acronyms used in this final rule:

AC Advisory Circular
AOA Angle of Attack
AQP Advanced Qualification Program
ARC Aviation Rulemaking Committee
ATP Airline Transport Pilot
AURTA Airplane Upset Recovery Training Aid
CAB Civil Aeronautics Board
CAP Continuous Analysis Process
CAST Commercial Aviation Safety Team
CFR Code of Federal Regulations
CRM Crew Resource Management
CTP Certification Training Program
DOT Department of Transportation
FAA Federal Aviation Administration
FCOM Flightcrew Operating Manual
FDR Flight Data Recorder
FFS Full Flight Simulator
FSB Flight Standardization Board
FSTD Flight Simulation Training Device
FTD Flight Training Device
IAS Indicated Airspeed
ICAO International Civil Aviation Organization
ICATEE International Committee for Aviation Training in Extended Envelopes
INFO Information for Operators
IOS Instructor Operating Station
LOC–I Loss of Control In-Flight
LOFT Line Oriented Flight Training
MDR Master Differences Requirements
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OEM Original Equipment Manufacturer
OMB Office of Management and Budget
PIC Pilot in Command
POI Principal Operations Inspector
PRIA Pilot Records Improvement Act
PTS Practical Test Standards
SAFO Safety Alert for Operators
SIC Second in Command
SMS Safety Management System
SNPRM Supplemental Notice of Proposed Rulemaking

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I. Overview of Final Rule

On May 3, 2004, the FAA established the Crewmember/Dispatcher Qualification Aviation Rulemaking Committee (ARC) as a forum for the FAA and the aviation community to discuss crewmember and aircraft dispatcher qualification and training. The ARC submitted recommendations to the Associate Administrator for Aviation Safety in April 2005.[1] These recommendations focused on changes to the regulatory requirements, the development of qualification performance standards (QPS) appendices specific to the qualification, training and evaluation of crewmembers (i.e. pilots, flight engineers, and flight attendants) and aircraft dispatchers, and reorganization of the existing regulations for traditional air carrier training programs, found in subparts N and O of part 121.

Based on the ARC's recommendations, the FAA proposed a comprehensive reorganization and revision to crewmember and aircraft dispatcher qualification, training, and evaluation requirements in a notice of proposed rulemaking (NPRM) published January 12, 2009 (74 FR 1280).

On February 12, 2009, shortly after publication of the NPRM, a Colgan Air, Inc. Bombardier DHC–8–400, operating as Continental Connection flight 3407, crashed into a residence in Clarence Center, New York, about 5 nautical miles northeast of the airport resulting in the death of everyone on board and one person on the ground. The National Transportation Safety Board (NTSB) determined that the probable cause of this accident was the pilot in command's (PIC) inappropriate response to the activation of the stick shaker, which led to an aerodynamic stall.

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216), enacted August 1, 2010, included a number of requirements to form ARCs and conduct rulemaking related to the results of the NTSB investigation of the Colgan Air accident. For example, in § 208 of Public Law 111–216, Congress directed the FAA to conduct rulemaking to ensure that all flightcrew members receive ground training and flight training in recognizing and avoiding stalls, recovering from stalls, and recognizing and avoiding upset of an aircraft, as well as the proper techniques to recover from upset. Public Law 111–216 also directed the FAA to conduct rulemaking to ensure air carriers develop remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment. In addition, Public Law 111–216 included a number of related requirements for rulemaking.[2]

In light of the statutory mandate to conduct rulemaking related to stall and upset prevention and recovery training, as well as significant comments on the NPRM and the need to obtain additional data and clarify the proposal, the FAA published a supplemental notice of proposed rulemaking (SNPRM) on May 20, 2011 (76 FR 29336). The SNPRM included pilot training requirements intended to mitigate the causal factors related to pilot training identified by the NTSB in its investigation and report on the 2009 Colgan Air accident.

The FAA recognizes the critical safety roles and contributions of all crewmembers and aircraft dispatchers in today's integrated operating environment. The agency has taken steps in addition to this final rule to ensure that crewmember and aircraft dispatcher training reflects that integrated operating environment.

Since the publication of the SNPRM, however, there have been several changes within the aviation industry. These changes have resulted from work by the FAA and air carriers to implement the related rulemakings and guidance required by Public Law 111–216. Specifically, recent changes to the Airline Transport Pilot certification requirements for first officers (second in command pilots) have raised the baseline knowledge and skill set of pilots entering air carrier operations.

In addition, while the agency finalizes the proposed rulemaking that will require part 121 operators to implement safety management systems (SMS), many air carriers have already begun to develop SMSs, which will assist air carriers in identifying risks unique to their own operating environments (including air carrier training programs), and establishing mitigations to address those risks. Implementation of the initiatives identified in the FAA's 2009 Call to Action to Enhance Airline Safety has also impacted the training environment.

As a result of these changes, the FAA believes it is necessary to consider the cumulative effects of these efforts across the aviation industry before additional regulations are imposed. Accordingly, at this time, the agency has decided to finalize certain provisions of the proposal that enhance pilot training for rare, but high-risk scenarios, and that provide the greatest safety benefit. The time required in order to publish a final rule that contained the comprehensive revisions and reorganization of existing training program requirements as proposed in the SNPRM would result in unacceptable delay in light of the risk presented by these scenarios.

The FAA will continue to assess the need for the comprehensive revisions and reorganization of pilot, flight engineer, flight attendant and dispatcher qualification and training requirements proposed in the NPRM and SNPRM as it evaluates the cumulative effectiveness of these various efforts outlined above. If this assessment indicates that additional action is warranted, the FAA will engage stakeholders on these important issues and work to develop additional safety measures as appropriate.

This final rule adds training requirements for pilots that target the prevention of and recovery from stall and upset conditions, recovery from bounced landings, enhanced runway safety training, and enhanced training on crosswind takeoffs and landings with gusts. Stall and upset prevention require pilot skill in manual handling maneuvers and procedures. Therefore, the manual handling maneuvers most critical to stall and upset prevention (i.e., slow flight, loss of reliable airspeed, and manually controlled departure and arrival) are included in the final rule as part of the agency's overall stall and upset mitigation strategy. These maneuvers are identified in the final rule within the ''extended envelope'' training provision.

Further, the final rule requires air carriers to establish remedial training and tracking programs for pilots with

[1] The ARC recommendations are available at Regulations.gov, FAA–2008–0677–0049.

[2] The rulemakings required by Public Law 111–216 include § 203, FAA pilot records database; § 206, Flight crewmember mentoring, professional development, and leadership training; § 215, Safety management systems; § 216, Flight crew member screening and qualifications; and § 217, Airline transport pilot certification. These rulemaking projects are in various stages of development, and updates on the status of these rulemakings can be found on the U.S. Department of Transportation's (DOT) Report on DOT Significant Rulemakings, available at *http://www.dot.gov/regulations/report-on-significant-rulemakings*.

performance deficiencies or multiple failures; includes additional training for instructors and check airmen who conduct training or checking in a flight simulation training device (FSTD); and incorporates pilot monitoring training into existing requirements for scenario-based flight training. The final rule also provides for efficiencies in training flightcrew members who operate multiple aircraft types with similar design and flight handling characteristics. In addition, the rule finalizes other discrete SNPRM proposals, such as ensuring that personnel identified as flight attendants have completed flight attendant training and qualification requirements; requiring approval of training equipment; revising record keeping requirements for communication records between the flight crew and dispatch personnel; establishing civil enforcement authority for making fraudulent or intentionally false statements; and other technical and conforming changes.

Table 1, Summary of Final Rule Provisions, provides additional detail regarding the final rule provisions incorporated into existing subparts of part 121.

TABLE 1—SUMMARY OF FINAL RULE PROVISIONS

Final rule provision [3]	Description of provision	Timeline for compliance [4]
Fraud and falsification (§ 121.9)	Although currently prohibited by criminal statute, this section authorizes the FAA to take certificate action or assess a civil penalty against a person for making a fraudulent or intentionally false statement.	Compliance is required on the effective date of the final rule.
Personnel identified as flight attendants (§ 121.392).	Prohibits part 121 operators from identifying persons as flight attendants if those persons have not completed flight attendant training and qualification.	Compliance is required on the effective date of the final rule.
Approval of flight simulation training devices (§ 121.407).	Conforms the requirements for the evaluation, qualification, and maintenance of flight simulation training devices used in part 121 to existing part 60 requirements.	Compliance is required 5 years after the effective date of the final rule.
Training equipment other than flight simulation training devices approved under part 60 (§§ 121.408, 121.403(b)(2)).	Ensures that all equipment used in approved training programs adequately replicates the equipment that will be used on an aircraft.	Compliance is required 5 years after the effective date of the final rule.
Pilot monitoring (§§ 121.409, 121.544, appendix H).	Requires training on pilot monitoring to be incorporated into existing requirements for scenario-based training and establishes an operational requirement that flightcrew members follow air carrier procedures regarding pilot monitoring. The pilot not flying must monitor the aircraft operation.	Compliance is required 5 years after the effective date of the final rule.
Training for instructors and check airmen who serve in FSTDs (§§ 121.413, 121.414).	Requires check airmen and flight instructors who conduct training or checking in FSTDs to complete initial, transition, and recurrent training on the operation of the FSTD and the device's limitations.	Compliance is required 5 years after the effective date of the final rule.
Remedial training program (§§ 121.415(h) and 121.415(i)).	Implements Congressional direction to require part 121 operators to identify and correct pilot training deficiencies through remedial training programs.	Compliance is required 5 years after the effective date of the final rule.
Proficiency checks for PICs (§ 121.441(a)(1)(ii)).	Amends current provision to require PICs who fly more than one aircraft type to receive a proficiency check in each aircraft type flown.	Compliance is required 5 years after the effective date of the final rule.
Related aircraft differences training (§§ 121.400, 121.418, 121.434, 121.439, 121.441).	Allows air carriers to modify training program requirements for flightcrew members when the air carrier operates aircraft with similar flight handling characteristics.	Since the related aircraft provisions provide relief to operators, compliance is permitted on the effective date of the final rule.
Extended envelope flight training maneuvers and procedures (§§ 121.407(e), 121.423, 121.424, 121.427(d)(1)(i), 121.433(e), appendix E).	Requires pilot flight training on the following maneuvers and procedures: • Upset recovery maneuvers • Manually controlled slow flight • Manually controlled loss of reliable airspeed. • Manually controlled instrument arrivals and departures. • Recovery from stall and stick pusher activation, if aircraft equipped. • Recovery from bounced landing. This training is required in a full flight simulator (FFS) during all qualification and recurrent training and will require additional time to complete.	Compliance is required 5 years after the effective date of the final rule.

TABLE 1—SUMMARY OF FINAL RULE PROVISIONS—Continued

Final rule provision [3]	Description of provision	Timeline for compliance [4]
Extended envelope ground training subjects (§§ 121.419(a)(2), 121.427).	Requires pilots to complete ground training during qualification and recurrent training on stall prevention and recovery and upset prevention and recovery. This training adds 2 hours to qualification ground training and 30 minutes to recurrent ground training.	Compliance is required 5 years after the effective date of the final rule.
Communication records for domestic and flag operations (§ 121.711).	Codifies details of content for records of communication between aircraft dispatchers and flight crew previously described in a legal interpretation.	Compliance is required on the effective date of the final rule.
Runway safety maneuvers and procedures (Appendices E and F).	Expands existing taxi and pre-takeoff requirements.	Compliance is required 5 years after the effective date of the final rule.
Crosswind maneuvers including wind gusts (Appendices E and F).	Expands existing requirement for training on crosswind maneuvers to include gusts.	Compliance is required 5 years after the effective date of the final rule.

[3] Table 1 does not include all technical or editorial amendments.
[4] All final rule provisions are effective 120 days after publication in the FEDERAL REGISTER. However, certain provisions have an extended timeline for compliance consistent with the proposal in the NPRM and SNPRM. The FAA encourages early compliance and will work with all operators to ensure compliance with the final rule training provisions is achieved as soon as practicable but no later than 5 years after the effective date of the final rule.

Table 2 shows the FAA's estimate for the base case costs, including the low and high cost range, in 2012 dollars. Table 2 also shows the estimated potential quantified safety benefits using a 22-year historical accident analysis. The FAA conducted a sensitivity analysis to explore the effect of reducing the historical analysis period from 22 years to 10 years in response to comments disputing the use of a 22-year time frame. Using a shorter historical analysis period, the estimated benefits of this final rule increase by approximately 17 percent. This analysis can be found in Appendix 14 of the Regulatory Impact Analysis, which is available in the docket for this rulemaking.

Table 2—Total Benefits and Costs (2012 $ Millions) From 2019 to 2028

Total Benefits and Costs ($ Millions)				
			Present Value	
Range		2012 $	7%	3%
Low	Cost	$274.1	$130.8	$197.5
High	Cost	$353.7	$168.8	$254.8
Base Case	**Cost**	**$313.9**	**$149.8**	**$226.1**
	Benefit	**$689.2**	**$317.1**	**$488.7**

II. Background

A. Statement of the Problem

The agency has identified 11 aircraft accidents over a 22-year interval (between 1988 and 2009), including the 2009 Colgan accident, that may have been prevented or mitigated by the training requirements in this final rule. This final rule also responds to several requirements in Public Law 111–216 and addresses seven National Transportation Safety Board (NTSB) recommendations.

Several of the accidents that the FAA has determined could have been mitigated by the pilot training requirements in the final rule involved rare, but high-risk in-flight events. For example, on February 12, 2009, a Colgan Air, Inc., Bombardier DHC–8–400, operating as Continental Connection flight 3407, was on an instrument approach to Buffalo-Niagara International Airport, Buffalo, New York, when it crashed into a residence in Clarence Center, New York, about 5 nautical miles northeast of the airport resulting in the death of everyone aboard and one person on the ground. The NTSB determined that the probable cause of this accident was the pilot in command's (PIC) inappropriate response to the activation of the stick shaker, which led to an aerodynamic stall from which the airplane did not recover. The PIC's response was inappropriate because he pulled back on the control column rather than pushing it forward to reduce the angle of attack. As a result, the airplane's pitch increased and its airspeed decreased, resulting in the stall. A contributing factor relevant to this rulemaking was both pilots' failure to monitor airspeed via their primary flight display and thus their failure to recognize the impending stick shaker onset as airspeed fell and pitch increased. The NTSB noted that the ''failure of both pilots to detect this situation was the result of a significant breakdown in their monitoring responsibilities and workload management.'' The PIC's poor response suggests he was surprised by activation of the stick shaker. Had the flightcrew been required to complete the extended envelope training provisions required by this final rule, this accident would likely have been mitigated.

Prior to the Colgan Air accident, on November 12, 2001 American Airlines flight 587 crashed in a residential area of Belle Harbor, New York. The airplane accident occurred shortly after takeoff from John F. Kennedy International Airport, Jamaica, New York. All 260 people aboard the airplane and 5 people on the ground were killed, and the airplane was destroyed by impact forces and a postcrash fire. The NTSB found the probable cause of this accident to be the in-flight separation of the vertical stabilizer as a result of the loads beyond ultimate design caused by the second in

command's (SIC) unnecessary and excessive rudder pedal inputs. The rudder input was a reaction to wake turbulence.

Characteristics of the Airbus A300–600 rudder system design and elements of the American Airlines Advanced Aircraft Maneuvering Program also contributed to the incorrect rudder pedal inputs. The NTSB found that the American Airlines Advanced Aircraft Maneuvering Program excessive bank angle simulator exercise could have caused the SIC to have an unrealistic and exaggerated view of the effects of wake turbulence; erroneously associate wake turbulence encounters with the need for aggressive roll upset recovery techniques; and develop control strategies that would produce a much different, and potentially surprising and confusing, response if performed during flight.

The provisions adding upset prevention and recovery training in this final rule (§§ 121.419 and 121.423) may have mitigated this accident because the training delivers recovery strategies which focus on primary control inputs and early intervention strategies. Further, the provisions that require pilots to complete upset prevention and recovery training in a full flight simulator (FFS) (§ 121.423) with an instructor who has been trained on the specific motion and data limitations of the FFS (§ 121.414) would mitigate the possibility of delivering negative training in simulation.

In another in-flight accident on September 8, 1994, USAir (now US Airways) flight 427, a Boeing 737–3B7 (737–300), N513AU, crashed while maneuvering to land at Pittsburgh International Airport, Pittsburgh, Pennsylvania. Flight 427 was operating as a scheduled domestic passenger flight from Chicago-O'Hare International Airport, Chicago, Illinois, to Pittsburgh. The flightcrew did not report any problems with the airplane and radar data indicates that the closest other traffic was about 4.5 miles and 1,500 feet vertically separated from flight 427 at the time of the accident. About 6 miles northwest of the destination airport, the airplane entered an uncontrolled descent and impacted terrain near Aliquippa, Pennsylvania. All 132 people on board were killed, and the airplane was destroyed by impact forces and fire. The NTSB determined that the probable cause of the accident was a loss of control of the airplane resulting from the movement of the rudder surface to its limit. The rudder surface most likely deflected to its limit in a direction opposite to that commanded by the pilots as a result of a failed main rudder power control unit (PCU). The FAA has determined that the provisions regarding upset prevention and recovery training in this final rule may have prevented or mitigated this accident.

Also, on December 20, 2008, Continental Airlines flight 1404, a Boeing 737–500, N18611, departed the left side of runway 34R during takeoff from Denver International Airport, Denver, Colorado. At the time of the accident, visual meteorological conditions prevailed, with strong and gusty winds out of the west. The NTSB reported that, as the airplane crossed uneven terrain before coming to a stop it became airborne, resulting in a jarring impact when it regained contact with the ground. A postcrash fire ensued and the airplane was substantially damaged. The PIC and 5 of the 110 passengers were seriously injured; the SIC, 2 cabin crewmembers, and 38 passengers sustained minor injuries.

The NTSB accident report revealed that before starting the takeoff roll the PIC verbally repeated the wind speed and direction; however, during the takeoff roll the PIC inconsistently applied cross wind correction. The NTSB found that the probable cause of the accident was the PIC's ceased rudder input, which was needed to maintain directional control of the airplane, about 4 seconds before the excursion, when the airplane encountered a strong and gusty crosswind that exceeded the PIC's training and experience. The FAA has determined that the expansion of existing requirements for training on crosswind maneuvers to include wind gusts in this final rule may have prevented or mitigated this accident.

The final rule also addresses preventable runway safety accidents and incidents that have occurred on a more frequent basis. For example, on August 27, 2006, Comair flight 5191, a Bombardier CL–600–2B19, crashed during takeoff from Blue Grass Airport, Lexington, Kentucky, resulting in the death of the PIC, a flight attendant, and 47 passengers. The SIC also received serious injuries. The flight crew was instructed to take off from runway 22 but instead proceeded to take off from runway 26, which was much shorter. The airplane ran off the end of the runway and crashed into the airport perimeter fence, trees, and terrain. The airplane was destroyed by impact forces and postcrash fire. The NTSB determined that the probable cause of this accident was the flightcrew members' failure to use available cues and aids to identify the airplane's location on the airport surface during taxi and their failure to cross-check and verify that the airplane was on the correct runway before takeoff. The enhanced runway safety training provisions in this final rule would likely have mitigated this accident.

B. Related Actions

1. FAA Modernization and Reform Act of 2012 (Pub. L. 111–216)

Public Law 111–216 contained a number of related requirements for rulemaking, resulting in the following rulemaking initiatives: Pilot Certification and Qualification Requirements for Air Carrier Operations; Safety Management Systems; Flight Crewmember Mentoring, Leadership and Professional Development; and Pilot Records Database. The rule related to pilot certification was recently published and the remaining initiatives are in various stages of development. Further, the agency determined that amendments to FSTD qualification and evaluation standards in part 60 are needed to support the provisions in this final rule.

On July 15, 2013, the FAA published the final rule on Pilot Certification and Qualification Requirements for Air Carrier operations (78 FR 42324) (Pilot Certification rule). This final rule creates new certification and qualification requirements for pilots in air carrier operations including operations conducted under part 121. As a result of this action, a second in command pilot (first officer) in domestic, flag, and supplemental operations must now hold an airline transport pilot (ATP) certificate and an airplane type rating for the aircraft to be flown. Further, the Pilot Certification rule adds to the training and experience requirements for an ATP certificate with an airplane category multiengine class rating or an ATP certificate obtained concurrently with an airplane type rating. To receive an ATP certificate with a multiengine class rating, a pilot must have 50 hours of multiengine flight experience and must have completed a new FAA-approved ATP Certification Training Program (CTP). This new training program will include academic coursework and training in an FSTD. The Pilot Certification rule raises the experience requirement and the baseline knowledge for incoming part 121 pilots in that it provides foundational knowledge on many topics including aerodynamics, meteorology, air carrier operations, leadership/professional development, and crew resource management (CRM).

On November 5, 2010, the FAA published an NPRM that proposes to

require each part 121 operator to develop and implement a safety management system (SMS) to improve the safety of its aviation-related activities (75 FR 68224). The SMS NPRM proposed to require part 121 operators to develop systematic procedures, practices, and policies for the management of safety risk for all of its aviation systems. While crewmember and dispatcher training programs constitute aviation systems and as such must be addressed within the certificate holder's SMS, the requirements in this final rule do not duplicate the SMS proposal. For example, the remedial training requirements in this final rule may serve as an element of a robust SMS and provide specific solutions to identified pilot performance deficiencies, thereby complementing the SMS requirements for continuous monitoring, analysis, and corrective action.

In addition, the agency has initiated a separate rulemaking to implement the requirements of § 206 of Public Law 111–216 related to flight crewmember mentoring, leadership and professional development. The action is necessary to ensure that air carriers establish or modify training programs to address mentoring, leadership, and professional development of flight crewmembers in part 121 operations. Although the agency proposed certain academic training related to § 206(a)(1)(D)—(E) in the SNPRM preceding this final rule, the agency is not proceeding with those elements of the proposal in this final rule. These issues will be considered in the Flight Crewmember Mentoring, Leadership, and Professional Development rulemaking project (RIN 2120–AJ87).[5]

Also, the FAA has initiated a separate rulemaking project to define simulator fidelity requirements for several new and modified training tasks mandated for air carrier training programs by Public Law 111–216 (Part 60 rulemaking).[6] This rulemaking would amend part 60 to establish new or updated FSTD technical evaluation standards for training tasks such as full stall training, airborne icing training, and upset recognition and recovery training. Furthermore, this rulemaking would improve the minimum FSTD evaluation requirements for crosswinds with gusts (takeoff/landing) and bounced landing recovery methods in response to NTSB and Aviation Rulemaking Committee (ARC) recommendations. The rulemaking will help ensure simulator fidelity when conducting various flight training tasks.

In addition, to address the requirements of § 203 of Public Law 111–216, the FAA has initiated a rulemaking project (RIN 2120–AK31) to develop a pilot records database and phase out the requirements of the Pilot Records Improvement Act (PRIA) found at 49 U.S.C. 44703(h). Although the FAA, in the SNPRM, had proposed to conform § 121.683 (proposed as § 121.684) to the PRIA provisions, the FAA will consider these requirements in the pilot records database rulemaking to avoid confusion and possible redundancy. Thus, the FAA has not included proposed § 121.684 in the final rule.

In connection with these rulemaking initiatives and this final rule, Public Law 111–216 also required the FAA to establish several ARCs and several Task Forces to further examine existing training program requirements and develop recommendations for improvements. The FAA chartered the Air Carrier Safety and Pilot Training ARC; the Training Hours Requirement Review ARC; and the Stick Pusher and Adverse Weather Event Training ARC (the 208 ARC) to respond to the directives in Public Law 111–216.

The 208 ARC also worked to develop effective upset prevention and recovery training methodologies. Subsequently, the International Civil Aviation Organization (ICAO), the European Aviation Safety Agency (EASA), and the FAA decided to combine efforts to identify and establish an acceptable approach to eliminating such occurrences. ICAO sponsored seven meetings in 2012 during which Civil Aviation Authorities and subject matter experts were encouraged to participate in focused discussions. Also, as a number of initiatives were underway simultaneously that sought to reduce the number of loss of control in-flight (LOC–I) events, ICAO brought many of the groups involved with these efforts into the ensuing discussions under what became known as the loss of control avoidance and recovery training (LOCART) initiative.

The ARCs have presented their recommendations to the FAA. The reports from the following ARCs have been placed in the docket for this rulemaking:

- Air Carrier Safety and Pilot Training ARC
- Stick Pusher and Adverse Weather Event Training ARC
- Training Hours Requirement Review ARC

The agency notes that many of the new requirements in this final rule are consistent with ARC recommendations, including pilot monitoring requirements; enhanced simulator instructor training; upset prevention and recovery training; manual handling training; and remedial training requirements.

Finally, the FAA recognizes that drafting proposals on related topics simultaneously can give the appearance of overlapping or duplicative requirements. As we have done in this rule and in prior rulemakings issued to address the discrete sections of Public Law 111–216, the FAA will continue to minimize any overlapping or duplicative requirements.

2. FAA Modernization and Reform Act of 2012 (Pub. L. 112–95)

On February 14, 2012, following the publication of the SNPRM, the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) added certain flight attendant requirements similar to those included in the SNPRM, such as English language proficiency and training on various aspects of flight attendant response to passenger intoxication. Specifically, § 304 of Public Law 112–95 (49 U.S.C. 44728) requires flight attendants to be proficient in English and identifies certain English language competencies that must be demonstrated. In current part 61, English language proficiency is an eligibility requirement for all pilot certificates. In current part 63, English language proficiency is an eligibility requirement for a flight engineer certificate. The statutory mandate therefore ensures that all crewmember communication complies with crew resource management objectives.

Compliance with § 304 has been required since the statute was enacted. The FAA has published an INFO for air carriers to use when complying with the statutory requirement. This INFO can be accessed at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/*.

Additionally, § 309 of Public Law 112–95 (49 U.S.C. 44734) requires each air carrier to provide flight attendants with training on providing alcohol to passengers, recognizing intoxicated passengers, and dealing with disruptive passengers. Section 309 also requires air carriers to provide flight attendants with situational training on the proper method for dealing with intoxicated passengers. Currently, under 14 CFR

[5] As provided in Appendix Q, Table 2A, of the SNPRM the agency proposed academic training on PIC authority, PIC responsibility, leadership and command, and conflict resolution every 18 months at an introductory level for SICs and a refresher level for PICs.

[6] Flight Simulation Training Device (FSTD) Qualification Standards for Extended Envelope and Adverse Weather Event Training Tasks, RIN 2120–AK08.

121.421, operators are already required to provide flight attendants with training on how to handle passengers whose conduct might jeopardize safety. To assist operators with meeting the specific statutory mandate in § 309, the FAA has published an INFO regarding compliance with the statutory requirement. This INFO can be accessed at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/*.

3. Related Agency Initiatives

In the time since the Colgan accident in 2009, the FAA has put forth several initiatives that support improved pilot training in part 121 operations. These initiatives, along with the requirements in the final rule, are intended to reduce the number of aviation accidents.

One major initiative was the FAA Call to Action to Enhance Airline Safety, which began in June of 2009. (The report ''Answering the Call to Action on Airline Safety and Pilot Training'' will be placed in the docket for this rulemaking). The Call to Action included a number of key initiatives including a two-part focused review of air carrier flightcrew member training, qualification, and management practices. First, the FAA assessed the capability of air carriers to identify, track, and manage low-time flightcrew members and those who have failed evaluations or have demonstrated a repetitive need for additional training. Second, the FAA conducted additional inspections to revalidate that the air carriers' training and qualification programs met regulatory standards.

As part of the Call to Action, in 2009 the FAA inspected 85 air carriers to determine if they had systems to provide remedial training for pilots.[7] The FAA did not inspect carriers who train pilots under an Advanced Qualification Program (AQP) because AQP includes such a system. When the inspections began in June of 2009, not all air carriers had developed remedial training programs. However, by January 2010, after the completion of the inspections, all air carriers had some part of a remedial training system.

Also, on August 6, 2012, the FAA published Advisory Circular (AC) 120–109, Stall and Stick Pusher Training which was developed based on a review of recommended practices developed by major airplane manufacturers, labor organizations, air carriers, training organizations, simulator manufacturers, and industry representative organizations.[8] This AC identified best practices and guidance for training, testing, and checking for pilots to ensure correct and consistent responses to unexpected stall warnings and stick pusher activations. This AC also included guidance regarding the development of stall and stick pusher event training.

Additional FAA actions to address pilot training requirements include the following:

- Information for Operators (INFO) 09007 Pilot Training and Checking—Pneumatic Deicing Boot Equipped Airplanes recommends that operators enhance pilot training and checking to ensure safe operations in icing conditions. All INFOs can be accessed at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/*
- Safety Alert for Operators (SAFO) 09015 Training for Landing on Contaminated Runways highlights FAA guidance regarding training and procedures for landing on contaminated runways. All SAFOs can be accessed at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo*
- INFO 10002 Agency Best Practices consolidates guidance and resources that can be used by operators to improve pilot training.
- SAFO 10006 Inflight Icing Operations and Training Recommendations includes recommendations regarding Pilot and Dispatcher training to address severe icing conditions associated with freezing rain and freezing drizzle.
- INFO 10010 Enhanced Upset Recovery Training highlights the availability of the Airplane Upset Recovery and Training Aid that all operators can use to develop an effective upset recovery training module.
- SAFO 13002 Manual Flight Operations recommends that in this age of aircraft automation, training and flight operations should emphasize manual handling when appropriate to ensure pilots retain the ability to manually fly the airplane.

C. National Transportation Safety Board (NTSB) Recommendations

This final rule addresses the following NTSB recommendations for certificate holders operating under Title 14 of the Code of Federal Regulations (14 CFR) part 121:

- A–96–120. Require 14 CFR part 121 and 135 operators to provide training to flightcrews in the recognition of and recovery from unusual attitudes and upset maneuvers, including upsets that occur while the aircraft is being controlled by automatic flight control systems, and unusual attitudes that result from flight control malfunctions and uncommanded flight control surface movements.
- A–05–14. Require all 14 CFR part 121 air carrier operators to establish programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment that would require a review of their whole performance history at the company and administer additional oversight and training to ensure that performance deficiencies are addressed and corrected.
- A–05–30. Require all 14 CFR part 121 and 135 air carriers to incorporate bounced landing recovery techniques in their flight manuals and to teach these techniques during initial and recurrent training.
- A–07–44. Require that all 14 CFR part 91K, 121, and 135 operators establish procedures requiring all crewmembers on the flight deck to positively confirm and cross-check the airplane's location at the assigned departure runway before crossing the hold short line for takeoff. This required guidance should be consistent with the guidance in AC 120–74A and SAFO 06013 and 07003.
- A–10–22. Require 14 CFR part 121, 135, and 91K operators and 14 CFR part 142 training centers to develop and conduct training that incorporates stalls that are fully developed; are unexpected; involve autopilot disengagement; and include airplane-specific features, such as a reference speeds switch.
- A–10–23. Require all 14 CFR part 121, 135, and 91K operators of stick pusher-equipped aircraft to provide their pilots with pusher familiarization simulator training.
- A–10–111. Require 14 CFR part 121, 135, and 91K operators to incorporate the realistic, gusty crosswind profiles developed as a result of Safety Recommendation A–10–110 into their pilot simulator training programs.

In the analysis for the final rule, the FAA identified 11 accidents involving part 121 operations, resulting in fatalities or injuries that occurred between 1988 and 2009 that may have been prevented or mitigated if the proposed enhanced training requirements had been in effect at the time of those accidents. Causal factors that contributed to these accidents

[7] Due to airline mergers and bankruptcies, there are fewer total air carriers (83 as of February 2013) operating under part 121.

[8] *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1020244*

included inadequate pilot training regarding recovery from stall, upset recovery, runway safety, bounced landings, crosswind takeoffs with gusts, and pilot monitoring. These accidents resulted in 601 fatalities, 48 serious injuries, and 137 minor injuries. A detailed description of this accident analysis, and how it was conducted, is provided in the benefits section of the regulatory evaluation for this final rule.

D. Sections 208 and 209 of Public Law 111–216

This final rule responds to Public Law 111–216, sections 208 and 209. Under Public Law 111–216, Congress directed the FAA to conduct rulemaking to ensure that all flightcrew members receive ground training and flight training in recognizing and avoiding stalls, recovering from stalls, and recognizing and avoiding upset of an aircraft, as well as the proper techniques to recover from upset; directed the FAA to conduct rulemaking to ensure air carriers develop remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment; and directed the FAA to issue a final rule with respect to the NPRM.[9]

E. Summary of NPRM and SNPRM

On January 12, 2009, the FAA published an NPRM (74 FR 1280), proposing major changes to the requirements for crewmember and aircraft dispatcher training programs in domestic, flag, and supplemental operations. The primary purpose of the NPRM was to establish new requirements for traditional air carrier training programs to enhance crewmember and aircraft dispatcher training. The NPRM proposed a significant reorganization of training and qualification requirements as new subparts to be added to part 121.

Upon review of the comments to the NPRM, the FAA identified several issues that were not adequately addressed in the NPRM. Furthermore, the FAA determined that additional data and clarification were necessary. Because of the substantive changes and reorganization of the NPRM, on May 20, 2011 the FAA published the rulemaking proposal in its entirety in an SNPRM (76 FR 29336).

F. Differences Between SNPRM and Final Rule

In the SNPRM, the agency included the NPRM proposals to reorganize and revise crewmember and aircraft dispatcher qualification, training, and evaluation requirements in existing subparts N and O of part 121. This reorganization would have resulted in the creation of two new subparts within part 121.

The agency has decided to finalize provisions proposed in the SNPRM that enhance pilot training for rare but high risk scenarios and provide the greatest safety benefit. The final rule also includes other discrete provisions proposed in the SNPRM and described in Table 1. As discussed in the Overview section of this preamble, the remaining proposals in the SNPRM require further deliberation. These remaining proposals include the following:

- The operational requirements pertaining to crewmembers and aircraft dispatchers, except for § 121.9 (Fraud and falsification), § 121.392 (Personnel identified as flight attendants) and § 121.711 (Communication records), which are reflected in Table 3 below.
- The reorganization and restructuring of crewmember and aircraft dispatcher training and qualification in proposed subparts BB and CC, including the crewmember and aircraft dispatcher qualification performance standards in proposed Appendices Q, R, S and T (except as specifically noted in Table 3 below).

Thus, the FAA may pursue additional rulemaking in the future to address the more comprehensive changes proposed in the NPRM and SNPRM.

The agency has incorporated the final rule provisions into existing subparts of part 121 rather than creating new subparts within part 121. Table 3 identifies the SNPRM source for each of the final rule provisions.

TABLE 3—SNPRM SOURCE OF PROVISIONS INCLUDED IN FINAL RULE

Description of final rule provision	Final rule provision	SNPRM provision
Fraud and falsification	§ 121.9	§ 121.9.
Personnel identified as flight attendants	§ 121.392	§ 121.392.
Approval of FSTDs	§ 121.407	§ 121.1345.
Training equipment other than FSTDs approved under part 60.	§§ 121.408, 121.403(b)(2)	§§ 121.1331, 121.1351.
Pilot monitoring	§§ 121.409, 121.544, appendix H	§§ 121.1213, 121.1353.
Training for instructors and check airmen who serve in FSTDs.	§§ 121.413, 121.414	§§ 121.1377, 121.1381.
Remedial training	§ 121.415(h) and § 121.415(i)	§ 121.1355(a)(4), (a)(5) and (b).
Proficiency checks for PICs	§ 121.441(a)(1)(ii)	§ 121.1223.
Related aircraft differences training	§§ 121.400, 121.418, 121.434, 121.439, 121.441.	§§ 121.1205, 121.1206, 121.1215, 121.1230.
Extended envelope ground training subjects	§§ 121.419(a)(2), 121.427	Appendix Q, Attachment 2, Table 2A.
Extended envelope training maneuvers and procedures (Including requirements to train in an FFS).	§§ 121.407(e), 121.423, 121.424, 121.427(d)(1)(i), 121.433(e), appendix E.	Appendix Q, Attachment 3, Tables 3A and 3B.
Communication records for domestic and flag operations.	§ 121.711	§ 121.711.
Runway safety maneuvers and procedures	Appendix E, Flight Training Requirements: I(c), I(d). Appendix F, Proficiency Check Requirements: I(c), I(d).	Appendix Q, Attachment 3, Table 3A.

[9] The FAA notes that § 201 of Public Law 111–216 states that ''[t]he term 'flight crewmember' has the meaning given the term 'flightcrew member' in part 1 of title 14, Code of Federal Regulations.'' Part 1 defines ''flightcrew member'' as ''a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.'' Because flight engineers and flight navigators do not manipulate the aircraft controls and flight navigators are no longer used in part 121 operations, the FAA assumes that Congress did not intend to require these flightcrew members to complete training on recovery from full stall and upset. Further, because no accidents have been attributed to flight engineer performance and the agency has not identified any issues related to flight engineer training, the remedial training requirements in the final rule apply to pilots only.

TABLE 3—SNPRM SOURCE OF PROVISIONS INCLUDED IN FINAL RULE—Continued

Description of final rule provision	Final rule provision	SNPRM provision
Crosswind maneuvers including wind gusts	Appendix E, Flight Training Requirements: II(c), IV(d). Appendix F, Proficiency Check Requirements: II (c), V(c).	Appendix Q, Attachment 3, Table 3A.

III. Discussion of Public Comments and Final Rule

A. General

The FAA received approximately 130 comments in response to the SNPRM. Commenters included air carriers, labor organizations, trade associations, training organizations, one aircraft manufacturer, Families of Continental Flight 3407, the NTSB, and individuals. Air carrier and trade associations commented that the SNPRM was overly prescriptive; the FAA underestimated costs and overestimated benefits; and the FAA underestimated the effect of the proposal on air carriers that use an AQP for training. Labor organizations' comments included concerns regarding the proposed integration of lower fidelity and non-motion simulators for pilot training; the standards by which CRM competencies would be integrated into job performance training and evaluated; and the proposed recordkeeping requirements. An aircraft manufacturer supported the related aircraft initiatives included in the SNPRM. The NTSB and Families of Continental Flight 3407 were generally supportive of the SNPRM but raised concerns regarding the efficacy of the remedial training proposal further discussed in section III. (Discussion of Public Comments and Final Rule) J. (Remedial Training Programs) of this preamble.

The agency received several comments on the proposed flight attendant and aircraft dispatcher training requirements. Labor organizations generally supported the proposed training and qualification requirements, but air carriers asserted some provisions, such as the proposals regarding requalification requirements and check flight attendant and check dispatcher training and qualification, were unnecessary and would place an undue burden on operators.

As part of the FAA's effort to move forward with a rule that finalizes specific statutorily mandated requirements and provisions proposed in the SNPRM that enhance pilot training and provide the greatest safety benefit, but require time to implement, the final rule does not include the flight attendant and aircraft dispatcher training requirements proposed in the SNPRM. In the discussion that follows, the FAA has addressed those comments related to the provisions included in this final rule.

B. Compliance With Final Rule Requirements

In the SNPRM, the agency proposed an effective date for the final rule of 120 days after publication of the final rule in the **Federal Register**. However, for the crewmember and aircraft dispatcher training and qualification revisions in proposed subparts BB and CC, the agency proposed to allow air carriers to come into compliance with the requirements no later than 5 years after the effective date of the final rule. As explained in the SNPRM, setting the effective date for 120 days after publication of the final rule and allowing use of the existing regulations for 5 years would provide existing certificate holders and the FAA time to smoothly transition to the new requirements.

Consistent with the proposal, all provisions in this final rule will become effective 120 days after publication of the final rule in the **Federal Register**. In the final rule, compliance is required on the effective date unless the regulatory text for a particular provision indicates the alternate date for compliance of 5 years after the effective date. Although the final rule allows air carriers up to 5 years to come into compliance, the FAA encourages air carriers to comply with these provisions as early as possible to maximize the safety benefits that this rule will achieve.

In the final rule, the agency modified the compliance date for certain provisions as follows:

- The final rule eliminates the 5-year compliance date for the provisions regarding related aircraft (§ 121.418) because these amendments provide voluntary alternatives to certain requirements of subparts N and O.
- The final rule eliminates the 5-year compliance date for the provision regarding the prohibition on fraud and falsification (§ 121.9) because all persons subject to the final rule prohibitions on fraud and falsification are currently prohibited from committing fraud and falsification by criminal statute, 18 U.S.C. 1001.
- The final rule eliminates the 5-year compliance date for the provision regarding personnel identified as flight attendants (§ 121.392) because this requirement imposes a minimal burden on air carriers.

Consistent with the SNPRM, the final rule requires compliance with the agency proposals regarding dispatch communication records upon the rule's effective date. The applicable date on which compliance is required for each substantive final rule provision is summarized in Table 1 of this preamble.

The FAA recognizes that some air carriers may have implemented a number of the new training requirements in the final rule but the agency has determined that maintaining a 5-year compliance period as proposed in the NPRM and SNPRM continues to be appropriate for the training-related initiatives because it may not be feasible for most part 121 operators to achieve compliance by the effective date of the final rule.

To accomplish many of the new safety-critical flight training provisions, the FFSs in which the training must be completed must be updated. As discussed previously, the FAA has initiated the Part 60 rulemaking to develop the standards for updating these simulators to ensure the extended envelope training provided for in this final rule is conducted in a realistic, accurate training environment. The FAA believes the 5-year compliance period for these provisions will provide sufficient time for completion of that rulemaking project and the actual updates to the FFSs that would be required by that rulemaking. The FAA will continue to evaluate the time necessary for compliance with the training requirements set forth in this final rule based on the updates that are necessary for the FFSs and will seek public comment on this issue in the Part 60 rulemaking. In addition, based on the comments received to the SNPRM, the FAA recognizes that some operators may already have the technology and simulation knowledge necessary to incorporate these training requirements into their approved training programs. The FAA encourages these operators to

initiate compliance with this rule as soon as practicable. To help facilitate these efforts, operators should contact the FAA's National Simulator Program to obtain the relevant guidance material on evaluating the FSTDs used to provide extended envelope training.

The FAA recognizes the public benefit associated with early implementation of the new safety-critical training requirements. The FAA will work with all operators to ensure compliance with the final rule training provisions is achieved as soon as possible but no later than 5 years after the effective date of the final rule. As originally proposed, we anticipated that air carriers would complete holistic changes to their training programs at one time. Upon further reflection and based on the revisions to the final rule and the simulator updates discussed earlier, we note that individual air carriers may submit proposed training program revisions for approval at any point after the effective date. The agency will work with each air carrier to meet their implementation needs.

C. Applicability of Final Rule Requirements and Impact of Final Rule on Operators with Advanced Qualification Program Curriculums

Air carriers that conduct operations under part 121 may train and qualify crewmembers and aircraft dispatchers in accordance with the provisions of current subparts N, O, and P. Alternatively, air carriers may train and qualify crewmembers and aircraft dispatchers under an AQP in accordance with the provisions of subpart Y.

Subpart Y does not contain training and evaluation requirements, per se. However, an AQP developed in accordance with subpart Y allows air carriers to use alternative methods for training and evaluating pilots, flight engineers, flight attendants, and aircraft dispatchers based on instructional systems design, advanced simulation equipment, and comprehensive data analysis to continuously validate curriculums.

In accordance with § 121.909, to obtain approval of an AQP, an air carrier must develop a Qualification Standards Document that specifies which requirements of parts 61, 63, 65, 121 (including subparts N, O, and P), or 135, as applicable, will be replaced by the AQP curriculum. Each requirement contained in part 61, 63, 65, 121, or 135 that is not specifically addressed in an approved AQP curriculum continues to apply to the certificate holder.

The SNPRM principally affected part 121 operators that train and qualify crewmembers and aircraft dispatchers in accordance with the provisions of current subparts N, O, and P. However, commenters generally noted that the FAA underestimated the impact of the proposed requirements on AQP carriers. Additionally, some commenters noted that AQP should be mandated as the sole training method to be used by all certificate holders conducting part 121 operations.

First, as previously discussed, AQP provides for an alternate method of compliance with the standards provided by parts 61, 63, 65, 121 (including subparts N and O), or 135, as applicable. This means that even if the agency mandated AQP for all part 121 operators, the agency would have to provide standards from which to create the compliance methods in an AQP. These standards would change as the technology used in training tools evolves and as the FAA learns more about factors contributing to accidents and effective training methodology. Further, the final rule includes training requirements that are mandated by statute (i.e., upset and stall prevention and recovery). Without a revision to the traditional training requirements in this final rule, the FAA would not be able to require these maneuvers and procedures for pilots as part of pilot AQP curriculums.

Second, commenters including Continental, American, USAirways, JetBlue, Delta, and ASTAR, stated that the agency did not fully consider all of the direct and indirect effects that the proposal would have on part 121 operators that currently conduct training under an AQP. The agency has reviewed its final rule cost analysis to determine whether carriers that currently train flightcrew members under an AQP would incur additional costs not previously considered. Upon further review of existing pilot AQPs and the final rule requirements, the agency has determined the new ground and flight training requirements in the final rule are generally not addressed by existing pilot AQPs. Therefore, in the final rule regulatory evaluation, the agency has revised its cost analysis and determined that it is appropriate to attribute costs to the additional ground and flight training requirements for all pilots who train under subparts N and O as well as those who train under an AQP.

Applicable requirements of part 121 that are not specifically addressed in the certificate holder's AQP continue to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. See § 121.903(b). This final rule differs from the SNPRM in that it does not alter the training and qualification principles established in subparts N and O, but rather adds discrete new pilot training subjects, procedures and maneuvers. Accordingly, an operator that uses AQP to train flightcrew members must submit a revised Qualification Standards Document if that operator seeks to address these additional ground training subjects and flight training procedures and maneuvers through alternative methods in accordance with subpart Y.

Third, in response to comments that AQP should be mandated for all part 121 operators, the FAA maintains its position as stated in the SNPRM. Although the FAA considers AQP to be an effective voluntary alternative for compliance with minimum training and qualification requirements, the FAA does not believe that it is appropriate to require all air carriers to train under AQP. The FAA recognizes that AQP may not be appropriate for every certificate holder. The AQP is a voluntary program established to allow a greater degree of regulatory flexibility in the approval of innovative training programs. Based on a documented analysis of operational requirements, a certificate holder under AQP may propose to depart from the traditional practices with respect to what, how, when, and where training and testing is conducted. Detailed AQP documentation requirements, data collection, and analysis provide the FAA and the operator with the tools necessary to adequately monitor and administer an AQP. See 70 FR 54810, 54811 (Sept. 16, 2005).

The FAA further recognizes that some air carriers may not wish to incur the costs associated with an AQP. Such costs include additional personnel and management infrastructure to develop and facilitate the required data collection, analysis, and application required under AQP. Furthermore, some air carriers may prefer the structured requirements of a traditional program to the analytically-driven AQP training program. Other air carriers that use contract training facilities may not find AQP to be a suitable alternative to traditional training requirements. Accordingly, the final rule does not require all certificate holders to train under the AQP requirements in subpart Y of part 121. This determination is consistent with the recommendations provided by the Training Hours Requirement Review ARC findings. See Training Hours Requirement Review ARC Report.

D. Fraud and Falsification

In the SNPRM, the FAA proposed adding § 121.9, a new general requirement that would prohibit a person from making intentionally false or fraudulent statements on an application, record, or report required by part 121. The SNPRM also specified the consequences of making incorrect and intentionally false or fraudulent statements. Although the language would be added to part 121 for the first time, it is not a new concept in FAA regulations. Similar language already appears in 14 CFR 61.59 and 67.403, and was recently added to part 139 subpart B at § 139.115. Moreover, 18 U.S.C. 1001 currently prohibits fraud and intentional falsification in matters within the jurisdiction of the executive branch.

The FAA proposed adding the requirement to part 121 to emphasize the importance of truthful statements, especially with regard to training and checking of crewmembers and aircraft dispatchers. The FAA considers the making of intentionally false or fraudulent statements a serious offense. Falsification has a serious effect on the integrity of the records on which the FAA's safety oversight depends. If the reliability of these records is undermined, the FAA's ability to promote aviation safety is compromised.

Airbus requested clarification regarding to whom the proposed sanctions would apply. Continental supports the prohibition of fraudulent or intentionally false statements, but commented that the assignment of responsibility and potential sanctions go too far. For example, it is Continental's understanding that the proposal adopts a strict liability standard for a part 121 operator by imposing denial of a training program application or removal of a training program approval for infractions. Continental further commented that the FAA should hold a carrier responsible for fraudulent or intentionally false statements only when it can prove carrier approval or endorsement of such actions; individual employee or contractor actions should not be automatically attributed to a carrier. They conclude that penalties against carrier training programs should only be levied when FAA can prove carrier approval of such actions. In addition, Continental stated that the proposal to impose penalties for incorrect statements or entries is inconsistent with FAA enforcement policy, because Order 2150.3B, FAA Enforcement and Compliance Program, and case law recognize that not all acts warrant enforcement action, especially unintended acts. Continental notes that the introduction of penalties for incorrect statements or entries, which may have been made inadvertently, will serve no deterrent purpose and recommends eliminating paragraph (c) of proposed § 121.9.

The agency agrees with comments that not all certificate holder actions necessarily warrant the strictest agency response and clarifies that § 121.9 does not set forth a strict liability standard. Section 121.9 identifies the potential consequences for intentional falsification or fraud. However, the potential sanctions set forth in § 121.9(b) are limited to cases of intentional falsification or fraud that violate § 121.9(a). As discussed in the following paragraph, proposed § 121.9(c) regarding consequences for making incorrect statements has not been included in the final rule.

Further, in response to comments that § 121.9 is inconsistent with agency guidance, the agency responds that the addition of § 121.9 does not alter the agency's policy in Order 2150.3B regarding the factors it considers in assessing whether to pursue enforcement action, the type of enforcement action (i.e. administrative, legal, etc.) to pursue, and the nature of the sanction that will be pursued, if any. In fact, § 121.9(b)(3)–(4) of the proposal recognize that a more flexible response by the agency may be warranted in certain circumstances. Not all action taken as a result of a regulatory violation is punitive as is the case with the proposal to deny an application or approval of a training program upon the discovery of incorrect training-related information upon which the agency relied. Rather, as is the case today, the agency may withdraw an approved training program to assess the safety and effectiveness of the program based on accurate information. Therefore, proposed paragraph (c) is not necessary and has not been included in the final rule.

In response to commenters' concerns that certificate holders may be held liable for the actions of any person under § 121.9 as proposed, the regulatory language of § 121.9(b) applies to certificate holders as well as any person acting on behalf of a certificate holder who commits an act prohibited by § 121.9(a). Commenters' concerns regarding liability for the acts of their employees have been addressed by case law. Part 119 certificate holders are ultimately responsible for compliance with the duties required to satisfy part 121 requirements and are expected to oversee the conduct of persons they employ. If a certificate holder could be considered liable only upon proof that it was at fault independently, it would have an incentive to minimize oversight of persons it employs.

Currently, 18 U.S.C. 1001 prohibits fraud and falsification in matters within the jurisdiction of the executive branch. Accordingly, there is no cost or additional burden to the certificate holder to comply with this provision, and there is no reason to delay compliance with this section by 5 years.[10] In the final rule, this provision will become effective 120 days after publication in the **Federal Register**.

E. Personnel Identified as Flight Attendants

In existing § 121.391, the FAA requires flight attendants on an aircraft operated under part 121 when the agency determines that the presence of a flight attendant is required to ensure the safety of the aircraft and its occupants. When such a determination has been made, the agency also identifies the minimum number of flight attendants required. However, a certificate holder may choose to provide a flight attendant when one is not required or a certificate holder may choose to provide additional flight attendants in excess of the required minimum number of flight attendants.

Historically, there has been an inconsistent application of the rules regarding training and qualification requirements for these flight attendants who are not required to be on the aircraft. In part 121, the agency requires flight attendants to complete training that will enable them to perform safety-related functions in a normal operating environment as well as to increase passenger and crewmember survivability in an accident. However, the identification of any crewmember as a flight attendant implies that the crewmember is fully qualified to perform all safety-related flight attendant duties and responsibilities upon which other crewmembers or passengers may rely.

Accordingly, in § 121.392 of the SNPRM and the final rule, the agency requires any person identified by the certificate holder as a flight attendant on an aircraft in operations under part 121 to have completed the part 121 flight attendant training and qualification requirements. This requirement applies whether or not the person serves as a required crewmember. The agency

[10] 18 U.S.C. 1001 is a criminal statute prohibiting fraud and intentional falsification in matters within the jurisdiction of the executive branch. This regulation will allow the agency to pursue civil enforcement in instances in which a person has committed fraud or falsification.

further clarifies that certificate holders must identify a person serving as a crewmember who has not yet completed all flight attendant training and qualification requirements to serve as a required crewmember on a particular aircraft, such as a person who is gaining the aircraft operating experience required by § 121.434(e), as a qualifying flight attendant. Air carriers may determine how they want to identify these individuals to passengers, as appropriate for their operation. Some possible methods would be to differentiate their uniform from that of fully qualified flight attendants, identify flight attendants in training as ''trainees'' via nametags or to make an announcement to passengers before the aircraft pushes back from the gate.

The FAA did not receive any comments on this section as proposed in the SNPRM. Proposed § 121.392 appears in the final rule with a modified compliance date as discussed in section III.B. of this preamble.

F. Approval of Airplane Simulators and Training Devices

Currently, existing § 121.407 requires a certificate holder to obtain the agency's approval for the use of airplane simulators and other training devices in a training program approved under part 121.[11] In the NPRM (§ 121.1347) and in the SNPRM (§ 121.1345), the agency proposed to require each FSTD used in a part 121 training program to be qualified and maintained in accordance with 14 CFR part 60—Flight Simulation Training Device Initial and Continuing Qualification and Use, and approved by the Administrator for use in training or evaluating the particular flight training maneuver or procedure. This proposal aligned the existing requirements for approval of airplane simulators and other training devices in a part 121 training program with the requirements regarding the evaluation, qualification, and maintenance of FSTDs added to title 14 in 2006. The part 60 FSTD requirements currently apply to all persons using or applying to use an FSTD to meet any requirement of title 14, chapter 1, Federal Aviation Administration, Department of Transportation, including the training and qualification requirements of subparts N and O. See 14 CFR 60.1(b).

Southwest, American, USAirways, Continental, FedEx, and a number of other commenters questioned how the proposal would affect devices qualified in accordance with ACs that predate part 60. These commenters recommended a blanket statement on simulation and various types of simulator qualification that states an FFS could be either qualified under part 60 or grandfathered into regulation by § 60.17 although not actually qualified under part 60.[12]

This final rule does not modify the existing part 60 requirements for the evaluation, maintenance, and qualification of FSTDs. In the final rule, the agency clarifies that § 60.17 will continue to address previously qualified devices that may be used in part 121 training programs.

Through modifications to existing § 121.407, the final rule incorporates the proposal to conform part 121 requirements regarding the use of FSTDs in approved training programs with the existing part 60 requirements that already apply to the use of FSTDs in part 121 training programs.

G. Approval of Training Equipment Other Than Flight Simulation Training Devices

Current regulations do not provide specific requirements for training equipment other than FSTDs, but the regulations generally require training equipment to be adequate. To ensure that all equipment used in approved training programs is adequate for the particular task for which it is used, in § 121.1351 of the NPRM and SNPRM, the FAA proposed requirements for training equipment other than FSTDs. The FAA has retained this provision as § 121.408 of the final rule. Section 121.408 states that the FAA must approve training equipment (e.g. cockpit procedures trainers, door/exit trainers, water survival equipment, etc.) used to functionally replicate aircraft equipment required to be used as part of the approved training program.

In the SNPRM, the agency explained that this provision would apply to training equipment including, but not limited to, portable emergency equipment, including life vests and fire extinguishers, aircraft exit trainers, and equipment for overwater operations. In response to comments to the NPRM that the proposed requirements in § 121.1351 were overly broad and open to interpretation, the agency restated the purpose of this requirement in the SNPRM was focused on ensuring that crewmembers receive training on emergency equipment that replicates the actual equipment they would use in emergency situations in aircraft operations. The proposed requirements in § 121.1351 appear in § 121.408 of the final rule with the clarifications described in the following paragraphs.

In response to the SNPRM, American, the Air Transport Association of America, Inc. (ATA) (now known as Airlines for America), USAirways, Continental, ASTAR, FedEx, and Southwest requested more specificity about the types of training equipment that would be covered under this section. American, ATA, USAirways, Continental, ASTAR, and FedEx further stated that it would be difficult to comply with the provision that requires the training equipment to replicate the form, fit, function, and weight, as appropriate, of the aircraft equipment, because much of the data, which must come from the manufacturers, is not part of the information currently provided by the manufacturers.

In the final rule, the FAA maintains the existing requirements in § 121.403(b)(2) that all training devices mockups, systems trainers, procedures trainers and other training aids be listed in the air carrier's approved training program. The final rule also includes a new provision, proposed in the SNPRM, which clarifies the FAA's intent regarding the criteria that must be met by this training equipment. This provision requires that training equipment used to accomplish the training requirements of this part meet the form, fit, function, and weight, as appropriate, of the actual equipment that crewmembers will be using during normal and/or emergency aircraft operations. In addition, the equipment must replicate the normal operation (and abnormal and emergency operation, if appropriate) of the aircraft equipment including the required force, actions and travel of the aircraft equipment and variations in aircraft equipment operated by the certificate holder, if applicable. It must also replicate the operation of the aircraft equipment under adverse conditions, if appropriate.

The FAA has qualified the requirement with ''as appropriate'' to allow for flexibility in cases where manufacturer's data is not available or it is impracticable or unnecessary to meet this requirement. The FAA clarifies that the requirements in section § 121.408 apply to training equipment used to

[11] The agency notes that the terms ''visual simulator'' and ''airplane simulator'' as used throughout part 121, are currently referred to as ''full flight simulators'' in part 60. A ''training device'' or ''flight training device,'' as used throughout part 121 are currently referred to as ''flight training devices'' in part 60. A ''non-visual simulator'' or a ''simulator without a visual system'' is a motion simulator without a visual presentation. These types of devices have either been retired or upgraded to FFSs with the installation of visual displays.

[12] Although this comment was made in connection with the use of an FSTD to maintain pilot recent experience requirements, it is generally applicable to a number of other conforming references to part 60 throughout the SNPRM.

accomplish job performance requirements only where replication of the actual equipment used in operations is key to the learning objectives of the drill. Further, certain criteria do not affect the efficacy of training equipment as a training tool. For example, the weight of the entire door trainer would not have to match the weight of that size section of an actual aircraft fuselage, but the weight of the door/window that the crewmember is opening would have to replicate the weight of the actual exit on an aircraft in order to prepare a crewmember adequately to react in an emergency. The key objective of this requirement is that the training equipment reflects the equipment that would be used by the crewmember in normal and/or emergency aircraft operations in order to accomplish the learning objectives of the drill.

Additionally some commenters noted that the FAA has not required the official approval of training equipment outside of the National Simulator Program or part 60. In response, the FAA clarifies that existing § 121.403(b)(2) already requires that all training device mockups, systems trainers, procedures trainers, and other training aids be listed in the air carrier's approved training program. The requirements of § 121.408 simply clarify the functional attributes and requirements that must be met by this training equipment.

Commenters (American, ATA, USAirways, Continental, ASTAR, FedEx and Southwest) have assumed that this provision would apply to door and window trainers, but question whether it would also include unique slat/flap handle trainers, intruder resistant cockpit door latch trainers, and many other cockpit or cabin items for which a hands-on trainer would be beneficial, but not necessarily required.

The FAA agrees that it is important to clarify what training equipment must meet the requirements of § 121.408. In the final rule, the FAA has amended § 121.408(b) to require that the provisions of this section apply to training equipment used to meet the training requirements of this subpart. This includes portable emergency equipment (e.g. fire extinguishers, portable oxygen bottles, and protective breathing equipment), aircraft exit trainers, equipment for overwater operations, and other equipment used to meet hands on training requirements.

The agency notes that air carriers may find it useful to create hands on training opportunities for crewmembers to enhance training in a certain area, even when hands on performance training is not required by regulation. When a device (e.g. unique slat/flap handle trainers, intruder resistant cockpit door latch trainers, and many other cockpit or cabin items) is not required by the training requirements of this subpart, the functional attributes and requirements for the equipment of § 121.408 do not apply. However, the device must still be listed in the air carrier's approved training program, under the requirements of § 121.403, and contribute to training objectives.

Southwest also asserts that the requirement proposed in § 121.1351(d) that all training equipment must have a method of documenting discrepancies in close proximity, precludes the use of technology to maintain an electronic log book for discrepancies unless a recording device is located in close proximity to each piece of equipment. Southwest proposed changing ''close proximity'' to ''within the training facility.''

The FAA agrees with the commenter and in the final rule has amended the requirements of § 121.408(d) to only require a method for documenting discrepancies for all training equipment. This provision will allow the greatest flexibility for air carriers to develop, and submit for approval, a method that works effectively in their particular training environment.

H. Pilot Monitoring Duties and Training

Existing regulations do not explicitly address development of pilot monitoring skills. However, pilot monitoring duties are currently included in the operating manual required by § 121.133. Therefore, the FAA expects that they are incorporated in air carrier standard operating procedures.

Historically, the FAA has referred to the individual completing pilot monitoring duties as the pilot not flying. In FAA AC 120–71A, Standard Operating Procedures for Flight Deck Crewmembers, the agency provides guidance regarding a means to incorporate standard operating procedures for the pilot not flying and pilot flying duties into the operating manual. The FAA amended this AC in 2003. In one notable change, the agency replaced the term ''pilot not flying'' with the term ''pilot monitoring'' to convey that the pilot not flying should be actively engaged in the safe operation of the aircraft and as such, should be trained and evaluated in performing active pilot monitoring skills.

In § 121.1213 of the NPRM and SNPRM, the agency proposed to codify the use of the term ''pilot monitoring'' to reflect the activities conducted by the pilot who is seated at the controls, but not flying the aircraft or the FSTD. The agency further proposed to require a pilot to accomplish pilot monitoring duties in accordance with the operating manual. The proposals did not change the current duties and responsibilities of the pilots at the controls.

The Air Line Pilots Association, International (ALPA) supported the use of the term ''pilot monitoring,'' as incorporated in the NPRM and SNPRM, as it better describes the function of the pilot who is not actually controlling the aircraft. Southwest, Fed Ex, Continental, American, ATA, and USAirways commented that the agency should include a definition of ''pilot monitoring'' in the final rule to clarify the term. The agency is not persuaded by commenters that a definition of ''pilot monitoring'' is required. In the final rule, § 121.544 of subpart T includes the proposed description of the pilot who must complete pilot monitoring duties with sufficient detail such that an additional definition is not necessary.

In § 121.1213 of the SNPRM, the agency's proposal combined operational and training requirements for the pilot monitoring. Southwest, Continental, ASTAR, American, ATA, USAirways, and FedEx commented that the agency should remove language in the proposal that would require pilots to accomplish pilot monitoring duties in accordance with the operating manual while at the controls of an FSTD during training. These commenters stated that there may be times when a pilot is instructed to behave in a way other than specified by the operating manual to complete a training objective (e.g., incapacitated pilot, get into upset event for training purposes, check pilot training, etc.).

In response to comments, the agency clarifies that training requirements must be based on operating manual contents and standard operating procedures so that pilots can receive comprehensive training on the procedures that must be followed during operations. However, the agency recognizes that it may not always be feasible or practical to maintain consistency with the operating manual for the ''set up'' of certain maneuvers and procedures in a training environment. Therefore, the final rule addresses pilot monitoring duties and training in separate provisions. Section 121.544 of the final rule provides pilot monitoring duties and § 121.409 and appendix H provide pilot monitoring training.

The agency's determination regarding the need for training on pilot monitoring is supported by the NTSB final report on the Colgan accident. In the NTSB final report on this accident, the NTSB

stated, ''The flight crewmembers failed to monitor the airplane's pitch attitude, power, and especially its airspeed and failed to notice, as part of their monitoring responsibilities, the rising low-speed cue on the IAS display. Multiple strategies can be used to protect against catastrophic outcomes resulting from these and other monitoring failures, including flight crew training, flight deck procedures, and low-airspeed alert systems . . .'' The NTSB concluded that ''the monitoring errors made by the accident flight crew demonstrate the continuing need for specific pilot training on active monitoring skills.'' See NTSB Rep. AAR–10/01, at p. 94.

In the SNPRM, the agency proposed to require pilots to serve as pilot monitoring during Line Oriented Flight Training (LOFT) to facilitate opportunities for pilots to practice and demonstrate proficiency in pilot monitoring skills and workload management under the supervision of a flight instructor or check airman. The final rule includes requirements for part 121 operators to provide opportunities for pilot monitoring training during LOFT.

Currently, the agency requires LOFT, a scenario-based training event with minimal check pilot or flight instructor interruption, for all pilots who complete training in an advanced simulation training program. In accordance with appendix H, LOFT must consist of two representative flights for each pilot. In addition, air carriers may substitute LOFT that meets the requirements of § 121.409, for the recurrent proficiency check requirement specified in § 121.441. Further information regarding LOFT can be found in AC 120–35C, which provides guidelines for the design and implementation of LOFT.

In § 121.1353 of the SNPRM, the agency proposed to add specificity to existing LOFT requirements by requiring each pilot to serve as pilot flying and pilot monitoring any time a part 121 operator uses LOFT in a training curriculum. Similar to existing LOFT requirements in appendix H, the agency proposed that LOFT must consist of two operating cycles. However, the SNPRM defined ''operating cycle'' as a gate-to-gate operation. Further, the agency proposed that one of the required operating cycles would be a ''pilot flying cycle'' and one cycle would be a ''pilot monitoring cycle.''

Southwest, ASTAR, American, ATA, USAirways, Continental, UPS, and FedEx, stated that the two operating cycles that must be completed during LOFT should not be required to include two full gate-to-gate (taxi-in and taxi-out) scenarios. These comments were provided in response to the proposal for two operating cycles for all LOFT and with particular concern regarding recurrent LOFT. These commenters state two gate-to-gate operating cycles would reduce the effectiveness of LOFT due to more time and emphasis on ground operations and less on flight operations.

Further ASTAR, American, ATA, USAirways, Continental, UPS, and FedEx stated that, for those carriers engaged in long haul, international flights, the requirement to design LOFT with two operating cycles representative of the certificate holder's operation will be challenging. Commenters recommend that for purposes of a LOFT, ''Operating Cycle'' should be defined to include only takeoff, climb, en route, descent and landing.

The FAA concurs with commenters that two gate-to-gate operating cycles are unnecessary for the reasons cited by commenters. In response to carriers' concerns regarding the effect of requiring two operating cycles for LOFT, the agency clarifies that LOFT is intended to be representative of a certificate holder's operation, not a replication of the flight. As described in FAA AC 120–35C Line Operational Simulation: Line Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation, LOFT is conducted as a line operation and allows for no interruption by the instructor during the session except for a non-disruptive acceleration of uneventful en route segments. Accordingly, the crew completing LOFT must complete one taxi-out and one taxi-in during the 4-hours required for LOFT in current § 121.409. Additional segments need only consist of takeoff, climb, en route, descent, and landing.

Commenters state that the proposed requirement for two operating cycles during which a pilot serves exclusively as pilot monitoring or pilot flying was not representative of actual line operations. This proposal would force crews into predetermined pilot flying and pilot monitoring roles irrespective of actual line operations in order to meet the regulatory requirements.

The agency agrees with comments that the LOFT training should be representative of actual line operations. During typical line operations, a pilot may not serve exclusively as either the pilot flying or the pilot monitoring. Therefore, the final rule does not require exclusive pilot monitoring and flying cycles during LOFT. Instead, the final rule requires pilots who must complete LOFT in accordance with appendix H or who complete LOFT as an alternative to the proficiency check requirement specified in § 121.441, to complete two representative flight segments and to serve as pilot monitoring for a period of time during the LOFT. This change ensures pilots will have an opportunity to practice pilot monitoring under the supervision of a flight instructor or check airman while maintaining a representative scenario-based training environment.

In addition, in the SNPRM, the agency proposed to require part 121 operators to evaluate active pilot monitoring skills. American, ATA, USAirways, Continental, and ASTAR commented that the proposed evaluation requirements § 121.1213 will require the development of new pilot monitoring standards, and grading and data collection methods making the requirement burdensome.

Based on review of the comments and the proposal, the agency clarifies that pilot monitoring is most appropriately assessed in the LOFT environment which is intended to represent a normal operation. Therefore, it would not be appropriate to require monitoring as a discrete training and evaluation item.

The final rule requirement to include pilot monitoring during LOFT does not place any additional simulator time burden on operators who use advanced simulation training programs to train their pilots or substitute LOFT for recurrent proficiency check requirements because the requirement can be met during the ordinary course of any LOFT that is currently part of a part 121 operator's training program. However there may be some burden due to the need to amend an air carrier's training program. This burden has been reflected in the information collection requirements that are discussed in the Paperwork Reduction Act discussion in Section IV of the preamble. The FAA has included this requirement in the final rule as amendments to paragraph 6 in appendix H and § 121.409.

I. Flight Instructor (Simulator) and Check Airmen (Simulator) Training

Existing §§ 121.413 and 121.414 require flight instructors and check airmen to complete initial and transition ground and flight training. The ground training focuses on instruction and evaluation methods, procedures, and techniques. Sections 121.413 and 121.414 do not currently require ground training on the specific operation and limitations of the simulator or training device.

However, appendix H to part 121 requires certificate holders to provide enhanced instruction for flight

instructors and check airmen that serve in advanced simulation training programs. Flight instructors and check airman who serve in a part 121 advanced simulation training program must complete the training required by §§ 121.413 and 121.414, as applicable, as well as annual training identified in appendix H that includes simulator operation, limitations, and minimum equipment required for each course of training.

In §§ 121.1377 and 121.1381 of the SNPRM, the agency proposed requirements for all flight instructors and all check airmen who serve in FSTDs to complete ground training on FSTD use, operation, and limitations based on existing appendix H annual training requirements. To coincide with the SNPRM proposal for flightcrew member recurrent training, the agency proposed an 18 month interval for recurrent flight instructor and check airman training.

Aviation Performance Solutions (APS) expressed specific concern about the qualifications of instructors conducting training in upset recognition and recovery. APS stated that the delivery of upset recognition and recovery training by instructors who have not first been provided with such information themselves and qualified in the delivery of information and techniques in this area has a high probability of propagating incorrect or unsafe information and techniques. APS recommended that the FAA require instructors to receive training and be specifically qualified to deliver training in the area of upset recognition and recovery.

The FAA agrees with this commenter's concerns regarding the importance of instructor training for upset recovery training. Similar concerns were raised by the 208 ARC, which identified the lack of instructor knowledge, qualification, and standardization as a major hazard for the delivery of upset recovery training.

In the final rule, the FAA has determined that instructor and check airman training must not only contain initial and recurrent training for maneuvers, concepts and techniques but must also include training on both the data and motion limitations of the FSTD. Accordingly, the agency added these enhanced training requirements for flight instructors and check airmen to current §§ 121.413 and 121.414. Further, the FAA has established the recurrent interval for flight instructor and check airmen training at 12 months to coincide with appendix H recurrent training that flight instructors and check airmen who conduct training or checking in FSTDs must complete.

Training on the limitations of the specific FSTD will enable instructors and check airmen to provide upset recovery training consistent with the capabilities and performance of the specific aircraft type. This comprehensive instructor training will not only increase instructor standardization and the quality of upset recovery training, but also reduce the risk of negative training which could easily occur with an untrained instructor. These enhanced instructor and check airmen training requirements are consistent with recommendations of the 208 ARC. Current training for check airmen and instructors is extensive and the FAA has determined that these new final rule requirements can be integrated into the part 121 certificate holder's current curriculum for check airmen and instructor training.

Commenters including Continental and American stated that the proposed check airmen recurrent training requirements in the SNPRM would result in additional cost to air carriers. The FAA has revised the projected benefits and costs based on the specific provisions that are adopted in this final rule. The final rule recurrent training requirements for flight instructors and check airmen who serve in FSTDs can be accomplished within the instructor and check airman requirements in existing appendix H. Therefore, costs are limited to those costs that may accrue from the revision to existing manuals and training courseware. This burden has been reflected in the information collection requirements that are discussed in the Paperwork Reduction Act discussion in Section IV of the preamble.

J. Remedial Training Programs

In § 208(a)(2) of Public Law 111–216, Congress directed the Administrator to conduct a rulemaking to require part 121 operators to establish remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment. See footnote 2. This statutory requirement for rulemaking is consistent with NTSB recommendation A–05–14 and existing FAA guidance regarding pilot remedial training.

The Congressional direction is similar to NTSB recommendation A–05–14, issued following the Federal Express flight 647 accident in Memphis, Tennessee on December 18, 2003. See NTSB/AAR–05/01. The NTSB's review of Federal Express's pilot training procedures and oversight at the time of the accident revealed that Federal Express's pilot training program focused on a pilot's performance on the day of the check with little or no review of that pilot's performance on checks months or years earlier. In January 2004, as a result of a series of operational accidents and incidents, Federal Express implemented an enhanced oversight program to identify and track pilots who have demonstrated performance deficiencies or failures in the training environment. The NTSB's report on the accident concluded that a similar proactive program would provide safety benefits for other part 121 operators. Accordingly, in recommendation A–05–14, the NTSB recommended that the FAA require all part 121 operators to establish programs for flightcrew members who demonstrated performance deficiencies or experienced failures in the training environment that would require a review of their whole performance history at the company and administer additional oversight and training to ensure that performance deficiencies are addressed and corrected. The NTSB reiterated recommendation A–05–14 in the Colgan Air flight 3407 accident report (NTSB/AAR–10/01) after the investigation revealed that the pilot demonstrated continued weaknesses in basic aircraft control and attitude instrument flying during multiple evaluations within a 3-year period.

On October 27, 2006, the agency issued SAFO 06015, ''Remedial Training for Part 121 Pilots.'' Consistent with NTSB recommendation A–05–14, in this SAFO, the agency recommended a process to identify pilots with persistent performance deficiencies or who have experienced multiple failures in training and checking. The agency explained that the process should accomplish three objectives: (1) Review the entire performance history of any pilot in question; (2) provide additional remedial training as necessary; and (3) provide additional oversight by the certificate holder to ensure that performance deficiencies are effectively addressed and corrected. Following the Administrator's Call to Action to Enhance Airline Safety, in January 2010, the agency confirmed that all part 121 operators had implemented remedial training consistent with the objectives of SAFO 06015. See FAA Fact Sheet, January 27, 2010.

In the SNPRM, the agency explained that the statutory requirement for the development of remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment was included

as part of the continuous analysis process (CAP) proposed in § 121.1355. See 76 FR 29336, 29340 (May 20, 2011).

In the SNPRM, the FAA revised the CAP process to include more detailed requirements to ensure that all part 121 operators regularly analyze flightcrew member training and checking and that any deficiencies in flightcrew member performance or operation of the training program are identified and corrected. See 76 FR at 29361. The agency further proposed to require part 121 operators to monitor flightcrew members who completed remedial training. See 76 FR at 29361.

Commenters, including the Regional Airline Association (RAA), questioned whether the proposed CAP was generally duplicative of activities that would be required in accordance with a certificate holder's SMS. Specifically, RAA commented that the CAP proposal unnecessarily duplicates activities that more appropriately fall within the purview of an airline SMS. RAA suggested that, rather than maintaining CAP and SMS as ''separate silos'' for analyzing a certificate holder's training program, the agency withdraw proposed §§ 121.1355 (applicable to crewmembers) and 121.1441 (applicable to aircraft dispatchers) and incorporate the CAP into the agency's proposed SMS rule.

The agency agrees that elements of the proposed CAP were similar to the proposed SMS requirements. Accordingly, in the final rule, the agency has only retained the pilot-specific remedial training components of the proposed CAP that complement the proposed SMS requirements. The agency clarifies that the analysis process element of the remedial training program requirement may serve as a component of a robust SMS.

1. Analysis Process

Section 121.415(h) of the final rule retains the SNPRM proposal that each approved training program must include a process for the regular analysis of individual pilot training and checking performance to identify pilots with performance deficiencies during training and checking or multiple failures during checking. The agency recommends that air carriers analyze an individual pilot's performance after completion of any qualification curriculum or recurrent training/checking event. To meet the intent of a regular analysis, the agency expects an air carrier to analyze an individual pilot's performance at least annually. The agency expects this analysis to include a review of the pilot's performance during all training and checking with the air carrier to identify performance deficiencies or multiple failures.

2. Remedial Training and Tracking

The purpose of remedial training and tracking is to ensure that the failures or identified performance deficiencies are addressed and corrected. Therefore, effective remedial training must be tailored to the individual pilot. Possible methods of remedial training include, but are not limited to, one-on-one training with an instructor, repeat of ground or flight training modules, additional LOFT, or a combination of methods. The remedial training requirements in the final rule are consistent with the Air Carrier Safety and Pilot Training ARC recommendations, which called for implementing structured remedial training programs, while retaining flexibility for air carriers to tailor tracking to the individual pilot.

Section 121.415(i) of the final rule requires the approved training program to include methods for remedial training and tracking [13] of pilots that have been identified during the analysis process required under 121.415(h).

In § 121.1335(b) of the SNPRM, the agency proposed to require that the air carrier monitor (identified as tracking in the final rule) an individual who has completed remedial training until the individual satisfactorily completes the following recurrent training session to ensure the crewmember's competent performance during this period. ATA, American, USAirways, Continental, FedEx, and Southwest commented that the duration of the monitoring (identified as tracking in the final rule) of an individual who completed remedial training was unclear.

After further review of the SNPRM and consideration of the comments, the agency has determined that the certificate holder must have the flexibility to establish the duration of pilot tracking. Pilot tracking is an element of the remedial training process to manage pilots with performance deficiencies or multiple failures to ensure that the performance deficiencies or failures are effectively corrected. The agency expects air carriers to conduct additional observation of pilot performance following completion of remedial training to determine whether the pilot has mastered the maneuver(s), procedure(s) or subject area(s), in which he or she has previously demonstrated weakness. Possible methods of tracking include, but are not limited to, additional PIC line checks, SIC line checks or observations, additional proficiency checks, additional flight training, or a combination of these methods. Given the potential range of identified areas of weakness, the individual pilot performance during remedial training and tracking and the frequency of opportunities to continuously demonstrate proficiency in those areas, the agency determined that the necessary time frame for tracking these pilots' performance will vary. The agency expects certificate holders to continue to track a pilot until the performance deficiencies or failures are effectively corrected. The agency also expects each certificate holder's approved training program to include specific indicators used to determine that the pilot has mastered the maneuver(s), procedure(s), or subject area(s) in which the pilot has previously demonstrated weakness.

The agency clarifies that tracking is separate from required recurrent training and checking. Regardless of any additional training or checking that a pilot completes during tracking, recurrent training and checking is still required at the intervals specified in part 121. A pilot's due month for recurrent training or checking may not be changed based on completion of any additional training or checking required by the certificate holder's remedial training and tracking program.

The NTSB and Families of Continental Flight 3407 commented that once a pilot completes a ''checkride'' there will be no further tracking of this individual even if he or she subsequently experiences difficulty performing a maneuver, similar to the scenario identified during the investigation of the Colgan accident. The requirement for additional tracking of pilot performance is not the only opportunity for a certificate holder to consider a pilot's overall training and checking performance. As previously discussed, the final rule includes the requirement for regular analysis of individual pilot training and checking performance. If a pilot completes tracking and subsequently demonstrates weakness again, this pilot would again be identified during the analysis process. Then, this pilot would again be required to complete remedial training and tracking in accordance with the certificate holder's approved training program.

[13] After further review of the SNPRM, in the final rule remedial training requirements, the agency has replaced the term, ''monitoring'' with the term, ''tracking.'' The agency made this substitution because the term ''monitoring'' was inconsistent with existing guidance and to avoid confusion with ''pilot monitoring'' duties described elsewhere in the final rule.

Families of Continental Flight 3407 commented that enhanced recordkeeping requirements are necessary for a complete assessment of a pilot's performance. The agency believes that existing air carrier training and checking recordkeeping practices provide sufficient information for operators to successfully implement the remedial training program requirements in the final rule. In addition, § 121.683 requires operators to maintain records to demonstrate pilot compliance with the training and qualification requirements of subparts N and O.[14] Records regarding an individual's performance in the training or checking environment are of the type that could be used to satisfy the requirements of § 121.683(a)(1). Accordingly, these records should be currently available for operator use in implementing an effective remedial training program including the regular analysis of pilot training and checking performance.

K. Related Aircraft Differences Training

Under existing regulations, flightcrew members must complete the training, checking, and qualification requirements for each aircraft type they operate. In addition, due to differences in instrumentation and installed equipment, the skills and knowledge required to operate aircraft of the same type may be different. Therefore, crewmembers trained on one variant of an aircraft type may require additional training to safely and efficiently operate other variants of that aircraft type. This additional training is identified in existing regulations as differences training.

The FAA, through Flight Standardization Boards (FSB), provides analysis of the differences between the variations of existing aircraft types during certification. The analyses are published in a Master Differences Requirements (MDR) document in each FSB report. Under existing regulations, an operator preparing a training program must review the MDR, determine the differences between the variants of the aircraft type, and develop a training program, subject to FAA approval, that addresses these differences.

With the rapid advancement in modern technologies, both in manufacturing techniques and systems design and application, industry now incorporates products and processes that have redefined the relationships between and within aircraft types. For example, the technological development of flight guidance computers has produced ''fly-by-wire'' control laws embedded in computer software that increasingly determine and control the handling or flight characteristics of an aircraft. The use of such technology can produce aircraft types of differing models and aerodynamic airframes, with similar handling or flight characteristics. In addition, modern aircraft systems and displays may allow different type certificated aircraft to have common flight deck and systems designs, such that minimal differences training may be warranted.

Given this technological advancement, when requested by industry, the FSB will analyze and compare aircraft with different type certificates and their associated systems. Through this analysis, the FSB may recommend training reduction for identified similarities between aircraft types. These recommendations are documented in FSB reports for each aircraft and have been used by certificate holders to develop training program curriculums.

In the SNPRM, the agency proposed to extend the differences training concept to aircraft with different type certificates. This proposal would not change existing requirements pertaining to differences training for variants of a single aircraft type.

To address the relationships among aircraft with different type certificates, in the SNPRM, the FAA proposed to add to part 121 a definition for ''related aircraft'' for use exclusively in the context of flightcrew member training, checking, and qualification. Related aircraft refers to two or more aircraft of the same make (with either the same or different type certificates) that have been demonstrated and determined by the Administrator to have commonality to the extent that flightcrew member training, checking, recent experience, operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills may be reduced while still meeting the training and qualification requirements for service on the other aircraft. This definition is consistent with the related aircraft definition in AC 120–53A—Guidance for Conducting and Use of Flight Standardization Board Evaluations. The agency has provided an update to this advisory circular (AC 120–53B) in the docket for this final rule.

Based on the FAA's experience with evaluating aircraft similarities in the training, checking and operations contexts, in § 121.1206 of the SNPRM, the FAA proposed to allow certificate holders to seek related aircraft designation for aircraft with different type certification for use in part 121 training program development. Having such a designation would allow certificate holders to take advantage of any similarities that may exist between different aircraft types in its operation. Certificate holders could develop a related aircraft differences training program (inclusive of training and checking), make modifications to existing training programs, or seek a deviation from the SNPRM's proposed recency, operating experience and consolidation requirements.

In the final rule, the agency has added the proposal for related aircraft differences training to § 121.418 and has retained the proposed deviation authority with modifications. Further, consistent with § 121.1223 of the SNPRM, § 121.441(a)(1)(ii) of the final rule requires a PIC to complete a proficiency check in each aircraft type in which the PIC is to serve. Compliance with this provision will be required 5 years after the effective date of the final rule.

A certificate holder may seek a deviation to allow credit for related aircraft operating experience and consolidation, recency of experience and proficiency checking through a deviation request submitted in accordance with §§ 121.434, 121.439, and 121.441 respectively.

Currently, in accordance with § 121.433(d), a PIC who serves on more than one aircraft type must complete either recurrent flight training or a proficiency check on each aircraft type. To ensure PICs operating multiple aircraft types (whether designated as related or not designated as related) maintain proficiency on each aircraft type, the FAA has carried forward the proposal from the SNPRM to require a proficiency check on each aircraft type in which a PIC serves.

The recurrent frequency for a PIC proficiency check in this final rule aligns with the existing recurrent checking frequency of 12 months. The agency does not believe this requirement results in any additional burden or cost to a certificate holder. Section 121.433(d) currently requires a PIC to satisfactorily complete either recurrent flight training or a proficiency check on each aircraft type in which a PIC serves within the preceding 12 calendar months. Therefore, this amendment to § 121.441 does not require any additional time in an FSTD during flightcrew member recurrent

[14] As discussed in section II.B.1. of this preamble, the FAA has initiated a rulemaking project (RIN 2120–AK31) to develop a pilot records database and phase out the requirements of the PRIA found at 49 U.S.C. 44703(h) and will consider the requirements of § 121.683 in the pilot records database rulemaking.

training. Additionally, the FAA expects that any training program updates needed to reflect this change are minimal and are subsumed in the paperwork costs for the collective amendments made to the recurrent training provisions.

However, the final rule does allow a certificate holder to seek a deviation from this requirement for aircraft that are designated related. In accordance with § 121.441(f), a certificate holder may apply for a deviation that would allow reduced frequency and/or reduced content of the designated related aircraft proficiency check for PICs. Although the final rule does not amend the existing requirements applicable to SICs in § 121.441(a)(2), the deviation authority added to § 121.441(f) also permits a certificate holder to seek a deviation from the proficiency check requirements applicable to SICs for designated related aircraft.

The agency notes that, consistent with current practice, the FAA has not established a limit on the number of aircraft types, or variants within a type, on which a flightcrew member may be qualified to serve provided a flightcrew member is able to demonstrate proficiency and complete the training and checking requirements set forth in the certificate holder's approved training program.

Airbus supported the proposal to allow certificate holders to modify their pilot training programs based on FSB related aircraft designation. However, FedEx, Southwest, Continental, ASTAR, American, ATA, and USAirways questioned the necessity for the designation of related aircraft because existing FSB reports already define the relationship between aircraft. Commenters further asserted that they should not be required by regulation to seek approval from the FAA for related aircraft designation a second time outside the FSB process.

The agency clarifies that neither the proposal nor the final rule make any substantive changes to the process by which FSB analysis of aircraft with the same or different type certificates is currently conducted. Currently, part 121 requires differences training for variants of aircraft with the same type certification, but it does not specifically address a differences training concept for aircraft with different type certification. Thus, the agency determined codification of the related aircraft policy in AC 120–53A is necessary.

ASTAR, Continental, American, ATA, USAirways, and Southwest asked the agency to clarify the proposed recurrent training requirements for flightcrew members qualified on related aircraft that required an alternating sequence of flight training and checking for each related aircraft type.

Upon further review of the proposal, the agency has determined that the concept currently in place for recurrent differences training and recurrent evaluations should apply to training on aircraft designated as related. In the final rule, flightcrew member recurrent training must include all required ground training, flight training and checking and crewmember emergency training on a ''base aircraft.'' For an aircraft designated as related to the base aircraft, each flightcrew member must be trained or trained and checked on the differences as described in the FSB report.

ATA, USAirways, FedEx, Continental, ASTAR, Southwest, and American expressed confusion regarding the use of the term ''classification of related aircraft'' as proposed in the SNPRM provision that would allow part 121 operators to seek deviations from operating experience, consolidation, and recent experience requirements. These commenters also stated that there is no clear guidance on acceptable reasons for the agency to authorize a deviation from operating experience, consolidation and recent experience based on related aircraft designation.

In response to commenters' concerns regarding the term ''classification of related aircraft,'' the agency has amended the final rule deviation language to refer to ''designation of related aircraft'' for clarity and consistency. Regarding commenters' concerns about the basis for authorizing deviations from operating experience, consolidation and recent experience, the agency will evaluate a deviation request based on the recommendations in the FSB report. Additionally, the agency notes that under existing requirements and in the final rule, separate operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills are not required for variations within the same type airplane. See 14 CFR 121.434(a).

ATA, USAirways, FedEx, Continental, ASTAR, Southwest, and American noted that the deviations are now required to be approved by the FAA Director of Flight Standards. These commenters suggest that the deviation authority should remain at the principal operations inspector (POI) level, asserting that a POI who is familiar with the airline's operation, experience levels, and training programs is critical to making a well-founded decision regarding a deviation.

The agency generally agrees with commenters that POIs are the most familiar with the operation, experience levels and training programs of the certificate holder they oversee. However, upon further review of the proposal, the agency has determined that it is more appropriate to address the Administrator's delegation of authority for specific functions associated with related aircraft designations and deviations in guidance material. Accordingly, the final rule reflects this change.

The agency emphasizes that the related aircraft provisions do not create a requirement for an operator to seek designation of related aircraft. A part 121 operator's determination whether to pursue a related aircraft designation or develop related aircraft differences training is voluntary. The alternative to related aircraft differences training is for the part 121 operator to develop comprehensive training programs for any new aircraft type as is currently required.

L. Extended Envelope Flight Training

Currently, the agency does not require ground or flight training on recovery from aerodynamic (full) stall or upset conditions. In § 208 of Public Law 111–216, enacted August 1, 2010, Congress directed the FAA to require part 121 operators to provide flightcrew members with ground and flight training on the recognition and avoidance of stalls and upsets as well as full stall and upset recovery maneuvers. Public Law 111–216 also directed the agency to implement the recommendations of the expert panel convened to report on methods to increase flightcrew member familiarity with and response to stick pusher systems and adverse weather events.

Public Law 111–216 followed the Colgan accident in which the flight crew incorrectly responded to both a stall warning and a stick pusher activation resulting in an aerodynamic stall. Additional improper response to the stalled condition precipitated an upset condition from which the flight crew did not recover, resulting in the death of everyone on board as well as one person on the ground and a catastrophic loss of the aircraft.

In the SNPRM, the agency proposed to require flightcrew members to receive flight training on upset recognition and recovery, as well as recovery from full stall and stick pusher activations. The SNPRM also proposed to require pilot ground training on recognition and recovery from stall and upset.

As required by Public Law 111–216, the final rule includes stall and upset

ground and flight training. Consistent with Public Law 111–216 and the 208 ARC recommendations, the agency has determined that the greatest safety benefit can be achieved by adjusting the focus of the training requirements to ''avoid'' or prevent the upset or stall. Accordingly, the final rule promotes pilot manual handling skill development to prevent stall and upsets, coupled with training which allows pilots to quickly recover from developed stalls and upsets. The final rule also includes the proposed requirement for flight training on recovery from bounced landings.

In the final rule, the agency identifies the stall and upset prevention and recovery maneuvers and procedures as ''extended envelope training.'' The term ''extended envelope training'' refers to maneuvers and procedures conducted in a FSTD that may extend beyond the limits where typical FSTD performance and handling qualities have been validated with heavy reliance on flight data to represent the actual aircraft. In instances when obtaining such flight data is hazardous or impractical, engineering predictive methods and subject-matter-expert assessment are used to represent the aircraft adequately in the simulator.

The final rule extended envelope flight training maneuvers and procedures are required in qualification curriculums as proposed in the SNPRM, as well as in recurrent curriculums. The time required to complete the extended envelope training is in addition to existing programmed hour requirements for inflight training.[15]

In the SNPRM, the agency proposed to require all pilots in part 121 operations to complete recurrent training for the extended envelope flight training tasks at either 9 month or 36 month intervals. The agency also proposed to require all pilots to complete recurrent training or evaluation on approach to stall in at least one configuration (clean, takeoff or maneuvering, or landing) every 9 months. A number of commenters raised concern generally regarding the totality of required recurrent training proposed in the SNPRM. However, commenters did not provide specific objections to the proposed training or evaluation frequency for approach to stall or the extended envelope flight training tasks.

In the final rule, the agency replaces the term ''approach to stall'' with ''stall prevention training.''[16] This change does not alter the substantive requirements of existing approach to stall training. The FAA has adopted this terminology change in concert with ICAO and as a result of the FAA/ICAO/EASA joint initiative to study the contributing factors of loss of control inflight, internationally recognized as the LOCART initiative.

The FAA has determined that the term ''stall prevention training'' more accurately describes the training objective intended by the existing ''approach to stall'' maneuvers. This terminology change also draws a clearer distinction from the full stall recovery training introduced in this final rule. As described in AC 120–109, pilots should continue to be trained that the primary response at the first indication of a stall is to reduce the angle of attack.

The recurrent frequency for stall prevention (approach to stall) training and evaluation and the extended envelope maneuvers training in this final rule aligns with the existing recurrent training and evaluation frequency of 6 months for PICs and 12 months for SICs. The extended envelope maneuvers training focuses on manual handling skills for proper response to development of slow flight, stall prevention and loss of reliable airspeed. Accordingly, in the final rule, the agency has increased the frequency for these manual handling maneuvers from the proposed rule and decreased the frequency of recurrent training proposed for stall and upset recovery from the proposed rule to target resources to the areas in which the greatest safety benefit can be achieved. As a result, and in order to encourage a cohesive training approach, the agency has determined that every 24 months, upset and stall recovery should be trained together with the manual handling skill development. The agency further notes that this frequency is consistent with the 208 ARC recommendation that upset recovery should be trained no less frequently than every 36 months.

Additionally, in furtherance of stall prevention, the agency ensures that the existing requirement to train or evaluate approach to stall every 12 months is maintained even if a part 121 operator substitutes line-oriented simulator training or LOFT for alternating SIC recurrent training. Training and checking on stall prevention (approach to stall) provides the greatest benefit in that proficiency in this area provides the highest likelihood that the pilot will be able to avoid the onset of stall or upset.[17]

Also, in the final rule, the agency is furthering the training concepts developed in the Pilot Certification rule. The requirements in both this final rule and the Pilot Certification rule use academic training to develop foundational knowledge and then consolidate that knowledge with FSTD training and experience. Together, these final rules require certificate holders to effectively provide a building block approach to learning for pilots. Developing the broad concepts of aerodynamics in the ATP CTP to the type specific aerodynamic concepts now required in an air carrier's training program, serves as an effective method to deliver the training mandated by Public Law 111–216 and recommended by the 208 ARC.

Enhanced academic knowledge, emphasis on prevention training, and the recommended recovery techniques developed by the Original Equipment Manufacturer (OEM) constitute a complete training solution. The agency expects that if this solution is properly delivered, it will have a significant effect on the LOC–I statistics.

1. Upset Prevention and Recovery

Existing regulations do not specifically require pilots to receive flight training on upset prevention and recovery. The Colgan Air flight 3407 and American Airlines flight 587 accidents reinforced the need for this training because each involved sudden or unexpected aircraft upset.

In the NPRM, the agency proposed to require flight training for upset recognition and recovery during every qualification curriculum and during recurrent training. In the SNPRM, the agency added a requirement for pilots to be evaluated on this task.

Upset prevention: The greatest safety benefit can be achieved if an upset condition is prevented through proper pilot intervention. Although the agency

[15] The programmed hours identified in § 121.424 refer to ''inflight'' training. As defined in 121.401, ''inflight'' refers to maneuvers, procedures or functions that must be conducted in the airplane. Extended envelope training does not fall within this definition because this training must be completed in a FFS. Therefore, the pilot inflight training programmed hours have not been amended to account for the additional time required for these new training requirements.

[16] The agency considers stall prevention training and approach to stall training as synonymous. As such, the FAA is not requiring certificate holders to adopt this new nomenclature in any documentation. However, the FAA will revise AC 120–109 and make other conforming changes to adopt this terminology in future rulemakings and guidance.

[17] The agency notes that currently, line-oriented simulator training (also referred to as line oriented flight training or LOFT) may be substituted for alternating SIC recurrent training which may exclude stall prevention (approach to stall) training. See §§ 121.409 and 121.441. For this reason, the final rule ensures that stall prevention training must be conducted every 12 months even if a part 121 training program substitutes LOFT for alternating SIC recurrent training.

supports training pilots on recovery skills for a developed upset, the probability of recovery from the upset condition decreases with the magnitude of the divergence from the desired flight path. Accordingly, the final rule extended envelope flight training includes both training on manual handling skills to enhance a pilot's ability to prevent upset, as well as training to recover from an upset condition. Each of these concepts is derived from recommendations received from the 208 ARC.

The purpose of requiring manual handling skills is to ensure correct pilot control inputs to avoid undesired flightpath deviations. Manual handling skills are essential to the prevention of stall and upset because they allow a pilot to master the aircraft's flight path without the use of total automation. Development and maintenance of these skills are necessary to keep pilots engaged in the operation of the aircraft and more easily allow them to become re-engaged if an abnormal problem arises which prohibits automation or typical flight path guidance. Thus, the final rule maintains the SNPRM proposal to require, as part of the extended envelope flight training, manual handling training throughout all phases of flight to better develop a pilot's core manual handling skills and consolidate the principles of airplane energy management.

Pilots must know the common errors to avoid and why they occur, as well as the importance of cross-checking and verifying inputs and communication and coordination between pilots. It is also critical for pilots to know how the airplane responds to inputs across all flight regimes (e.g., high and low altitudes, airspeeds, and energy states).

Accordingly, the training requirements in the final rule include manually flown arrival and departure, slow flight, and flight with loss of reliable airspeed. The agency expects that training on these maneuvers and procedures will provide pilots with the manual handling skills necessary to prevent undesired flight path divergence.

Manually controlled arrival and departure: In the SNPRM, the agency proposed to require pilots to complete training on manually controlled departure and arrival. The agency did not receive any comments on the proposal to train these maneuvers.

Existing appendices E and F of part 121 currently require area departure and area arrival for both training and checking, but these maneuvers need not be performed manually. Modern aircraft are commonly operated using autoflight systems (e.g., autopilot or autothrottle/autothrust). Autoflight systems are useful tools for pilots and have improved safety and workload management, and thus enabled more precise operations. However, continuous use of autoflight systems could lead to degradation of the pilot's ability to quickly recover the aircraft from an undesired state. Therefore, the agency has retained the provisions regarding manually controlled arrival and departure in the final rule.

Slow flight: In the SNPRM, the agency proposed to require ''slow flight'' training during qualification and recurrent training to provide pilots with an understanding of the performance of the airplane and ''hands-on'' exposure to the way the airplane handles at airspeeds that are just above the stall warning. Similarly, the 208 ARC recommended slow flight as a task which can develop a pilot's manual handling skill.

ALPA and an individual supported the proposed addition of slow flight to pilot training curriculums. However, ALPA expressed concern regarding the target speeds specified for slow flight in the draft advisory circular published with the SNPRM (AC 120–FCMT), which are set as those between the onset of stall warning and aerodynamic stall. ALPA believes that the airspeed for slow flight should be established by the manufacturer (such as Vref) and be near the onset of stall warning indication, but fast enough that stall warnings would rarely, if ever, be activated. ALPA further states that requiring slow flight practice at speeds that require pilots to continuously fly while ignoring impending stall indications would result in negative training and could cause pilots to become desensitized by the approach to stall warnings.

The FAA agrees that encountering continuous stall warnings during slow flight practice without initiating an immediate stall recovery procedure would result in negative training. The target speed for slow flight must be below the speeds that are normal and appropriate for the various configurations, but targeted to avoid stall warning devices. Further, the FAA concurs with the use of Vref for the configuration which should allow for the necessary experience in low speed/low energy handling characteristics with sufficient margins to avoid stall warning/stall onset with proper airspeed control. The agency will revise draft guidance contained in AC 120–FCMT on slow flight accordingly.

Loss of reliable airspeed: Finally, practice and experience with the recognition of and appropriate response to a system malfunction that results in loss of reliable airspeed is essential to minimizing the risk of stall and upset. Failure or erroneous display of critical flight information, such as airspeed, can lead to an upset if loss of energy is not quickly recognized and aircraft control is not maintained. As such, loss of reliable airspeed has been included in the final rule extended envelope training requirements.

The training of an airspeed indication system malfunction is critical for a pilot's understanding of type specific failure modes. Additionally, cascading failure of other dependent systems provides a training environment, which allows a pilot to practice manually handling an aircraft with varying degrees of automation and capabilities that may be present during upset. In many instances, the loss of reliable airspeed results in an aircraft which must be flown primarily by relying on pitch and power. Further, these maneuvers require an understanding of the aerodynamic qualities of large transport category aircraft. Therefore, this training requirement covers a broad spectrum of conditions that could be encountered during the period in which the upset could be prevented as well as during recovery. The training is also consistent with 208 ARC recommendations regarding pilot awareness of how system malfunctions affect their specific aircraft and the recommendation to provide more manual handling skill training with emphasis on the aircraft's pitch and power relationship.

Checking extended envelope flight training maneuvers: In the SNPRM, the agency proposed to require evaluation of two components of the extended envelope training—recovery from full stall and upset. Atlas Air recommended against any evaluation of upset recovery or any other maneuvers and procedures in this area. This commenter stated that the requirement to evaluate upset recognition and recovery skills will not improve pilot response and will likely have a negative unintended consequence that will far outweigh any perceived benefit of evaluating the maneuver.

Upon further review of the proposal and comments, the agency has removed the requirement to evaluate upset recovery from the final rule because the agency agrees that a successful recovery is somewhat difficult to quantify due to the multitude of variables involved. This final rule increases the academic knowledge of pilots, requires increased instructor training to deliver these concepts, develops pilot's manual handling skills which aid in upset

prevention, and trains the pilots in proper recovery techniques. Achieving the learning objective defined in the recovery maneuvers is paramount.

Evaluation and approval of upset training programs: Commenters also raised concerns regarding upset training. APS recommended that the FAA produce guidance for the evaluation and approval of programs of instruction in upset recognition and recovery that includes stipulations for appropriate content, methodology, and delivery of training.

The FAA concurs with the commenter's recommendation and will provide operators and training providers with sufficient and comprehensive guidance on the academic content, validated maneuvers, and appropriate cautions for the delivery of upset prevention and recovery training. In developing guidance, the agency has considered the recommendations of the 208 ARC on many aspects of training upset prevention and recovery in FSTD, including the scope and objective of conducting this training in an FSTD; the training device requirements; the instructor requirements; the academic training elements required before beginning upset prevention and recovery training in an FSTD; the flight training elements required including slow flight and manual handling training; and, the completion criteria for upset prevention and recovery training in an FSTD. In making its recommendations, the 208 ARC considered information provided by experts on LOC–I causal factors and reviewed previous guidance such as the Airplane Upset Recovery Training Aid (AURTA) produced by Airbus/Boeing and endorsed by the Flight Safety Foundation. The FAA has included e a copy of the ARC recommendations in the docket for this rulemaking.

Data and qualification of FSTDs: FlightSafety commented that most data packages do not contain the information and data necessary to model a FFS to accomplish the required upset recognition and recovery training. FlightSafety further commented that a mandate to train a recovery technique to use for a specific aircraft type without OEM data and/or FAA approved procedures would not improve training or safety. APS raised the same concern based in part on the expectation that extreme pitch and roll angles would necessarily be part of upset recognition and recovery training.

The FAA shares the commenter's concerns on the use of validated aircraft data and addresses this concern later in this section of the preamble. However, the agency disagrees with the assertion that upset recovery training must contain extreme pitch and roll angles. The FAA sought recommendations on this issue from the 208 ARC. The 208 ARC reviewed the work completed by such groups as the developers of the AURTA, the Industry/FAA Stall Work Group, and the International Committee for Aviation Training in Extended Envelopes (ICATEE). The 208 ARC validated much of the previous work done by each of these groups and used the AURTA Revision 2 [18] and the FAA AC 120–109 [19] as the basis of their recommendations. The ARC recommended the FAA use these two documents as source documents for the development of advisory material for upset prevention and recovery training.

Further, an airplane OEM group was also established within the 208 ARC to develop recommended standard OEM guidance for the recovery from nose-high/nose-low upsets. Airbus, ATR, Boeing, Bombardier, and Embraer developed the upset prevention and recovery template contained in the advisory material published with this final rule.

The FAA is satisfied the upset recovery techniques developed in conjunction with this final rule are appropriate. Each maneuver and associated recovery was developed by OEMs and has been validated to remain in both the data and motion limitations of a Level C or Level D FFS if conducted properly. The FAA also stresses that the increased instructor and check airmen training will allow instructors and check airmen to recognize any excursions outside of the data or motion capabilities of the device and debrief pilots on any such event.

Expand ''Upset'' definition: Calspan recommends the following expanded definition of upset: ''An aircraft upset is further defined as an airplane unintentionally exceeding the parameters normally experienced in line operations or an event that alters the normal response of the airplane to pilot input such that the pilot must adopt an alternate control strategy to sustain or regain controlled flight.''

Calspan commented that the definition of upset used in the NPRM does not capture how the precipitating event may impact the pilot's ability to control the aircraft. A number of accidents have occurred where a control failure or disturbance significantly altered the normal response of the airplane to pilot input such that conventional control strategies proved to be inadequate. Calspan further commented that the NPRM cited numerous NTSB recommendations developed from accidents that resulted in extreme upset conditions precipitated by an underlying control system issue. Calspan stated that these accidents were in fact controllable had the crew executed proper alternate control responses, but without upset recovery training they did not possess the knowledge and skill necessary to safely recover.

The FAA agrees that alternate control strategies are a component of a well-developed upset prevention and recovery training program. In guidance material developed for upset prevention and recovery, the agency will discuss the advantages and cautions for using alternate control strategies when primary control responses are not effective. However, the FAA disagrees with the commenter's assertion that most cited upset accidents were a result of control system issues. In the most recent accidents such as Colgan Air flight 3407, American Airlines flight 587 and USAir flight 427, the NTSB identified improper pilot response as a contributing factor.

Further, the FAA is not persuaded that the description of upset should be changed as recommended by the commenter. The agency continues to recognize the description of upset proposed in the NPRM. This description is also consistent with the AURTA and the 208 ARC recommendations.[20]

2. Stall Prevention and Recovery

In the SNPRM, the agency proposed to require pilots to train on recovery from full stall. Further, the agency proposed to require that, for pilots operating aircraft equipped with stick-pusher, stall recovery training must be completed by going through stick pusher release. Although the agency did not receive any comments objecting to the proposed requirement to train recovery from full stall in general, the agency did receive a number of technical comments regarding this proposed flight training. For example, ALPA commented that ICATEE has

[18] *http://www.faa.gov/other_visit/aviation_industry/airline_operators/training/media/AP_UpsetRecovery_Book.pdf*

[19] *http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-109.pdf*

[20] In the NPRM Upset Recognition and Recovery is described as follows:

6.5 Task: Upset Recognition and Recovery

(d) Reference the most current version of the Industry's Airplane Upset Recovery Training Aid. An aircraft upset is almost universally described as exceeding one or more of the following:

(1) Pitch attitude greater than 25° nose up.

(2) Pitch attitude greater than 10° nose down.

(3) Bank angle greater than 45°or within these parameters, but flying at airspeeds inappropriate for the conditions.

concluded that there is a need and a benefit for training pilots to the full aerodynamic stall because aircraft behavior in a full aerodynamic stall is very different from the aircraft behavior in an approach to stall condition. However, ALPA cautioned that the ICATEE recommendation for full-stall training should be put into place only if the aerodynamic model of the aircraft in the FFS is representative of a full aerodynamic stall in flight; the instructor pilot is given enhanced training in upset recovery training; and the FFS has feedback capability to assist the instructor and pilots in ensuring the stall training is conducted and evaluated properly. The agency agrees with ALPA's comments and addresses these comments throughout the preamble. The separate part 60 rulemaking initiative previously noted is also responsive to the issues raised by ALPA.

One recovery procedure: ALPA commented that the FAA-Industry Stall/Stick Pusher Work Group concluded that successful recovery from an impending stall and a full aerodynamic stall, require the same procedure. ALPA supports an approach in which pilots are trained to treat an ''approach to stall'' the same way as a ''full stall.'' Further, ALPA commented that this would simplify pilot recognition and response to an impending stall and allows for a single pilot conditioned response (i.e., one recovery procedure) to both approach to stall warning and full aerodynamic stall.

The agency agrees with the comments regarding one procedure for recovery from an impending stall and full aerodynamic stall. In AC 120–109, Stall and Stick Pusher Training, the agency stresses that pilot training should emphasize treating an ''approach to stall'' the same as a ''full stall.'' This common recovery procedure is also consistent with the recommendations from the 208 ARC for stall prevention and recovery.

Stall training methods and evaluation: FlightSafety commented that, in practice, a pilot should initiate a stall recovery at the first indication of a stall or at least at the stick shaker warning. However, in the SNPRM, the agency proposed to require stick pusher training that would give a pilot the experience of allowing an aircraft to go through early warning signs of stall, including stick shaker, so that they experience stick pusher. Thus, FlightSafety believes the requirement as proposed will not enhance safety. Further, FlightSafety recommends conducting stick pusher recovery as a demonstration, with training emphasis placed on recovery well before stick pusher activation.

Similarly, while ALPA agrees with industry experts that full-aerodynamic stall training and recovery should be demonstrated as a ''train to proficiency maneuver,'' ALPA states that full-aerodynamic stall should not be an evaluated item. ALPA states that only stall recoveries initiated at the first sign of the stall should be evaluated. ALPA recommends that the final rule incorporate the recommendations from the FAA-Industry Stall/Stick Pusher Work Group by maintaining the training requirement as a demonstration maneuver but removing the requirement to evaluate full stalls and stalls to stick pusher activation.

The FAA agrees with the FlightSafety and ALPA comments regarding evaluation and traditional training methods for recovery from full stall and stick pusher release. As discussed earlier, given that recovery procedures for approach to stall and full stall are the same, to avoid the potential for negative training that might occur by having pilots avoid early warning signs of stall, the FAA is not requiring evaluation of recovery from full stall.

In § 121.423, added to subpart N by this final rule, the agency has revised the recovery from full stall and stick pusher activation tasks. In the final rule, recovery from full stall and stick pusher activation are instructor-guided hands-on experience tasks only. This training will emphasize the recovery by the pilot incorporating the same angle of attack (AOA) principles from the stall prevention (approach to stall) training. Accordingly, in the final rule, neither full stall nor stick pusher is evaluated during a proficiency check.

Further, just as with upset training, the FAA has focused training on maneuvers that develop a flightcrew member's skill of preventing stalls. The FAA will continue to emphasize training and checking of prompt recovery at the first indication of a stall. Approaches to stalls (stall prevention training) are critical maneuvers which gauge a pilot's understanding and early response to stall indications including stall warning; as such the final rule maintains existing requirements for evaluation of this task.

High altitude approach to stall maneuver: ALPA recommends splitting the proposed requirement to complete training on stalls in a ''clean configuration'' into two separate tasks: one for high altitude and one for low altitude because high altitude stalls have unique issues that should be separately trained. Although the FAA agrees with the comment regarding differences between high altitude stalls and low altitude stalls, in the final rule, the agency continues to require recovery from approach to stall as it exists in current appendices E and F (i.e., requiring training in at least takeoff, clean and landing configuration). The agency does not specify the scenarios for stall prevention (approach to stall) in order to provide part 121 operators with the flexibility needed to develop a training methodology most appropriate for their operation.

However, in AC 120–109, the FAA recommends that air carriers incorporate high altitude stall prevention training into their training programs. This AC also recommends training on the differences between low altitude and high altitude stall prevention and appendix 2 of the AC includes a sample training scenario of a clean configuration high altitude approach to stall.

Manufacturer stall recovery procedures: ALPA notes that the SNPRM did not consider that manufacturers are developing and publishing stall recovery procedures for each specific aircraft. ALPA recommends that the final rule and stall recovery guidance recognize this development by including language to ensure that the pilot correctly executes the manufacturer-recommended stall recovery procedure in the Flightcrew Operating Manual (FCOM) and returns the aircraft to a safe flying condition. The agency agrees with ALPA and in AC 120–109 emphasizes that the manufacturer's recommended stall recovery procedure takes precedence over the generic recovery template.

Recovery and training criteria: ALPA commented that stall recovery training and evaluation criteria should not mandate a predetermined altitude or emphasize a ''minimum loss of altitude.'' Similarly, Atlas Air stated that it has difficulty with overemphasis on ''minimizing altitude loss'' for approach to stall training.

In response to commenters' concerns regarding stall recovery training and evaluation criteria, the agency notes that it has recently issued a number of information and guidance documents to assist air carriers with properly and consistently evaluating pilots' recovery from approach to stall. The agency initially issued SAFO 10012, Possible Misinterpretation of the Practical Test Standards (PTS) Language ''Minimal Loss of Altitude,'' to clarify the intent of the requirement for ''minimal loss of altitude'' during evaluation of recovery from approach to stalls. Then, in August 2012, the agency published AC 120–109, Stall and Stick Pusher Training,

emphasizing that the primary goal of testing or checking recovery from approach to stall is to evaluate a pilot's immediate recognition and response, which should be an immediate reduction of AOA. Additionally, the agency has revised the approach to stall evaluation criteria in the ATP PTS. The ATP PTS revision eliminates the language referring to ''minimum loss of altitude,'' emphasizes reduction of AOA over maintaining altitude, and also recommends that one of the three required approach to stalls should be accomplished while the autopilot is engaged.

3. Recovery From Bounced Landing

In the SNPRM, the agency proposed to add training on recovery from bounced landing to initial and transition curriculums. The agency also proposed to require that pilots complete recovery from bounced landing in recurrent training. The agency determined that the appropriate recurrent training interval for this task was 36 months based on the agency's balancing of the potential risk with the frequency of such an event.

The FAA determined that training on recovery from bounced landing is necessary based on FAA review of accident history including FedEx flight 859. On September 14, 2004, a Boeing McDonnell Douglas MD–11F operating as FedEx flight 859 experienced a tail strike during a go-around maneuver from Memphis International Airport. Neither of the two flightcrew members was injured. In its investigation of this accident, the NTSB found the probable cause was the pilot's over-rotation during a go-around maneuver initiated because of a bounced landing. See NTSB Event ID DCA04MA082.

Upon further review of the accident history related to bounced landings, and comments submitted by the NTSB, the agency agrees with the NTSB that the bounced landing proposal is responsive to NTSB recommendation A–05–30 issued following the American Eagle flight 5401 accident in San Juan, Puerto Rico. On May 9, 2004, American Eagle flight 5401 skipped on initial contact with the runway. Then, after the initial touchdown, the PIC took control of the airplane. Flight data recorder (FDR) data indicated that after taking control, the PIC made several abrupt changes in pitch and power, which led to two bounces before the airplane crashed at Luis Muñoz Marin International Airport. The PIC was seriously injured; the SIC, 2 flight attendants, and 16 of the 22 passengers received minor injuries. The NTSB concluded that company guidance on bounced landing recovery techniques would have increased the possibility that the PIC could have recovered from the bounced landings or handled the airplane more appropriately by executing a go-around. The NTSB recommended that the FAA take action to require all part 121 and part 135 operators to incorporate bounced landing recovery techniques in their flight manuals and to teach these techniques during initial and recurrent training.

On June 9, 2006, the FAA issued SAFO 06005, Bounced Landing Training for certificate holders operating under Title 14 of the Code of Federal Regulations (14 CFR) parts 121 and 135. This SAFO recommends that each part 121 or 135 operator check to see that bounced landing recovery techniques are included in the manuals used by their pilots and in their initial ground training for each of the airplane types that the operator flies. The SAFO also recommends that those same techniques are reinforced by briefings and debriefings during flight training, supervised operating experience, and line checks. The SAFO includes instructions on how to develop bounced landing recovery techniques if not already addressed by the operator.

In 2009, the FAA enlisted the assistance of the ATA and the RAA to poll part 121 and 135 member carriers to find out if they incorporated recovery from bounced landing into their training program as SAFO 06005 suggests. Both organizations reported 100 percent implementation of the SAFO's recommendations.

The final rule requirements for flight training in an FFS on recovery from bounced landing supplements the ground training recommended by SAFO 06005. The agency has included the proposal for bounced landing training in the final rule subject to the modification described in the following discussion. In the final rule, the FAA has determined that recovery from bounced landing must be trained during all qualification training curriculums, including upgrade. The agency notes that any maneuver or procedure that is trained in recurrent must be covered in the pilot's qualification training because the pilot's base month for recurrent is reset upon the completion of the qualification curriculum. If an upgrade curriculum does not also include all maneuvers and procedures required by the recurrent curriculum, then the recurrent interval for a maneuver or procedure may be extended.

FlightSafety questioned how training would be developed for an aircraft that does not have written procedures for recovery from bounced landings and whether the FAA developed a training tool and syllabus for simulator training. FlightSafety further commented that if the agency has developed a training tool and syllabus for simulator training, it would question the data that forms the basis for the tool.

In the draft Flightcrew Member AC (AC 120–FCMT) published for comment with the SNPRM, the agency developed generic procedures and performance expectations for recovery from a bounced landing, including techniques for avoiding overcontrol and premature derotation during bounced landings. These procedures were based on a review of the accidents and extensive FAA and industry experience with these accidents and incidents. However, the FAA expects that the recommendations of the aircraft OEM to take precedence regarding procedures that may differ from any published FAA guidance.

4. Use of Full Flight Simulators for Extended Envelope Flight Training

Currently, air carriers may voluntarily use simulators for varying amounts of the training and checking required by subparts N and O. The agency requires an airplane simulator for windshear training only. See § 121.409(d). However, the FAA has long recognized that the use of simulation in flight training provides an opportunity to train, practice, and demonstrate proficiency in a safe, controlled environment.

In the SNPRM, the agency proposed to require all flight training and evaluation to be completed in an FSTD. This requirement included a range of FSTDs from Level 4 flight training devices (FTDs) through Level D FFSs depending on the maneuver or procedure. For the extended envelope maneuvers and procedures, the agency proposed to allow the use of FFSs ranging from Level A to Level D.

For certain maneuvers required in part 121 pilot training, such as the maneuvers included in the extended envelope training requirements, motion provides cues that may affect pilot control strategies and subsequently, vehicle performance. Motion serves as an essential element of a task when, in order to complete the task, the flightcrew member must make continual adjustments based on any number of sensory inputs. Accordingly, for those training tasks where motion is critical to achieving the training objective, such as ''recovery from stall,'' an FFS is essential to successful training outcomes.

Although commenters generally supported the agency's proposal to require FSTDs for all flight training and

evaluation, some air carriers such as Continental, United, and JetBlue were generally critical of the agency's reliance on FFSs, noting that effective training programs currently in place use a combination of FFSs and FTDs to deliver training. Other commenters such as the International Association of Machinists and Aerospace Workers (IAMAW) and the Transport Workers Union of America (TWU), ALPA, and APS stated that only the highest levels of FSTDs should be used to deliver training citing concerns including the risk for negative training. APS commented specifically that operators should be required to use the highest level of device available to train upset recognition and recovery because, considering the high consequence nature of aircraft upset events, every effort should be made to provide pilots with the greatest fidelity possible in order to learn the skills necessary for prevention and recovery from a LOC–I situation.

The agency has not included the proposal to require all flightcrew member training to be completed in an FSTD although currently, most operators use FSTDs in pilot training programs. The final rule does, however, require the extended envelope training required in § 121.423 to be completed in a FFS. The agency addresses the APS comments regarding the use of the highest level of device available for training upset events in the discussion on the requirement for Level C FFSs.

Level C FFS: In the final rule, the agency continues to require the extended envelope flight training maneuvers and procedures to be completed in an FFS. However, the final rule requires a minimum of a Level C FFS because these devices provide the highest level of aerodynamic modeling, visual fidelity and motion cueing to replicate the aircraft for motion based pilot training. The requirement to use a Level C or higher FFS is consistent with current appendix H requirements for Advanced Simulation Programs that do not permit Level B devices except in limited circumstances. Further, the 3-degree-of-freedom motion cues provided by Level A and B devices do not provide the level of fidelity required to meet the training objectives of the extended envelope flight training maneuvers and procedures as compared to the 6-degree-of-freedom requirements for Level C and higher devices.

In response to comments suggesting that the highest level of device is required for training in a simulated environment, the FAA has determined that the current distinction in capabilities between a Level C and Level D FFS is negligible for the extended envelope training included in this final rule. The primary difference that exists today between a Level C and a Level D FFS is the evaluation of vibration and sound. Level D evaluation involves objective criteria while Level C evaluation of vibration and sound is subjective.

Deviation Authority: Although the final rule applies the requirement to train in an FFS to a limited number of tasks, the agency has considered comments on the FSTD deviation authority proposed in the SNPRM as they relate to the final rule requirements. In the SNPRM, the agency proposed a means by which certificate holders could seek a deviation from the requirements to complete all flight training in an FSTD. The proposed deviation authority contemplated the use of an aircraft as an alternate training platform.

ASTAR commented on the SNPRM deviation authority, stating that the FSTD requirements in the SNPRM did not recognize that some operators fly older aircraft for which the level of simulator required exists in limited numbers or does not exist at all. The National Air Carrier Association, Atlas Air, and six individuals commented on deviation authority generally, opposing a deviation authority that allows training in lower level devices than those specified for each flight training task in the SNPRM.

The agency agrees that the challenges identified by ASTAR may arise with respect to the requirement to use a Level C or higher FFS for extended envelope flight training, although currently over 95% of FAA-evaluated FFS devices that replicate part 121 aircraft are either a Level C or higher FFS. Therefore, in those limited instances in which a Level C or higher FFS does not exist (e.g., certain older fleets such as the Convair 580) or for extraordinary reasons, access to a Level C or higher FFS is limited, a carrier may apply for FAA consideration of a deviation in accordance with the process described in § 121.423(e) of the final rule. Conducting extended envelope flight training inflight presents significant safety risks. Therefore, the extended envelope maneuvers and procedures must be trained in a controlled simulated environment or through another means by which the learning objectives can be achieved.

Training in Other Devices: Two training providers, ETC and Calspan, commented that current capabilities of existing FSTDs are limited in their ability to fully train crewmembers in the competencies needed to prevent and recover from LOC–I events because they cannot replicate the stressors that will be present. These commenters and APS suggested using alternate training resources (e.g., in-flight simulation aircraft or a continuous-g motion platform) in conjunction with FSTD and academic training. Calspan commented that academic training should be augmented with both an in-flight simulator and ground-based FFS training.

The agency intends for the extended envelope training to include ground training and flight training in a FFS. At this time the agency does not have sufficient information by which to determine the safety and effectiveness of the alternate training devices proposed by commenters. Enhanced academic knowledge, emphasis on prevention training and the recommended recovery techniques developed by the OEM constitutes a complete training solution. The agency has determined that if this solution is implemented properly, it will have a significant effect on the LOC–I statistics.

Consistency with International Civil Aviation Organization (ICAO) 9625: United, Continental, and USAirways stated that the FSTD requirements proposed in the SNPRM are inconsistent with some of the more progressive concepts in contained in ICAO Document 9625 which seeks to align simulator standards and training tasks on a global basis. It is designed to address all levels of pilot training and licensing, which is outside of the scope of the SNPRM.[21] Although the final rule does not contain many of the maneuvers contemplated by the SNPRM, the remaining maneuvers and FSTD requirements are consistent with the standards contained in the ICAO Document 9625.

Device Qualification: ALPA, FlightSafety, and Families of Continental Flight 3407 commented that existing FFSs lack the data package containing the information required to create the aerodynamic model necessary to accomplish full stall and upset recovery training. ALPA further commented that modifications to part 60 are also necessary for existing FSTDs to address bounced landings, as well as tasks such as icing, microburst and windshear, so as to avoid negative training in these areas.

[21] International Civil Aviation Organization (ICAO) Document 9625 addresses the use of Flight Simulation Training Devices (FSTDs). The methods, procedures and testing standards contained in this manual are the result of the experience and expertise provided by National Aviation Authorities (NAA), aeroplane and FSTD operators and manufacturers. Document 9625 may be obtained from ICAO at *www.icao.int.*

APS stated that there are Instructor Operating Station (IOS) capabilities that could enhance training in upset recognition and recovery. APS recommends that an FSTD specification be created for the qualification of newly manufactured devices which calls for information to be provided to the instructor indicating whether or not the FSTD is being operated within the valid training envelope for that device.

The FAA agrees with commenters that modifications to part 60 are necessary to train the extended envelope flight training tasks, but such modifications are outside of the scope of this rulemaking. Imposing new FSTD evaluation requirements will require revisions to the qualifications standards in part 60 (for newly qualified FSTDs) or an FSTD Directive (for previously qualified FSTDs). Accordingly, the FAA has initiated rulemaking to address the necessary changes to part 60 which will be needed to deliver the FFS fidelity and IOS tools needed to effectively deliver many of the extended envelope training tasks. Amendments to part 60 qualification standards for extended envelope training and the IOS panel upgrades are also responsive to the recommendations for simulation improvements from the 208 ARC.

The FAA believes that the 5 year compliance period in this rule provides an ample amount of time for an FSTD sponsor to conduct any necessary modifications as may be required by amendments to part 60 to ensure the FSTD validation limits are sufficient to conduct the required training tasks.

M. Extended Envelope Ground Training

Currently, the agency does not require specific ground training on stall or upset recovery concepts. As stated above, § 208 of Public Law 111–206 directed the FAA to require part 121 operators to provide flightcrew members with ground and flight training on the recognition and avoidance of aerodynamic stalls and upsets as well as aerodynamic stall and upset recovery maneuvers. The agency proposed to require training on these two ground training subjects in the SNPRM (Table 2A in attachment 2 of appendix Q). The agency did not receive any comments on this proposal.

The final rule includes training on stall prevention and recovery as well as upset prevention and recovery. In the final rule, the agency identifies upset ground training as upset prevention and recovery. The modification focuses the training requirements on knowledge to create awareness and the ability to prevent an occurrence of upset, rather than focusing solely on training after the upset has already occurred and recovery is necessary. Prevention serves to avoid incidents and includes any pilot action to avoid a divergence from a desired airplane state prior to entering an upset event. Recovery training serves to reduce accidents as a result of an unavoidable upset event. Accordingly, recovery refers to pilot actions that return an airplane that is diverging in altitude, airspeed, or attitude to a desired state. This change to ground training is consistent with the recommendations of the 208 ARC, convened by the FAA as required by § 208 of Public Law 111–216.

In the final rule the agency included ground training on full stalls and upset as additions to current § 121.419, Pilots and flight engineers: Initial, transition, and upgrade ground training. Section 121.427 requires that the subjects covered in § 121.419 are covered in recurrent training as well. Due to the addition of these subjects, the agency has adjusted the existing required programmed hours for initial and recurrent ground training. The agency has determined that 2 additional hours are required for initial training and 30 additional minutes are required for recurrent training, based on a review of the content required for training these subjects and the agency's experience evaluating and approving training programs.

N. Communication Records for Domestic and Flag Operations

Under the current regulations, § 121.711 requires certificate holders conducting domestic or flag operations to record all en route radio contacts between the certificate holder and its pilots and to keep the record for at least 30 days. Existing § 121.711 recodified 14 CFR 40.512, which provided that ''[e]ach air carrier shall maintain, and retain for a period of 30 days, records of radio contacts by or with pilots en route.'' The rationale behind this rule, as stated in the preamble to the NPRM that proposed § 40.512, was to ''enable the [Civil Aeronautics] Board and the Administrator to discharge fully their respective accident investigation and safety regulatory responsibilities.'' See 23 FR 7721, 7723 (October 7, 1958).

The FAA issued a legal interpretation of this section setting forth the minimum content that must be included in a § 121.711 communication record, including: the date and time of the contact; the flight number; aircraft registration number; approximate position of the aircraft during the contact; call sign; and narrative of the contact. See Legal Interpretation to John S. Duncan, Division Manager, Air Transportation Division, FAA Flight Standards Service, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Feb. 2, 2010), a copy of which is included in the docket for this rulemaking

In the SNPRM, the FAA proposed revisions to § 121.711 to clarify the contents of the record required for each en route radio contact between the certificate holder and its pilots, based on the agency's February 2010 legal interpretation. The agency also proposed to extend the record requirement in § 121.711 to supplemental operations. In the SNPRM, the FAA proposed that these additional recordkeeping requirements be effective 120 days from the publication of the final rule.

The FAA received comments on the proposed revisions to § 121.711 from Continental, USAirways, Southwest, American, ATA, FedEx, ASTAR, and one individual. Commenters stated that the time frame for implementation is too short because it requires carriers to incorporate new functionality into existing software systems, and the agency did not identify a safety benefit that would result from this new requirement. The commenters asserted that this requirement does not enhance safety or increase efficiency, but increases complexity and cost for operators, with no positive cost/benefit. Based on the foregoing, Continental, USAirways, Southwest, ATA, FedEx, and American recommend striking this proposal from the SNPRM.

As discussed in the background section of the preamble, the FAA has determined it is necessary to move forward at this time with a final rule that contains certain discrete provisions proposed in the SNPRM. As a result, this final rule does not change the operational control requirements for supplemental operations. Since the final rule does not provide for supplemental operators to share in operational control, it would be incongruous to impose the requirements of § 121.711 to communications in supplemental operations. Therefore, the communication record requirements in § 121.711 will not be extended to supplemental operations as part of this final rule.

In the final rule, the FAA has retained the proposed changes to § 121.711 as they apply to domestic and flag operators. As set forth previously, the agency has interpreted the current provision of the regulations as requiring certain minimum details regarding the contact between a certificate holder and its pilots. The approach in the SNPRM has merely codified the agency's

interpretation of the level of detail required to comply with existing regulations. Accordingly, in the final rule, the agency has retained the 120-day timeline for compliance with this provision because the final rule no longer extends the § 121.711 recordkeeping requirement to supplemental operations.

The communication record requirements in § 121.711 apply to communications that take place while an aircraft is ''en route'' to its destination. In the SNPRM preamble, the agency clarified that in this specific context, an aircraft is considered to be ''en route'' from the time the aircraft pushes back from the departing gate until the aircraft reaches the arrival gate at its destination. See 76 FR 29336, 29352 (May 20, 2011). One individual commenter noted that the agency's interpretation of ''en route'' in this context was inconsistent with a legal interpretation previously issued by the FAA and suggested that § 121.711 be revised to clearly state that communication records are required from the time the aircraft has pushed back from the origin gate until the time it arrives at the destination gate. See Legal Interpretation to Mr. Charles Lewis from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (April 17, 1997); see also, Legal Interpretation to Ansel McAllaster, Manager, Flight Standards Division from John H. Cassidy, Assistant Chief Counsel, Regulations Division (September 21, 1988), copies of which are included in the docket for this rulemaking.

The FAA agrees with the commenter that clarification is necessary given the context in which the term ''en route'' is primarily used in existing regulations and the conflicting intent of the SNPRM. Therefore, the final rule revises § 121.711 to reflect the meaning of ''en route'' in this context, consistent with the meaning asserted in the SNPRM preamble.

The same individual further suggested removing the word ''radio'' from current § 121.711 ''if the intent is for the certificate holder to maintain records of all contact from pushback at origin to arrival at destination gate.'' As the commenter points out, if a pilot communicates with dispatch via a means of communication other than radio, a record may not be required under current § 121.711. The agency agrees with this commenter. Since the meaning of en route in the context of § 121.711 includes time when the aircraft is on the ground, the potential exists for non-radio communications to occur between dispatch and the flightcrew. Such a result would be contrary to the clear intent of the SNPRM and the original premise of § 121.711, which was to ensure that appropriate records of all en route communications between aircraft dispatchers and the flightcrew are created and maintained. Moreover, it would be inconsistent with the provisions of current § 121.99.

Sections 121.711 and 121.99 were added to part 121 in the same rulemaking and both provisions were recodifications from the Civil Aeronautics Board (CAB) regulations. See 29 FR 19186, 19195, and 19228 (Dec. 31, 1964). Section 121.99 describes the type of communication system each certificate holder is required to have for purposes of communications in domestic and flag operations. Although these provisions are not currently cross-referenced, they are closely intertwined because the requirements of § 121.711 contemplate the type of communication system that is required in § 121.99.

In 2007, § 121.99 was revised to change the previous requirement for a ''two-way radio communication system . . .'' to a requirement of a ''two-way communication system under normal operating conditions.'' See 72 FR 31662, 31668 (Jun. 7, 2007). This revision, removing the word ''radio,'' was made in recognition that advancements in technology have provided for other communication methods for contacting an aircraft other than radio. The agency explained the revision in the preamble to the NPRM stating that ''these changes would make the regulation more flexible for modern means of communication and would allow for future changes in technology.'' See 67 FR 77326, 77333–34 (Dec. 17, 2002). To ensure that § 121.711 is not rendered meaningless by the use of non-radio communication technology, the FAA has removed the word ''radio'' from § 121.711 in the final rule and included a cross-reference to § 121.99.

O. Runway Safety

Currently, the maneuvers ''taxi'' and ''pre-takeoff checks'' appear in appendices E and F and are required training and evaluation maneuvers. Upon review of accident and runway incursion history, the FAA determined that it was necessary to include additional procedures within ''taxi'' and ''pre-takeoff checks'' to reduce the causal factors that led to accidents and runway incursions.

For example, on August 27, 2006, Comair flight 5191 crashed during takeoff from Blue Grass Airport in Lexington, Kentucky. See NTSB/AAR–07/05. The flight crew was instructed to take off from runway 22 but instead lined up the airplane on runway 26 and began the takeoff roll. The airplane ran off the end of the runway and impacted the airport perimeter fence, trees, and terrain. The PIC, flight attendant, and 47 passengers were killed, and the SIC received serious injuries. The airplane was destroyed by impact forces and postcrash fire.

Existing agency guidance and advisory material identify procedures that part 121 operators should use to enhance runway safety. See AC 120–74B, Parts 91, 121, 125 and 135 Flightcrew Procedures During Taxi Operations; SAFO 06013 Flight Crew Techniques and Procedures That Enhance Pre-takeoff and Takeoff Safety; and SAFO 07003, Confirming the Takeoff Runway. The taxi and pre-takeoff procedures proposed in the SNPRM and included in the final rule are consistent with this guidance and advisory material.

In the SNPRM, the agency proposed to include three additional procedures during the execution of the ''taxi'' maneuver. The agency proposed that, to comply with the maneuver requirement, ''taxi,'' a flightcrew member must complete the procedures ''Use of airport diagram (surface movement chart),'' ''Appropriate clearance before crossing or entering active runways,'' and ''Observation of all surface movement guidance control markings and lighting.'' Although some certificate holders may already train and evaluate taxi at this level of specificity, the FAA has determined that this maneuver must be targeted by all certificate holders to ensure that flightcrew members consistently use available cues and aids to identify the airplane's location on the airport surface during taxi and verify proper clearances before crossing or entering active runways.

Further, in response to the accident involving Comair flight 5191 and NTSB recommendation A–07–044, the FAA determined it was necessary to add pre-takeoff procedures, ''receipt of takeoff clearance'' and ''confirmation of aircraft location and FMS entry for departure runway prior to crossing hold short line for takeoff.'' The purpose of these procedures is to positively confirm and cross check the airplane's location at the assigned departure runway before crossing the hold-short line for takeoff.

The final rule incorporates the proposals in the SNPRM for airport runway safety training into existing taxi and pre-takeoff checks requirements in appendices E and F of part 121. The FAA has determined that the training and evaluation time required to

complete these taxi and pre-takeoff procedures would not take any longer than the time currently required to complete those maneuvers because the procedures are incorporated into the existing taxi and pre-takeoff maneuver requirements.

In incorporating the final rule runway safety requirements into appendices E and F, the agency has eliminated the option to complete pre-takeoff procedures in a non-visual simulator. Flightcrew members use visual cues, signs, and markings to confirm the aircraft's location prior to crossing the hold short line for takeoff. Accordingly, if an operator chooses to train and evaluate pre-takeoff procedures in a simulator instead of inflight, a simulator with a visual system must be used. The agency does not believe this change causes any additional cost to operators since there are currently no non-visual simulators qualified by the FAA's National Simulator Program.

P. Crosswind Maneuvers Including Wind Gusts

Existing training requirements for a PIC and SIC include the requirement to perform multiple takeoffs and landings until the PIC or SIC achieves proficiency. Currently, as part of the required training and evaluation of takeoffs and landings, flightcrew members must successfully complete crosswind maneuvers, as set forth in appendices E and F to part 121.

In the NPRM, the proposed Qualification Performance Standards for pilots specifically provided that while performing landings during training, pilots must demonstrate the ability to ''apply gust and wind factors and take into account meteorological phenomena . . .''. See 74 FR 1280, 1366 (Jan. 12, 2009). This requirement was inadvertently left out of the SNPRM, but remains consistent with the SNPRM's incorporation of existing crosswind training into the proposed training requirements for flightcrew members.

In its comments on the SNPRM, the NTSB stated that this rulemaking should include the requirements to train high gusty crosswinds. The agency agrees that wind gust maneuvers are a critical component of crosswind takeoffs and landings and that the training requirement should clearly reflect the incorporation of this variable into crosswind takeoff and landing training.

The final rule clarifies that crosswind training for flightcrew members in takeoff and landing maneuvers includes training on maneuvers necessary to respond to wind gusts. Wind gusts are a key variable of crosswind training given that a pilot must be able to rapidly respond to changes in speed and direction of winds to maintain the correct flight path to the runway. Moreover, crosswind training that includes the wind gust variable will improve training in areas identified as probable causes of accidents by the NTSB, including the accident involving Continental Airlines flight 1404. The NTSB determined that the probable cause of this accident was the PICs ''cessation of rudder input, which was needed to maintain directional control of the airplane, about 4 seconds before the excursion, when the airplane encountered a strong and gusty crosswind that exceeded the captain's training and experience.'' In connection with this accident, the NTSB issued a number of safety recommendations including A–10–111, which advised the FAA to require part 121, 135, and 91K operators to incorporate realistic, gusty crosswind profiles into their pilot simulator training programs.

In the final rule, the FAA has amended appendices E and F to include the requirement for training and evaluation in crosswind takeoff and crosswind landing with gusts. The FAA has determined that this level of specificity is necessary to ensure that all flightcrew members have the necessary skills for takeoff and landing in gusty winds. It is likely that many certificate holders already train and evaluate crosswind takeoffs and landings with gusty winds included as a variable of the training. However, the agency recognizes that not all FFSs are capable of replicating gusts and is reviewing simulator capabilities as part of a separate rulemaking. Moreover, since crosswind takeoff and landing are already required and gusty winds are merely one variable of this current requirement, the agency does not believe any additional time is necessary to train and evaluate crosswind takeoffs and landings with gusts.

Q. Miscellaneous

The final rule includes a number of miscellaneous editorial and clarifying changes. These changes remedy typographical errors, redundancies and provisions that are no longer applicable within the regulatory text.

In those instances in which the agency must provide approval or authorization, for consistency, the final rule refers only to the Administrator. The Administrator's delegation of authority for specific functions is appropriately addressed in guidance material.

Finally, the agency has removed flight navigator training requirements from subpart N. Flight navigators are no longer required on aircraft used in part 121 operations. Also, consistent with the SNPRM, the agency replaced the terms proficiency check and competency check in § 121.413(a)(2) with checks and supervision of operating experience, to more accurately reflect check airman functions in part 121 operations.

R. SNPRM Economic Comments

In March 2010, the FAA conducted a preliminary regulatory evaluation to estimate the costs and benefits of the provisions proposed in the SNPRM. The agency received several comments on the SNPRM regulatory evaluation from air carriers, labor organizations and trade associations. This section provides a summary of issues raised by commenters on the SNPRM regulatory evaluation and the FAA's response.

1. Benefit Analysis

ATA, Continental, and United noted the benefit methodology developed for the SNPRM regulatory evaluation differs significantly from the original methodology used in the NPRM regulatory evaluation.

The FAA refined the SNRPM regulatory evaluation benefit analysis based on public comments to the NPRM analysis. For example, in the SNPRM benefit analysis, the FAA limited historical accidents to those associated with airlines that did not have an existing AQP for pilot training. The agency made this change based on comments stating it was inconsistent for the FAA to determine that the provisions in the NPRM would have minimal cost impact on AQP operators while claiming monetary benefits for preventing or mitigating accidents that involved carriers using AQP for training. Further, consistent with NPRM comments, the FAA discounted the benefits in the same way costs were discounted.

The agency has determined it is necessary to move forward at this time with a final rule to address certain provisions proposed in the SNPRM that enhance pilot training for rare but high risk scenarios and provide the greatest safety benefit. Therefore, the methodology used in the regulatory evaluation for the final rule differs somewhat from the SNPRM.

The final rule regulatory evaluation benefits analysis uses the same methodology as that used in the SNPRM analysis in terms of using the Commercial Aviation Safety Team (CAST) approach to select and score each accident, and discounting benefits and costs. However, after further review of the proposal and existing AQPs, the

FAA has determined that the training standards required in the final rule will result in new training for all pilots who complete training under subparts N and O as well as those who complete training under AQP.

Thus, the agency has estimated the benefits and costs of the final rule requirements on all part 121 operators, including those training pilots under an AQP. In addition, the final rule benefit analysis adds benefits from accidents involving air carriers that trained pilots under an AQP at the time of the accident if the accident could have been prevented or mitigated by the requirements in the final rule. The cost analysis for the final rule also calculates costs for carriers that use AQP to train pilots based on new training requirements for all pilots and not just traditionally trained pilots.

Several commenters raised concerns about the accident avoidance safety benefit analysis in which the FAA estimated the potential benefits of the SNPRM by attempting to calculate the number and cost of future accidents that would be prevented if this proposal were adopted. Continental and Southwest assert the methodology the FAA used assumed that past accident history from the chosen time period would be an accurate reflection of future accidents. The commenters contend that the accident rate per departure has been decreasing over the past 60 years and therefore the FAA methodology is flawed.

First, although part 121 accidents have generally decreased over the past 20 years, major and serious accidents still occur. The NTSB's records on Accidents and Accident Rates show that from 2001 to 2010, 26 major accidents, 19 serious accidents, 160 accidents with injuries, and 209 accidents with aircraft damage occurred.[22]

Second, OMB guidance directs the FAA to monetize quantitative estimates by using sound and defensible procedures to monetize benefits and costs. The FAA used the willingness-to-pay approach to assume that past accident history would be an accurate reflection of reducing the risk of future airplane accident fatalities. This approach is transparent, reproducible and follows OMB guidance. OMB states the willingness-to-pay approach is the best methodology to use if reduction in fatality risk is monetized, and the monetized value of small changes in fatality risk can be measured by the ''value of statistical life'' (VSL).[23]

The FAA estimated total damages for the accidents identified in the SNPRM regulatory evaluation based on assumptions identified in the benefits analysis. ATA commented that accident investigation costs were assigned based on the agency conducting the investigation and that it is unclear how the FAA identified which type of cost applied to each accident.

The FAA calculated investigation costs based on the results of a study completed in 2003 and 2004 to provide the FAA with critical values the agency uses in costs analyses. The results of the study can be found in a report ''*Economic Values for FAA Investment and Regulatory Decisions, A Guide*'' at *http://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/media/050404%20Critical%20Values%20Dec%2031%20Report%2007Jan05.pdf*. The benefit analysis added the weighted averages of investigation costs (in 2002 dollars) for an NTSB investigation, an FAA investigation and a private investigation from Table 8–2 of the study to estimate the total per accident investigation cost savings. Since Table 8–2 was in 2002 dollars, using a GDP deflator, we escalated the results of Table 8–2 to 2012 dollars. In addition, the FAA used Department of Transportation guidance to estimate accident costs found at *http://www.dot.gov/policy/transportation-policy/treatment-economic-value-statistical-life*. The SNPRM regulatory evaluation documented this report as a data source for accident costs.

ATA, Continental, and Delta commented that the SNPRM regulatory evaluation contains no description of the criteria the FAA used to determine which accidents were relevant or how the criteria were applied.

The process the FAA used to determine which accidents were relevant to the proposal is described in Section II.B.2. Accident Population and Scoring on page 7 of the SNPRM regulatory evaluation. To determine which accidents were relevant to the accident avoidance benefit analysis, the FAA initially reviewed accident data for U.S. certificate holders required to train under parts 121 and 121/135 from 1988 through 2009. The agency considered accidents that occurred during this 22-year period because this period includes accidents with open NTSB recommendations. The agency then selected accidents in which the NTSB identified areas of inadequate training as either the probable cause or a contributing factor to the accident. The accidents included for consideration in the analysis were those for which the FAA developed a regulatory change proposed in the SNPRM that could have mitigated each accident. Finally, the agency eliminated from consideration accidents that occurred by operators with an AQP training program and while the carrier was operating under part 135.

The importance of training varies for each of the accidents. Therefore, the FAA rated each accident by evaluating the effectiveness of the proposed rule against each accident using the scoring process in CAST. All of the accidents with published final NTSB reports were scored against the CAST safety enhancements. The agency used the NTSB recommendations along with narratives, probable cause, contributing factors and other pertinent data to score the accidents.

American, ATA, Continental, Southwest, and United believe the accident analysis should only include accidents from the past 10 years because of the dramatic decline in accident rates over the past 20 years. ATA and United contend the FAA should exclude pilot-related accidents from carriers who are now out of business, have merged with other carriers, or involve more than one airline.

For the benefits analysis, the FAA analyzed the causal factors, as determined by the NTSB, for past accidents that occurred in part 121 operations. As discussed earlier in this preamble, the first accident with pertinent accident causal factors was Delta flight 1141. Although the accident rate has declined in the last 10 years, accident causal factors identified by the NTSB during the 22-year historical benefit analysis period are still relevant and need to be addressed. Also, accidents by carriers who are out of business, have merged with other carries, or involve more than one airline could have been mitigated if this proposal had been in effect when the accident occurred. Therefore these accidents were included in the benefits analysis because (1) the accident occurred while the pilot was training under a part 121 traditional training program, and (2) new US certificated operators entering part 121 service and training under a traditional training program would benefit from the additional training requirement proposed in the SNPRM.

American, ASTAR, ATA, Continental, Delta, Southwest, and USAir contend the FAA has failed to give adequate credit for accident rate reduction

[22] NTSB Aviation Statistical Reports, Table 2. Accidents and Accident Rates by NTSB Classification, 1992 through 2011, for U.S. Air Carriers Operating Under 14 CFR 121, *http://www.ntsb.gov/data/table2_2012.html*, (visited. March 14, 2013).

[23] *http://www.whitehouse.gov/omb/circulars_a004_a-4*, March 4, 2013.

resulting from existing training program enhancements and technological advancements that have been incorporated over the last 20 years, including the following: Terrain Avoidance Warning System (TAWS); Controlled Flight into Terrain (CFIT) standard operating procedures; CFIT avoidance, vertical angles; CFIT prevention training; Visual Glide Slope Indicators (VGSI) requirements implemented; Area Navigation (RNAV) 3D and Required Navigation Performance (RNP) approach procedures; Flight Operation Quality Assurance (FOQA) and Aviation Safety Action Program (ASAP); loss of control prevention, policies, systems and training; and runway incursion prevention policies, systems and training. Taking these enhancements into account, the commenters assert the FAA economic analysis overstates the potential benefit/cost savings purported to be achieved by implementation of the proposed rule.

Even with these existing programs, the NTSB shows that major and serious accidents still occur. The final rule requirements include higher training standards and specific tasks which improve pilot training program's content and application that will reduce human error among crewmembers, particularly in hazardous or emergency situations.

Southwest disagrees with the FAA's analysis of NTSB recommendations relevant to training and accidents that could have been mitigated if the proposed training requirements had been in effect at the time of the accident. The SNPRM cited 28 NTSB recommendations relevant to training programs that were issued as a result of 178 accidents, which occurred between 1988 and 2009. Southwest reviewed the 28 NTSB recommendations and stated ''the FAA speculates that no more than 4 accidents were associated with pilot inflight actions.'' Additionally, Southwest noted the NTSB did not identify inadequate training as the probable cause of these four accidents. Therefore, Southwest disagrees with the FAA's conclusion that these pilot inflight accidents could have been mitigated if the proposed training requirements had been in effect at the time of the accident.

As part of the decision to move forward with certain provisions proposed in the SNPRM that enhance pilot training for rare but high risk scenarios and other discrete provisions, the agency has conducted a new analysis and determined the final rule addresses the seven NTSB recommendations identified in the background section of this preamble.

Moreover, the FAA clarifies that relevant NTSB recommendations were used to establish the proposed training requirements. These recommendations served as one of the components of the analysis used to establish the mitigation effect on discrete accidents. The approach taken to establish an effectiveness ratio (mitigation for each accident) for the training requirements included an analysis of each accident in the context of the CAST scoring process.

2. Cost Analysis

ATA, Continental, ASTAR, and United contend the SNPRM regulatory evaluation fails to provide documentation of the underlying assumptions of the cost estimates.

The FAA documented the sources for its information in the assumption sections, tables and footnotes of the SNPRM regulatory evaluation. The methodologies employed in the analysis were discussed in the sections preceding the tables showing total costs.

ATA and United stated the projected growth in affected crew population levels of initial/new hire training in the SNPRM regulatory evaluation was based on the net increase in total crew population but ignores training necessary to replace retiring crew. United also stated that, retirements alone are expected to be 5 percent annually throughout the benefit period and thus the FAA underestimated the pilot attrition rate in the SNPRM regulatory evaluation. As a result of underestimating the attrition rate, United asserts that we have underestimated the training costs that will result from retirements. United contends one retirement would generate at least two initial courses.

The FAA crew population forecast accounts for the replacement of a retired crewmember in the turnover percentage. Although United projected a 5 percent retirement rate for their pilots, the FAA maintains its assumption that 5 percent of the total number of pilots would leave an operator through attrition (including loss of medical certificate, loss of airman certificate, career transfer, or retirement). This assumption is based on objective data presented in a University of North Dakota study.[24] The FAA disagrees with United's assertion that for every crewmember who retires, two courses of initial training would be required. The agency assumed that for each pilot lost through attrition, one pilot will complete initial training. For any additional training, the agency considered transition training and upgrade training and accounted for those training costs in the final rule regulatory evaluation.

Based on the FAA Aerospace Forecasts 2013–2023, we expect the total number of part 121 pilots to increase by 0.4 percent annually.[25] Applying BLS labor wage data, the FAA has determined that the training costs due to attrition and growth will range from $51.6M to $69.1M.

ATA stated the FAA's determination of the net impact on annual training hours appears to be based on the minimum programmed hour requirements rather than on the actual number of training hours necessary to complete the required training tasks.

In preparing the cost estimate for the SNPRM regulatory evaluation, the FAA identified the proposed programmed hour requirements and calculated the incremental costs that the proposed programmed hours would add over the current regulatory requirements. If operators voluntarily exceed the training standard proposed in the SNPRM, then there was no additional compliance cost estimated in the FAA cost analysis.

ALPA, American, Continental, JetBlue, Southwest, United, UPS, and USAir stated the FAA underestimated the time it takes to complete flight training tasks proposed in the SNPRM.

On October 26, 2009 the FAA conducted a simulator trial to determine the time required to complete the proposed recurrent proficiency check requirements. The agency collected data on the time it took to complete the recurrent proficiency check tasks proposed in the NPRM and then used this data to estimate the time required to complete the proficiency check requirements proposed in the SNPRM. See *http://www.regulations.gov/#!documentDetail;D=FAA-2008-0677-0177*. In preparing the cost estimate for the SNPRM regulatory evaluation, the FAA used the data from the simulator trial to determine the additional training hours required by the proposal and calculated the incremental costs, over the current regulations, the proposed requirements would add.

[24] *http://www.faa.gov/news/conferences_events/aviation_forecast_2010/agenda/media/GAF%20Jim%20Higgins%20and%20Kent%20Love.pdf.* The University of North Dakota estimates that 2.12% of pilots have retired annually along with forecasting 2.94% pilot attrition (loss of medical, loss of certificate, career transfer) from 2009 to 2024. We rounded to three digits.

[25] FAA Aerospace Forecasts 2013–2033. Table 30: Active Pilots by Type of Certificate, Airline Transport, 2012–2033. *http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2013-2033/* Accessed March 2013.

On June 19, 2012, the FAA conducted a second simulator trial to determine the time required to complete the additional final rule maneuvers and procedures in each curriculum. During the second simulator trial, the agency observed two FAA pilots perform the extended envelope flight training requirements in an Airbus 330 Level D simulator.[26] The FAA pilots serving as the PIC and SIC both held ATP certificates and were current and qualified to operate the Airbus 330. All required checklists and procedures were completed in their entirety for each maneuver and procedure. In addition, all required Air Traffic Control (ATC) instructions and clearances were provided.

The data collected during this simulator trial provides the estimated simulator time required to meet the extended envelope flight training requirements in the final rule. The FAA has reviewed both simulator trials and revised the cost estimates for the training tasks required by the final rule.[27]

ATA, Continental, United, and USAIR noted the FAA calculates simulator costs at an hourly rate instead of the industry-standard 4-hour blocks for the purpose of keeping the cost of the proposed rule low. These commenters also stated the simulator hour projection for the SNPRM regulatory evaluation does not consider collective bargaining agreements that may further limit training hours per day.

The SNPRM regulatory evaluation calculated simulator costs at an hourly rate instead of 4-hour blocks. Industry is not tied to the 4-hour simulator training blocks. With the 5-year compliance date in the final rule for simulator training tasks, air carriers have the ability to revise their internal processes or re-negotiate contracts with simulator training providers. In addition, the FAA believes that bargaining agreements can be adjusted before the 5 year compliance date. Therefore these costs are not attributed to the rule. The final rule includes extended envelope training that must be completed in an FFS. The agency estimates that the time required to complete this training ranges from 90 to 135 minutes for initial training, 60 to 90 minutes for transition training, 45 to 60 minutes for upgrade training, and 30 to 45 minutes for recurrent training.

Continental contends the associated costs for legacy mainframe computer programming related to the proposed requirement for evaluating and recording line check performance in proposed § 121.1233(d) were not accounted for in the SNPRM regulatory evaluation. Continental also states the requirements proposed in the SNPRM would add significantly to the recordkeeping system requirement.

The agency notes programmers in major companies, such as Continental, are typically on staff. Staff programmers typically cover software updates and maintenance. The FAA has reviewed the paperwork requirements for the new final rule provisions and has revised the regulatory evaluation accordingly. Upon further review of the SNPRM regulatory evaluation, the agency identified paperwork costs that were inadvertently omitted. For the final rule regulatory evaluation, the FAA has further reviewed the potential costs of implementing the final rule requirements and captured additional detail. For example, the paperwork costs now fully address the review and development of training programs, courseware and manuals.

ATA, Continental, JetBlue, and USAir assert the SNPRM regulatory evaluation did not include non-paperwork costs for program development, and maintenance including high capital and management costs necessary to modify or replace training equipment, reconfigure training facilities, or re-program and maintain software systems.

The agency included costs in the SNPRM regulatory evaluation for maintenance, including high capital and management costs, necessary to modify or replace training equipment, reconfigure training facilities, or re-program and maintain software systems with a simulator or ground cost hourly rental expense.

For the final rule, the FAA determined that the average simulator rental fee is $500 per hour plus the cost of an instructor for consistency with the FAA's ''Pilot Certification and Qualification Requirements for Air Carrier Operations'' final rule. The FAA believes the hourly rental price accurately reflects the cost of capital and includes costs for maintenance, capital, management, reconfiguring training facilities, and reprogramming.

The FAA received several comments from air carriers stating the agency underestimated the cost of a number of SNPRM provisions, including: Operating manual changes; the continuous analysis process; crewmember and aircraft dispatcher requalification; flightcrew member recurrent training; relief pilot recent experience; PIC line checks; training with a complete flightcrew; flight attendant operating experience; check flight attendant requirements; aircraft dispatcher qualification and recurrent training; and, check dispatcher training.

At this time, the agency is proceeding with a final rule to address certain provisions proposed in the SNPRM that enhance pilot training for rare but high risk scenarios, provide the greatest safety benefit, and require time to implement, as well as certain other discrete proposals. This final rule does not include the provisions identified by commenters as having underestimated costs. If a subsequent final rule includes the provisions cited by commenters, the agency will review the costs identified in the SNPRM and determine whether reassessment of these costs is necessary.

3. General Cost-Benefit Analysis

ATA asserted that the FAA failed to correctly match the timing of the benefits and costs in the SNPRM regulatory evaluation and asserted that the incurrence of implementation costs would necessarily precede any benefits that might occur by at least two years.

The FAA initiated the benefits and costs of the analysis at the compliance date of the final rule. The compliance date proposed in the SNPRM was 2016, or 5 years after the proposed effective date of the final rule. In the SNPRM regulatory evaluation, the agency determined the timing of both the benefits and costs would start in 2016 and end in 2025.

In the SNPRM, the agency proposed an effective date for the final rule of 120 days after publication in the **Federal Register**. The agency further proposed to require compliance with certain amendments to part 121 on the effective date and to delay compliance with other amendments requiring time to implement, to 5 years after the effective date. However, in the SNPRM regulatory evaluation, the agency assumed the timing of both the benefits and costs for all provisions would start in 2016 to account for a compliance date of 5 years after the proposed effective date of the final rule, and end in 2025.

The agency agrees that some implementation costs may be incurred prior to when the full benefits of the final rule are realized. For the final rule, safety benefits are realized beginning in 2019, when compliance is required with

[26] Recognition of, and recovery from, full stall and demonstration of stick pusher activation were not completed during the second simulator trial. Therefore, the agency considered the time for recognition of, and recovery from, approach to stall—clean configuration, collected during the first simulator trial. The agency expects the time for each of these two maneuvers to be similar to the time for recognition of, and recovery from, approach to stall because full stall and stick pusher are further developed stages of an approach to stall.

[27] The FAA has amended the Technical Report to add the 2012 simulator trial data in new appendix G. The agency has placed the revised Technical Report in the public docket for this rulemaking.

the new pilot training maneuvers and procedures. However, the agency assumes paperwork costs associated with the training provisions for instructors and check airmen who serve in FSTDs will begin the year before the compliance date in preparation to meet the final rule requirements. For the paperwork costs associated with the remaining final rule provisions, the agency assumes new paperwork costs start to accrue on the date that compliance is required. These timelines are reflected in the table that appears in the Paperwork Reduction Act discussion in the Regulatory Notices and Analyses section of this preamble (Section IV). Greater detail regarding the paperwork burden can be found in the Summary of Estimated Paperwork Costs by Objective Grouping section of the final rule regulatory evaluation.

4. Economic Impact to Operators Training under AQP

The FAA received several comments from air carriers concerned that the agency failed to include costs to air carriers with pilots who train under an AQP in its economic analysis of the SNPRM.

In the economic analysis of the SNPRM, the agency determined the proposals in the SNPRM would have a minimal impact on carriers that train pilots using an AQP. Therefore, the SNPRM regulatory evaluation included only certain paperwork costs for these carriers.

Following further review of existing AQP curriculums and the final rule pilot training requirements, the agency has determined that the majority of new pilot training maneuvers and procedures are not incorporated into existing AQPs used to train pilots. Therefore, the FAA has estimated the cost of the new requirements on all part 121 operators, including those who train under AQP.

IV. Regulatory Notices and Analyses

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in the U.S. Department of Transportation's (DOT) Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The following table shows the FAA's estimate for the base case costs, including the low and high cost range, in 2012 dollars. This table also shows our estimated potential quantified safety benefits using a 22-year historical accident analysis period.

Total Benefits and Costs (2012 $ Millions) From 2019 to 2028

Range		2012 $	Present Value	
			7%	3%
Low	Cost	$274.1	$130.8	$197.5
High	Cost	$353.7	$168.8	$254.8
Base Case	**Cost**	**$313.9**	**$149.8**	**$226.1**
	Benefit	**$689.2**	**$317.1**	**$488.7**

For the benefits analysis, the FAA analyzed the causal factors, as determined by the NTSB, for past accidents that occurred in part 121 operations. The objective of the analysis was to determine if an accident could have been prevented or mitigated by the training provisions in the final rule. In 1988, Delta flight 1141 crashed shortly after lifting off from the runway at the Dallas-Fort Worth International Airport (DCA88MA072). In its final report, the NTSB determined that one causal factor for the accident was ''The captain and first officer's inadequate cockpit discipline which resulted in the flightcrew's attempt to take off without wing flaps and slats properly configured.''

As a result of the accident investigation, the NTSB made recommendations to the FAA that emphasized the importance of training and manual procedures regarding ''the roles of each flight crewmember in visually confirming the accomplishment of all operating checklist items,'' as well as the ''verification of flap position during stall recognition and recovery procedures.''

The FAA determined that the pilot monitoring training and operational provisions may have prevented or mitigated this accident. The pilot monitoring training will provide pilots an opportunity to practice monitoring skills in an environment that closely simulates real line operations. The operational requirements will require flightcrew members to follow air carrier procedures regarding pilot monitoring. Together, these provisions establish an active requirement for the pilot not flying the aircraft to remain engaged throughout the flight by monitoring the

pilot flying, as well as the position of the aircraft, the flight instruments, the configuration of the aircraft, etc. The provisions will ensure that the pilot monitoring is prepared to notify the pilot flying of any anomalies or to assume the flying responsibilities if necessary. If these requirements had been in place at the time of this accident, the pilot monitoring may have identified the incorrect configuration and notified the pilot flying prior to takeoff.

Therefore, the FAA initiated the historical accident interval for the benefits analysis with this accident in 1988. The FAA concluded the accident interval in 2009 with the Colgan accident because, at this time, the NTSB still has not finalized its reports on the major accidents (that may be pertinent to this training rule) that occurred in 2010 and 2011. This is why the FAA uses the same 22 year accident interval (1988–2009) for the benefits analysis in the final rule as in the SNPRM.

The FAA identified 10 additional major accidents with casual factors identified by the NTSB that are addressed by the provisions in the final rule that occurred during this 22 year accident interval. The FAA cited these accidents in the benefits analysis based on pertinent accident causal factors, regardless of whether or not there were open NTSB recommendations associated with those accidents.

The FAA notes, however, that it conducted a sensitivity analysis to explore the effect of reducing the historical accident analysis period from the 22 years to 10 years in response to comments disputing the use of a 22-year time frame. Appendix 14 of the regulatory evaluation shows that using a shorter historical accident analysis period increases the estimated benefits of the final rule by approximately 17 percent.

Who is potentially affected by this rule?

This final rulemaking will increase costs to operators of transport category airplanes operating under 14 CFR part 121 by requiring improved pilot training, as well as by requiring accompanying revisions to their training manuals and related training materials.

Assumptions

The benefit and cost analysis for the regulatory evaluation is based on the following factors/assumptions:

- The analysis is conducted in constant dollars with 2012 as the base year.
- The estimates of costs and benefits reported in this evaluation include both 2012 dollar values and present values. Benefits and costs are calculated in present values using both 3 percent and 7 percent discount rates as prescribed by OMB in Circular A–4.
- This final rule will be published in late 2013.
- This final rule will become effective in 2014, 120 days after its publication. Compliance is required on the effective date (120 days) for a few of the provisions, including for example all technical amendments, §§ 121.9 (falsification), 121.392 (identification of personnel as flight attendants), and 121.711 (communication records). Compliance with the remaining substantive provisions is required within 5 years after the effective date.
- Although some incidental costs are expected to occur prior to 2019, the primary analysis period for costs and benefits extends for 10 years, from 2019 through 2028. This period was selected because annual costs and benefits will have reached a steady state by 2019.
- Safety benefits will be realized beginning in 2019, when compliance is required with the new training provisions in the final rule.
- Past accident history from 1988 to 2009 (22 years) is an appropriate basis on which to forecast the likely future occurrence of the types of accidents that the training and other provisions of this rule will help to prevent. The full regulatory evaluation provides a detailed justification for the selection of the 22 year analysis period, as well as a sensitivity analysis that explores the effect of reducing the historical analysis period from the 22 year period to 10 years. The *Accident Population and Scoring* section in the full final rule regulatory evaluation gives more details on the use of accident history in this analysis.

Changes From the SNPRM to the Final Rule Regulatory Evaluation

Based on public comments and further agency review of the proposal, the FAA made the following changes to the regulatory evaluation for the final rule:

- Re-estimated costs and benefits to correspond directly to the provisions of this final rule. The final rule focuses on enhancements to pilot training for rare, but high-risk scenarios.
- Assumed that the final rule will affect all Advanced Qualification Program (AQP) and non-AQP trained pilots in command, second in command, check pilots, and flight instructors by adding simulator and ground school time to their current training curriculum.
- Accounted for paperwork costs documenting the required revisions to operators listed in Appendix 9 of the regulatory evaluation.
- Updated the value of averted fatalities, injuries, accident investigation and medical costs based on current DOT guidance.[28]
- Updated the hourly wages and benefits for aircraft crew members with current hourly wages from the Bureau of Labor Statistics (BLS).
- Removed airfare, hotel, and per diem travel costs from the cost estimates because the FAA believes operators will be able to complete the new final rule training requirements within their current initial, upgrade, transition, or recurrent simulator and ground school training days. The FAA conducted a sensitivity analysis on the costs of the final rule adding an additional day of travel. The results of the sensitivity analysis are shown in Appendix 10 of the regulatory evaluation. Even with the cost of an extra day of travel, the benefits of the final rule still exceed the costs.
- Conducted a new accident analysis that took into account the mitigations of other rulemakings for the same accidents in determining the probability of effectiveness for this final rule.
- Assumed that the ''Flight Simulation Training Devices Qualification Standards For Extended Envelope and Adverse Weather Event Training Tasks'' rulemaking (RIN 2120–AK08) is in place by the time compliance is required with the new pilot training requirements because amendments to FSTD qualification and evaluation standards in part 60 are needed to support the new full flight simulator training requirements in this final rule. In addition, the agency recognizes that the final rule on Pilot Certification and Qualification Requirements for Air Carrier Operations will be in place at the time that compliance is required with the pilot training requirements in this final rule.
- Included a table in Appendix 13 of the regulatory evaluation comparing the probability of effectiveness ratings of the overlapping accidents from the Flightcrew Member Duty and Rest Requirements final rule, the Pilot Certification and Qualification Requirements for Air Carrier Operations final rule and this final rule.
- Updated employment growth rates for pilots based on current FAA forecasts and actual February 2013 employment statistics for operators

[28] ''Revised Departmental Guidance 2013: Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analysis.'' available at *http://www.dot.gov/regulations/economic-values-used-in-analysis.*

listed in Appendix 9 of the regulatory evaluation.

• Updated the hourly simulator costs from the $550 estimate used in the SNPRM to $500 for the final rule based on updated FAA Flight Standards Service (AFS) data. This revised cost maintains consistency with analysis from the Pilot Certification and Qualification Requirements for Air Carrier Operations final rule published on July 15, 2013 (78 FR 42324).

• Conducted a sensitivity analysis on the hourly simulator rental rate using the $550 rate from the SNPRM. The agency estimated $323.1 million for the total costs using the $550 hourly rate. The total benefits, as shown in the table above, exceed the costs for the $550 hourly simulator rental rate.

• Initiated the ''Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training Tasks'' rulemaking to amend 14 CFR part 60 to require the additional programming and upgrades to simulators, which will be needed to comply with extended envelope training required by the final rule. The FAA estimates that the $500 hourly simulator rental rate assumed in this analysis includes all upgrades expected to be required by the Flight Simulation Training Device rulemaking. As an alternative, the agency also conducted a sensitivity analysis using $600 for an hourly simulator rental rate. The agency estimated $332.4 million for the total costs with the $600 hourly rate. The total benefits as shown in the table above also exceed the costs for the $600 hourly simulator rental rate.

• Conducted a sensitivity analysis to explore the effect of reducing the historical analysis period from the 22 year period to 10 years in response to comments disputing the use of a 22-year time frame for accidents. Appendix 14 of the final rule regulatory evaluation shows that using the 10-year period, the estimated benefits of this final rule increase by approximately 17 percent. The full regulatory evaluation provides a detailed justification for the selection of the 22 year analysis period.

• Changed the pilot ground school distance learning [29] percentage from the 80 percent estimate used in the SNPRM to 100 percent, because the FAA allows 100 percent of ground training to be accomplished via distance learning.[30]

Benefits of This Rule

Phased-in potential benefits will accrue from the additional training requirements, and these are estimated in the table above. As prescribed by OMB in Circular A–4, we discounted the 2012 $ benefits to their present values using a seven and three percent annual rate.

The final rule will also generate qualitative benefits. The final rule addresses safety issues identified during two recent FAA ''Call to Action'' initiatives including improvement of runway safety by requiring training in critical runway safety issues, responds to seven National Transportation Safety Board (NTSB) safety recommendations, and addresses the requirements in the Airline Safety and Federal Aviation Administration Extension Act of 2010.

Costs of This Rule

The FAA estimates the range of costs to air carriers in the table above. As prescribed by OMB in Circular A–4, we discounted the 2012 $ to their present values using a seven and three percent annual rate.

Alternatives Considered

The FAA considered multiple alternatives to the final rule. Three of the alternatives that were considered would have provided relief from some of the rule's provisions to small entities, while one alternative considered accepting all of the provisions of the SNPRM. A discussion of these alternatives can be found in the final regulatory flexibility analysis.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA believes that this final rule will result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination.

Section 604 of the Act requires agencies to prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. Section 604(a) of the Act specifies the content of a FRFA.

Each FRFA must contain:

• A statement of the need for, and objectives of, the rule;

• A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

• The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

• A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

• A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

• A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Statement of the Need for, and Objectives of, the Rule

The primary purpose and objectives of the final rule are to ensure that training and evaluation is provided for crewmembers by establishing new

[29] Distance learning allows pilots to train out of the classroom (such as at home).

[30] FAA Order 8900.1, Vol.3, Ch. 19, Sec. 5, Para. 3–1209 (July 15, 2013). The FAA notes that pilot ground school training requirements include hands-on emergency equipment training (current § 121.417(c) requires that every 24 months, pilots must perform hands-on drills on aircraft emergency equipment) that may not be accomplished via distance learning. These costs are not included in this cost analysis because those hands-on drills are currently required.

requirements for part 121 commercial air carrier training programs, as mandated by Public Law 111–216. The changes seek to make a significant contribution to the FAA's accident reduction goal by directly addressing the safety goals from two recent FAA ''Call to Action'' initiatives including improvement of runway safety by requiring training in critical runway safety issues. The requirements of the final rule also implement numerous safety recommendations from the NTSB.

Statement of the Significant Issues Raised by Public Comments

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Agency Response to Comments Filed by the Chief Counsel for Advocacy

There were no comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

As described in the Paperwork Reduction Act summary in this preamble, the agency expects only minimal new training documentation, reporting and record-keeping compliance requirements to result from this final rule. Every operator (including small businesses and businesses with greater than 1500 employees) will incur a paperwork burden as described in Paperwork Reduction Act discussion in this preamble.

Costs for the labor entailed in meeting these documentation, reporting, and record-keeping requirements constitute a burden under the Paperwork Reduction Act, and these costs are accounted for in the final rule regulatory evaluation. The types of professional skills necessary for preparation of the report or record include both technical writers and flight instructors.

Under section 604 of the Act, the FAA must determine an estimate of the classes of small entities which will be subject to the requirement. This determination is typically based on small entity size and cost thresholds that determine whether an entity meets the definition of ''small,'' and these thresholds vary depending on the affected industry.

Using the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, the FAA defined companies as small entities if they have fewer than 1,500 employees.[31]

Small Entities Affected

This final rule will be published in 2013 and become effective in 2014. Operators affected by this final rule will be required to comply with a majority of the final rule requirements 5 years after the effective date. The FAA does not know if an operator will still be in business or will still remain a small business entity by the 2019 compliance date applicable to the majority of the provisions. Therefore, the FAA will use current U.S. operator's employment and annual revenue in order to determine the number of operators this final rule affect.

To determine the economic impact of this final rule on small-business operators the agency began by identifying the affected firms, gathering operational data, and establishing the compliance cost impact. The FAA obtained a list of U.S. operators, who are affected by the final rule, from the FAA Flight Standards Service National Vital Information Subsystem (NVIS) database.[32] Using information provided by the U.S. Department of Transportation Form 41 filings and the World Aviation Directory & Aerospace Database (WAD) the agency obtained company revenue and employment for many of the operators.

We determined that 83 operators would be affected by the final rule. Of these 83 operators, there are 49 that reported annual employment and operating revenue data. Of the 49 air carriers that reported annual employment data, 22 air carriers are below the SBA size standard of 1,500 employees for a small business. Due to the sparse amount of publicly available data on internal company financial and employment statistics for small entities, it is not feasible to identify how many of the remaining carriers that did not report employment data would also qualify as small businesses, so it is not possible to estimate the total population of small entities that are likely to be affected by this rulemaking. However, based on the publically available data, the FAA assumes that this rule will have an impact on a substantial number of small entities.

To assess the final rule's cost impact to small business operators, the FAA determined the amount of additional time this rulemaking will add to their current training activities.

The FAA uses the average hourly wage (including benefits) of flight-crew members as a basis to estimate costs for additional training time. The FAA does not expect that the additional training requirements will result in higher travel costs, because the final rule adds only a small amount of training time, which we believe can be absorbed within operators' current training schedules. In order to estimate the impact on small entities, we sum the incremental costs of this rulemaking, and use that estimate to calculate an average cost per flight crew member. We then use that average to estimate the total cost burden on carriers that we identify as meeting the above definition of small entities.

Specifically, we estimate each operator's total compliance cost by multiplying our estimate of the average cost per flight crew member by the number of flight-crew members for each of the 22 air carriers that meet the SBA size standard for a small business of 1,500 employees. In estimating the average cost per flight-crew member, we use the high cost from the range of costs estimated in the final rule, in order to provide a conservative estimate. We then measure the economic impact on small entities by dividing the estimated compliance cost for each of the 22 small entities by its annual revenue, and expressing the result as a percentage.

The FAA estimates that costs for complying with this final rule will exceed one percent of annual revenue for 2 of the sample of 22 operators identified as small entities. On the basis of these estimates, we conclude that this final rule will have a significant economic impact on a substantial number of small entities.

Agency Steps Taken To Minimize the Significant Economic Impact on Small Entities

In the following *Analysis of Alternatives* section, the FAA considered three alternatives to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. The *Analysis of Alternatives* section also includes statements of the factual, policy, and legal reasons for selecting the final rule and why each one of the alternatives to the rule, considered by the agency, which affect the impact on small entities, was rejected.

Analysis of Alternatives

The FAA proposed alternatives to the SNPRM for small carriers and considered the proposed alternatives as

[31] 13 CFR 121.201, Size Standards Used to Define Small Business Concerns, Sector 48–49 Transportation, Subsector 481 Air Transportation.

[32] The National Vital Information Subsystem (NVIS) is a Flight Standard Service database that contains the general information about operators, including the number of pilots.

it developed the final rule. A discussion of the final rule alternatives follows.

Alternative 1–12 month recurrent training cycle for small entities.

Currently, PICs (captains) train every 6 months and SICs (first officers) train every 12 months. The FAA considered extending the recurrent training cycle for PICs working for small entities to 12 months to coincide with existing SIC recurrent training cycles. This would result in cost savings for small entities. However, a reduction in the training frequency for PICs to a 12-month cycle would be contrary to the purpose of this rulemaking, which is to improve safety. As a consequence, FAA determined that this alternative was unacceptable.

Alternative 2—Excluding certain small entities.

In the SNPRM, the FAA considered exempting certain operators from compliance with the rule simply because they are small entities; however, small entities had experienced past accidents that the agency believes could be mitigated or prevented by this rule. Thus exempting small entities entirely form the rule would be contrary to our policy of ensuring a single high level of safety in all part 121 operations. Thus, the FAA did not find this alternative to be acceptable.

Alternative 3—Extending the final compliance date to 7 years for small entities.

Extending the final compliance date from 5 years to 7 years for small entities reduces the costs to small entities over the analysis interval. Under this alternative, the FAA expects that the projected cost of the final rule would not be significant for some of the 22 operators studied.

In the final rule, the FAA requires improvements that would reduce human error among crewmembers, particularly in situations that present special hazards. Because these requirements would address problems that are faced by all part 121 air carriers, regardless of their size, excluding certain operators simply because they are small entities would again be contrary to FAA's policy of ensuring one high level of safety in all part 121 operations. Thus, the FAA also found this alternative to be unacceptable.

Alternative 4—The SNPRM

This agency considered moving forward with a final rule including all of the provisions of the rule proposed in the SNPRM. Industry commented that the rule language was unclear and did not estimate all of the proposal's costs. Instead of modifying the SNPRM, the FAA elected to adopt a final rule that included those provisions that provide the greatest safety benefit. Thus, the FAA did not accept this alternative.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the final rule ensures the safety of the American public and does not exclude foreign operators that meet this objective. As a result, this rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. The Office of Management and Budget has assigned OMB Control Number 2120–0739 to this collection, and upon publication of this rule, the package will be available on reginfo.gov.

Summary: This final rule revises the training requirements for pilots in air carrier operations. The regulations enhance air carrier pilot training programs by emphasizing the development of pilots' manual handling skills and adding safety-critical tasks such as recovery from stall and upset. The final rule also requires enhanced runway safety training, training on pilot monitoring to be incorporated into existing requirements for scenario-based flight training and requires air carriers to implement remedial training programs for pilots. The FAA expects these changes to contribute to a reduction in aviation accidents.

Public comments: The requirements in the final rule were proposed in a supplemental notice of proposed rulemaking, published in the **Federal Register** on January 12, 2009, vol. 74, no. 7, pages 1280–1453, and the public was encouraged to comment.

Commenters to the proposed rule noted that the provisions specifically addressing preparation, approval and contents of crewmember and dispatcher manuals would generally result in significant time and cost to revise current manuals. Commenters also noted that proposed requirements regarding collection and retention of crewmember and dispatcher records were excessive and unnecessary. Commenters further noted that paperwork required by the proposed requirements for approval and amendment of crewmember and dispatcher training programs were burdensome for both air carriers and FAA personnel. Commenters also identified programming costs related to SNPRM provisions (e.g. new training intervals, new evaluation intervals and new designations for check personnel) and claimed that while these costs would be substantial, they were not included in the agency's cost analysis. The FAA has not adopted these proposed requirements in this final rule.

The final rule contains discrete additional training and evaluation requirements (e.g. prevention and recovery from stall, prevention and recovery of upset, recovery from bounced landing and training in manual

handling skills). The FAA did not receive any comments regarding recording or recordkeeping requirements for these proposed provisions that are being adopted in the final rule.

Purpose: This project is in direct support of the Department of Transportation's Strategic Plan—Strategic Goal—SAFETY; *i.e.,* to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries. This final rule also responds to Public Law 111–216, sections 208 and 209. Under Public Law 111–216, Congress directed the FAA to conduct rulemaking to ensure that all flightcrew members receive ground training and flight training in recognizing and avoiding stalls, recovering from stalls, and recognizing and avoiding upset of an aircraft, as well as the proper techniques to recover from upset. Public Law 111–216 also directed the FAA to ensure air carriers develop remedial training programs for flightcrew members who have demonstrated performance deficiencies or experienced failures in the training environment. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

Respondents (including number of): The FAA estimates there are 83 certificate holders who would be required to provide information in accordance with the final rule. The respondents to this proposed information requirement are certificate holders using the training requirements in 14 CFR part 121.

Frequency: The FAA estimates certificate holders will have a one-time information collection, then may collect or report information occasionally thereafter.

Annual Burden Estimate:

The FAA estimates the total one time paperwork costs for the final rule will be about $8.2 million.

Final Rule Requirement	FAA Assumed Costs Start To Accrue	Number of Pages			Number Of Hours	Paper Work Person	Number Of Operators
		Training Program	Training Courseware	Operating Manual			
Fraud and falsification (§ 121.9)	120 days	0	0	0	0.0	n/a	83
Personnel identified as flight attendants (§ 121.392)	120 days	0	0	1	2.0	Tech Writer	83
Proficiency checks for PICs (§ 121.441(a)(1)(ii))	5 years and 120 days	0	0	0	0.0	n/a	83
Related aircraft differences training (§§ 121.400, 121.418, 121.434, 121.439, 121.441)	120 Days	0	0	0	0.0	n/a	83
Training equipment other than FSTDs approved under part 60 (§§ 121.403(b)(2), 121.408)	5 years and 120 days	1	0	5	40.0	Tech Writer	83
Approval of FSTDs (§ 121.407)	5 years and 120 days	0	0	0	0.0	n/a	83
Pilot monitoring (§§121.409,121.544, Appendix H)	5 years and 120 days	0	20	0	40.0	Instructor	83
		1	0	0	20.0	Tech Writer	83
Remedial training (§§ 121.415(h) and § 121.415(i))	5 years and 120 days	0	20	0	48.0	Instructor	83
		1	0	0	20.0	Tech Writer	83
Communication records for domestic and flag operations (§ 121.711)	120 days	0	0	2	2.0	Tech Writer	83
Qualifications and Training for instructors and check airmen who serve in FSTDs (§§ 121.411, 121.412, 121.413, 121.414)	4 years	0	40	0	60.0	Instructor	83
		2	0	0	40.0	Tech Writer	83
Extended envelope flight training maneuvers and procedures (§§121.407(e),121.423, 121.424, 121.427(d)(1)(i), 121.433(e)), Extended envelope ground training subjects (§§ 121.419(a)(2), 121.427), Runway safety maneuvers and procedures (Appendices E and F) and Crosswind maneuvers including wind gusts (Appendices E and F).	5 years and 120 days	0	60	0	240.0	Instructor	83
		4	0	40	240.0	Tech Writer	83
Approval of Advanced Qualification Program (§ 121.909)	120 Days	0	0	0	9.6	Instructor	22
		5	0	0	40.0	Tech Writer	22
Total					**801.6**		

International Compatibility and Cooperation

1. In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

2. Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 12866 and 13563

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth in the preamble, amend part 121 of title 14 of the Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note).

■ 2. Add § 121.9 to read as follows:

§ 121.9 Fraud and falsification.

(a) No person may make, or cause to be made, any of the following:

(1) A fraudulent or intentionally false statement in any application or any amendment thereto, or in any other record or test result required by this part.

(2) A fraudulent or intentionally false statement in, or a known omission from, any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this chapter.

(b) The commission by any person of any act prohibited under paragraph (a) of this section is a basis for any one or any combination of the following:

(1) A civil penalty.

(2) Suspension or revocation of any certificate held by that person that was issued under this chapter.

(3) The denial of an application for any approval under this part.

(4) The removal of any approval under this part.

■ 3. Add § 121.392 to read as follows:

§ 121.392 Personnel identified as flight attendants.

(a) Any person identified by the certificate holder as a flight attendant on an aircraft in operations under this part must be trained and qualified in accordance with subparts N and O of this part. This includes:

(1) Flight attendants provided by the certificate holder in excess of the number required by § 121.391(a); and

(2) Flight attendants provided by the certificate holder when flight attendants are not required by § 121.391(a).

(b) A qualifying flight attendant who is receiving operating experience on an aircraft in operations under subpart O of this part must be identified to passengers as a qualifying flight attendant.

■ 4. Amend § 121.400 by adding paragraphs (c)(9) through (11) to read as follows:

§ 121.400 Applicability and terms used.

* * * * *

(c) * * *

(9) *Related aircraft.* Any two or more aircraft of the same make with either the same or different type certificates that have been demonstrated and determined by the Administrator to have commonality to the extent that credit between those aircraft may be applied for flightcrew member training, checking, recent experience, operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills.

(10) *Related aircraft differences training.* The flightcrew member training required for aircraft with different type certificates that have been designated as related by the Administrator.

(11) *Base aircraft.* An aircraft identified by a certificate holder for use as a reference to compare differences with another aircraft.

■ 5. Amend § 121.403 by revising paragraph (b)(2) to read as follows:

§ 121.403 Training program: Curriculum.

* * * * *

(b) * * *

(2) A list of all the training device mockups, systems trainers, procedures trainers, or other training aids that the certificate holder will use. No later than March 12, 2019, a list of all the training equipment approved under § 121.408 as well as other training aids that the certificate holder will use.

* * * * *

■ 6. Amend § 121.407 as follows:

■ A. Revise paragraph (a) introductory text;

■ B. Revise paragraphs (a)(1), (a)(1)(i), (a)(1)(iii), (a)(2), and (a)(3); and

■ C. Add paragraph (e).

The revisions and addition read as follows:

§ 121.407 Training program: Approval of airplane simulators and other training devices.

(a) Each airplane simulator and other training device used to satisfy a training requirement of this part in an approved training program, must meet all of the following requirements:

(1) Be specifically approved by the Administrator for—

(i) Use in the certificate holder's approved training program;

(ii) * * *

(iii) The particular maneuver, procedure, or flightcrew member function involved.

(2) Maintain the performance, function, and other characteristics that are required for qualification in accordance with part 60 of this chapter or a previously qualified device, as permitted in accordance with § 60.17 of this chapter.

(3) Be modified in accordance with part 60 of this chapter to conform with any modification to the airplane being simulated that results in changes to performance, function, or other characteristics required for qualification.

* * * * *

(e) An airplane simulator approved under this section must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the extended envelope training set forth in

§ 121.423 of this part. Compliance with this paragraph is required no later than March 12, 2019.

■ 7. Add § 121.408 to read as follows:

§ 121.408 Training equipment other than flight simulation training devices.

(a) The Administrator must approve training equipment used in a training program approved under this part and that functionally replicates aircraft equipment for the certificate holder and the crewmember duty or procedure. Training equipment does not include FSTDs qualified under part 60 of this chapter.

(b) The certificate holder must demonstrate that the training equipment described in paragraph (a) of this section, used to meet the training requirements of this subpart, meets all of the following:

(1) The form, fit, function, and weight, as appropriate, of the aircraft equipment.

(2) Replicates the normal operation (and abnormal and emergency operation, if appropriate) of the aircraft equipment including the following:

(i) The required force, actions and travel of the aircraft equipment.

(ii) Variations in aircraft equipment operated by the certificate holder, if applicable.

(3) Replicates the operation of the aircraft equipment under adverse conditions, if appropriate.

(c) Training equipment must be modified to ensure that it maintains the performance and function of the aircraft type or aircraft equipment replicated.

(d) All training equipment must have a record of discrepancies. The documenting system must be readily available for review by each instructor, check airman or supervisor, prior to conducting training or checking with that equipment.

(1) Each instructor, check airman or supervisor conducting training or checking, and each person conducting an inspection of the equipment who discovers a discrepancy, including any missing, malfunctioning or inoperative components, must record a description of that discrepancy and the date that the discrepancy was identified.

(2) All corrections to discrepancies must be recorded when the corrections are made. This record must include the date of the correction.

(3) A record of a discrepancy must be maintained for at least 60 days.

(e) No person may use, allow the use of, or offer the use of training equipment with a missing, malfunctioning, or inoperative component to meet the crewmember training or checking requirements of this chapter for tasks that require the use of the correctly operating component.

(f) Compliance with this section is required no later than March 12, 2019.

■ 8. Amend § 121.409 as follows:

■ A. Remove the semicolon at the end of paragraph (b)(1) and add a period in its place;

■ B. Revise paragraph (b)(2);

■ C. Remove paragraph (b)(3); and

■ D. Redesignate paragraph (b)(4) as paragraph (b)(3).

The revisions read as follows:

§ 121.409 Training courses using airplane simulators and other training devices.

* * * * *

(b) * * *

(2) Provides training in at least the following:

(i) The procedures and maneuvers set forth in appendix F to this part; or

(ii) Line-oriented flight training (LOFT) that—

(A) Before March 12, 2019,

(1) Utilizes a complete flight crew;

(2) Includes at least the maneuvers and procedures (abnormal and emergency) that may be expected in line operations; and

(3) Is representative of the flight segment appropriate to the operations being conducted by the certificate holder.

(B) Beginning on March 12, 2019—

(*1*) Utilizes a complete flight crew;

(*2*) Includes at least the maneuvers and procedures (abnormal and emergency) that may be expected in line operations;

(*3*) Includes scenario-based or maneuver-based stall prevention training before, during or after the LOFT scenario for each pilot;

(*4*) Is representative of two flight segments appropriate to the operations being conducted by the certificate holder; and

(*5*) Provides an opportunity to demonstrate workload management and pilot monitoring skills.

* * * * *

■ 9. Amend § 121.411 by revising paragraphs (b)(1) through (3) and (6) and (c)(1) through (3) to read as follows:

§ 121.411 Qualifications: Check airmen (airplane) and check airmen (simulator).

* * * * *

(b) * * *

(1) Holds the airman certificates and ratings required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(2) Has satisfactorily completed the appropriate training phases for the airplane, including recurrent training, that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(3) Has satisfactorily completed the appropriate proficiency or flight checks that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

* * * * *

(6) Has satisfied the recency of experience requirements of § 121.439 of this part, as applicable; and

* * * * *

(c) * * *

(1) Holds the airman certificates and ratings, except medical certificate, required to serve as a pilot in command or a flight engineer, as applicable, in operations under this part;

(2) Has satisfactorily completed the appropriate training phases for the airplane, including recurrent training, that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(3) Has satisfactorily completed the appropriate proficiency or flight checks that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

* * * * *

■ 10. Amend § 121.412 by revising paragraphs (b)(1) through (3) and (b)(5) and (6) and (c)(1) through (3) to read as follows:

§ 121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).

* * * * *

(b) * * *

(1) Holds the airman certificates and rating required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(2) Has satisfactorily completed the appropriate training phases for the airplane, including recurrent training, that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(3) Has satisfactorily completed the appropriate proficiency or flight checks that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

* * * * *

(5) Holds at least a Class III medical certificate unless serving as a required crewmember, in which case holds a Class I or a Class II medical certificate as appropriate; and

(6) Has satisfied the recency of experience requirements of § 121.439 of this part, as applicable.

* * * * *

(c) * * *

(1) Holds the airman certificates and ratings, except medical certificate, required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(2) Has satisfactorily completed the appropriate training phases for the airplane, including recurrent training, that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part;

(3) Has satisfactorily completed the appropriate proficiency or flight checks that are required to serve as a pilot in command or flight engineer, as applicable, in operations under this part; and

* * * * *

■ 11. Amend § 121.413 as follows:

■ A. Revise the section heading;

■ B. Revise paragraphs (a)(2), (d), (e) introductory text, (e)(4), and (g) introductory text; and

■ C. Add paragraphs (c)(7), (h), and (i).

The revisions and additions read as follows:

§ 121.413 Initial, transition and recurrent training and checking requirements: Check airmen (airplane), check airmen (simulator).

(a) * * *

(2) Within the preceding 24 calendar months that person satisfactorily conducts a check or supervises operating experience under the observation of an FAA inspector or an aircrew designated examiner employed by the operator. The observation check may be accomplished in part or in full in an airplane, in a flight simulator, or in a flight training device.

* * * * *

(c) * * *

(7) For check airmen who conduct training or checking in a flight simulator or a flight training device, the following subjects specific to the device(s) for the airplane type:

(i) Proper operation of the controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Data and motion limitations of simulation; and

(iv) The minimum airplane simulator equipment required by this part or part 60 of this chapter, for each maneuver and procedure completed in a flight simulator or a flight training device.

(d) The transition ground training for check airmen must include the following:

(1) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the airplane to which the check airman is transitioning.

(2) For check airmen who conduct training or checking in a flight simulator or a flight training device, the following subjects specific to the device(s) for the airplane type to which the check airman is transitioning:

(i) Proper operation of the controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Data and motion limitations of simulation; and

(iv) The minimum airplane simulator equipment required by this part or part 60 of this chapter, for each maneuver and procedure completed in a flight simulator or a flight training device.

(e) The initial and transition flight training for check airmen (airplane) must include the following:

* * * * *

(4) For flight engineer check airmen (airplane), training to ensure competence to perform assigned duties.

* * * * *

(g) The initial and transition flight training for check airmen who conduct training or checking in a flight simulator or a flight training device must include the following:

* * * * *

(h) Recurrent ground training for check airmen who conduct training or checking in a flight simulator or a flight training device must be completed every 12 calendar months and must include the subjects required in paragraph (c)(7) of this section.

(i) Compliance with paragraphs (c)(7), (d)(2), and (h) of this section is required no later than March 12, 2019.

■ 12. Amend § 121.414 as follows:

■ A. Revise the section heading;

■ B. Revise paragraphs (a)(2), (d), (e) introductory text, (e)(4), and (g) introductory text; and

■ C. Add paragraphs (c)(8), (h), and (i).

The revisions and additions read as follows:

§ 121.414 Initial, transition and recurrent training and checking requirements: flight instructors (airplane), flight instructors (simulator).

(a) * * *

(2) Within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an FAA inspector, an operator check airman, or an aircrew designated examiner employed by the operator. The observation check may be accomplished in part or in full in an airplane, in a flight simulator, or in a flight training device.

* * * * *

(c) * * *

(8) For flight instructors who conduct training in a flight simulator or a flight training device, the following subjects specific to the device(s) for the airplane type:

(i) Proper operation of the controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Data and motion limitations of simulation; and

(iv) The minimum airplane simulator equipment required by this part or part 60 of this chapter, for each maneuver and procedure completed in a flight simulator or a flight training device.

(d) The transition ground training for flight instructors must include the following:

(1) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the airplane to which the flight instructor is transitioning.

(2) For flight instructors who conduct training in a flight simulator or a flight training device, the following subjects specific to the device(s) for the airplane type to which the flight instructor is transitioning:

(i) Proper operation of the controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Data and motion limitations of simulation; and

(iv) The minimum airplane simulator equipment required by this part or part 60 of this chapter, for each maneuver and procedure completed in a flight simulator or a flight training device.

(e) The initial and transition flight training for flight instructors (airplane) must include the following:

* * * * *

(4) For flight engineer instructors (airplane), inflight training to ensure competence to perform assigned duties.

* * * * *

(g) The initial and transition flight training for flight instructors who conduct training in a flight simulator or a flight training device must include the following:

* * * * *

(h) Recurrent flight instructor ground training for flight instructors who conduct training in a flight simulator or a flight training device must be completed every 12 calendar months and must include the subjects required in paragraph (c)(8) of this section.

(i) Compliance with paragraphs (c)(8), (d)(2), and (h) of this section is required no later than March 12, 2019.

■ 13. Amend § 121.415 as follows:
■ A. Revise section heading;
■ B. In paragraph (a)(2), remove the reference to ''§§ 121.419 through 121.422'' and add in its place ''§§ 121.419, 121.421 and 121.422'';
■ C. In paragraph (b), remove the reference to ''121.426'' and add in its place ''121.425'';
■ D. In paragraph (d), remove the reference to ''§ 121.418'' and add in its place ''§ 121.418(a)'' and remove the word ''his'' and add in its place ''their'';
■ E. In paragraph (f), remove the reference to ''§§ 121.419 through 121.425'' and add in its place ''§§ 121.419, 121.421, 121.422, 121.424, and 121.425''; and
■ F. Add paragraphs (h), (i), and (j).

The revision and additions read as follows:

§ 121.415 Crewmember and dispatcher training program requirements.

* * * * *

(h) Each training program must include a process to provide for the regular analysis of individual pilot performance to identify pilots with performance deficiencies during training and checking and multiple failures during checking.

(i) Each training program must include methods for remedial training and tracking of pilots identified in the analysis performed in accordance with paragraph (h) of this section.

(j) Compliance with paragraphs (h) and (i) of this section is required no later than March 12, 2019.

■ 14. Amend § 121.418 as follows:
■ A. Revise section heading;
■ B. Redesignate paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and the undesignated paragraph, as paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2) respectively;
■ C. Add a subject heading to paragraph (a); and
■ D. Add paragraphs (b) and (c).

The revisions and additions read as follows:

§ 121.418 Differences training and related aircraft differences training.

(a) *Differences training.*

* * * * *

(b) *Related aircraft differences training.* (1) In order to seek approval of related aircraft differences training for flightcrew members, a certificate holder must submit a request for related aircraft designation to the Administrator, and obtain approval of that request.

(2) If the Administrator determines under paragraph (b)(1) of this section that a certificate holder is operating related aircraft, the certificate holder may submit to the Administrator a request for approval of a training program that includes related aircraft differences training.

(3) A request for approval of a training program that includes related aircraft differences training must include at least the following:

(i) Each appropriate subject required for the ground training for the related aircraft.

(ii) Each appropriate maneuver or procedure required for the flight training and crewmember emergency training for the related aircraft.

(iii) The number of programmed hours of ground training, flight training and crewmember emergency training necessary based on review of the related aircraft and the duty position.

(c) *Approved related aircraft differences training.* Approved related aircraft differences training for flightcrew members may be included in initial, transition, upgrade and recurrent training for the base aircraft. If the certificate holder's approved training program includes related aircraft differences training in accordance with paragraph (b) of this section, the training required by §§ 121.419, 121.424, 121.425, and 121.427, as applicable to flightcrew members, may be modified for the related aircraft.

■ 15. Amend § 121.419 as follows:
■ A. Revise paragraph (a)(1)(ix);
■ B. In paragraph (a)(2)(x), remove ''and'' following the semi-colon;
■ C. Redesignate paragraph (a)(2)(xi) as (a)(2)(xiii); and
■ D. Add new paragraph (a)(2)(xi) and paragraphs (a)(2)(xii) and (e).

The revisions and additions read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(1) * * *

(ix) Other instructions as necessary to ensure pilot and flight engineer competence.

(2) * * *

(xi) For pilots, stall prevention and recovery in clean configuration, takeoff and maneuvering configuration, and landing configuration.

(xii) For pilots, upset prevention and recovery; and

(xiii) The approved Airplane Flight Manual.

* * * * *

(e) *Compliance and pilot programmed hours.* (1) Compliance with the requirements identified in paragraphs (a)(2)(xi) and (a)(2)(xii) of this section is required no later than March 12, 2019.

(2) Beginning March 12, 2019, initial programmed hours applicable to pilots as specified in paragraphs (c) and (d) of this section must include 2 additional hours.

§ 121.420 [Removed and Reserved]

■ 16. Remove and reserve § 121.420.
■ 17. Add § 121.423 to read as follows:

§ 121.423 Pilot: Extended Envelope Training.

(a) Each certificate holder must include in its approved training program, the extended envelope training set forth in this section with respect to each airplane type for each pilot. The extended envelope training required by this section must be performed in a Level C or higher full flight simulator, approved by the Administrator in accordance with § 121.407 of this part.

(b) Extended envelope training must include the following maneuvers and procedures:

(1) Manually controlled slow flight;

(2) Manually controlled loss of reliable airspeed;

(3) Manually controlled instrument departure and arrival;

(4) Upset recovery maneuvers; and

(5) Recovery from bounced landing.

(c) Extended envelope training must include instructor-guided hands on experience of recovery from full stall and stick pusher activation, if equipped.

(d) Recurrent training: Within 24 calendar months preceding service as a pilot, each person must satisfactorily complete the extended envelope training described in paragraphs (b)(1) through (4) and (c) of this section. Within 36 calendar months preceding service as a pilot, each person must satisfactorily complete the extended envelope training described in paragraph (b)(5) of this section.

(e) Deviation from use of Level C or higher full flight simulator:

(1) A certificate holder may submit a request to the Administrator for approval of a deviation from the requirements of paragraph (a) of this section to conduct the extended envelope training using an alternative method to meet the learning objectives of this section.

(2) A request for deviation from paragraph (a) of this section must include the following information:

(i) A simulator availability assessment, including hours by specific simulator and location of the simulator, and a simulator shortfall analysis that includes the training that cannot be completed in a Level C or higher full flight simulator; and

(ii) Alternative methods for achieving the learning objectives of this section.

(3) A certificate holder may request an extension of a deviation issued under this section.

(4) Deviations or extensions to deviations will be issued for a period not to exceed 12 months.

(f) Compliance with this section is required no later than March 12, 2019. For the recurrent training required in paragraph (d) of this section, each pilot qualified to serve as second in command or pilot in command in operations under this part on March 12, 2019 must complete the recurrent extended envelope training within 12 calendar months after March 12, 2019.

■ 18. Amend § 121.424 as follows:
■ A. Revise paragraph (a);
■ B. Revise paragraph (b) introductory text;
■ C. In paragraph (b)(1), remove the word ''and'' following the semi-colon;
■ D. Redesignate paragraph (b)(2) as (b)(3);
■ E. Add new paragraph (b)(2);
■ F. In paragraph (c), remove the reference to ''paragraph (a)'' and add in its place ''paragraph (a)(1);'' and
■ G. Add paragraph (e).

The revisions and additions read as follows:

§ 121.424 Pilots: Initial, transition, and upgrade flight training.

(a) Initial, transition, and upgrade training for pilots must include the following:

(1) Flight training and practice in the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and in appendix E to this part, as applicable; and

(2) Extended envelope training set forth in § 121.423.

(b) The training required by paragraph (a) of this section must be performed inflight except—

* * * * *

(2) That the extended envelope training required by § 121.423 must be performed in a Level C or higher full flight simulator unless the Administrator has issued to the certificate holder a deviation in accordance with § 121.423(e); and

* * * * *

(e) Compliance with paragraphs (a)(2) and (b)(2) of this section is required no later than March 12, 2019.

§ 121.426 [Removed and Reserved]

■ 19. Remove and reserve § 121.426.
■ 20. Amend § 121.427 as follows:
■ A. Revise paragraph (b)(4);
■ B. Remove paragraph (c)(2);
■ C. Redesignate paragraphs (c)(3) and (4) as paragraphs (c)(2) and (3), respectively;
■ D. Revise paragraph (d)(1);
■ E. Remove paragraph (d)(3); and
■ F. Add paragraph (e).

The revisions and addition read as follows:

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(4) CRM and DRM training. For flightcrew members, CRM training or portions thereof may be accomplished during an approved simulator line operational flight training (LOFT) session. The recurrent CRM or DRM training requirements do not apply until a person has completed the applicable initial CRM or DRM training required by §§ 121.419, 121.421, or 121.422.

* * * * *

(d) Recurrent flight training for flightcrew members must include at least the following:

(1) For pilots—

(i) Extended envelope training as required by § 121.423 of this part; and

(ii) Flight training in an approved simulator in maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and flight training in maneuvers and procedures set forth in appendix F to this part, or in a flight training program approved by the Administrator, except as follows—

(A) The number of programmed inflight hours is not specified; and

(B) Satisfactory completion of a proficiency check may be substituted for recurrent flight training as permitted in § 121.433(c) and (e) of this part.

* * * * *

(e) Compliance and pilot programmed hours:

(1) Compliance with the requirements identified in paragraphs (d)(1)(i) of this section is required no later than March 12, 2019.

(2) After March 12, 2019, recurrent programmed hours applicable to pilots as specified in paragraph (c)(1) of this section must include 30 additional minutes.

§ 121.432 [Amended]

■ 21. Amend § 121.432 as follows:
■ A. Remove paragraphs (b)(2) and (3);
■ B. Redesignate paragraphs (b)(4) and (5) as paragraphs (b)(2) and (3) respectively;
■ C. Remove paragraphs (c) and (d); and
■ D. Designate the undesignated paragraph as paragraph (c).

■ 22. Amend § 121.433 as follows:
■ A. Remove ''he'' and add in its place ''the person'' each time it appears in the section; and
■ B. Revise paragraphs (d) and (e).

The revisions read as follows:

§ 121.433 Training required.

* * * * *

(d) For each airplane in which a pilot serves as pilot in command, the person must satisfactorily complete either recurrent flight training or a proficiency check within the preceding 12 calendar months. The requirement in this paragraph expires on March 12, 2019. After that date, the requirement in § 121.441(a)(1)(ii) of this part applies.

(e) Notwithstanding paragraphs (c)(2) and (d) of this section, a proficiency check as provided in § 121.441 of this part may not be substituted for the extended envelope training required by § 121.423 or training in those maneuvers and procedures set forth in a certificate holder's approved low-altitude windshear flight training program when that program is included in a recurrent flight training course as required by § 121.409(d) of this part.

■ 23. Amend § 121.434 as follows:
■ A. Add paragraph (a)(4); and,
■ B. In paragraph (b)(1), remove ''he'' and add in its place ''the person'';
■ C. Remove the last sentence of paragraph (f); and
■ D. Revise paragraph (i).

The addition and revision read as follows:

§ 121.434 Operating experience, operating cycles, and consolidation of knowledge and skills.

(a) * * *

(4) Deviation based upon designation of related aircraft in accordance with § 121.418(b).

(i) The Administrator may authorize a deviation from the operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills required by this section based upon a designation of related aircraft in accordance with § 121.418(b) of this part and a determination that the certificate holder can demonstrate an equivalent level of safety.

(ii) A request for deviation from the operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills required by this section based upon a designation of related aircraft must be submitted to the Administrator. The request must include the following:

(A) Identification of aircraft operated by the certificate holder designated as related aircraft.

(B) Hours of operating experience and number of operating cycles necessary based on review of the related aircraft, the operation, and the duty position.

(C) Consolidation hours necessary based on review of the related aircraft, the operation, and the duty position.

(iii) The administrator may, at any time, terminate a grant of deviation authority issued under this paragraph (a)(4).

* * * * *

(i) Notwithstanding the reductions in programmed hours permitted under §§ 121.405 and 121.409 of subpart N of this part, the hours of operating experience for crewmembers are not subject to reduction other than as provided in accordance with a deviation authorized under paragraph (a) of this section or as provided in paragraphs (e) and (f) of this section.

§ 121.435 [Removed and Reserved]

■ 24. Remove and reserve § 121.435.

■ 25. Amend § 121.439 by adding paragraph (f) to read as follows:

§ 121.439 Pilot qualification: Recent experience.

* * * * *

(f) Deviation authority based upon designation of related aircraft in accordance with § 121.418(b).

(1) The Administrator may authorize a deviation from the requirements of paragraph (a) of this section based upon a designation of related aircraft in accordance with § 121.418(b) of this part and a determination that the certificate holder can demonstrate an equivalent level of safety.

(2) A request for deviation from paragraph (a) of this section must be submitted to the Administrator. The request must include the following:

(i) Identification of aircraft operated by the certificate holder designated as related aircraft.

(ii) The number of takeoffs, landings, maneuvers, and procedures necessary to maintain or reestablish recency based on review of the related aircraft, the operation, and the duty position.

(3) The administrator may, at any time, terminate a grant of deviation authority issued under this paragraph (f).

■ 26. Amend § 121.441 by revising paragraph (a)(1) and adding paragraph (f) to read as follows:

§ 121.441 Proficiency checks.

(a) * * *

(1) For a pilot in command—

(i) Before March 12, 2019,

(A) A proficiency check within the preceding 12 calendar months and,

(B) In addition, within the preceding 6 calendar months, either a proficiency check or the approved simulator course of training.

(ii) Beginning on March 12, 2019,

(A) A proficiency check within the preceding 12 calendar months in the aircraft type in which the person is to serve and,

(B) In addition, within the preceding 6 calendar months, either a proficiency check or the approved simulator course of training.

* * * * *

(f) Deviation authority based upon designation of related aircraft in accordance with § 121.418(b) of this part.

(1) The Administrator may authorize a deviation from the proficiency check requirements of paragraphs (a) and (b)(1) of this section based upon a designation of related aircraft in accordance with § 121.418(b) of this part and a determination that the certificate holder can demonstrate an equivalent level of safety.

(2) A request for deviation from paragraphs (a) and (b)(1) of this section must be submitted to the Administrator. The request must include the following:

(i) Identification of aircraft operated by the certificate holder designated as related aircraft.

(ii) For recurrent proficiency checks, the frequency of the related aircraft proficiency check and the maneuvers and procedures to be included in the related aircraft proficiency check based on review of the related aircraft, the operation, and the duty position.

(iii) For qualification proficiency checks, the maneuvers and procedures to be included in the related aircraft proficiency check based on review of the related aircraft, the operation, and the duty position.

(3) The administrator may, at any time, terminate a grant of deviation authority issued under this paragraph (f).

■ 27. Add § 121.544 to read as follows:

§ 121.544 Pilot monitoring.

Each pilot who is seated at the pilot controls of the aircraft, while not flying the aircraft, must accomplish pilot monitoring duties as appropriate in accordance with the certificate holder's procedures contained in the manual required by § 121.133 of this part. Compliance with this section is required no later than March 12, 2019.

■ 28. Revise § 121.711 to read as follows:

§ 121.711 Communication records: Domestic and flag operations.

(a) Each certificate holder conducting domestic or flag operations must record each en route communication between the certificate holder and its pilots using a communication system as required by § 121.99 of this part.

(b) For purposes of this section the term en route means from the time the aircraft pushes back from the departing gate until the time the aircraft reaches the arrival gate at its destination.

(c) The record required in paragraph (a) of this section must contain at least the following information:

(1) The date and time of the contact;

(2) The flight number;

(3) Aircraft registration number;

(4) Approximate position of the aircraft during the contact;

(5) Call sign; and

(6) Narrative of the contact.

(d) The record required in paragraph (a) of this section must be kept for at least 30 days.

■ 29. Amend appendix E:

■ A. By revising the first paragraph;

■ B. In the Table entitled ''Flight Training Requirements'':

■ i. Redesignate entry I(c) as I(c)(1) and revise text of I(c)(1);

■ ii. Add new entry I(c)(2);

■ iii. Redesignate entry I(d) as I(d)(1) and revise text of (I)(d)(1);

■ iv. Add new entry I(d)(2);

■ v. Redesignate entry II(c) as II(c)(1);

■ vi. Add new entry II(c)(2);

■ vii. In entry III(e) replace the word ''runway'' with ''runaway'';

■ viii. Revise entry III(i);

■ ix. Redesignate entry IV(d) as IV(d)(1); and

■ x. Add new entry IV(d)(2).

The revisions and additions read as follows:

Appendix E to Part 121—Flight Training Requirements.

The maneuvers and procedures required by § 121.424 of this part for pilot initial, transition, and upgrade flight training are set forth in the certificate holder's approved low-altitude windshear flight training program, § 121.423 extended envelope training, and in this appendix. All required maneuvers and procedures must be performed inflight except that windshear and extended envelope training maneuvers and procedures must be performed in an airplane simulator in which the maneuvers and procedures are specifically authorized to be accomplished. Certain other maneuvers and procedures may be performed in an airplane simulator with a visual system (visual simulator), an airplane simulator without a visual system (nonvisual simulator), a training device, or a static airplane as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

Maneuvers/Procedures	Initial Training					Transition Training					Upgrade Training				
	Airplane		Simulator			Airplane		Simulator			Airplane		Simulator		
	Inflight	Static	Visual simulator	Non-visual simulator	Training device	Inflight	Static	Visual simulator	Non-visual simulator	Training device	Inflight	Static	Visual simulator	Non-visual simulator	Training device
* * * * * * *															
I Preflight—															
* * * * * * *															
(c)(1) Before March 12, 2019, taxiing, sailing, and docking procedures in compliance with instructions issued by the appropriate Traffic Control Authority or by the person conducting the training.	B					AT					BU				
(c)(2) Taxiing. Beginning on March 12, 2019, this maneuver includes the following: (i) Taxiing, sailing, and docking procedures in compliance with instructions issued by the appropriate Traffic Control Authority or by the person conducting the training. (ii) Use of airport diagram (surface movement chart). (iii) Obtaining appropriate clearance before crossing or entering active runways. (iv) Observation of all surface movement guidance control markings and lighting.	B					AT					BU				

(d)(1) Before March 12, 2019, pre-takeoff checks that include power-plant checks.				B					AT					BU	
(d)(2) Beginning March 12, 2019, pre-takeoff procedures that include power-plant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate), for departure runway prior to crossing hold short line for takeoff.			B					AT					BU		
II Takeoffs—															
* * * * * * *															
(c)(2) Beginning March 12, 2019, crosswind takeoffs including crosswind takeoffs with gusts if practicable under the existing meteorological, airport, and traffic conditions.	B					AT					BU				
* * * * * * *															
III. Flight Maneuvers and Procedures															
* * * * * * *															

(i) Stall Prevention. For the purpose of this training the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Stall prevention training must be conducted in at least the following configurations: (1) Takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration). (2) Clean configuration. (3) Landing configuration. * * *				B					AT					BU	
* * * * * * *															
IV Landings and Approaches to Landings—															
* * * * * * *															
(d)(2) Beginning March 12, 2019, crosswind landing, including crosswind landings with gusts if practicable under the existing meteorological, airport, and traffic conditions.	B					AT					BU				
* * * * * * *															

■ 30. In appendix F, amend the entries in the Table as follows:

■ A. Remove the reference in entry I(b) to § 121.424(d)(2) and add in its place a reference to § 121.424(d)(1)(ii);

■ B. Redesignate entry I(c) as I(c)(1) and revise it;

■ C. Add entry I(c)(2);

■ D. Redesignate entry I(d) as I(d)(1) and hyphenate the words power-plant in I(d)(1);

■ E. Add entry I(d)(2);

■ F. Redesignate entry II(c) as II(c)(1) and revise it;

■ G. Add entry II(c)(2);

■ H. Amend entry III(c)(4) by removing the second sentence;

■ I. Revise entry IV(b) and the first floating paragraph that follows;

■ J. Amend entry V introductory text by removing the last sentence in the first paragraph;

■ K. Redesignate entry V(c) as V(c)(1); and

■ L. Add entry V(c)(2).

The revisions and additions read as follows:

Maneuvers/procedures	Required		Permitted			
	Simulated instrument conditions	Inflight	Visual simulator	Nonvisual simulator	Training device	Waiver provisions of § 121.441(d)
* * *		*	*		*	*
I Preflight—						
* * *		*	*		*	*
(c)(1) Taxiing. Before March 12, 2019, this maneuver includes taxiing (in the case of a second in command proficiency check to the extent practical from the second in command crew position), sailing, or docking procedures in compliance with instructions issued by the appropriate traffic control authority or by the person conducting the checks		B				
(c)(2) Taxiing. Beginning March 12, 2019, this maneuver includes the following: (i) Taxiing (in the case of a second in command proficiency check to the extent practical from the second in command crew position), sailing, or docking procedures in compliance with instructions issued by the appropriate traffic control authority or by the person conducting the checks. (ii) Use of airport diagram (surface movement chart). (iii) Obtaining appropriate clearance before crossing or entering active runways. (iv) Observation of all surface movement guidance control markings and lighting		B				
* * *		*	*		*	*
(d)(2) Beginning March 12, 2019, pre-takeoff procedures that include power-plant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate), for departure runway prior to crossing hold short line for takeoff			B			
II Takeoff—						
* * *		*	*		*	*
(c)(1) Crosswind. Before March 12, 2019, one crosswind takeoff, if practicable, under the existing meteorological, airport, and traffic conditions		B*				
(c)(2) Beginning March 12, 2019, one crosswind takeoff with gusts, if practicable, under the existing meteorological, airport, and traffic conditions		B*				
* * *		*	*		*	*
IV. Inflight Maneuvers						
* * *		*	*		*	*
(b) Stall Prevention. For the purpose of this maneuver the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Except as provided below there must be at least three stall prevention recoveries as follows:	B			B		B*
(1) One in the takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration).						
(2) One in a clean configuration.						
(3) One in a landing configuration.						
At the discretion of the person conducting the check, one stall prevention recovery must be performed in one of the above configurations while in a turn with the bank angle between 15° and 30°. Two out of the three stall prevention recoveries required by this paragraph may be waived * * *.						
* * *		*	*		*	*
V Landings and Approaches to Landings—						

Maneuvers/procedures	Required		Permitted			
	Simulated instrument conditions	Inflight	Visual simulator	Nonvisual simulator	Training device	Waiver provisions of § 121.441(d)
Notwithstanding the authorizations for combining and waiving maneuvers and for the use of a simulator, at least two actual landings (one to a full stop) must be made for all pilot-in-command and initial second-in-command proficiency checks.						
Landings and approaches to landings must include the types listed below, but more than one type may be combined where appropriate.						
* * *		*	*		*	*
(c)(2) Beginning March 12, 2019, crosswind landing with gusts, if practical under existing meteorological, airport, and traffic conditions		B *				
* * *		*	*		*	*

■ 31. Amend appendix H by adding a sentence to the end of paragraph (6) in the section titled Advanced Simulation Training Program; and add paragraph (5) to the section titled Level C Training and Checking Permitted to read as follows:

Appendix H to Part 121—Advanced Simulation

* * * * *

Advanced Simulation Training Program

* * * * *

6. * * * After March 12, 2019, the LOFT must provide an opportunity for the pilot to demonstrate workload management and pilot monitoring skills.

* * * * *

Level C

Training and Checking Permitted

* * * * *

5. For all pilots, the extended envelope training required by § 121.423 of this part.

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 44701(a) and Secs. 208 and 209 of Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note), on November 5, 2013.

Michael P. Huerta,

Administrator.

[FR Doc. 2013–26845 Filed 11–6–13; 4:15 pm]

BILLING CODE 4910–13–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 218 November 12, 2013

Part IV

Bureau of Consumer Financial Protection

12 CFR Part 1006

Debt Collection (Regulation F); Advanced Notice of Proposed Rulemaking

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2013–0033]

RIN 3170–AA41

Debt Collection (Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Financial Protection Bureau (the Bureau) is seeking comment, data, and information from the public about debt collection practices. Debt collection affects a significant number of consumers and the Bureau is considering proposing rules relating to debt collection. Therefore, the Bureau is interested in learning through responses to this advance notice of proposed rulemaking (ANPR) about the debt collection system, about consumer experiences with the debt collection system, and about how rules for debt collectors might protect consumers without imposing unnecessary burdens on industry.

The Fair Debt Collection Practices Act (FDCPA) was passed in 1977 and the Bureau is the first Federal agency to possess the authority to issue substantive rules for debt collection under this statute. The Bureau may also address concerns related to debt collection using its authority under the Dodd-Frank Act to issue regulations concerning unfair, deceptive, and abusive acts or practices and to establish disclosures to assist consumers in understanding the costs, benefits, and risks associated with consumer financial products and services.

DATES: Comments on this ANPR must be received by February 10, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2013–0033 or Regulatory Identification Number (RIN) 3170–AA41, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or RIN. Please include the question number(s) to which your comment pertains. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by calling (202) 435–7275.

All comments submitted through the formal means described above, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

E-Rulemaking Initiative: The Bureau is working with the Cornell e-Rulemaking Initiative (CeRI) on a pilot project, RegulationRoom (*www.RegulationRoom.org*), that uses web technologies and approaches to enhance public understanding and effective participation. This ANPR on debt collection is a focus of the project. RegulationRoom is set up to make it easier for consumers and others to understand what the Bureau is considering, to share their information, experiences, and concerns, and to discuss possible ideas and solutions. Note that RegulationRoom is not an official United States Government Web site. Although comments made on that site are not formal comments like those submitted through the means identified above, the discussion on RegulationRoom will be captured through a detailed summary, which participants will have the chance to review and suggest revisions. This summary will be filed as a formal comment on Regulations.gov. For questions about this project, please contact Whitney Patross, Counsel, Office of Regulations, at (202) 435–7700.

FOR FURTHER INFORMATION CONTACT: Krista Ayoub and Pavneet Singh, Senior Counsels; or Kristin McPartland, Lauren Weldon, and Evan White, Counsels; Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION: This ANPR seeks data and other information to assist the Bureau in developing proposed rules for debt collection. Part I provides a general overview of debt collection, consumer protection problems in debt collection, and government authority and activities to address these problems.

Parts II and III of the ANPR principally focus on the quantity and quality of information in the debt collection system. Part II solicits information on the transfer of information and access to information upon sale or placement of debts. Part III seeks information regarding validation notices, disputes, investigations, and verification of disputes.

Parts IV, V, and VI primarily concern the conduct of collectors in interacting with consumers in trying to recover on debts through the collection process. Part IV requests information about collector communications seeking location information about consumers, interacting with consumers themselves, disclosing debts to third parties, and newer technologies. This part includes issues concerning sections 804 and 805 of the FDCPA. Part V asks for information about unfair, deceptive, and abusive acts and practices, including issues concerning sections 806, 807, and 808 of the FDCPA. Part VI addresses issues relating to the collection of debts that are beyond the statute of limitations.

Parts VII and VIII predominantly address debt collection activities that implicate issues relating to State law. Part VII requests information about debt collection litigation, most of which occurs in State courts. Part VIII raises questions about exemptions under Federal law for State debt collection systems under section 817 of the FDCPA, as well as for private entities that operate bad check diversion programs under contracts with State and local district attorneys under section 818 of the FDCPA.

Finally, Part IX solicits information concerning recordkeeping, monitoring, and compliance.

While the Bureau encourages all commenters to read and respond to the entire ANPR, we provide the outline above to assist commenters in identifying the sections most relevant to their interests and knowledge. The Bureau also invites consumers, consumer service organizations, creditors, collectors, or other interested parties to file comments describing the practical experiences that they have had or observed in the area of consumer debt collection, even if it is not apparent to which particular question those experiences are closely related. In particular, Parts III and VII may be of most interest to consumers, who may be able to offer insight on their experiences and expectations with respect to debt collection communications and interactions with debt collection litigation.

I. Debt Collection and Consumer Protection

A. Consumer Debts

A debt is commonly understood to be an obligation by a consumer to pay its owner; these obligations frequently arise out of an extension of credit. Consumers have many debts in collection and may have many different types of debts in collection. In 2011, for example, a national trade association of collectors reported that the most frequent debts on which collectors seek to recover from others include medical and other health-related debts (36%), credit card debts (20%), telecom debts (13%), and student loan debts (12%).[1]

Owners of debts include original creditors as well as those who buy debts from original creditors and from others. Some consumers are unable or unwilling to pay debts at the time when payment is required. Owners of debts who are not paid typically deem, for various reasons, that the consumer is in default after a period of time and therefore place the debt in collection. Owners either use their own collectors to recover in their own names on these defaulted debts (first-party debt collectors) or they place the debts with collection firms or law firms that specialize in the collection of defaulted debt (third-party debt collectors).

Collection of consumer debts serves an important role in the functioning of consumer credit markets by reducing the costs that creditors incur through their lending activities.[2] Collection efforts directly recover some amounts owed to owners of debts and may indirectly support responsible borrowing by underscoring the obligation of consumers to repay their debts and by incenting consumers to do so.[3] The resulting reductions in creditors' losses, in turn, may allow them to provide more credit to consumers at lower prices.[4] Collection activities can also lead to repayment plans or debt restructuring that enable consumers to gradually make payments and resolve their debts.

While debt collection can benefit consumers by reducing the price and increasing the availability of credit, in the absence of legislation and regulation many consumers may be subject to debt collection efforts that raise consumer protection concerns. Typically, competition in markets will incentivize firms to provide products and services on terms that consumers favor, but this competition may not be effective with regard to collections practices. Once a debt has gone into collection, consumers cannot choose their collector; the relevant choice for the consumer came when deciding from which firm to purchase or borrow. If firms' collection practices—or the practices of third-party collectors employed by the creditors or the buyers to whom creditors sell debt—played an important role in consumers' borrowing or purchasing decisions, then this competition would impose some discipline on firms to reduce overly aggressive tactics. When consumers make borrowing or purchasing decisions, however, they may not be focused on the risk that they will default. As a result, a consumer's decision to obtain credit from a particular creditor is unlikely to be influenced by the identity of the collector that might eventually collect on the debt if the consumer defaults. Indeed, it is unlikely that the consumer and perhaps even the creditor could know the identity of the future third-party collector. Firms therefore have a limited incentive to engage in less aggressive tactics if those tactics lead to increased recovery of debts. This effect may be exacerbated in the case of third-party collectors or debt buyers if consumers do not associate their treatment by the collector or debt buyer with the original creditor.

B. Debt Collection Industry

Debt collection is currently a multi-billion dollar industry composed of first-party collectors, third-party collectors, debt buyers, collection law firms, and a wide variety of related service providers. The Bureau understands that, over the past few decades, the debt collection industry has experienced dramatic growth along with significant evolution in business practices.

When a consumer defaults on a debt, the first efforts to collect on that debt are often made by the creditor itself, either through in-house collectors or others collecting in the name of the creditor. In either case, first-party collections are largely exempt from the FDCPA. These collections presumably constitute a significant segment of the debt collection market, with one industry source estimating revenues to collection companies acting in the name of first-party collectors to have been around $2 billion in 2007.[5]

If the creditor or other owner of the debt decides not to collect on the debt itself, it may engage a third-party debt collector to try to recover on the debt in the collector's own name rather than in the name of the creditor or other owner of the debt. In 2010, there were more than 4,000 third-party debt collection firms that employed more than 140,000 people.[6] These third-party collection firms had reported revenue of $11.7 billion in 2010.[7]

An original creditor or subsequent debt purchaser may choose to ''outsource'' its collections to a third party to collect in the third party's name for several reasons. Third-party collectors may possess capabilities and expertise in collections that the creditors' in-house operations lack. Typically, third-party collectors are paid on a contingency basis, usually a percentage of recoveries. This transfers collections expenses from the debt owner or creditor to the third party, with the result that the debt owner or creditor may recover some of what it is owed but without assuming risk that its in-house collections expense would be unproductive. Additionally, using third parties may allow debt owners and creditors to expand collection capacity during down-cycles in the economy (when the number of debts in collection increases) without having to hire or invest in additional systems or higher additional collectors on a short-term basis. Finally, an original creditor or debt owner may determine that a customer in default is no longer one with whom it is likely to maintain a long-term business relationship and thus may choose to devote its customer service efforts toward paying or prospective customers.

Debt collectors typically contact consumers to try to recover on debts, but if these efforts are unsuccessful, debt owners may decide to file an action in court to try to recover the debt. Most debt collection litigation is filed in State

[1] ACA International, *2011 Top Collection Markets Survey: For Period: Jan.1, 2010–Dec. 31, 2010* at 9 (2011), *available at http://www.acainternational.org/files.aspx?p=/images/12980/2011topmarketsurvey-electronic.pdf.*

[2] U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013* at 9 (Mar. 20, 2013), *available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf* (2013 FDCPA Annual Report); U.S. Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* at 11 (Jan. 2013), *available at http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf* (2013 FTC Debt Buyer Report).

[3] *2013 FDCPA Annual Report* at 9.

[4] *2013 FDCPA Annual Report* at 9.

[5] Kaulkin Ginsberg, *Executive Summary: The Kaulkin Report: The Future of Receivables Management* (Kaulkin-Ginsberg Company 7th ed. 2007), *available at http://www.insidearm.com/wp-content/uploads/The-Kaulkin-Report-7th-Ed-Executive-Summary.pdf.*

[6] Robert Hunt, Fed. Reserve Bank of Pa., *Understanding the Model: The Life Cycle of a Debt* at 10 (2013), *available at http://www.ftc.gov/bcp/workshops/lifeofadebt/UnderstandingTheModel.pdf* (presented at the FTC–CFPB Roundtable).

[7] *Id.*

and local courts, and, therefore, owners of debts often retain law firms and attorneys that specialize in debt collection and are familiar with these courts and State and local requirements to act on their behalf. The use of debt collection litigation to recover on debts has grown to become a critical part of the debt collection industry, with collection law firms having an estimated $2.4 billion in revenues from collections in 2011.[8]

While third-party collection agencies have been increasing in size in recent years, third-party debt collection continues to include a significant number of smaller entities.[9] Several factors account for this level of industry fragmentation. First, debt collection has historically been subject to low barriers to entry; and while debt collection relies on an array of data processing and communications technologies, the cost of investing in these technologies has steadily declined. Secondly, some collection firms specialize regarding the types of debt they collect. For example, some firms specialize in the collection of student loans, while others may specialize in collection of medical debt.

A third source of industry fragmentation may be that many businesses that use debt collection services, such as utilities and medical providers, serve local markets and may prefer to rely on collectors who are based in, and familiar with, their local markets. Utilities and medical providers' collection practices, in particular, may be subject to regulation at the State or even local level, and thus require collectors who are sensitive to these requirements.

A final source of collections industry fragmentation may be due to the fact that a considerable amount of debt collection activity, including direct collection from consumers as well as debt litigation, is conducted by law firms, which similarly operate within local and State jurisdictions.

Additionally, the advent and growth of debt buying has been called ''the most significant change in the debt collection business in the past decade.'' [10] Debt buyers purchase defaulted debt from original creditors or other owners of debt and thereby take title to the debt. They seek to collect on purchased debts themselves, place them with third-party collectors, or sell them to other debt buyers. Credit card debt comprises a large majority of the debt that debt buyers purchase.[11] Although over 500 debt buyers are currently active, the market is fairly concentrated, with about 10 firms purchasing a large proportion of the debt that is sold.[12]

Creditors who sell their uncollected debt to debt buyers receive a certain up-front return, with these debts typically sold at prices that are a small fraction of the face value of the debt they are owed. The debt buyer assumes the risk that it may recover less than it paid to acquire the debt and collect on it (including litigation costs, if applicable).

While all collectors have an incentive to minimize their costs and maximize their recoveries to increase their profits, their strategies and methodologies may vary considerably based on a number of factors. Types of debts may differ widely in amount or in the amount or type of information available to collectors about them, as discussed further below. For example, a majority of medical, utility, and telecommunications debts in collection are for small amounts and may not warrant the high cost of seeking to locate or contact the consumer; consequently some collectors simply report these items to consumer reporting agencies (CRAs) and wait for the consumer to contact the collector after discovering the item on a credit report.

Some types of debts are subject to statutory or regulatory requirements that may affect how the collector tries to recover on them. Privacy protections may impact how collectors seek to recover on medical debt, for example. The availability of administrative wage garnishment and tax refund intercepts likewise may affect how collectors try to recover on Federal student loans.

For some debts, changes in the consumer's situation may warrant a change in the collector's recovery strategy. For example, a consumer that was unable to pay a debt due to unemployment may find a job. Thus, some collectors purchase information about consumers from CRAs and other third parties to track whether the consumers' circumstances have changed, indicating new ability to pay past debts they still owe.

To assist them in developing efficient and effective means of collecting on debts, collectors may obtain goods and services from a wide range of other businesses. Skip-tracing companies, for instance, provide contact information for consumers and may screen accounts to determine if consumers have declared bankruptcy or have died. Technology firms provide auto-dialers and related software programs to help debt collectors place calls to consumers. Print shops prepare and mail validation notices and other written communications from collectors to consumers. Collectors may furnish information about their experience with the debts about consumers to CRAs and these agencies may, in turn, provide collectors with consumer reports for use in connection with collections.

C. FDCPA Protection for Consumers

The Federal and State governments historically have sought to protect consumers from harmful practices of collectors. From 1938 to 1977, the Federal government primarily protected consumers through Federal Trade Commission (FTC or Commission) enforcement actions against collectors who engaged in unfair or deceptive acts and practices in violation of section 5 of the FTC Act. Despite such efforts, Congress found in 1977 that ''there [was] abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,'' and that these practices ''contribute[d] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.'' [13] Congress also found that ''existing laws and procedures for redressing these injuries [were] inadequate to protect consumers.'' [14]

In light of these findings, Congress enacted the FDCPA. Among other things, the FDCPA was enacted to ''eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.'' [15] To achieve these purposes, among other things, the FDCPA: (1) prohibits debt collectors from engaging in abusive, deceptive, or unfair practices; (2)

[8] Kaulkin Ginsberg, *Executive Summary: The Kaulkin Report: The Future of Receivables Management* (Kaulkin-Ginsberg Company 7th ed. 2007), *available at http://www.insidearm.com/wp-content/uploads/The-Kaulkin-Report-7th-Ed-Executive-Summary.pdf.*

[9] Robert Hunt, Fed. Reserve Bank of Pa., *Understanding the Model: The Life Cycle of a Debt* at 10 (2013), *available at http://www.ftc.gov/bcp/workshops/lifeofadebt/UnderstandingTheModel.pdf* (presented at the FTC–CFPB Roundtable).

[10] U.S. Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change—A Workshop Report* at iv (2009), *available at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.*

[11] U.S. Gov't Accountability Office, GAO–09–748, *Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* (2009), *available at http://www.gao.gov/new.items/d09748.pdf.*

[12] Robert Hunt, Fed. Reserve Bank of Pa., *Understanding the Model: The Life Cycle of a Debt* (2013), *available at http://www.ftc.gov/bcp/workshops/lifeofadebt/UnderstandingTheModel.pdf* (presented at the FTC–CFPB Roundtable).

[13] Fair Debt Collection Practices Act, Public Law 95–109, 91 Stat 874 (FDCPA), 15 U.S.C. 1692(a).

[14] FDCPA section 802(b), 15 U.S.C. 1692(b).

[15] FDCPA section 802(e), 15 U.S.C. 1692(e).

imposes restrictions on debt collectors' communications with consumers and on their communications with others; and (3) mandates a debt dispute process that includes certain protections for consumers and obligations for collectors.

The FDCPA, however, does not apply to all collectors of debts. The statute generally covers the collection activities of third-party collectors for debts in default at the time they are obtained. In addition, a creditor can be treated as a debt collector under the FDCPA with respect to debts that were in default when it obtained them, or when a creditor collects under names other than its own.

D. Continued Consumer Problems and Government Responses

Despite the enactment and enforcement of the FDCPA and other measures,[16] significant consumer protection problems related to debt collection have persisted. For many years, consumers have submitted more complaints to the FTC about debt collectors than any other single industry.[17] The Bureau began accepting debt collection complaints on July 10, 2013. As of November 1, 2013, the Bureau is receiving comparable levels of debt collection and mortgage complaints in terms of daily complaint volume, with each accounting for approximately thirty percent of daily volume.

Consumer complaints relate to a wide variety of debt collection acts and practices. Consumers most commonly complain to the FTC that collectors harass them, demand amounts that consumers do not owe, threaten dire consequences for non-payment, or fail to send required notices.[18]

Not only do consumers complain about debt collectors, but they also file thousands of private actions each year against debt collectors that allegedly have violated the FDCPA. The number of these actions filed in Federal district court increased from 3,215 in 2005 to 11,811 in 2011, with increases observed each year.[19] While the number of these actions appeared to level off in 2012,[20] the continued number of such actions filed each year demonstrates that a significant number of consumers allege that debt collectors are violating the FDCPA.

Other sources report different but no less serious consumer protection problems in debt collection. For instance, some consumer advocates have highlighted issues in debt collection litigation, including problems with inadequate service of process, insufficient evidence accompanying complaints, and high rates of default judgment.[21]

In response to these consumer protection concerns, Federal and State officials have made debt collection a top priority. In October 2012, for example, the Bureau used its enforcement authority under the Dodd-Frank Act to bring its first enforcement action involving debt collection practices, requiring three bank subsidiaries to refund an estimated $85 million to approximately 250,000 customers for several distinct illegal credit card practices, including deceptive debt collection.[22] In 2012, the FTC also brought or resolved seven debt collection cases, matching the highest number of debt collection cases that it has brought or resolved in any single year.[23] States likewise have continued their traditional vigorous law enforcement activities involving a broad range of conduct by debt collectors.

The Bureau has also become the first Federal agency to routinely supervise debt collectors.[24] In addition to its supervisory activities involving certain creditors collecting on their own debts, in October 2012 the Bureau issued its Larger Participant Rule,[25] establishing supervisory authority over approximately 175 debt collectors accounting for over 60 percent of the industry's annual receipts.[26] On July 10, 2013, the Bureau held a field hearing in Portland, Maine, during which it announced guidance in the form of two supervisory bulletins, one that addresses unfair, deceptive, and abusive acts and practices in debt collection activities generally[27] and one that specifically addresses representations regarding credit reports and credit scores during the debt collection process.[28] At the field hearing, the Bureau also announced that it was accepting debt collection complaints and released template letters to assist

[16] In 1984, the FTC issued its Credit Practices Rule under the FTC Act, which addressed a few unfair or deceptive acts or practices that relate to consumer credit, but which have application in the context of debt collection. *Trade Regulation Rule: Credit Practices,* 49 FR 7740 (Mar. 1, 1984). The Board of Governors of the Federal Reserve System (Board), the Federal Home Loan Bank Board (FHLBB) (predecessor to the former Office of Thrift Supervision), and National Credit Union Administration (NCUA) followed suit with similar rules. *Unfair or Deceptive Acts or Practices; Credit Practices,* 50 FR 16696 (Apr. 29, 1985) (Board); *Consumer Protections; Unfair or Deceptive Credit Practices,* 50 FR 19325 (May 8, 1985) (FHLBB); *Federal Credit Union; Prohibited Lending Practices,* 52 FR 35060 (Sept. 17, 1987) (NCUA).

[17] In 2010, for example, the FTC received 141,285 total complaints about collectors, representing 27 percent of all complaints received by the FTC. U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2012* at 6 (2012), *available at http://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.* In 2011, the FTC received 142,743 total complaints about collectors, representing 27 percent of all complaints. *Id.* In 2012, the FTC received 125,136 total complaints about collectors, representing 24 percent of all complaints received by the FTC. U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013* at 14 (2013), *available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.*

[18] *2013 FDCPA Annual Report* at 7–9.

[19] Blog Post, J. Gordon, *FDCPA and Other Consumer Lawsuit Statistics, Full Year 2011 Recap* (Jan. 12, 2012), *available at http://accountsrecovery.net/profiles/blogs/fdcpa-and-other-consumer-lawsuit-statistics-full-year-2011-recap.*

[20] P. Lunsford, *FDCPA Lawsuits Filed by Consumers Decline 7 Percent in 2012* (Jan. 17, 2013), *available at http://www.insidearm.com/daily/debt-buying-topics/debt-buying/fdcpa-lawsuits-filed-by-consumers-decline-7-percent-in-2012/.*

[21] *See, e.g.,* Susan Shin & Claudia Wilner, New Econ. Project, *The Debt Collection Racket in New York* (2013), *available at http://www.nedap.org/resources/documents/DebtCollectionRacketNY.pdf;* Rachel Terp & Lauren Bowne, East Bay Commty. Law Ctr., *PAST DUE: Why Debt Collection Practices and the Debt Buying Industry Need Reform Now* (2011), *available at http://www.defendyourdollars.org/pdf/Past_Due_Report_2011.pdf;* Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., *The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts* (2010), *available at http://www.nclc.org/images/pdf/pr-reports/debt-machine.pdf.*

[22] Press Release, U.S. Bureau of Consumer Fin. Prot., *CFPB Orders American Express to Pay $85 Million Refund to Consumers Harmed by Illegal Credit Card Practices* (Oct. 1, 2012), *available at http://www.consumerfinance.gov/newsroom/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices/.*

[23] *2013 FDCPA Annual Report* at 28.

[24] Note that collectors of debts also may be subject to licensing, registration, supervision, and other oversight under State law.

[25] *Defining Larger Participants of the Consumer Debt Collection Market,* 77 FR 65775 (Oct. 31, 2012), 12 CFR 1090.

[26] Note that the Larger Participant Rule does not delineate the scope of the FDCPA, provisions of the Dodd-Frank Act related to consumer debt collection activities, or any other Federal consumer financial law. Activities that the Bureau chose to exclude from the defined consumer debt collection market in the Larger Participant Rule may nonetheless qualify as ''collecting debt'' within the meaning of the Dodd-Frank Act and may constitute consumer financial products or services.

[27] U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.*

[28] U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–08, Representations Regarding Effect of Debt Payments on Credit Reports and Scores* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.*

consumers when corresponding with debt collectors.[29]

Finally, Federal agencies have engaged in extensive efforts to identify consumer protection problems and potential solutions relating to debt collection. In 2009, for example, the FTC issued a report, ''Collecting Consumer Debts: The Challenges of Change'' (2009 FTC Modernization Report), which discussed a range of critical consumer protection issues thirty years after the enactment of the FDCPA.[30] In 2010, the FTC issued another report, ''Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration'' (2010 FTC Litigation and Arbitration Report), which identified consumer protection issues and possible responses related to debt collection litigation and arbitration.[31] In 2011, the FTC held a workshop to consider the impact of technological advances on the debt collection system, during which participants discussed, among other things, the ways in which changing technology affects debt collector communications.[32] In January 2013, the FTC issued ''The Structure and Practices of the Debt Buying Industry'' (2013 FTC Debt Buyer Report), which examined the manner and flow of information from creditors and other owners of debts to debt buyers, among other issues.[33] Most recently, in June 2013, the Bureau and the FTC held a joint FTC–CFPB Roundtable (FTC–CFPB Roundtable or Roundtable) on data integrity and information flows in debt collection.[34]

E. Federal Debt Collection Rulemaking

1. Rulemaking Authority

From the FDCPA's enactment in 1977 until its amendment by the Dodd-Frank Act in 2010, the FDCPA expressly prohibited the FTC and any other agency with enforcement responsibility from issuing implementing rules with respect to the collection of debts by debt collectors.[35] In 2010, the Dodd-Frank Act authorized the Bureau to ''prescribe rules with respect to the collection of debts by debt collectors, as defined in [the FDCPA].''[36]

In addition to conferring rulemaking authority under the FDCPA, the Dodd-Frank Act empowers the Bureau to issue regulations ''identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' [37] Such rules ''may include requirements for the purpose of preventing such acts or practices.'' [38]

Section 1032 of the Dodd-Frank Act also grants the Bureau the authority to ''prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service in light of the facts and circumstances.'' [39] ''In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' [40] The Bureau may include in such rules a model form that may be used at the option of the covered person for provision of the required disclosures and provide a safe harbor.[41] Such model forms must be validated through consumer testing.[42]

Further, the Bureau has the authority to ''prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [43] ''Federal consumer financial laws'' include the FDCPA and other statutes enumerated in the Dodd-Frank Act, as well as the rules to implement these statutes.[44]

The Bureau can exercise the Dodd-Frank Act rulemaking authority above with regard to any ''covered person or service provider.'' [45] ''Covered person'' is defined as ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.'' [46] ''Covered persons'' for purposes of the Dodd-Frank Act includes first-party collectors and third-party collectors who are collecting or attempting to collect on debts that arise out of consumer credit transactions.[47]

[29] *See, e.g.,* U.S. Bureau of Consumer Fin. Prot., *How Can I Stop Debt Collectors from Contacting Me?, available at http://www.consumerfinance.gov/askcfpb/1405/how-can-i-stop-debt-collectors-contacting-me.html* (last updated July 12, 2013); U.S. Bureau of Consumer Fin. Prot., *I've Been Contacted by a Debt Collector and Need Help Responding. How Do I Reply?, available at http://www.consumerfinance.gov/askcfpb/1695/ive-been-contacted-debt-collector-and-need-help-responding-how-do-i-reply.html* (last updated July 10, 2013); Blog Post, U.S. Bureau of Consumer Fin. Prot., *New Ways to Combat Harmful Debt Collection Practices, available at http://www.consumerfinance.gov/blog/debtcollection/* (last updated July 10, 2013).

[30] U.S. Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change—A Workshop Report* at iv (2009), *available at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.*

[31] U.S. Fed. Trade Comm'n, *Repairing a Broken System* (2010), *available at http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.*

[32] Additional information about the Workshop is available at *http://www.ftc.gov/bcp/workshops/debtcollectiontech.*

[33] U.S. Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* (2013), *available at http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf.*

[34] Additional information about the Roundtable is available at *http://www.ftc.gov/bcp/workshops/lifeofadebt.*

[35] 15 U.S.C. 1692l(d). During that time period, the FDCPA required the FTC by regulation to exempt from the requirements of the FDCPA any class of debt collection practices within any State if the FTC determined that under the law of that State that class of debt collection practices was subject to requirements substantially similar to those imposed by the FDCPA, and that there was adequate provision for enforcement. 15 U.S.C. 1692o. The FTC issued its rule on State exemptions in 1979. *Fair Debt Collection Practices; Procedures for State Application for Exemption,* 44 FR 21005 (Apr. 9, 1979) (Interim rule promulgating 16 CFR pt. 901). Maine applied for and received such an exemption from the FTC, effective March 26, 1996. *Exemption from Sections 803–812 of the Fair Debt Collection Practices Act granted to State of Maine,* 60 FR 66972 (Dec. 27, 1995).

[36] Section 814(d) of the FDCPA, 15 U.S.C. 1692l(d), as amended by section 1089 of the Dodd-Frank Act. This provision expressly excludes certain motor vehicle dealers from the scope of the Bureau's rulemaking authority. *Id. See* section 1029 of the Dodd-Frank Act, 12 U.S.C. 5519. The Dodd-Frank Act also transferred the FTC's rule writing authority with respect to State exemptions to the Bureau. *See* section 817 of the FDCPA, 15 U.S.C. 1692o, as amended by section 1089 of the Dodd-Frank Act. The Bureau restated the FTC's rule in 2011. *Fair Debt Collection Practices Act (Regulation F),* 76 FR 78121 (Dec. 16, 2011). The FTC rescinded its rule in 2012. *Rescission of Rules,* 77 FR 22200 (Apr. 13, 2012).

[37] Section 1031(b) of the Dodd-Frank Act, 12 U.S.C. 5531(b).

[38] *Id.*

[39] Section 1032(a) of the Dodd-Frank Act, 12 U.S.C. 5532(a).

[40] Section 1032(c) of the Dodd-Frank Act, 12 U.S.C. 5532(c).

[41] Section 1032(b) of the Dodd-Frank Act, 12 U.S.C. 5532(d).

[42] Section 1032(b) of the Dodd-Frank Act, 12 U.S.C. 5532(b).

[43] Section 1022(b) of the Dodd-Frank Act, 12 U.S.C. 5512(b).

[44] Section 1002(14) of the Dodd-Frank Act, 12 U.S.C. 5481(14).

[45] Section 1031(b) of the Dodd-Frank Act, 12 U.S.C. 5531(b).

[46] Section 1002(6) of the Dodd-Frank Act, 12 U.S.C. 5481(6). However, a person is not a ''service provider'' solely by virtue of offering or providing to a covered person ''(i) a support service of a type provided to businesses generally or a similar ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.'' *Id.*

[47] ''Consumer financial product or service'' under the Dodd-Frank Act means any ''financial product or service,'' either offered or provided for use by consumers primarily for personal, family, or household purposes, or, as applicable, delivered, offered, or provided in connection with a consumer financial product or service. Section 1002(5) of the

''Service provider'' is generally defined as ''any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.'' [48]

In addition, the Bureau has the authority to, after considering enumerated factors,[49] ''conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title [title X of the Dodd-Frank Act].'' [50]

2. Federal Debt Collection Rulemaking Proceeding

The Bureau is issuing this ANPR to request information on a wide range of debt collection practices and issues and to explore potential debt collection rulemaking proceedings and other actions that the Bureau could take to improve the systematic performance of the debt collection market. The Bureau believes this information will be useful for several reasons. First, significant consumer protection problems relating to debt collection appear to persist despite various vigorous government enforcement, supervision, policy development, and educational efforts. While the Bureau is active in these efforts, the Bureau believes it is appropriate to explore ways in which the new rulemaking authorities afforded by the Dodd-Frank Act could be used to address some of the longstanding problems discussed above.

Second, there have been technological developments, such as email and text messaging, since the enactment of the FDCPA. These new communication tools have created uncertainty as to the applicability of the FDCPA in various contexts. Rulemaking permits the Bureau to consider these technological issues in a comprehensive and careful manner, fostering the considered development of standards that provide adequate protection for consumers while reducing uncertainty for collectors.

Third, the Bureau believes it is important to examine whether rules covering the conduct of creditors collecting in their own names on their own debts that arise out of consumer credit transactions are warranted. As discussed above, Congress excluded such creditors from the FDCPA in 1977, but it gave the Bureau authority under the Dodd-Frank Act in 2010 to prescribe rules applicable to creditors. Congress excluded such creditors in 1977 because it concluded that the risk of reputational harm would be sufficient to deter creditors from engaging in harmful debt collection practices.[51] However, experience since passage of the FDCPA suggests that first-party collections are in fact a significant concern in their own right. For instance, the FTC receives tens of thousands of debt collection complaints each year concerning creditors.[52] The Bureau likewise has brought a debt collection enforcement action against a creditor,[53] and it recently issued a supervisory bulletin emphasizing that collectors, including creditors, need to ensure that they are not engaging in unfair, deceptive, or abusive, acts and practices in violation of the Dodd-Frank Act.[54] Moreover, many States have enacted consumer protection statutes that apply to the collection activities of creditors,[55] with some of these statutes enacted after Congress excluded creditors in the FDCPA. In addition to seeking input on whether any proposed rules should cover creditors, the Bureau seeks input on the basic premise that it should generally seek to harmonize any rules it develops for third-party collectors and first-party collectors, except to the extent that the law, facts, or policy considerations warrant different treatment.

3. Scope of Proceeding

In this ANPR, the Bureau seeks information to help it determine what rules and other Bureau actions, if any, would be useful under the FDCPA and the Dodd-Frank Act. The Bureau has not yet decided the precise scope and nature of rulemaking(s) it may conduct concerning debt collection. Specifically, the Bureau seeks to learn more about regulations that would best complement other governmental activities in protecting consumers from problems in debt collection. The Bureau's objective would be to protect consumers, yet not impose undue or unnecessary burdens on the industry.

The Bureau is also interested in receiving information bearing on how proposed rules should define and use relevant terms. The FDCPA defines terms such as ''communication,'' [56] ''creditor,'' [57] ''debt,'' [58] and ''debt

Dodd-Frank Act, 12 U.S.C. 5481(5). ''Financial product or service'' includes ''extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extension of credit (other than solely extending commercial credit to a person who originates consumer credit transactions).'' Section 1002(15)(A)(i) of the Dodd-Frank Act, 12 U.S.C. 5481(15)(A)(i); *see* Section 1002(7) of the Dodd-Frank Act, 12 U.S.C. 5481 (defining ''credit'' as ''the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.)'' ''Financial product or service'' also includes ''collecting debt related to any consumer financial product or service.'' Section 1002(15)(A)(x) of the Dodd-Frank Act, 12 U.S.C. 5481(15)(A)(x).

[48] Section 1002(6) of the Dodd-Frank Act, 12 U.S.C. 5481(26).

[49] These factors include the total assets of the class of covered persons, the volume of transactions involving consumer financial products or services in which the class of covered persons engages, and existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections. Section 1022(b)(3)(B) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(3)(B).

[50] Section 1022(b)(3)(B) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(3).

[51] As early as two years after the FDCPA's enactment, the FTC submitted a report to Congress finding that ''there is little difference between the practices employed by certain creditors and those employed by debt collection firms. Indeed, there evidence that the collection practices of creditors may be more egregious than those practices engaged in by debt collection firms.'' U.S. Fed. Trade Comm'n, *1979 FDCPA Annual Report* at 7 (1979). The FTC therefore ''urge[d] the Congress to reconsider its decision to exempt creditors from the provisions of the Fair Debt Collection Practices Act.'' *Id.*

[52] In 2012, the FTC received 22,353 complaints about first-party collectors, representing 4.3 percent of all complaints received. In 2011, the FTC received 25,506 complaints about first-party collectors, representing 4.9 percent of all complaints received. In 2010, the FTC received 31,952 complaints first-party collectors, representing 6.2 percent of all complaints received. U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013* at 14 (2013), *available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf;* U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2012* at 7 (2012), *available at http://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.*

[53] *See http://www.consumerfinance.gov/newsroom/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices/.*

[54] *See* U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf. See also* U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–08, Representations Regarding Effect of Debt Payments on Credit Reports and Scores* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.*

[55] *See, e.g.,* Cal. Civ. Code §§ 1788—1788.33, 1812.700—1812.072; Colo. Rev. Stat. §§ 5–1–101—5–12–105, 12–14–101—12–14–137; Conn. Gen. Stat. § 36a–647; Fla. Stat. §§ 559.55—559.785; Haw. Rev. Stat. §§ 443B–1, 480D—480D–5; Kan. Stat. Ann. § 16a–5–107; N.Y. Gen. Bus. Law §§ 600—604b; Okla. Stat. § 14A, 5–107; Tex. Fin. Code Ann. §§ 392.001—392.404, 396.001—393.353; Vt. Stat. Ann. tit. 9, § 2451a—2461; Wis. Stat. Ann. § 427.101—427.105.

[56] Section 803(2) of the FDCPA, 15 U.S.C. 1692a(2).

[57] Section 803(4) of the FDCPA, 15 U.S.C. 1692a(4).

[58] Section 803(5) of the FDCPA, 15 U.S.C. 1692a(5).

collector.'' [59] The FDCPA also uses terms such as ''regularly collects or attempts to collect'' [60] and ''in default.'' [61] For example, one influential FTC staff opinion letter addressed when an account goes into ''default'' and when a collection agency's employees become the creditor's de facto employees.[62] Many court decisions and agency documents interpret the FDCPA's terms to establish important parameters for the FDCPA. Likewise, the Dodd-Frank Act defines terms such as ''consumer financial product or service'' [63] and ''credit'' [64] and uses terms such as ''extending credit and servicing loans'' [65] and ''collecting debt related to any consumer financial product or service.'' [66]

The way in which proposed rules might define ''collectors'' would be critical to determining the scope of the proposed rules. The Bureau is especially interested in information bearing on whether a rule under the Dodd-Frank Act would be useful to protect consumers from the conduct of creditors collecting in their own names on debts arising out of consumer credit transactions.[67] In particular, the Bureau seeks comment on whether proposed rules should exclude certain types of debts or subject them to different requirements. Some debt collection that is subject to the FDCPA may not be subject to the Dodd-Frank Act's prohibition against unfair, deceptive, or abusive acts or practices and thus could be addressed in a proposed FDCPA rule but not a proposed Dodd-Frank Act rule. For example, in its Larger Participant Rule, the Bureau noted that some medical debt (*i.e.,* that which did not arise from an extension of credit within the meaning of the Dodd-Frank Act), might not involve a consumer financial product or service.[68] Municipal debts (*e.g.,* tickets and fines) and some other types of debts that may not arise out of an extension of credit may raise similar issues. The Bureau seeks factual information regarding different types of debts in collection to help it determine which debts involve a consumer financial product or service.

The Bureau acknowledges that there are avenues other than rulemaking through which to change or clarify the standards applicable to the collections process. The statutory standards governing how collectors must act in seeking to recover on debts have remained largely unchanged since the FDCPA was enacted in 1977. Further, certain changes that would be beneficial to consumers may be attainable only through statutory revisions. Others may be best effectuated by issuing guidance. The Bureau therefore encourages commenters to provide comment on where rulemaking provides the preferred means of addressing a particular issue and where statutory changes [69] or guidance would be a better approach. Finally, the Bureau seeks information about market initiatives or other ways in which tools are already being implemented to improve the debt collection marketplace.

The Bureau also recognizes that industry, academics, or others may have already conducted consumer testing or other research that is relevant to the topics addressed in this proceeding. The Bureau invites comment on any consumer testing or other research concerning consumer understanding or disclosures that has been undertaken. The Bureau also invites comments on any model notices that industry organizations, consumer groups, academics, or governmental entities have developed. Such information would augment consumer testing the Bureau plans to do in connection with validation notices and other required disclosures.

II. Transfer and Accessibility of Information Upon Sale and Placement of Debts

This Part addresses transfers of information related to debt when debts are sold or placed for collection with third parties. This Part seeks information to assist in the development of proposed rules for creditors, debt buyers, and third-party collectors to create a comprehensive and coherent system for information about debts. Incentives in the marketplace may not be sufficient in some circumstances [70] to result in collectors having adequate information. A comprehensive and coherent system for information about debts would make it more likely that those who demand that consumers pay debts have accurate and complete information bearing on claims of indebtedness. Having accurate and complete information, in turn, would facilitate disclosing information to consumers through validation notices and other methods, as well as assist in preventing false or misleading claims as to who owes debts and how much is owed.

A. Information Transferred Between Debt Owners and Debt Buyers or Third-Party Collectors

Debt owners, collectors, consumer advocates, and the FTC have all raised concerns about the adequacy of information transferred with debts when debts are placed with a collector or sold to a debt buyer. In the 2009 FTC Modernization Report, the Commission identified problems with the flow of information in the debt collection system as a significant issue, noting repercussions from these problems for both debt collectors and consumers.[71] The FTC also observed that technological innovations over the past thirty years have exponentially increased the ability of creditors and

[59] Section 803(6) of the FDCPA, 15 U.S.C. 1692a(6).

[60] Section 803(6) of the FDCPA, 15 U.S.C. 1692a(6).

[61] Section 803(6)(F)(iii) of the FDCPA, 15 U.S.C. 1692a(6)(F)(iii).

[62] Letter from Thomas Kane, Attorney, U.S. Fed. Trade Comm'n, to Richard de Mayo, President & CEO, TSYS Total Debt Management, Inc. (May 23, 2002), *available at http://www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm.*

[63] Section 1002(5) of the Dodd-Frank Act, 12 U.S.C. 5481(5).

[64] Section 1002(7) of the Dodd-Frank Act, 12 U.S.C. 5481(7).

[65] Section 1002(15)(A)(i) of the Dodd-Frank Act, 12 U.S.C. 5481(15)(A)(i).

[66] Section 1002(15)(A)(x) of the Dodd-Frank Act, 12 U.S.C. 5481(15)(A)(x).

[67] Note that in 2009, the FTC said that, because ''neither consumer advocates nor industry representatives [at the FTC's 2007 debt collection workshop] recommended that the FDCPA be generally expanded to cover creditors,'' ''there is no basis in the workshop record for the Commission to assess the costs and benefits of such an expansion of FDCPA coverage, including how such an expansion would affect entities like national backs that are subject to regulation by other federal agencies.'' *2009 FTC Modernization Report* at 2 n.1.

[68] *Defining Larger Participants of the Consumer Debt Collection Market,* 77 FR 65775, 65778 n.28, 65779 (Oct. 31, 2012) (promulgating 12 CFR pt. 1090).

[69] The Bureau notes that under section 815(a) of the FDCPA, it is required to file annual reports with the Congress ''concerning the administration of its functions under [the FDCPA], including such recommendations as the Bureau deems necessary or appropriate.'' 15 U.S.C. 1692m(a). Comments could be useful to the Bureau in fulfilling this statutory requirement.

[70] For example, debt collectors seeking to maximize profits may not acquire sufficient information about the amount of debts. Owners of debts might be able to create or compile additional information that would allow debt collectors to accurately calculate the outstanding balance on debts in all, or virtually all, circumstances. Collectors nevertheless may not acquire this information for various reasons. Collectors often may accept payments for debts that are substantially less than the outstanding balance, so it may not benefit collectors substantially to have additional information that allows them to determine the precise amount of the balance of debts. Even if collectors would benefit from additional information that permits them to calculate the outstanding balance more accurately, the cost to the collector of acquiring this additional information may still exceed its benefit to the collector, while if the benefits to consumers were considered the overall value of the information may exceed the cost.

[71] *2009 FTC Modernization Report* at 21–24.

debt collectors to obtain, store, and transfer data about consumers and their debts.[72]

The Bureau believes that improving the integrity and flow of information within the debt collection system is of critical importance. In addition to the FTC's work, consumer groups have also raised concerns about the lack of information available to debt buyers and third-party collectors.[73] Consumer groups have shed light on the impact that the lack of information has on debt collection litigation, a topic discussed in greater depth in Part VII.[74] Concerns about the adequacy of information available to participants in the system served as the impetus for the recent FTC–CFPB Roundtable that examined the integrity and flow of debt-related information throughout the debt collection system.

With respect to the placement of debts with third-party collectors, participants at the Roundtable stated that the amount of information provided by a debt owner placing a debt with a collector may vary significantly depending on the sophistication of the debt owner and the collector.[75] More sophisticated debt owners and collectors typically share information through electronic interfaces that allow both parties to access data maintained or submitted by either party.[76]

With respect to debt sales, the FTC noted in its 2013 Debt Buyer Report that in addition to the information the FDCPA currently requires debt collectors to include with the validation notices, debt buyers typically receive or are aware of the name of the original creditor,[77] as well as other information such as the original creditor's account number, the debtor's Social Security number, the date of last payment, and the date of charge-off.[78] The Commission's report also examined the transfer and availability of debt-related documents (sometimes referred to as ''media'') when debts are purchased. Examples of such documentation might include electronic copies of original signed agreements, periodic statements, or payment receipts. According to the report, debt buyers obtain few, if any, underlying documents about a debt at the time of purchase.[79] Debt buyers are sometimes able to obtain account documentation for the debts they purchase, but debt sellers often limit or charge for access to those documents.[80] In the absence of this information, debt buyers may try to collect from the wrong consumer or collect the wrong amount.

In sum, it is widely recognized that problems with the flow of information in the debt collection system is a significant consumer protection concern. At the Roundtable, many participants expressed support for national standards related to what information should be transferred with a debt.[81] However, various participants expressed different ideas about what specific information should be transferred.[82] The Bureau is considering using its rulemaking authority to develop requirements related to the transfer of specified information or documents as part of the sale of a debt or the placement of a debt with a third-party collector.

Q1: What data are available regarding the information that is transferred during the sale of debt or the placement of debt with a third-party collector and does the information transferred vary by type of debt (*e.g.,* credit card, mortgage, student loan, auto loan)? What data are available regarding the information that third-party debt collectors acquire during their collection activities and provide to debt owners?

Q2: Does the cost of a debt that is sold vary based on the information provided with the debt by the seller? Are there certain types of debts that are not sold, such as debts a consumer has disputed, decedent debt, or other categories of debt?

Q3: The OCC recently released a statement of best practices in debt sales which recommends that national banks monitor debt buyers after sales are completed ''to help control and limit legal and reputation risk.'' [83] What monitoring or oversight of debt buyers do creditors currently undertake or should they undertake after debt sales are completed or after debts are placed with third parties for collection?

Q4: If debt buyers resell debts, do purchasers typically receive or have access to the same information as the reseller? Do purchasers from resellers typically receive or have access to information or documentation from the reseller or from the original creditor? Do conditions or limitations on purchasers from resellers obtaining information from the resellers or the original creditors raise any problems or concerns?

Information Related to FDCPA Provisions

Q5: To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: Disputes [84] (*e.g.,* that a debt had been disputed, the nature of the dispute, whether the debt had or had not been verified, the manner in which it was verified, and any information or documentation provided by the consumer with the dispute); unusual or inconvenient places or times [85] for communications with the consumer (*e.g.,* at the consumer's place of employment); [86] cease communications requests; [87] or attorney representation [88]? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to

[72] *Id.* at 17.

[73] *E.g.,* Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., *The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts* at 22 (2010), *available at http://www.nclc.org/images/pdf/pr-reports/debt-machine.pdf;* Legal Aid Society, et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* at 5 (2010), *available at http://www.nedap.org/pressroom/documents/DEBT_DECEPTION_FINAL_WEB.pdf.*

[74] *See, e.g.,* New York Appleseed, *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases* at 20, *available at http://ftc.gov/os/comments/debtcollectroundtable3/545921-00031.pdf* (only 1 percent of complaints reviewed ''included any documents relating to proof of the underlying agreement''); *Debt Deception* at 6, 10 (suggesting that 35 percent of debt buyer cases were meritless).

[75] U.S. Bureau of Consumer Fin. Prot. & U.S. Fed. Trade Comm'n, *Roundtable on Data Integrity in Debt Collection: Life of a Debt* at 109 (June 6, 2013) (*Transcript of 2013 FTC–CFPB Roundtable*).

[76] *Id.*

[77] *2013 FTC Debt Buyer Report,* at ii. Under the FDCPA, debt collectors are required to provide the name and address of the original creditor if different from the current creditor to any consumer who requests such information in writing within 30 days of receipt of the validation notice. 15 U.S.C. 1692g(a)(5).

[78] 2013 *FTC Debt Buyer Report* at 34–35. However, the FTC further noted that, in its experience, debt buyers generally do not include these types of information in their validation notices. *Id.* at 36.

[79] *Id.* at 35–36.

[80] *Id.* at 39–40.

[81] *Transcript of 2013 FTC–CFPB Roundtable* at 103, 119, 144, 159, 171, 174, 196.

[82] *Id.* at 26–37.

[83] Office of the Comptroller of the Currency, Statement of the Office of the Comptroller of the Currency Provided to the Subcommittee on Financial Institutions and Consumer Protection Senate Committee on Banking, Housing, and Urban Affairs, *Shining a Light on the Consumer Debt Industry* at 12 (July 17, 2013), *available at http://www.occ.gov/news-issuances/congressional-testimony/2013/pub-test-2013-116-oral.pdf.*

[84] Information about the requirements related to disputes under both the FDCPA and FCRA are discussed below in Part III.B.

[85] Collection at inconvenient places and times is discussed below in Part IV.C.

[86] Collectors contacting consumers at work is discussed below in Part IV.C.

[87] Cease communications requests are discussed below in Part IV.E.

[88] Collector communications with consumers represented by counsel is discussed below in Part IV.C.

debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Additional Information

Q6: To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: The consumer's understanding of other languages (if the consumer has limited English proficiency); the consumer's status as a servicemember; the consumer's income source; or the fact that a consumer is deceased? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Q7: Is there other information that has not yet been mentioned that should be required to be transferred or made available with a debt when it is sold or placed for collection with a third-party collector? What would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this information upon the sale or placement of a debt?

Documentation (Media)

Q8: Please describe debt collectors' access rights to documentation such as account statements, terms and conditions, account applications, payment history documents, etc. What restrictions are most commonly placed on these access rights? Do these restrictions prevent or hinder debt collectors from accessing documentation?

Q9: Part III.A below solicits comment on whether the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be provided to consumers in connection with the validation notice. If these documents are not required in connection with the validation notice, what would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this documentation when the debt is sold or placed for collection?

Q10: Are there other types of documents that would be useful for debt buyers and third-party collectors in their interactions with consumers? What types of documentation would it be most beneficial to consumers for debt buyers to have or have access to? For instance, would it be beneficial to consumers for debt buyers to have: (1) A contract or other statement evidencing the original transaction; (2) a statement showing all charges and credits after the last payment or charge-off; or (3) a charge-off statement? What would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to each of these types of documentation when a debt is sold or placed for collection?

Q11: What privacy and data security concerns should the Bureau consider when owners of debts provide or debt buyers and third-party collectors obtain or obtain access to documentation and information when a debt is sold or placed for collection?

Technological Advances. In the 2009 FTC Modernization Report, the Commission noted that increases in data storage capacity can enable document sharing between creditors and collection agencies, or between creditors and debt buyers.[89] A number of commenters at the recent FTC–CFPB Roundtable also pointed to technological advances as a means to better enable creditors, debt collectors, and debt buyers to share information and documentation.[90] At the same time, centralizing such consumer data raises potential data privacy and security risks, as well as the costs of transferring documents and other information.[91]

Q12: Would sharing documentation and information about debts through a centralized repository be useful and cost effective for industry participants? If repositories are used, what would be the costs and benefits of allowing consumers access to the documentation and information about their debts in the repository and of creating unique identifiers for each debt to assist in the process of tracking information related to a debt? What privacy and data security concerns would be raised by the use of data repositories and by permitting consumer and debt collector access? Would such concerns be mitigated by requiring that repositories meet certain privacy and security standards or register with the CFPB? What measures, if any, should the Bureau consider taking in proposed rules or otherwise to facilitate the debt collection industry's use of repositories? What rights, if any, should consumers have to see, dispute, and obtain correction of information in such a repository?

[89] *2009 FTC Modernization Report* at 17–18.

[90] *Transcript of 2013 FTC–CFPB Roundtable* at 103–04, 120–21, 130–31, 135.

[91] *2009 FTC Modernization Report* at 23.

B. Information Debt Owner, Debt Buyer, or Third-Party Collector Provides to Consumer Upon Sale or Placement of Debt

The FDCPA does not currently require any notification to consumers at the time that a consumer's debt is sold or placed with a third party for collection. Instead, consumers often become aware that their debts have been sold or placed with a third party for collection because they receive a communication to collect the debt or a written validation notice from the debt buyer or third-party collector. Consumers may have difficulty recognizing a debt or knowing whom to pay because a debt may be sold and resold multiple times or placed for collection multiple times with different third-party collectors, with the result that a consumer may receive communications from several debt collectors, possibly naming several debt owners, over a period of several years. Some commenters have suggested that one way to mitigate that confusion would be to require notification to the consumer when a debt is sold or placed for collection.

Q13: Do debt owners, buyers of debt, or third-party collectors currently notify consumers upon sale or placement of a debt, other than through the statutorily-required validation notices or through required mortgage transfer notices?[92]

Q14: What would be the costs and benefits of requiring notification to a consumer when a debt has been sold or placed with a third party for collection? If such a notice were required, what additional information should be provided to the consumer and what would be the costs and benefits of providing such additional information?

Q15: What would be the respective costs and benefits of requiring a debt

[92] Federal consumer financial laws currently require notices to consumers of mortgage transfers. Under the Truth in Lending Act's (TILA's) implementing Regulation Z, a mortgage transfer notice must be sent by each covered person. The transfer notice must include the date of the transfer, contact information for the covered person and an agent or party authorized to receive notice of the right to rescind or resolve issues concerning the consumer's payments on the loan, and whether ownership is or may be recorded in public records or has not been recorded in public records. 12 CFR 1026.39. Further, under the Real Estate Settlement Procedures Act's (RESPA's) implementing Regulation X, a mortgage servicer transfer servicing notice must be sent both by the transferor prior to the transfer, and by the transferee after the transfer (though they can be combined in one notice). That servicing transfer notice must include the effective date of the transfer, the contact information for both servicers, the date on which the transferor will cease accepting payments, and other statements of the consumer's rights. 12 CFR 1024.21. The Regulation Z and Regulation X notices can be combined where applicable. 12 CFR pt. 1026, Supp. I, Comment 1026.39(b)(1)–1.

buyer or a debt owner to provide notice that a debt has been sold? What would be the respective costs and benefits of requiring that a third-party collector or a debt owner provide notice that a debt has been placed with a third party for collection?

III. Validation Notices, Disputes, and Verifications (Section 809 of the FDCPA)

This Part seeks information related to the validation notices provided to consumers and the obligations of debt collectors with respect to consumer disputes. Part III.A discusses the content, form, and delivery of validation notices under the FDCPA. Part III.B solicits comment on the FDCPA dispute process, including the process to submit disputes, the requirements of investigations, and the processes used to verify debts.

A. Validation Notices

FDCPA section 809(a) generally requires a debt collector, within five days of the first communication with a consumer in connection with the collection of any debt, to provide the following information in writing to the consumer:

1. The amount of debt;

2. The name of the creditor to whom the debt is owed;

3. A statement that unless the consumer disputes the validity of the debt or any portion of it within 30 days after receipt of the notice, the debt will be considered to be valid by the debt collector;

4. A statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion of it, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and will mail a copy of such verification or judgment to the consumer;

5. A statement that upon written request within 30 days of the notice, the collector will provide the name and address of the original creditor, if different from the current creditor.

The above notice is typically referred to as the ''validation notice'' or ''g notice'' (since the notice requirement is codified at 15 U.S.C. 1692(g)). Under FDCPA section 809(a), a debt collector is not required to provide this validation notice in writing within five days of the first communication with a consumer in connection with the collection of any debt if (1) the debt collector provided the information that is required in the validation notice in the initial communication to the consumer; or (2) the consumer has paid the debt.[93]

The legislative history of FDCPA section 809 indicates that the principal purpose for the validation notice and related dispute rights was to ''eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.'' [94] Through FDCPA section 809, Congress intended to provide consumers with a means of addressing such mistakes by requiring collectors to provide debtors with some basic information about the alleged debt and about the consumer's right to dispute it. In addition, validation notices educate consumers about their FDCPA rights.[95]

1. Information in Validation Notices Related to Recognizing the Debt

Debt collectors must disclose two pieces of information about the specific debt in validation notices: (1) The name of the creditor to whom the debt is owed, and (2) the amount of the debt. Concerns have been raised by the FTC and consumer groups that this information is not sufficient in many cases to allow consumers to recognize whether the debts being collected are their own because consumers may not recognize the name of the debt buyer that currently owns the debt. In addition, the amount of the debt shown on the validation notice may not be recognizable to consumers because it may differ from the amount of debt that was disclosed on the last periodic statement or billing statement sent by the original creditor because original creditors, debt collectors, and debt buyers sometimes add fees and interest to the amount of the debt that appeared on the last periodic statement, billing statement, or other documentation that consumers received.

a. Current Owner of the Debt

As discussed above, under FDCPA section 809(a), a debt collector must disclose in the validation notice the name of the current owner of the debt.[96]

Q16: Where the current owner of the debt is not the original creditor, should additional information about the current owner, such as the current owner's address, telephone number or other contact information, be disclosed in the validation notice or upon request? Would this information be helpful to consumers so that they may contact the current owner directly about the debt, or about the conduct of its third-party collector?

b. Itemization of Total Amount of Debt

As discussed above, the amount of the debt shown on the validation notice may not be recognizable to consumers because original creditors, debt collectors, and debt buyers sometimes add fees and interest to the amount of the debt that appeared on the last periodic statement, billing statement, or other documentation that consumers received. In its 2009 Modernization Report, the FTC recommended that debt collectors be required to include in all validation notices an itemization of the total debt using the following categories: (1) Principal; (2) total of all interest; and (3) total of all fees and other charges added. The FTC concluded that this itemization would benefit consumers and debt collectors, insofar as consumers would be more likely to recognize debts they have incurred and to identify debts that are not theirs. Once they recognize a debt, consumers might be more willing to discuss payment arrangements. The FTC also stated that debt buyers, in particular, would benefit from obtaining such an itemization of debts they purchase because they must distinguish between principal and interest to prepare Form 1099–C's to comply with section 6050P of the Internal Revenue Code.[97]

For certain types of debts, such as closed-end mortgage loans, the amount of outstanding principal is disclosed on periodic statements for those loans.[98] For other types of debts, such as credit card debts, consumers may not understand the term ''principal'' and how it relates to amounts shown on periodic statements or billing statements provided by the original creditor.[99]

[93] 15 U.S.C. 1692g(a).

[94] S. Rept. 382, 95th Cong. at 4 (1977).

[95] *Jacobson* v. *Healthcare Fin. Services, Inc.,* 516 F.3d 85, 95 (2d Cir. 2008) (validation notices ''make the rights and obligations of a potentially hapless debtor as pellucid as possible''); *see also Wilson* v. *Quadramed Corp.,* 225 F.3d 350, 354 (3d Cir. 2000); *Miller* v. *Payco-Gen. Am. Credits, Inc.,* 943 F.2d 482, 484 (4th Cir. 1991); *Swanson* v. *S. Oregon Credit Serv., Inc.,* 869 F.2d 1222, 1225 (9th Cir. 1988).

[96] 15 U.S.C. 1692g(a).

[97] *2009 FTC Modernization Report* at 29–30.

[98] For example, beginning January 10, 2014, creditors, assignees, and servicers generally will be required under Regulation Z to provide periodic statements for most closed-end consumer mortgage loans secured by a dwelling. 12 CFR 1026.41; 78 FR 10902, 11007 (Feb. 14, 2013). The periodic statements for these loans must include the outstanding principal on the loan. 12 CFR 1026.41(d)(7)(i); 78 FR 10902, 11007 (Feb. 14, 2013).

[99] For example, for credit card accounts or other open-end credit, whether a charge is ''interest'' or a ''fee'' or ''principal'' may change over time, depending on whether the interest or fee is capitalized. For credit card accounts, if interest or fees charged in a billing cycle are not paid by the end of the billing cycle, these charges typically are

Continued

The Bureau specifically solicits comments on the alternatives discussed below for itemizing the total amount of debt. The Bureau also solicits comments on whether there are other alternatives it should consider. For each alternative, the Bureau solicits comment on the benefits and costs of providing each itemization, including the costs for creditors and debt collectors in tracking or collecting data and in providing this itemization on the validation notice. The Bureau also solicits comment on: (1) The types of debts for which or situation in which each alternative would be most useful to consumers and (2) how should relevant terms for each alternative should be defined.

Alternative 1: (1) Principal; (2) interest; and (3) fees and other charges?

Alternative 2: (1) The amount of debt at the date of charge-off or default; (2) total of interest added after the date of charge-off or default; (3) total of all fees or other charges added or credits posted after the date of charge-off or default; and (4) any payments or credits received after the date of charge-off or default.

Alternative 3: (1) The amount due shown on the last periodic statement given for the account; (2) any additional outstanding balance that became due after the closing date of such periodic statement; (3) any interest imposed after the closing date of such periodic statement; (4) any fees or other charges imposed after the closing date of such periodic statement; and (5) any payments or credits received after the closing date of such periodic statement.

Other alternatives.

Q17: Are there other approaches to itemization of the total amount of debt on validation notices that the Bureau should consider, and if so, for what type of debts should this itemization apply? For example, the Bureau recognizes that the three alternatives described above might work best for credit-based debt. Are there other approaches that might work better for other types of debts? Are there advantages to consistency in itemization across different types of debt or would it be more helpful, for consumers and collectors alike, to require different itemizations standards depending on the type of debt? Or could a standard set of information be required, with certain augmentation for specific types of debt?

c. Additional Information

Q18: What additional information should be included in the validation notice to help consumers recognize whether the debts being collected are owed by them or respond to collection activity? For example, which of the following pieces of information would be most useful to consumers?

- The name and address of the alleged debtor to whom the notice is sent
- The names and addresses of joint borrowers
- A partial Social Security number of the alleged debtor
- The account number used by the original creditor or a truncated version of the account number
- Other identifying information
- The name of the original creditor (if different from current owner)
- The name of the brand associated with the debt, where different from the original creditor (*e.g.,* the name of a retail partner on a private label or co-branded credit card, or the name of the person providing the periodic statement for closed-end mortgages)
- The name of the doctor, medical group, or hospital for medical bills ancillary to their provision of services (*e.g.,* a testing laboratory)
- Type of debt (*e.g.,* student loan, auto loan, etc.)
- Date and amount of last payment by the consumer on the debt
- Copy of last periodic statement

To what extent is this information available to debt collectors and debt buyers and what would be the cost of requiring that it be included in the validation notice? What privacy concerns would be implicated by providing any of this information (*e.g.,* the name and addresses of joint borrowers, partial Social Security numbers, and account numbers) and how might the Bureau address such concerns?

2. Statements of Consumers' Rights Set Forth in the FDCPA

Under FDCPA section 809(a), debt collectors must disclose in the validation notice two statements regarding the consumer's right to dispute the debt. Specifically, the validation notice must include a statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion of it, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and will mail a copy of such verification or judgment to the consumer. The validation notice must also include a statement that unless the consumer disputes the validity of the debt or any portion of it within 30 days after receipt of the notice, the debt collector will consider the debt valid.

Q19: Are the statements currently provided to consumers regarding these FDCPA rights understandable to consumers? If consumers do not understand the statements that collectors currently include on validation notices as to their FDCPA rights, please provide suggested language for how these statements should be changed to make them easier to understand.

The FDCPA does not require debt collectors to notify consumers that: (1) Disputing a debt will suspend collection until it is verified, and (2) consumers can request that collectors cease communicating with them. In its 2009 Modernization Report, the FTC noted that few, if any, debt collectors appear to voluntarily disclose this information to consumers. [100]

Q20: Should consumers be informed in the validation notice that, if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing? Would any other information be useful to consumers in understanding this right? Should consumers be informed in the validation notice of their right to request that debt collectors cease communication with them?

Q21: Are there any other rights provided in the FDCPA that should be described in the validation notices? For example, would it be helpful to consumers for the validation notice to state that the consumer has the right to refer the debt collector to the consumer's attorney, to inform a debt collector about inconvenient times to be contacted, or to advise the collector that the consumer's employer prohibits the consumer from receiving communications at work? If so, please identify the costs and benefits of including each right that should be included in the validation notices.

Q22: What would be the costs and benefits of disclosing FDCPA rights in the validation notice itself, as opposed to the Bureau developing a separate ''summary of rights'' document that debt collectors would include with validation notices? [101]

3. Format and Delivery of Validation Notices

a. Format

FDCPA section 809(a) does not impose formatting requirements for

added to the outstanding balance as principal. Creditors typically do not label the outstanding account balance on periodic statements given for credit card accounts or other open-end credit using the term ''principal.''

[100] *2009 FTC Modernization Report* at 26.

[101] *See* 12 CFR pt. 1022, App. K for an example of a stand-alone document summarizing rights under the FCRA.

validation notices, such as form, sequence, location, grouping, segregation, or type-size requirements for the information in the notice.[102] In addition, FDCPA section 809(a) does not expressly prohibit debt collectors from adding language to the written validation notice with the mandatory disclosures. Nevertheless, FDCPA section 809(b) expressly states that ''[a]ny collection activities and communication during the 30-day period [to dispute the debt] may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.'' [103]

Debt collectors typically add language to the written validation notice along with the mandatory disclosures, such as a demand for payment.

Q23: What additional information do debt collectors typically include on or with validation notices beyond the mandatory disclosures? Do debt collectors typically include State law disclosures on the validation notices? If so, do debt collectors typically use a validation notice that contains the State law disclosures from multiple States, or do debt collectors typically tailor validation notices for each State?

b. Foreign Language Notices

According to the U.S. Census, approximately 34 million Americans speak Spanish at home. Of those, approximately 10 million speak English less than ''well,'' making it the largest linguistic population with limited English proficiency (LEP) in the United States.[104] Many other LEP consumers speak languages at home other than Spanish, but no other individual language is nearly as prevalent.[105]

Recognizing that only providing forms and notices in English may impede these populations' ability to understand written material, some financial service providers, including debt collectors, apparently provide forms and notices in languages other than English. For example, some providers will convey disclosures to a consumer in Spanish if the consumer initiated the credit application in Spanish. Other providers may allow consumers to choose the language they would like to use in communicating with collectors.

Q24: How common is it for collectors to communicate with consumers or provide validation notices in languages other than English?

Q25: If collectors were sometimes required to provide validation notices in languages other than English, what should trigger that obligation? For example, should it be triggered by the request of the consumer, by information from the original creditor indicating that the consumer communicated in a language other than English, by the language used in the original credit contract, or by information gathered by the collector during the course of its dealing with the consumer? What would be the costs of requiring validation notices in languages other than English using each of these triggers?

c. Method of Delivery of Validation Notices

(1) Electronic Delivery of the Validation Notice

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) prescribes a procedure by which firms may provide to consumers electronically disclosures that are required to ''be provided or made available to a consumer in writing.'' In essence, that statute requires affirmative consent from consumers to receiving disclosures electronically after they demonstrate they can access the disclosure electronically and after they have been informed of their right to a paper copy.[106] The statute also gives Federal regulatory agencies the ability to interpret, within certain limits, the E-Sign Act with respect to other statutes over which they have rulemaking authority.[107]

Q26: Do collectors currently provide validation notices to consumers electronically? If so, in what circumstances, by what electronic media (*e.g.,* email), and in what format (*e.g.,* PDF, HTML, plain text)?

Q27: Does the consent regime under the E-Sign Act work well for electronic delivery of validation notices? If a consumer consents to electronic disclosures pursuant to the E-Sign Act prior to the account being moved to collection, are debt collectors currently requiring E-Sign consent again when the account moves into collection? When the account is sold or placed with a new collector, is the new collector currently requiring a new E-Sign consent? If a consumer consents to electronic correspondence, what process do debt collectors currently require to revoke this consent?

(2) Consumers' Use of Electronic Means To Fulfill Writing Requirements for Exercising Rights Described in Validation Notice

To be effective under FDCPA section 809(a)(4), a consumer's right to dispute the debt must be exercised in writing.[108] Likewise, under FDCPA section 809(a)(5), the collector must provide the consumer with the name of the original creditor only if the consumer submits a written request within 30 days after receiving a validation notice.[109] Also, under FDCPA section 805(c), consumers can request in writing that collectors cease communicating with them. The purpose of requiring that such communications be in writing appears to be to establish a written record of the request.

Q28: Do debt collectors currently treat emails, text messages, or other forms of electronic communications as satisfying the ''in writing'' requirement to exercise the three rights described above? If so, what would be the costs and benefits of treating them as satisfying the ''in writing'' requirement?

(3) Consumer Testing of Validation Notices

Q29: Have industry organizations, consumer groups, academics, or governmental entities developed model validation notices? Have any of these entities or individuals developed a model summary of rights under the FDCPA that is being given to consumers to explain their rights, or a model summary of rights under State debt collection laws? Which of these models, if any, should the Bureau consider in developing proposed rules?

Q30: Is there consumer testing or other research concerning consumer understanding or disclosures relating to validation notices that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

B. Disputes and Verification

The adoption of standards for transferring information about debts and for compiling and presenting clarified and enhanced validation notices may make it more likely that collectors will try to collect the correct amounts from the correct consumers. Currently, there are many circumstances in which consumers deny or question that they are the debtor, that they owe the debt, or that the amount sought is accurate, as

[102] The FTC in its Commentary indicated that an illegible notice, however, does not comply with FDCPA section 809. FTC Commentary section 809(a), comment 3.

[103] 15 U.S.C. 1692g(b).

[104] *See* U.S. Census Bureau, *Language Use, available at http://www.census.gov/hhes/socdemo/language/.*

[105] For example, LEP consumers speaking Chinese, Korean, and Vietnamese, the next three largest LEP linguistic populations, number in the hundreds of thousands. *Id.*

[106] 15 U.S.C. 7001(c)(1).

[107] 15 U.S.C. 7004(b).

[108] 15 U.S.C. 1692g(a)(4).

[109] 15 U.S.C. 1692g(a)(5).

evidenced by the significant volume of these complaints to the FTC and the Bureau.

Under the FDCPA, consumers have the right to dispute and receive verification of the debts that collectors attempt to collect and many consumers exercise this right.[110] Section 809(b) of the FDCPA provides that if a consumer disputes a debt in writing within 30 days of receiving the validation notice, a debt collector must stop collection of the debt until the collector obtains verification of the debt or a copy of a judgment against the consumer and mails it to the consumer.[111] The FDCPA does not elaborate on the standards for investigating a dispute, nor does it expressly define what constitutes ''verification of the debt.''

The Bureau is interested in information bearing on the adequacy of current practices to investigate collection disputes and verify the debt under the FDCPA. According to the 2009 FTC Modernization Report, ''many collectors currently do little more to verify debts than confirm that their information accurately reflects what they received from the creditor,'' which is unlikely to reveal whether collectors are trying to collect from the wrong consumer, collect the wrong amount, or otherwise misrepresent the debt.[112] The FTC further noted that to verify a debt, some debt collectors only provide consumers with a written statement that the amount being demanded is what the creditor claims is owed. To address these concerns, the FTC recommended that if a consumer disputes a debt, the debt collector should be required to undertake a ''reasonable'' investigation that is responsive to the specific dispute raised by the consumer.[113] At the recent FTC–CFPB Roundtable, a number of participants raised similar concerns about the limited investigations collectors conduct when consumers dispute debts.[114]

1. Definition, Types, and Timing of Disputes

Q31: What types of consumer inquiries do debt collectors currently treat as ''disputes'' under the FDCPA? What standards do debt collectors currently apply in distinguishing disputes from other types of consumer communications? What data exist to indicate the percentage of debts that are disputed, and what definition of ''dispute'' is being used to arrive at this percentage? What data exist to indicate how disputes are resolved by debt collectors?

Q32: Are certain types of debts (*e.g.,* credit card vs. student) disputed at higher rates than others? Do dispute rates differ between debts being collected by debt buyers versus those being collected by third-party collectors?

Q33: What data or other information are available regarding how disputed debts are resolved? What percentage of disputed debts are verified? What percentage of debt disputes are never investigated? Where disputes are investigated, what percentage of the investigations reveal that there was an error?

Q34: Should the Bureau define or set standards for what communications must be treated as ''disputes'' under the FDCPA and, if so, how? What are the advantages and disadvantages of the definition recommended?

Dispute Requirements

Regulation V sets standards for the consumer's direct dispute notice under the FCRA. This notice must include: (1) Sufficient information to identify the account or other relationship that is in dispute; (2) the specific information that the consumer is disputing and an explanation of the basis for the dispute; and (3) all supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute.[115]

Q35: Should consumers be required to provide particular information or documentation as part of their disputes to debt collectors to trigger an investigation requirement under the FDCPA? What would be the costs and benefits of requiring that consumers provide the same or similar information as required under the FCRA when making disputes directly to debt collectors? Should a consumer's obligation to provide this information about the basis for their disputes be contingent on having received a validation notice with requisite information? Why or why not?

Types of Disputes. Consumers apparently dispute debts for various reasons, such as disputing that they are the debtor or the amount of the debt. With respect to the amount of the debt, the consumer also might dispute more specific issues relating to the debt owed, such as the charges comprising a credit card balance, the fees applied after default, the application of past payments, or the interest calculation.

Q36: Do consumer disputes typically specify what is being disputed, or do consumers simply make general statements that they dispute the debt? If consumers do make specific statements, are those statements typically relevant to the consumer's particular circumstances or the alleged debt, or do they typically appear to be unrelated to the consumer's particular circumstances or the alleged debt? What types of specific disputes are most commonly received by debt collectors (*e.g.,* identity theft, wrong amount, do not recognize the debt, previously paid, previously disputed)?

Timing. Although a consumer can dispute a debt at any time, only a written dispute sent within 30 days of receipt of the validation notice triggers a debt collector's requirement to stop collection activities and provide

[110] 15 U.S.C. 1692g. Although the Bureau is not aware of any comprehensive data regarding what percentage of debts are disputed, the data available indicate that a significant number of consumers avail themselves of their FDCPA dispute rights each year. In its 2013 Debt Buyer Report, the FTC found that consumers disputed 3.2 percent of all accounts on which debt buyers attempted to collect themselves. The FTC noted that this dispute figure likely underestimated the prevalence of information problems, but that if it were applied across the entire debt buying industry, it would result in about one million disputed debts per year. *2013 FTC Debt Buyer Report* at iv. The total number of disputed debts for the entire debt collection industry is likely to be substantially higher because it would include disputes of debt on which third-party collectors, not just debt buyers, seek to recover.

[111] 15 U.S.C. 1692g(b). Notably, the FDCPA contains other provisions related to consumer disputes that are not dependent upon when the debt was disputed or whether the dispute was made in writing. For example, section 807(8) requires that a debt collector communicate that a debt is disputed if it shares credit information about that debt, and section 810 provides that if a consumer owes multiple debts and makes a single payment, a debt collector cannot apply the payment to a disputed debt. 15 U.S.C. 1692e(8), 1692h. In addition to obligations under the FDCPA related to disputes, debt collectors that furnish information on debts to CRAs are also subject to dispute obligations under the FCRA, which imposes different requirements than the FDCPA.

[112] *2009 FTC Modernization Report,* at v.

[113] *Id.* Recent FTC consent orders have also addressed the issue of how collectors subject to such orders must investigate debt disputes in the future. For example, the FTC's recent *Expert Global Solutions* consent order defines how the debt collector defendant must conduct each investigation, and includes consideration of specific information from the original creditor, the alleged debtor, third parties such as skip tracers, and from its own systems. Stipulated Order at 5–6, *United States* v. *Expert Global Solutions, Inc.,* No. 3–13CV2611–M (N.D. Tex. Jul. 16, 2013), *available at http://www.ftc.gov/os/caselist/1023201/130709ncoorder.pdf.* The *Asset Acceptance* consent order also stipulates certain requirements for completing an investigation, such as considering whether ''other accounts in a particular portfolio have been disputed by consumers for similar reasons at disproportionately high rates'' or whether ''a disproportionately high number of accounts in a particular portfolio have been supplemented by data from third-party sources.'' Consent Decree at 9, *United States* v. *Asset Acceptance, LLC,* No. 8:12–CV–182–T–27EAJ (M.D. Fla. Jan. 30, 2012), *available at http://www.ftc.gov/os/caselist/0523133/120131assetconsent.pdf.*

[114] *Transcript of the 2013 FTC–CFPB Roundtable* at 189, 191, 204.

[115] 12 CFR 1022.43(d).

verification of the debt. The FDCPA does not impose a time limit for a debt collector to respond to a dispute; it only requires that the collector must cease collection until it provides verification of the debt. At the recent FTC–CFPB Roundtable, some industry participants stated that debt collectors typically honor disputes that are received after the 30-day time period by stopping collection on the account, although it was unclear the extent to which those disputes are investigated or the debts verified.[116]

Q37: What practices do debt collectors follow when they receive a dispute after the 30-day period following receipt of the validation notice has expired? Do collectors usually follow the same verification procedures as for disputes that are received during the 30-day period? What would be the potential costs and benefits of a debt collector following the same investigation and verification procedures for disputes received after the 30-day period relative to disputes received within the 30-day period?

Q38: How long does it typically take after a debt has been disputed for the collector to investigate and provide verification to the consumer? Would establishing a specific time period for responding to a dispute be beneficial to consumers? Does the prohibition on collection until verification has been provided give collectors a sufficient incentive to investigate expeditiously and appropriately? What costs and burdens would establishing a specific deadline for an investigation impose?

2. Investigation of Disputed Debts

Under section 809(b) of the FDCPA, after receiving a consumer dispute, a debt collector may either cease collection efforts without investigation or may investigate the dispute with the intent of providing verification to the consumer.[117] The FDCPA does not detail how a collector must investigate a dispute. Several commenters have raised concerns that some debt collectors state that they have verified the debt to the extent the FDCPA requires[118] when, in fact, the collector has done little or nothing to investigate the disputes and verify the debts.

The FTC has recommended that debt collectors be required to conduct ''reasonable'' investigations under the FDCPA, noting that such a standard would be consistent with the FCRA.[119] In the FTC's view, adopting a ''reasonable investigation'' standard would decrease consumer concerns about mistaken collection attempts, but also respond to collection industry requests for flexible standards.[120]

Q39: What steps do collectors take to investigate a dispute under the FDCPA? Do collectors request information from the debt owner or any other parties? Do they look beyond confirming that the information contained in the validation notice is consistent with their records? Are the steps debt collectors are taking adequate?

Q40: What steps should debt collectors be required to take to investigate a dispute? Would a ''reasonableness'' standard benefit consumers and debt collectors? Would more specific standards or guidance be useful to help effectuate such a standard? For example, should debt collectors be required to review account-specific documents upon receiving the consumer's dispute? Should debt collectors be required to consider the accuracy and completeness of the information with a portfolio of accounts, including whether the information is facially inaccurate or incomplete? Should debt collectors be required to consider the nature and frequency of disputes they have received about other accounts within the same portfolio?

Q41: How should the investigation required vary depending on the type of dispute? For example, if a consumer states the balance on a debt is incorrect, what information should a debt collector review for its investigation? If a consumer states that she is not the alleged debtor, what information should a debt collector be required to obtain or review? If a consumer disputes the debt by stating that she does not recognize it, what information should a debt collector obtain or review? If the consumer claims prior payment of the debt, what information should a debt collector obtain or review? Please comment on other common dispute scenarios that may require review of specific types of information.

FCRA Obligations. In addition to their obligations under the FDCPA, debt collectors who furnish information to CRAs are subject to obligations to investigate disputes submitted directly to them by consumers (''direct disputes'')[121] and submitted to them through CRAs.[122] The FCRA contains an exception from the investigation requirement for certain disputes that are deemed ''frivolous and irrelevant,'' an exception for which there is no parallel in the FDCPA. A debt collector may treat a FCRA dispute submitted by a consumer directly to the collector as ''frivolous and irrelevant'' if the consumer does not provide sufficient information to investigate the dispute, the dispute is substantially the same as a previously submitted dispute that has already been investigated, or it falls within one of several other exceptions, including an exception for disputes the furnisher reasonably believes are submitted or prepared by a credit repair organization.[123] If the direct dispute is treated as frivolous and irrelevant, the FCRA and Regulation V require the collector to provide the consumer with a notice of that determination.[124]

Q42: What percentage of debt collectors are ''furnishers'' under the FCRA? How many FCRA disputes do debt collectors receive? What percentage of FDCPA disputes do collectors treat as direct disputes under the FCRA? How do debt collectors fulfill their responsibilities to investigate disputes that are covered by both the FDCPA and the FCRA? To what extent do debt collectors stop collecting debts disputed pursuant to the FDCPA and the FCRA without investigation? To what extent do debt collectors stop reporting debts disputed pursuant to the FDCPA and the FCRA without investigation?

Q43: What percentage of disputes are repeat disputes that were already subject to a reasonable investigation and do not include any new information from consumers? How do debt collectors currently handle repeat disputes or disputes that are unclear or

[116] *Transcript of 2013 FTC–CFPB Roundtable* at 183.

[117] 15 U.S.C. 1692g(b).

[118] *See, e.g., Chaudhry* v. *Gallerizzo,* 174 F.3d 394, 406 (4th Cir. 1999) (''[V]erification of debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed. . . . Verification is only intended to 'eliminate the problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.' '')

[119] *2009 FTC Modernization Report* at 33.

[120] *Id.* at 34.

[121] 12 CFR 1022.43.

[122] 15 U.S.C. 1681s–2(b). Although section 623(b)(1)(A) does not specifically state that a furnisher must conduct a ''reasonable'' investigation upon learning of a dispute from a CRA, courts applying the provision have consistently adopted a ''reasonable investigation'' standard. *See, e.g., Gorman* v. *Wolpoff & Abramson, LLP,* 584 F.3d 1147 (9th Cir. 2009); *Westra* v. *Credit Control of Pinellas,* 409 F.3d 825, 827 (7th Cir. 2005); *Johnson* v. *MBNA Am. Bank, NA,* 357 F.3d 426, 431 (4th Cir. 2004); *King* v. *Asset Acceptance, LLC,* 452 F. Supp. 2d 1272, 1278 (N.D. Ga. 2006).

[123] 15 U.S.C. 1681s–2(a)(8)(F)–(G); 12 CFR 1022.43(b), (f). The FCRA also contains an exception from the investigation requirements for disputes submitted to CRAs that are deemed ''frivolous and irrelevant.'' 15 U.S.C. 1681i(a)(3).

[124] 15 U.S.C. 1681s–2(a)(8)(F); 12 CFR 1022.43(f). Similarly, when a CRA treats a dispute as ''frivolous and irrelevant,'' the FCRA requires the CRA to provide the consumer with a notice of that determination. 15 U.S.C. 1681i(a)(3)(B).

incomplete? Do debt collectors receive a significant number of disputes from credit repair organizations? Is any data available as to the number of repeat disputes or disputes from credit repair organizations that debt collectors receive?

Q44: Should the Bureau consider including in proposed rules for debt collection an exception for ''frivolous and irrelevant'' disputes, similar to the one found in the FCRA? Are the incentives of those collecting on debts different from the incentives of other furnishers and CRAs with respect to information included on consumer reports? What would be the costs and benefits of allowing collectors not to investigate ''frivolous and irrelevant'' disputes?

3. Verification of Disputed Debts

Congress intended the dispute and verification process in FDCPA section 809(b) to address the problem of debt collectors collecting from the wrong person or collecting the wrong amount.[125] As noted above, the FDCPA does not define what constitutes proper verification of a debt, and some commenters have interpreted court decisions as holding that section 809(b) does not require debt collectors to undertake substantial efforts to verify a disputed debt.[126] In one case addressing this issue, *Chaudhry v. Gallerizzo,* the Fourth Circuit stated that ''verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt.'' [127] Based upon this statement, some debt collectors believe that verification requires nothing more than providing consumers with a written statement that the amount being demanded is the amount the creditor claims is owed.[128] However, other commenters have pointed out that, in the *Chaudhry* case, the debt collector had already verified the amount of the debt with the creditor; broken out that amount into principal, interest, and inspection fees; and forwarded bank summaries of consumers' loan transactions that included a description of and the date of each transaction.

In the 2009 FTC Modernization Report, the Commission noted that some debt collectors currently respond to verification requests only by confirming in writing that the amount demanded is what the creditor claims is owed.[129] A number of consumer advocates have recommended that debt collectors should be required to provide consumers with verification that is responsive to the consumer's specific dispute.[130] For example, if a consumer raises a claim of identity theft, the debt collector should provide verification that relates to the consumer's identity. Some debt collection industry representatives have stated that any requirements to provide more substantial verification should be flexible enough to account for different types and ages of consumer debt.

Under the FCRA, if a consumer continues to dispute information appearing in her consumer report with a CRA after an investigation is completed, the consumer may file a brief statement with the CRA setting forth the nature of the dispute.[131] Under the FCRA, a CRA is required to include this statement or a clear and accurate summary of the statement in any subsequent reports about the consumer.[132]

Q45: What information do debt collectors currently provide to verify a disputed debt? Do debt collectors typically provide documentation (media) to consumers to verify a debt?

Q46: Under which circumstances, if any, should collectors be required to provide consumers with documentation (media) to verify a debt? Would providing the last periodic or billing statement related to the account be sufficient to verify most disputed debts?

Q47: What would be the costs and benefits of requiring particular forms of information to verify a debt? Are there any particular types of verification that would be especially beneficial to consumers or particularly costly for collectors to provide?

Q48: Section 809(b) of the FDCPA states that verifications must be ''mailed'' to the consumer.[133] Do debt collectors currently provide the verifications only by postal mail, or are debt collectors providing verifications in other formats, such as email or text message? Do collectors obtain consumer consent if they wish to provide the verification electronically and, if so, what type of consent are they obtaining (*e.g.,* do they follow E-Sign standards)?

Q49: If consumers disagree with the verification of disputed debts provided by debt collectors, or if they do not receive verification of the disputed debts, should consumers be afforded the opportunity to file statements with collectors that explain the nature of their disputes with the debt collector, and should the debt collector then be required to provide that statement to the owner of the debt or subsequent collectors? What would be the costs and benefits of requiring debt collectors to accept and communicate consumers' statements of dispute?

Unverified Debts. The 2013 FTC Debt Buyer Report found that debt buyers did not verify nearly 50 percent of disputed debts.[134] The following types of debts were less likely to be verified than others: medical, telecommunications, and utility debts; debts purchased from another debt buyer rather than from the creditor; and debts more than six years old. In comparison, credit card debt, debt purchased from the creditor rather than from another debt buyer, and debt less than three years old were more likely to be verified.[135] The study also found that at least some debt buyers sold a small percentage of debt with unresolved disputes.[136] One participant at the recent FTC–CFPB Roundtable stated that many creditors and collectors refrain from selling or collecting on any debts with unresolved disputes.[137] The Debt Buyers Association has commenced a certification program that prohibits the sale of disputed debts that are unresolved.[138] Under the FCRA, debt owners are prohibited from selling a debt or placing it for collection if a CRA notifies the owner that the debt resulted from identity theft.[139] The FCRA also contains a prohibition on furnishing information related to an account disputed by a consumer without noting for the CRA that such information is disputed.[140]

Q50: To what extent do debt collectors attempt to verify a debt that is disputed? What do debt collectors currently do when they are unable to verify a disputed debt? What, if anything, should debt collectors be required to do when they are unable to verify a disputed debt? Do third-party collectors typically return the account to the debt owner when it is disputed, without attempting to verify it?

[125] *See* S. Rept. 382, 95th Cong., at 4 (1977); 94 Cong. Rec. H7789 (1976).

[126] *See 2009 FTC Modernization Report* at 31.

[127] *Chaudhry* v. *Gallerizzo,* 174 F.3d 394, 406 (4th Cir. 1999).

[128] *2009 FTC Modernization Report* at 32.

[129] *Id.* at 32.

[130] *Id.* at 33.

[131] 15 U.S.C. 1681i(b).

[132] 15 U.S.C. 1681i(c).

[133] 15 U.S.C. 1692g(b).

[134] *2013 FTC Debt Buyer Report* at 40.

[135] *Id.* at 40–41.

[136] *Id.* at 41.

[137] *Transcript of 2013 FTC–CFPB Roundtable* at 224.

[138] DBA Int'l, *DBA Int'l Debt Buyer Certification Program, Certification Standards Manual* at 8, *available at http://www.dbainternational.org/certification/certificationstandards.pdf.*

[139] FCRA section 615(f), 15 U.S.C. 1681m(f).

[140] FCRA section 623(a)(3), 15 U.S.C. 1681s–2(a)(3).

Q51: If a debt collector's investigation reveals errors or misrepresentations with respect to the debt, do collectors report those findings to the consumer? When and how are such findings conveyed to consumers?

Q52: Do owners of debts sell disputed but unverified debts to debt buyers or place them with new third-party collectors? Are these debts reported to CRAs? What limitations should be placed on the sale or re-placement of unverified disputed debts? For example, should the owner of the debt or the collector be required to inform debt buyers and new collectors that it is an unverified disputed debt when it is sold or re-placed? Should the new debt buyer or collector be required to verify the debt before making collection efforts? What would be the potential costs and benefits of such restrictions or conditions?

4. Reporting of Un-Validated Debts

Section 809(b) of the FDCPA provides for a 30-day window after the collector first contacts the consumer about the alleged debt in which the consumer may dispute or request verification of the debt.[141] The FTC's Staff Commentary states that collectors may report a debt to a CRA within the 30-day window, as long as the consumer has not yet disputed the debt.[142]

Q53: What would be the costs and benefits of prohibiting collectors from reporting a debt to a CRA during the 30-day window?

IV. Debt Collection Communications (Sections 804 and 805 of the FDCPA)

Many provisions of the FDCPA regulate debt collectors' communications with consumers and third parties. For example, debt collectors are generally prohibited from contacting consumers at unusual times or places, from disclosing collection-related information to third parties, and from communicating with consumers that have asked the collector to cease communications.[143] The FDCPA also governs communications in which a debt collector seeks location information about a consumer from a third party.[144] These provisions focus on preventing consumer harm in debt collection communications.

Despite the FDCPA's protections, consumers still consistently report abuses focusing on debt collection communications. For example, the FDCPA prohibits collectors from calling consumers ''repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.'' [145] Nevertheless, the most frequent debt collection-related complaint in the FTC's Consumer Sentinel database is that a collector is calling repeatedly or continuously, conduct in which collectors may be engaged to annoy, abuse, or harass the recipients of these calls.[146] A 2009 survey conducted by Ohio University similarly found that approximately one-third of survey respondents had received multiple calls from a debt collector in a pattern that seemed to them to be harassment.[147] Other communications-related concerns include calling hours, communications at the workplace, and inappropriate communications with friends and family. Consumers also file many lawsuits alleging that collectors have engaged in communication practices that are prohibited by the FDCPA.

The Bureau seeks comment on how rulemaking with respect to communications in debt collections could help both consumers and the industry. Part IV.A discusses recent advances in communications technologies, including social media, and their potential implications for debt collection practices. Part IV.B discusses communications soliciting location information from third parties about consumers, including when collectors may reinitiate contact with a third party and how collectors identify themselves in location communications. Part IV.C discusses issues regarding communications between debt collectors and consumers, including the times and places that are unusual or inconvenient for consumers, and issues specific to military servicemembers. Part IV.D addresses communications between debt collectors and third parties, including issues regarding decedent debt, caller ID, and recorded messages. Finally, Part IV.E discusses the right for consumers to cease communications from a debt collector, including the consumer's ability to limit communications to certain media or certain times of day.

A. Advances in Communications Technologies

The debt collection landscape has changed dramatically since the FDCPA was enacted in 1977. Perhaps the greatest transformations have occurred in the technologies that debt collectors and debt owners use to communicate with consumers. The statute itself contemplates communications via telephone, postal mail, and telegraph, but it does not reflect the advent of the internet, smartphones, autodialers, fax machines, and social media. These newer technologies present new challenges and new opportunities.[148] The challenges often arise when attempting to apply the FDCPA's prohibitions to a technology that was not envisioned at the time of its enactment and may not easily fit its statutory framework. Nonetheless, these technologies also create new opportunities for consumers, debt collectors, and debt owners to communicate in ways that may be more convenient and less costly than prior methods.

Q54: In addition to telephone and mail, what technologies, if any, do debt collectors currently use on a regular basis to communicate or transact business with consumers? For which technologies would it be useful for the Bureau to clarify the application of the FDCPA or laws regarding unfair, deceptive, or abusive acts or practices? What are the potential efficiencies or cost savings to collectors of using certain technologies, such as email or text messaging? What potential privacy, security, or other risks of harm to consumers may arise from those technologies and how significant are those harms? Could regulations prevent or mitigate those harms? Should consumers also be able to communicate with and respond to collectors through such technologies, including to exercise their rights under the FDCPA and particularly when a collector uses the same technology for outgoing communications to the consumer? What would be the potential costs and benefits of such regulations?

Q55: Are there nascent communication technologies, or communication technologies that are

[141] 15 U.S.C. 1692g(b).

[142] FTC Staff Commentary on FDCPA section 809(b), comment 1. At least one State, Colorado, prohibits collectors from reporting a debt to a CRA during the 30-day validation period. *See* Colo. Rev. Stat. 12–14–108(1)(j). The reasoning behind such a statute apparently is that such a prohibition gives consumers the opportunity to dispute debts before they are reported and appear on their credit reports. The Colorado statute provides some exceptions, such as when the consumer's last known address is known to be invalid.

[143] 15 U.S.C. 1692c(a)(1), (b), (c).

[144] 15 U.S.C. 1692b.

[145] Section 806(5) of the FDCPA, 15 U.S.C. 1692d(5).

[146] *2013 FDCPA Annual Report* at 16–17.

[147] Scripps Survey Research Ctr., Ohio Univ., *Survey: SHOH42* (Sept. 26, 2009), *available at http://www.newspolls.org/surveys/SHOH42/22540* (Question: Have you or your family ever received multiple calls from a debt collection agency, so many that it seemed to you to be harassment? Answers: Yes 32%; No 66%; Don't know 2%).

[148] In 2009, the FTC published a report that focused in part on the issues raised by changes in debt collection technologies. *See 2009 FTC Modernization Report.*

likely to arise in the future, whose use in connection with debt collection might materially benefit or harm debt collectors or consumers? What additional challenges do those communication technologies present in applying the FDCPA or the Dodd-Frank Act's prohibition against unfair, deceptive, and abusive acts and practices to debt collectors?

Q56: What complications or compliance issues do social media present for consumers or collectors in the debt collection process? How, if at all, should collector communications via social media be treated differently from other types of communications under debt collection rules? What privacy concerns are raised by various social media platforms?

Q57: FDCPA section 807(11) declares it to be a false, deceptive, or misleading representation for collectors to fail to disclose that a communication is from a debt collector. This section also requires in the collector's initial communication what is often called a ''mini-Miranda'' warning, in which the collectors state that they are attempting to collect a debt and any information obtained will be used for that purpose. Standard industry practice is for third-party debt collectors to provide the mini-Miranda warning during every collection call. What are the costs and benefits of such collectors including the mini-Miranda disclosure when they send communications via social media?

B. Communications To Locate Debtors (Section 804 of the FDCPA)

Collectors are generally prohibited from communicating with third parties regarding the collection of a debt, but one exception is location communications.[149] Location communications are permitted under FDCPA section 804 and used by collectors to obtain or update contact information for consumers. That section, for instance, requires a debt collector making location calls to ''identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer'' but not state that the consumer owes any debt.[150] Collectors are also limited to one location communication with a person unless, inter alia, ''the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.'' [151]

Q58: How frequently do debt collectors communicate with third parties about matters other than the location of the consumer? What other topics are discussed and for what reason? What are the potential risks to consumers or third parties? Would additional regulation to address this issue be useful?

Q59: What would be the costs and benefits of setting a standard for when a debt collector's belief about a third party's erroneous or incomplete location information is reasonable? If a standard would be useful, what standard would be appropriate? [152]

Q60: Some individuals employed by debt collectors use aliases to identify themselves to third parties when seeking location information about a consumer. Should this practice be addressed in a rulemaking? If so, how?

Q61: Under FDCPA section 804(1), debt collectors are permitted to identify their employers during location communications only if the recipient of the communication expressly requests that information. Does providing the true and full name of the collector's employer upon request risk disclosing the fact of the alleged debt to a third party? If so, how could the risk be minimized? What would be the costs and benefits of minimizing or otherwise addressing this risk?

Q62: FDCPA section 804(5) bars a debt collector from using any language or symbol on an envelope or elsewhere in a written communication seeking location information if the name indicates that the collector is in the debt collection business or that the communication relates to the collection of the debt.[153] How should such a restriction apply to technologies like email, text message, or fax?

C. Communications With Consumers (Section 805(a) of the FDCPA)

1. Unusual or Inconvenient Times

a. Traditional Communications Technologies (Phones)

Section 805(a) of the FDCPA sets parameters on collector communications with consumers, including a bar on contacting consumers at ''any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.'' [154] The statute further states, ''In the absence of knowledge to the contrary, a collector shall assume that a convenient time for communicating with a consumer is'' between 8:00 a.m. and 9:00 p.m., local time in the consumer's location.

The advent of mobile phones complicates the determination of what times are unusual or inconvenient. Mobile phones are increasingly the prominent mode of telephone communications.[155] With landline phone numbers, a collector can generally determine the consumer's time zone using the area code for the number (call forwarding is one exception). But consumers may take mobile phones anywhere and travel to different time zones is not uncommon. In addition, many consumers now keep their mobile phone number when they move, so that the area code for their mobile phone does not match the area code of their current residence. Collectors that use area codes or home addresses to determine convenient calling hours therefore may inadvertently call earlier or later than the law permits. In the 2009 FTC Modernization Report, the FTC recommended that collectors be permitted to assume, for the purposes of determining appropriate calling hours, that the consumer was located in the same time zone as her home address.[156]

Q63: Does sufficiently reliable technology exist to allow collectors to screen to determine whether a given phone number is a landline versus a

[149] 15 U.S.C. 1692c(b).

[150] 15 U.S.C. 1692b(1), (2).

[151] 15 U.S.C. 1692b(3).

[152] A recent FTC consent order provided standards governing when the debt collector subject to the order has a ''reasonable belief'' that a third party's prior statements are ''erroneous or incomplete.'' That order required that, to establish such a belief, the defendant debt collector must have:

(1) Conducted a thorough review of all applicable records, documents, and database entries for the alleged debtor Defendants are trying to reach to search for any notations that indicate that the alleged debtor cannot be reached at that telephone number or that the person does not have location information about the alleged debtor Defendants are trying to reach; and (2) obtained and considered information or evidence from a new or different source other than the information or evidence previously relied upon by Defendants in attempting to contact the alleged debtor Defendants are trying to reach and such information or evidence substantiates Defendants' belief that the person's earlier statements were erroneous or incomplete and that such person now has correct or complete location information.

Stipulated Order at 5–6, *United States* v. *Expert Global Solutions, Inc.,* No. 3–13CV2611–M (N.D. Tex. July 16, 2013), *available at http://www.ftc.gov/os/caselist/1023201/130709ncoorder.pdf.*

[153] 15 U.S.C. 1692b(5).

[154] 15 U.S.C. 1692c(a)(1).

[155] Eighty-nine percent of U.S. households now own a mobile phone, up from 36% in 1998, while 71% of households own a landline, down from 96% in 1998. Moreover, mobile-only households are on the rise among younger households, with about two-thirds of households led by people ages 15 to 29 having only mobile phones. Jeffrey Sparshott, *More People Say Goodbye to Landlines,* Wall St. J., Sep. 6, 2013, at A5.

[156] *2009 FTC Modernization Report* at vi.

mobile phone? If so, should collectors conduct such screening before relying on an area code to determine a consumer's time zone? What would be the costs and benefits of requiring such screening? Should collectors be allowed to rely on information provided by consumers at the time they applied for credit, such as when a consumer provides a phone number identified as a ''home'' number or a ''mobile'' phone number on an initial credit application without screening the area code?

Q64: Should collectors assume that the consumer's mailing address on file with the collector indicates the consumer's local time zone? If the local time zone for the consumer's mailing address and for the area code of the consumer's landline or mobile telephone number conflict, should collectors be prohibited from communicating during any inconvenient hours at any of the potential locations, or should one type of information (*e.g.,* the home address) prevail for determining the consumer's assumed local time zone?

b. Newer Communications Technologies (Email and Text Message)

The legislative history of the FDCPA indicates that the restrictions on convenient hours in section 805(a)(1) were intended to apply principally, or perhaps exclusively, to telephone communications rather than postal mail.[157] Newer technologies like email and text messages present challenges in applying section 805(a)(1) because the technologies themselves are hybrids between the textual nature of postal mail and the immediate delivery of telephone calls (as with faxes). For email, recipients arguably do not receive their messages until they affirmatively check their email account, thus allowing consumers to control when they view new messages. However, some consumers have devices that notify them when the email is delivered to their email provider, such as a smartphone that makes a sound upon the delivery of an email. The extent to which the receipt of an email occurs at an unusual or inconvenient time may therefore differ greatly among consumers.

Text messaging presents similar but distinct issues. Text messages arrive primarily over telephones, whereas emails can arrive on any device with an internet connection. As with email, a consumer may not view a text message until long after it was delivered to her phone, but many consumers are alerted when a text message arrives, often by an audio alert.

Q65: A main purpose of designating certain hours in the FDCPA as presumptively convenient apparently was to prevent the telephone from ringing while consumers or their families were asleep. Do similar concerns exist for other technologies? Should any distinction be made between the effect of a telephone ringing and an audio alert associated with another type of message delivery, such as email or text message, if a mobile phone is on during the night?

Q66: Should a limitation on usual times for communications apply to those sent via email, text message, or other new media? Should it matter whether the consumer initiates contact with the collector via that media? Is there a means of reliably determining when an electronic message is received by the consumer? Are there data on how frequently consumers receive audio alerts when either emails or text messages are delivered? Are there data showing how many consumers disable audio alerts on their devices when they wish not to be disturbed?

Q67: Is there a general principle that can guide the incorporation of standards on unusual times for communications to newer technologies? For instance, should such restrictions apply only to technologies that have ''disruptive'' effects, like phone calls, and if so, how might ''disruptive'' be best defined? What would be the costs and benefits of applying any such general principles?

2. Unusual or Inconvenient Places

Inconvenient Places. The Bureau seeks comment about the types of places, if any, that are unusual or that collectors know or should know to be inconvenient for them to contact consumers.

Q68: Especially with the advent and widespread adoption of mobile phones, consumers often receive calls at places other than at home or at work. Under what circumstance do collectors know, or should know, that the consumer is at one of the types of places listed below? What would be the costs and benefits of specifying that such locations are unusual or inconvenient, assuming the debt collector knows or should know the location of the consumer at the time of the communication?

- Hospitals, emergency rooms, hospices, or other places of treatment of serious medical conditions
- Churches, synagogues, mosques, temples, or other places of worship
- Funeral homes, cemeteries, military cemeteries, or other places of burial or grieving
- Courts, prisons, jails, detention centers, or other facilities used by the criminal justice system
- Military combat zones or qualified hazardous duty postings
- Daycare centers

Q69: Are there additional places not listed above that would be inconvenient places for consumers to be contacted?

Q70: Under what circumstances are communications at a consumer's place of employment inconvenient, even if the employer does not prohibit the receipt of such communications? What would be the potential costs and benefits of prohibiting communications at a consumer's place of employment due to inconvenience, assuming that the collector knows or should know the consumer's location? To what extent does the inconvenience depend on the nature of the consumer's workplace or on the consumer's type of employment at that workplace?

Place of employment communications. Under FDCPA section 805(a)(3), a collector may not contact a consumer at his place of employment if the collector knows or has reason to know that his employer prohibits the consumer from receiving such communication.[158]

Q71: Do employers typically distinguish, in their policies regarding employee contacts at work, between collection communications and other personal communications? Are employers' policies concerning receipt of communications usually company-wide, specific to certain job types, or specific to certain individuals?

Q72: Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work? If so, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees overall, or at a particular location or job type (*e.g.,* retail premises employers)? What would be the costs and benefits of requiring that collectors

[157] *See, e.g.,* S. Rept. 382, 95th Cong., at 2 (1977); 123 Cong. Rec. S13851, 13854 (daily ed. Aug. 5, 1977); H. Rept. 5294, 95th Cong., (1977) (prior version of the bill specifying that the hours restriction applied to telephone calls).

[158] 15 U.S.C. 1692c(a)(3).

cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employer's Web site?

3. Consumers Represented by Attorneys

The FDCPA provides that ''[w]ithout the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.'' [159] Collectors are also prohibited from making location communications concerning represented consumers unless the attorney fails to respond within a reasonable period of time to the communications from the debt collector.[160]

Q73: The FDCPA's restriction on contacting consumers represented by attorneys does not apply if ''the attorney fails to respond within a reasonable period of time.'' [161] How do collectors typically calculate a ''reasonable period of time'' for this purpose, and does the answer vary depending on particular circumstances?

Q74: How common is it for consumers to be represented by attorneys on debts? When consumers have multiple debts, do attorneys usually represent them on one debt, all debts, or some number of debts less than the total? How often do consumers with debts change their attorney?

4. Servicemember Issues

Credit applications for servicemembers may sometimes require them to provide contact information for their commanding officers. These applications may also request or require that servicemembers provide some form of consent allowing debt owners to contact their commanding officers with respect to the debt. When a servicemember signs such an application, some collectors may believe that communications to commanding officers are not subject to the prohibition on communication with third-parties under FDCPA section 805(b). Nonetheless, servicemembers may report that these communications are inconvenient, annoying, or harassing, or may harm their reputations at work.

Q75: How prevalent is the practice of requesting or requiring, as part of a credit application or credit contract, contact information and consent to contact a servicemember's commanding officer or other third parties? Are such consent agreements to contact a consumer's employer or boss as common among civilian consumers? How frequently do debt collectors actually contact servicemembers' commanding officers or other third parties identified in credit contracts? Are servicemembers harmed in unique ways by communications with their commanding officers? Relatedly, do such harms suggest solutions that are unique to servicemembers, either in the disclosures they receive as part of credit applications or regarding limits on communications with commanding officers?

Collectors may communicate with spouses while servicemembers are deployed to combat zones or qualified hazardous duty areas.[162] Collectors may ask military spouses to pay the debts of these consumers during periods when it is difficult for the spouse to contact these consumers, or when such contact may interfere with combat readiness. Alternatively, collectors may contact military spouses during the potentially sensitive period immediately following the death of a servicemember serving in a combat zone or qualified hazardous duty zone, with the hope of obtaining payment from the spouse's military death gratuity.

Q76: How common are the practices mentioned above?

D. Communications With Third Parties (Section 805(b) of the FDCPA)

FDCPA section 805(b) bars communication with most third parties absent prior consent of the consumer provided directly to the debt collector, express permission of a court, or as reasonably necessary to effectuate a postjudgment judicial remedy.[163] Communications with the consumer, the consumer's attorney, a CRA if otherwise permitted by law, the creditor, the attorney of the creditor, and the attorney of the debt collector are not subject to the bar in section 805(b). The purpose of this provision is to protect the privacy of consumers' personal and financial affairs.[164]

1. Definition of ''Consumer''

The FDCPA's definition of ''consumer'' is ''any natural person obligated or allegedly obligated to pay any debt.'' [165] In addition, for the purposes of FDCPA section 805, ''consumer'' is defined as including ''the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.'' [166] The Bureau seeks comment on the following questions related to the FDCPA's definition of ''consumer.''

Q77: During a consumer's lifetime, a collector can communicate with a consumer's spouse about the consumer's debt. When a consumer dies, the FDCPA does not specify whether a consumer's surviving spouse continues to be the consumer's ''spouse,'' such that collectors may continue to contact the person without violating section 805(b). How often do collectors contact surviving spouses and what is the effect of such contacts? What would be the potential costs and benefits of regarding surviving spouses as ''spouses'' under section 805(b)?

Q78: Are there circumstances under which a collector should not be permitted to contact a consumer's spouse, for example, the individuals are estranged or the consumer has obtained a restraining order against her spouse? How frequently do these circumstances occur? What would be the costs and benefits of prohibiting or limiting communications with a consumer's spouse upon the consumer's request?

Q79: The FDCPA permits collectors to communicate with ''executors'' and ''administrators'' about a decedent's debts. State laws may allow individuals other than those with the status of ''executor'' or ''administrator'' under State law, for example, ''personal representatives,'' to pay the debts of a decedent out of the assets of the decedent's estate. How frequently do collectors contact individuals who are not ''executors'' or ''administrators'' but still have the authority under State law to pay the debts of decedents out of the assets of decedents estates? What is the effect of these contacts? What would be the potential costs and benefits of treating any person who has the authority to pay the debts of the

[159] 15 U.S.C. 1692c(a)(2).

[160] 15 U.S.C. 1692b(6).

[161] *Id.*

[162] *See* Part IV.D's discussion of spouses.

[163] 15 U.S.C. 1692c(b).

[164] *See, e.g.,* S. Rept. 382, 95th Cong., at 4 (1977) (''[T]his legislation strongly protects the consumer's right to privacy by prohibiting a debt collector from communicating the consumer's personal affairs to third persons . . . .

[T]his legislation adopts an extremely important protection . . .: it prohibits disclosing the consumer's personal affairs to third persons . . . . Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as the loss of jobs.'').

[165] 15 U.S.C. 1692a(3).

[166] 15 U.S.C. 1692c(d).

decedent out of the assets of the estate as ''executors'' or ''administrators?'' [167] To what extent do spouses, executors, and administrators pay decedents' debts out of their own assets? Do collectors state or imply that such parties have an obligation to pay these debts?

Q80: Do owners of debts or collectors inform executors and administrators when collecting on debt that was disputed by the decedent prior to the decedent's death?

Q81: A third party who is not a ''consumer'' under FDCPA section 805(d) may know details about the consumer's debt and contact a debt collector to settle a consumer's debt. For example, the parent of a non-minor child may reach out to a collector to assist with the child's debt. How often are such contacts made? Should collectors be permitted to assume that the consumer has consented to the third-party contact, where a third party already knows about the consumer's debt and is offering to repay the debt? When would it be appropriate to allow collectors to rely on this theory of implied consent?

2. Recorded Messages

Communications by telephone remain the most common form of consumer contact in debt collections. Telephones themselves were one of the communications technologies Congress addressed when the FDCPA was enacted in 1977. However, over the years, phone technology has changed dramatically, from landlines to mobile phones and then to smart phones. In addition to voice calling, the ability to record voice messages for others to retrieve at a later date is commonplace (*e.g.,* voicemails). Many phones also allow consumers to see the caller's phone number, and sometimes other information about the caller, before answering.

When collectors leave recorded messages, they must identify themselves in the communication but they also must refrain from disclosing information about debtors to third parties. FDCPA section 806(6) prohibits debt collectors from placing telephone calls without meaningful disclosure of their identity.[168] Section 807(11) of the FDCPA also requires that collectors disclose in their initial communications with consumers, including telephone calls, that they are trying to collect a debt and that any information they obtain will be used for that purpose.[169] For many years, collectors did not include the information set forth in FDCPA sections 806(6) and 807(11) in recorded messages that they left on voicemails or answering machines.[170] However, in 2006, a Federal district court in *Foti v. NCO Financial Systems, Inc.,* held that a collector's telephone message is a ''communication'' within the meaning of the FDCPA, thereby requiring that these messages include the information set forth in FDCPA sections 806(6) and 807(11).[171] Other courts have reached the same conclusion as *Foti.*[172]

Collectors believe that *Foti* creates a dilemma. On the one hand, if recorded messages are ''communications,'' [173] then collectors must identify themselves as a debt collector. On the other hand, if they leave that information in a recorded message, they risk disclosing such information to a third party who may hear the message, which could violate FDCPA section 805(b).

Courts and other observers have noted that collectors can avoid both forms of liability by simply refraining from leaving recorded messages altogether.[174] Some collectors argue that this would impose high costs, by limiting their ability to reach many consumers, such as those that work night hours (given the calling-time restrictions in FDCPA section 805(a)(1)), those that do not answer calls from unfamiliar numbers, or those for whom collectors have the wrong mailing address. It could also cause harm if consumers do not learn that their debts are in collection and debt collectors furnish information about these debts to CRAs or file law suits to collect.

In its 2009 Modernization Report, the FTC acknowledged the challenges that *Foti* and similar cases create for collectors and stated that it would be beneficial to clarify the law relating to collectors leaving recorded messages.[175]

Q82: How should a rule treat recorded messages, if at all? What benefits do recorded messages (as distinct from live phone calls) offer to debt collectors or consumers?

Q83: What would be the costs and benefits of allowing the following approaches to leaving recorded messages?

- When leaving recorded messages on certain media where there is a plausible risk of third-party disclosure, the collector leaves a message that identifies the consumer by name but does not reference the debt and does not state the mini-Miranda warning.
- The collector leaves a recorded message identifying the consumer by name and referring the consumer to a Web site that provides the mini-Miranda warning after verifying the consumer's identity.
- The collector leaves a recorded message identifying the consumer by name, but only on a system that identifies (*e.g.,* via an outgoing greeting) the debtor by first and last name and does not identify any other persons.
- The collector leaves a recorded message that identifies the consumer by name and includes the mini-Miranda warning but implements safeguards to try to prevent third parties from listening.[176]

[167] The FTC previously issued a Policy Statement providing that the agency will not take enforcement action under the FDCPA against collectors that communicate with someone who is authorized to pay a decedent's debts from the estate of the deceased even if that person is not officially designated as an ''executor'' or ''administrator.'' *Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts,* 76 FR 44915 (July 27, 2011).

[168] 15 U.S.C. 1692d(6).

[169] 15 U.S.C. 1692e(11).

[170] For example, collectors would often leave messages stating, ''This is John Smith calling for Nancy Jones about an important business matter. Please call me back at 555–5555.''

[171] 424 F. Supp. 2d 643 (S.D.N.Y. 2006) (denying collector's motion to dismiss).

[172] *See, e.g., Hosseinzadeh* v. *M.R.S. Assocs.,* 387 F. Supp. 2d 1104 (C.D. Cal. 2005) (denying collector's motion for summary judgment); *Costa* v. *Nat'l Action Fin. Services,* 634 F. Supp. 2d 1069, 1076 (E.D. Cal. 2007) (denying collector's motion for summary judgment); *Berg* v. *Merchants Ass'n Collection Div., Inc.,* 586 F. Supp. 2d 1336, 1340–41 (S.D. Fla. 2008) (denying a collector's motion to dismiss); *Edwards* v. *Niagara Credit Solutions, Inc.,* 586 F. Supp. 2d 1346, 1350–51 (N.D. Ga. 2008) (granting consumer's motion for summary judgment), *aff'd on other grounds,* 584 F.3d 1350 (11th Cir. 2009).

[173] Some collectors argue that messages that do not reference the debt or the fact that the message is from a debt collector are not ''communications'' because they do not convey information regarding a debt, as required by the definition of ''communication'' under FDCPA section 803(2).

[174] *See, e.g., Mark* v. *J.C. Christensen & Assocs., Inc.,* Civil No. 09–100 ADM/SRN, 2009 WL 2407700, at *5 (D. Minn. Aug. 4, 2009); *Berg* v. *Merchants Ass'n Collection Division, Inc.,* 586 F. Supp. 2d 1336, 1343 (S.D. Fla. 2008); *Leyse* v. *Corporate Collection Services,* No. 03 Civ 8491 (DAB), 2006 WL 2708451, at *5 (S.D.N.Y. Sept. 18, 2006).

[175] *2009 FTC Modernization Report* at 49.

[176] ACA International, a debt collection trade association, developed a model message designed to address the *Foti* dilemma. The message provides the required disclosures only after asking third parties to stop listening and providing time for execution of those directions: ''This message is for [ ]. If you are not [ ] or their spouse, please delete this message. If you are [ ] or their spouse, please continue to listen to this message. By continuing to listen to this message, you acknowledge that you are the right party. You should not listen to this message so that other people can hear it, as it contains personal and private information. There will be a three second pause in the message to allow you to listen to the message in private. (Pause.)'' A 2010 survey of ACA's members found that 47 percent used its proposed message, while 39 percent did not, and 14 percent left no messages whatsoever. However, collectors note that these messages may prove too complicated to execute, their length may prove expensive, and their efficacy, in the end, may not convince courts, due

Continued

• The collector leaves a recorded message that indicates the call is from a debt collector but does not identify the consumer by name.

• The collector leaves a message that does not contain the mini-Miranda warning, but only after the consumer consents to receiving voice messages without the mini-Miranda warning.

Q84: Some of the proposed solutions described above would permit a collector to leave a recorded message without leaving the mini-Miranda warning. Should collectors be permitted, in their communications with consumers, to ask consumers if they will opt out of receiving future mini-Miranda warnings? If consumers are permitted to opt out of receiving future mini-Miranda messages, what factors or limitations, if any, should limit consumers' right to opt out? Should consumers be allowed to opt out both in writing and orally? Should the opt-out provision extend to mini-Miranda warnings given in other communications besides recorded messages?

3. Caller Identification (''Caller ID'')

Caller-ID technologies transmit certain information along with a telephone call that allows recipients of calls to view callers' telephone numbers and sometimes also their names. Some telephones display all or part of such information while others, such as many landlines, do not. A 2004 survey by the Pew Research Center indicated that approximately half of phone owners had some form of caller ID.[177]

Caller-ID technologies present certain compliance issues for debt collectors. For instance, FDCPA section 807(14) requires that debt collectors use the ''true name'' of their business. However, a debt collector may be concerned that using the name of the collector's employer in caller ID risks causing a disclosure of the consumer's debt to a third party or disclosure of the identity of the collector's employer without an express request under FDCPA sections 805(b) or 804(1). Alternatively, a debt collector may be concerned that changing how the name of its business is displayed via caller ID risks making a false representation or using a deceptive means, using a false name, or failing to make meaningful disclosure of the caller's identity under FDCPA sections 806(6), 807(10), or 807(14).

Debt collectors sometimes change the telephone number displayed via caller ID. For instance, when callers use certain voice-over-IP (VOIP) services, the phone number displayed to the recipient may have a local area code. Collectors may intend this result because they believe that consumers are more likely to pick up a local phone call, or it may be an unintended result of the telephone services collectors use. Callers sometimes block the caller-ID phone number altogether so that the recipient is unaware of the caller's identity. Debt collectors may be concerned that blocking or changing the phone number displayed via caller ID risks making a false representation or using a deceptive means under FDCPA section 807(10).[178] The FTC considered similar issues in its Telemarketing Sales Rule and its 2009 Modernization Report, but it did not make any specific recommendations in the debt collection context.[179]

Q85: What would be the costs and benefits for collectors in transmitting caller-ID information? In addition to the benefit of consumers being able to screen calls, how do consumers benefit from receiving caller-ID information? Do space limitations constrain the ability of collectors to disclose information (*e.g.,* the collector's identity) via caller ID? What are the risks of third-party disclosure by caller ID? The Bureau is particularly interested in data showing how many consumers currently use telephones that provide technologies such as caller ID, and whether these technologies display for consumers only a telephone number or whether they display additional information, such as the name of the caller. How can collectors use these technologies to minimize third-party disclosure risks while still providing consumers with relevant, truthful, and non-misleading information?

Q86: Should debt collectors be prohibited from blocking or altering the telephone number or identification information transmitted when making a telephone call, for example by blocking the name of the company or the caller's phone number or by changing the phone number to a local area code? What technological issues might complicate or ease compliance with regulation regarding caller-ID technologies?

4. Newer Technologies

Some new methods of communication appear to present greater privacy risks than do telephone or postal communications. Email, for example, is a service consumers often access through a provider, such as an employer or outside company (*e.g.,* Google, Microsoft, Yahoo). These providers, including employers, may retain rights to access the emails of their users. If employers or other email providers retain the ability to access an email account, the likelihood increases that debt collection emails sent to those accounts may be read by third parties. Joint users of email accounts also may be able to read each other's email messages, including any that debt collectors send.

Emails may also pose risks of third-party disclosure because they may be publicly viewable by anyone near the display screen. Even when consumers check their email using a smartphone, nearby onlookers may have the opportunity to see communications from debt collectors, especially when consumers have their smartphones configured to conspicuously display the subject and sender of the message upon receipt. A similar concern exists for text messages, which are often displayed on the public-facing screens of mobile phones.

Q87: Should the email provider's privacy policy affect whether collectors send emails to that account? For instance, where a collector knows or should know that an employer reserves the right to access emails sent to its employees, should the collector be prohibited from or limited in its ability to email a consumer at the employer-provided email address? Should a collector be prohibited from using an employer-provided email address if a collector is unsure whether an employer or other third party has access to email

to the continued risk that third parties can listen in. *See, e.g., Leahey* v. *Franklin Collection Serv., Inc.,* 756 F. Supp. 2d 1322, 1327 (N.D. Ala. 2010) (denying a collector's motion to dismiss in which it had argued that the ACA message did not violate FDCPA section 1692c(b)); *Berg* v. *Merchants Ass'n Collection Div., Inc.,* 586 F. Supp. 2d 1336, 1343 (S.D. Fla. 2008) (denying a collector's motion to dismiss).

[177] *See* Pew Research Ctr., *Polls Face Growing Resistance, But Still Representative Survey Experiment Shows* (2004), *available at http://www.people-press.org/2004/04/20/polls-face-growing-resistance-but-still-representative/.*

[178] *See, e.g., Knoll* v. *Allied Interstate, Inc.,* 502 F. Supp. 2d 943, 945 (D. Minn. 2007) (denying motion to dismiss where collector displayed caller ID as ''Jennifer Smith''). *But see Glover* v. *Client Services, Inc.,* No. 1:07–CV–81, 2007 WL 2902209 (W.D. Mich. Oct. 2, 2007) (granting motion to dismiss where collector displayed caller ID as ''unavailable'').

[179] The FTC's Telemarketing Sales Rule concluded that telemarketers should be prohibited from blocking, circumventing, or altering the transmission of caller-ID information. 68 FR 4580, 4623–4627 (Jan. 29, 2003). The FTC reasoned that transmission of caller-ID information was inexpensive and was not a technical impossibility and that doing so provided many benefits, including privacy protections for consumers, increased accountability in telemarketing, and increased information for law enforcement groups. The FTC recognized in its 2009 Modernization Report that prohibiting debt collectors from blocking, circumventing, or altering the transmission of caller-ID information would provide similar benefits in the debt collection context. *2009 FTC Modernization Report* at 54–55.

sent to a consumer? How difficult is it for collectors to discern whether an email address belongs to an employer?

Newer technologies also raise an issue similar to the *Foti* dilemma relating to the requirement to provide the mini-Miranda and the simultaneous prohibition against third-party disclosures.[180] All collection communications, including those made via new communication technologies, are subject to the requirements of FDCPA section 807(11), which requires that collectors clearly disclose in both initial and subsequent communications that the communication is from a debt collector.[181] Debt collectors may be concerned that this requirement is in tension with the prohibition on third-party disclosure under FDCPA section 805(b).[182] To prevent such disclosures with traditional communication technologies, FDCPA section 808(8) prohibits the use of debt-collection-related language or symbols on the envelope of any communication, such as a communication through postal mail or telegram.[183] The Bureau seeks comment on whether analogous prohibitions might be useful to prevent third-party disclosures in the sending of emails, text messages, or other communications made via newer technologies.

Q88: What third-party disclosure issues arise from providing FDCPA section 807(11)'s mini-Miranda via email, text message, or other means of electronic communication? Are an email's subject line and sender's address akin to the front of an envelope mailed by post, and should it be subject to the same restrictions? Should the restrictions apply to the sender's name on a text message or to the banner line on a fax?

E. Ceasing Communications (Section 805(c) of the FDCPA)

The structure of the FDCPA raises the question of whether consumers may set the conditions under which collectors communicate with them. First, FDCPA section 805(c) affords consumers the right to cease communications from collectors, with limited exceptions, if consumers notify the collectors in writing.[184] Second, as discussed above, FDCPA section 805(a) prohibits collectors from communicating with consumers at unusual or inconvenient times or places, from communicating with a consumer represented by an attorney, and from communicating with the consumers at their places of employment where the consumer's employer prohibits such communications.[185]

The express language of the FDCPA does not provide consumers with the right to restrict collector communications to a particular medium or a particular time or place. However, because consumers have the right to cease collector communications and the apparent right to declare certain times or places inconvenient, some argue that consumers do or should have the right to limit communications to certain media or to certain times or places. Others may respond that the FDCPA does not confer such a right on consumers and, if it is interpreted to, this would impose undue or unreasonable burdens on collectors.

Q89: What would be the costs and benefits of allowing consumers to limit the media through which collectors communicate with them? What would be the costs and benefits of allowing consumers to specify the times or locations that are convenient for collectors to contact them? What would be the costs and benefits of allowing consumers to provide notice orally or in writing to collectors of their preferred means or time of contact? Should there be limits or exceptions to a consumer's ability to restrict the media, time, or location of debt collection communications? Should consumers also be allowed to restrict the frequency of communications from debt collectors?

Q90: Other Federal consumer financial laws, as defined in section 1002(14) of the Dodd-Frank Act, may require collectors to provide certain notices or disclosures to consumers for a variety of purposes, raising potential conflicts in cases in which consumers have made a written request that collectors cease communications.[186] For example, the 2013 RESPA and TILA Servicing Final Rules require mortgage servicers to provide certain disclosures to borrowers, while the FDCPA may prohibit communications with those same consumers where the servicer falls within the FDCPA's definition of a debt collector and the consumer has requested that the servicer cease communications. The Bureau recently concluded that, in most cases, servicers that fall within the FDCPA's definition of debt collector are required to engage in certain communications required by Regulations X and Z, notwithstanding a consumer's cease communications request under the FDCPA.[187] However, two of the provisions under Regulations X and Z exempt such servicers from certain communications requirements in cases where the consumer has validly requested that communications cease under the FDCPA.[188] How often do debt collectors provide notices or disclosures to consumers required by other Federal consumer financial laws? What would be the advantages and disadvantages to consumers of receiving these notices and disclosures notwithstanding their cease communication requests?

Q91: Some jurisdictions require that collectors provide consumers with contact information. At least one jurisdiction has required that collectors provide not only contact information, but also a means of contacting the collector that will be answered by a natural person within a certain time period.[189] How would the costs and benefits of providing contact information compare to those associated with a natural person answering calls within a certain period of time?

V. Unfair, Deceptive, and Abusive Acts and Practices (Sections 806, 807, 808, 810, and 812 of the FDCPA)

Congress enacted the FDCPA in response to the ''abundant evidence of the use of abusive, deceptive, and unfair practices by many debt collectors.'' [190] A main purpose of the FDCPA's provisions, therefore, is to prohibit the use of such practices.[191] FDCPA section 806 prohibits ''any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a

[180] *See, e.g.,* Complaint at ¶ 15, *United States* v. *Nat'l Atty. Collection Servs., Inc.,* No. CV13–06212 (C.D. Cal. Aug. 23, 2013), *available at http://www.ftc.gov/os/caselist/1223032/130925naccmpt.pdf.*

[181] 15 U.S.C. 1692e(11).

[182] *See* 15 U.S.C. 1692c(b).

[183] 15 U.S.C. 1692f(8).

[184] 15 U.S.C. 1692c(c).

[185] 15 U.S.C. 1692c(a).

[186] *See, e.g.,* U.S. Fed. Trade Comm'n, *Anderson/Beato Advisory Opinion* (June 23, 2009), *available at http://www.ftc.gov/os/statutes/andersonbeatoletter.pdf.*

[187] U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–12, Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), *available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.*

[188] *Interim Final Rule, Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),* 78 FR 62993 (Oct. 23, 2013), *available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_interim.pdf.*

[189] New York City Admin. Code § 2–194.

[190] 15 U.S.C. 1692(a).

[191] 15 U.S.C. 1692(e); *See also F.T.C.* v. *LoanPointe, LLC,* No. 12–4006, 2013 WL 1896820, *6 (10th Cir. May 8, 2013) (''The FDCPA was expressly designed to curb the harms of abusive debt collection practices.''); *Schlegel* v. *Wells Fargo Bank, NA,* No. 11–16816, 2013 WL 3336727 (9th Cir. July 3, 2013); *Mellentine* v. *Ameriquest Mortg. Co.,* No. 11–2467, 2013 WL 560515 (6th Cir. Feb. 14, 2013).

debt.'' [192] FDCPA section 807 also bars the use of any ''false, deceptive, or misleading representation or means in connection with the collection of any debt.'' [193] FDCPA section 808 further prohibits the use of ''unfair or unconscionable means to collect or attempt to collect any debt.'' [194]

The Dodd-Frank Act authorizes the Bureau to prescribe rules that identify as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service, including collecting debt related to and delivered in connection with a consumer financial product or service.[195] The Act does not describe when the Bureau may declare an act or practice to be ''deceptive.'' However, the Dodd-Frank Act permits the Bureau to declare an act or practice to be ''unfair'' if it has a reasonable basis to conclude that it ''causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers [and] such substantial injury is not outweighed by countervailing benefits to consumers or to competition.'' [196] In determining if an act or practice is unfair, the Bureau ''may consider established public policies as evidence to be considered with all other evidence,'' but ''[s]uch public policy considerations may not serve as a primary basis for such determination.'' [197] The Act also authorizes the Bureau to declare an act or practice to be ''abusive'' if the act or practice:

(1) [M]aterially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) [T]akes unreasonable advantage of–(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.[198]

The FDCPA provides numerous specific examples of each category of ''harassment or abuse,'' ''false or misleading representations,'' or ''unfair practices,'' but the language of the FDCPA also expressly states that these examples do not limit the general application of these categories.[199] Courts have thus found other types of conduct to be included within these categories, including some conduct that violates other sections of the FDCPA.[200]

Unfair, deceptive, or abusive conduct that violates the FDCPA or the Dodd-Frank Act has been and will remain a focus of Bureau supervision and enforcement activity. Indeed, the Bureau recently issued two supervisory bulletins providing guidance to promote compliance with these laws.[201] Although such conduct is unlawful under these statutes, incorporating debt collection provisions into rules relating to unfair, deceptive, or abusive conduct could provide greater clarity and specificity. Greater clarity and specificity as to prohibited conduct could make it easier for collectors and others to know what they must do to comply with the law. Rules that provide greater clarity and specificity as to prohibited conduct also could simplify law enforcement actions against those who do not comply.

A. Abusive Conduct (Section 806 of the FDCPA)

A stated purpose of the FDCPA is ''to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.'' [202] Although the FDCPA does not define the term ''abusive,'' FDCPA section 806 prohibits debt collectors from engaging in any conduct ''the natural consequence of which is to harass, oppress, or abuse any person in collection of a debt.'' [203] The FDCPA also sets forth six specific examples of conduct that is harassing, oppressive, or abusive. The Dodd-Frank Act does not expressly prohibit conduct that is harassing or oppressive, but it does authorize the Bureau to prescribe rules barring ''abusive'' acts or practices in specified circumstances.[204]

1. General Abusive Conduct Questions

Q92: Should the Bureau incorporate all of the examples in FDCPA section 806 into proposed rules prohibiting acts and practices by third-party debt collectors where the natural consequence is to harass, oppress, or abuse any person? Should any other conduct by third-party debt collectors be incorporated into proposed rules under section 806 on the grounds that such conduct has such consequences? If so, what are those practices; what information or data support or do not support the conclusion that they are harassing, oppressive, or abusive; and how prevalent are they?

Q93: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as abusive conduct by third-party debt collectors? What considerations, information, or data support or do not support the conclusion that this conduct is ''abusive'' under the Dodd-Frank Act? Does information or data support or not support the conclusion that this conduct is ''unfair'' or ''deceptive'' conduct under the Dodd-Frank Act?

2. Specific Section 806 Prohibition Questions

Q94: FDCPA section 806(3) enjoins debt collectors from ''the publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 603(f) or 604(a)(3) of [the Fair Credit Reporting Act].'' Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how? The Bureau notes that in communicating with debtors through social media, the use of this media might cause collectors to make known the names of debtors to others using that medium. Should the Bureau include in proposed rules provisions setting forth

[192] 15 U.S.C. 1692d.

[193] 15 U.S.C. 1692e.

[194] 15 U.S.C. 1692f.

[195] 12 U.S.C. 5531(b).

[196] 12 U.S.C. 5531(c)(1)(A)–(B).

[197] 12 U.S.C. 5531(c)(2).

[198] 12 U.S.C. 5531(d)(1)–(2).

[199] 12 U.S.C. 1692d, 1692e, 1692f.

[200] *See, e.g., Fox* v. *Citicorp Credit Services, Inc.,* 15 F.3d 1507, 1516 (9th Cir. 1994) (holding that a violation of the FDCPA section 805(a) may also constitute an abusive practice under the FDCPA); *Jeter* v. *Credit Bureau, Inc.,* 760 F.2d 1168, 1178 (11th Cir. 1985) (holding that FDCPA section 1692d is not limited to the enumerated conduct it proscribes); *United States* v. *Cent. Adjustment Bureau, Inc.,* 667 F. Supp. 370, 375 (N.D. Tex. 1986) *aff'd as modified,* 823 F.2d 880 (5th Cir. 1987) (holding that making calls to a debtor at inconvenient times, at debtor's place of work, or contacting third parties about debt without debtor's consent constitutes abusive, deceptive, and unfair debt collection); *see also McVey* v. *Bay Area Credit Serv.,* 4:10–CV–359–A, 2010 WL 2927388, at *2 (N.D. Tex. July 26, 2010); *Arteaga* v. *Asset Acceptance, LLC,* 733 F. Supp. 2d 1218, 1228 (E.D. Cal. 2010); *Pittman* v. *J.J. Mac Intyre Co. of Nevada, Inc.,* 969 F. Supp. 609, 612 (D. Nev. 1997).

[201] *See* U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf;* U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–08, Representations Regarding Effect of Debt Payments on Credit Reports and Scores* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.*

[202] 15 U.S.C. 1692(e).

[203] 15 U.S.C. 1692d.

[204] 12 U.S.C. 5531(d)(1)–(2).

what constitutes the publication of a list of debtors in the context of newer communications technologies, such as social media? If so, what should these provisions prohibit or require and why?

Q95: FDCPA section 806(5) bars debt collectors from ''causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.'' Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how?

Q96: The FDCPA does not specify what frequency or pattern of phone calls constitutes annoyance, abuse, or harassment. Courts have issued differing opinions regarding what frequency of calls is sufficient to establish a potential violation.[205] Courts also often consider other factors beyond frequency, such as the pattern and content of the calls, where the calls were placed, and other factors demonstrating intent.[206] Should the Bureau articulate standards in proposed rules for when calls demonstrate an intent to annoy, harass, or abuse a person by telephone? If so, what should those standards be and why?

Q97: At least one State has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone—whether phone calls, texts, or audio recordings—in any seven-day period.[207] The prohibition is stricter for phone calls to a work phone, allowing only two in any 30-day period. If the Bureau provides bright-line standards in proposed rules, what should these standards include? Should there be a prohibition on repetitious or continuous communications for media other than phone calls and should that prohibition be in addition to any proposed restriction on phone calls? Should all communications be treated equally for this purpose, regardless of the communication media, such that one phone communication (call or text), one email, or one social networking message each count as ''one'' communication? What time period should be used in proposed rules in assessing an appropriate frequency of communications?

The Bureau recognizes that many consumers complain not only about the number and frequency of the calls they received from collectors, but also that they answer many calls in which the collector hangs up when they answer or in which there is no one on the line. It appears that such calls are the result of debt collectors' use of predictive dialer technologies in placing calls. Predictive dialers are automated systems that determine who to call, when to call, and how often to call, based on information about the time of day, the time zone of the consumer, the number of collectors available, and other factors such as the length of prior collection calls. The 2009 FTC Modernization Report noted that approximately 50 percent of ACA members use some type of predictive dialer, and that dialers may be the ''single most significant change in technology since the enactment of the FDCPA,'' given their ability to increase the efficiency of collection operations.

The 2009 FTC Modernization Report concluded that predictive dialers can result in disconnections when a consumer is reached but no collector is available, resulting in ''hang-ups'' or ''dead air.''[208] Although the FTC did not make policy recommendations relating to the use of predictive dialers in the collection context, the FTC has addressed hang-up and dead air calls in its Telemarketing Sales Rule. Call abandonment under the Telemarketing Sales Rule is treated as ''abusive,'' but the Rule creates a safe harbor for telemarketing systems that contain certain safeguards.[209] For instance, to qualify for the safe harbor, three percent or less of the calls the system places can be abandoned. The system also must allow the consumer's phone to ring for at least 15 seconds or four rings before disconnecting an unanswered call.

Q98: What are the costs and benefits to consumers and collectors of using predictive dialers? How commonly are they used by the collection industry and what are the different ways in which they are used? How often do consumers receive debt collection calls resulting in hang-ups, dead air, or other similar treatment?

Q99: Should there be standards limiting call abandonment or dead air for debt collection calls, similar to the standards under the FTC's Telemarketing Sales Rule? Are there reasons why debt collection standards should be more stringent or more lenient than standards for telemarketing?

B. Deceptive Conduct (Section 807 of the FDCPA)

1. FDCPA Examples of Deception

As discussed above, FDCPA section 807 prohibits ''any false, deceptive, or misleading representation or means in connection with the collection of any debt.'' Without limiting the application of this general prohibition, section 807 also sets forth 16 examples of such prohibited behavior but does not explicitly define the terms ''false, deceptive, or misleading.''[210]

The Dodd-Frank Act also prohibits deceptive practices but does not define ''deceptive.'' The Bureau has stated that the FTC's interpretation and application of deception under the FTC Act informs the Bureau's standard for deceptive practices under the Dodd-Frank Act.[211] Under section 5 of the FTC Act, deceptive acts or practices can take the form of written or oral representations or omissions of material information. Whether a representation or omission is likely to mislead under the circumstances is considered from the viewpoint of a reasonable consumer.[212] To be deceptive, a representation or omission must be material, that is, likely to affect a consumer's purchasing or other decisions. Section 807 contains a set of prohibitions regarding (1) the identity of collectors; (2) character, amount, or status of debt; (3) documentation of debt; (4) consequence of non-payment of debt; (5) implications of debt transfers; and (6) reporting credit information.

Q100: With respect to each of the areas covered in FDCPA section 807, should the Bureau clarify or supplement any of these FDCPA provisions? If so, how? Are there other representations or omissions that the Bureau should address to prevent deception in each of these areas? For each additional representation or omission you believe should be addressed, please describe its prevalence and why you believe it is material to consumers.

[205] *Compare Tucker* v. *CBE Group, Inc.,* 710 F. Supp. 2d 1301, 1303 (M.D. Fla. 2010) (granting summary judgment finding no violation with 57 calls to non-debtor, including 7 on one day, only 6 messages left in total), *with Sanchez* v. *Client Services, Inc.,* 520 F. Supp. 2d 1149, 1161 (N.D. Cal. 2007) (denying summary judgment where there were 54 calls and 24 messages in a 6-month period, including 17 calls in one month and 6 calls in one day).

[206] *E.g., Bingham* v. *Collection Bureau, Inc.,* 505 F. Supp. 864, 873 (D.N.D. 1981) (violation where collector immediately called back after plaintiff hung up).

[207] 940 Code of Mass. Regulations 7.04(1)(f).

[208] *2009 FTC Modernization Report* at 37.

[209] 16 CFR 310.4(b)(1)(iv) and 16 CFR 310(b)(4)(iii).

[210] 15 U.S.C. 1692e.

[211] *See* U.S. Bureau of Consumer Fin. Prot., *CFPB Supervision and Examination Manual* at UDAAP 6, *available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf; see also* U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2012–06, Marketing of Credit Card Add-On Products* (July 18, 2012), *available at http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf* (adding that the Bureau applies factors that track FTC guidance in evaluating the effectiveness of disclosures at preventing consumers from being misled).

[212] *Id.*

Q101: Do collectors falsely state or imply that the Servicemembers Civil Relief Act does not apply to debts? What would be the costs and benefits of requiring collectors to disclose information about rights related to debts subject to the Servicemembers Civil Relief Act to a consumer, consumer's spouse, or dependents? What debt collection information related to the Servicemembers Civil Relief Act should be communicated?

Q102: The Bureau has heard reports of debt collectors falsely stating that they will have a servicemember's security clearance revoked and threatening action under the Uniform Code of Military Justice if the servicemember fails to pay the debt. How prevalent are these threats?

Q103: Spouses and surviving spouses of alleged debtors may be asked by collectors to pay the spouse's individual debt in circumstances in which the non-debtor spouse is not legally liable for the debt. Do debt collectors state or imply that the non-debtor spouse or surviving spouse has an obligation to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors, where applicable, use disclosures or other approaches to convey that non-debtor spouses or surviving spouses have no legal obligation to pay the spouse's individual debt?

Q104: Authorized users on credit cards are sometimes contacted by debt collectors and asked to pay debts in circumstances where the cardholder is liable but the authorized user is not. How often are authorized users asked to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors disclose to authorized users, where applicable, that they have no legal obligation to pay the debt?

2. Other Deceptive Act and Practices

As discussed above, Congress intended the specific conduct set out in FDCPA section 807 to be a non-exhaustive list of examples of false, deceptive, and misleading representations. Indeed, FDCPA section 807(10) is a broad provision which prohibits collectors from using any ''false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.'' In addition, the Dodd-Frank Act also includes a general prohibition on any covered person or service provider engaging in unfair, deceptive, or abusive acts or practices, which would include deceptive acts and practices in the collection of debts arising out of consumer credit transactions. Consequently, the Bureau is interested in information about deceptive acts and practices beyond the specific examples in section 807 that would be appropriate to include in proposed rules.

a. Newer Communication Technologies

Collectors are making use of newer communications technologies like social media and text messaging. In recent years, social media has become a major means of communications. A 2012 Nielson report found that over 20 percent of internet time is devoted to social media.[213] Social media can take many forms, including, but not limited to, micro-blogging sites (*e.g.,* Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites, and bulletin boards (*e.g.,* Yelp); photo and video sites (*e.g.,* Flickr and YouTube); sites that enable professional networking (*e.g.,* LinkedIn); virtual worlds (*e.g.,* Second Life); and social games (*e.g.,* FarmVille).[214]

Collectors' use of social media to communicate with consumers implicates certain provisions of the FDCPA. Section 807(10) forbids collectors from using ''false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.'' [215] Section 807(11) requires that certain disclosures accompany initial and subsequent communications with consumers.[216] Similar concerns about deception in collecting via social media may arise under the Dodd-Frank Act's prohibition on deceptive acts and practices.

Text messaging is now a common mode of communication.[217] It may be more difficult to disclose information in a text message than in other methods collectors use to communicate with consumers. Text messages (sometimes called ''short message service'' or ''SMS'') are normally limited to 160 characters (although some services allow other forms of ''messaging'' with longer formats). Debt collectors who communicate by text message, among other things, are subject to FDCPA section 807(11), but the limited character format of text messages presents a special challenge for inclusion of both the mini-Miranda disclosure and the communication itself.[218]

Q105: What technological limitations might prevent mini-Miranda warnings from being sent via text message? Should consumers be able to opt in to collector communications via text message that do not include a mini-Miranda warning? If so, what type of consent should be required and how and when should it be obtained? Could the mini-Miranda warning be more succinctly stated so that it fits within the character constraints of a text message?

Q106: What technological innovations (*e.g.,* links, attachments) might facilitate the delivery of mini-Miranda warnings via text message? For instance, what would be the potential costs and benefits of allowing a collector to send the consumer a text message that does not contain the mini-Miranda but contains only a link to a Web site, PDF, or similar document that provides the mini-Miranda as well as other information about the consumer's debt? Should the acceptability of relying on a link or an attachment depend on the frequency with which persons who receive such links or attachments go to the linked material or open the attachment? Would relying on a link or an attachment raise privacy or security risks? If so, how significant are those risks?

Q107: Are there challenges in providing the mini-Miranda warning via other newer technologies, such as email or social networking sites? If so, what, if anything, should be included in proposed rules to address these challenges?

b. Payment Methods and Fees

With advances in technologies and in the marketplace, consumers now have a greater variety of payment options than they once did. For example, as the FTC noted in its 2009 Modernization Report, electronic payment methods have continued to proliferate in recent years.[219] According to the Federal Reserve, in 2009, electronic payments exceeded 75 percent of noncash retail

[213] Nielsen, *State of the Media: The Social Media Report 2012,* at 3 (Dec. 2012), *available at http://www.nielsen.com/us/en/reports/2012/state-of-the-media-the-social-media-report-2012.html.*

[214] For the purposes of this document, social media is a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video; messages sent via email or text message, standing alone, do not constitute social media.

[215] 15 U.S.C. 1692e(10).

[216] 15 U.S.C. 1692e(11).

[217] A recent Pew Internet Research study found that 73 percent of cell phone users use text messages, sending an average of over 40 text messages each day. *See* Pew Research Ctr., *Americans and Text Messaging* (Sept. 2011), *available at http://pewinternet.org/Reports/2011/Cell-Phone-Texting-2011.aspx.*

[218] *See, e.g.,* Stipulated Order for Permanent Injunction and Monetary Judgment, *United States* v. *Nat'l Attorney Collection Services,* Case No. CV13–06212 (C.D. Cal. Aug. 23, 2013), *available at http://ftc.gov/os/caselist/1223032/130925nacstip.pdf.*

[219] *2009 FTC Modernization Report* at 20–21.

payments, with checks constituting less than 25 percent of noncash retail payments.[220]

Q108: Which methods of payment do consumers use to pay debts? How frequently do consumers use each type of payment method? In particular, how often do consumers pay collectors through electronic payment systems?

Q109: Do collectors charge fees to consumers based on the method that they use to pay debts? How prevalent are such fees for each payment method used? How much is charged for each payment method used?

Q110: Do collectors make false or misleading claims to consumers about the availability or cost of payment methods? If so, how prevalent are these claims and why are they material to consumers?

Q111: Do consumers understand the costs of using specific payment methods to pay their debts or the speed with which their payment will be processed depending on which payment method they choose? Should disclosures be required with respect to the costs, speed, or reversibility of alternative payment methods and, if so, what type of disclosures?

C. Unfair Conduct (Section 808 of the FDCPA)

As discussed above, FDCPA section 808 prohibits any ''unfair or unconscionable means to collect or attempt to collect any debt.'' [221] Without limiting the application of this general prohibition, section 808 sets forth eight examples of such prohibited behavior. Unfairness is not defined in the FDCPA. The Dodd-Frank Act also prohibits unfairness, and it authorizes the Bureau to identify through rulemaking acts or practices as unfair so long as ''the Bureau has a reasonable basis to conclude that–(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.'' [222] The Bureau may consider established public policies as evidence in its analysis of whether acts and practices are unfair.[223] This Dodd-Frank Act approach to ''unfairness'' is very similar to the approach to unfairness in section 5(n) of the FTC Act, and the Bureau has stated that its views on unfairness under the Dodd-Frank Act are informed by the FTC's application of the unfairness standard in the FTC Act.[224]

1. General Unfair Conduct Questions

Q112: Should the Bureau incorporate the examples from FDCPA section 808 into proposed rules prohibiting unfair or unconscionable means to collect or attempt to collect any debt by third-party debt collectors? Should any of the specific examples addressed in section 808 be clarified or supplemented and, if so, how? Should any other conduct by third-party debt collectors be incorporated into proposed rules prohibiting unfair or unconscionable means of collection? If so, what are those practices; what information or data support or do not support the conclusion that they are unfair or unconscionable; and how prevalent are they?

Q113: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as unfair or unconscionable by third-party debt collectors? What information or data support or do not support the conclusion that this conduct is ''unfair'' under the Dodd-Frank Act? What information or data support or do not support the conclusion that this conduct is ''abusive'' or ''deceptive'' conduct under the Dodd-Frank Act?

2. Specific Section 808 Prohibition Questions

Q114: Section 808(1) of the FDCPA prohibits collecting any amount unless it is expressly authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules?

Q115: The FDCPA expressly defines the amount owed to include ''any interest, fee, charge, or expense incidental to the principal obligation.'' Section 808(1) makes it unlawful for debt collectors to collect on these amounts unless authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules?

FDCPA section 808(5) prohibits debt collectors from ''causing charges to be made to any person for communications by concealment of the true purpose of the communication.'' [225] Since the FDCPA was enacted in 1977, communications methods other than collect calls and telegrams have been introduced that also may cause consumers to incur charges. Two prominent examples are calls to mobile phones and text messaging. While some consumers have wireless plans that do not charge for either mode of communication, other consumers are charged by the minute or by the text message. Some free-to-end-user services, however, may be available to allocate all charges to collectors and thereby obviate concerns about charges to consumers.

In the 2009 FTC Modernization Report, the FTC recommended that ''the law should presume that consumers will incur charges for calls and text messages made to their mobile phones, and, therefore, generally prohibit debt collectors from contacting consumers via mobile phones.'' [226] However, the FTC also recognized that ''the law may need to be changed in the future if most consumers would not be charged based on the number of calls or text messages received or the time spent on calls to their mobile phones.'' [227]

Q116: What communications technologies could cause consumers to incur charges from contacts by debt collectors? What are the costs to consumers and how many consumers use these technologies? For instance, how common is it for consumers to be charged for text messages and what is the average cost of receiving a text message? How common is it for consumers to be charged for mobile phone calls and what is the average cost of receiving an average-length call? Does incurring such charges vary by demographic group? If so, how?

Q117: Should proposed rules presume that consumers incur charges for calls and text messages made to their mobile phones? Should the failure to use free-to-end-user services when using technologies that would otherwise impose costs on the consumer be prohibited? What would be the costs and challenges for collectors of implementing such requirements?

Q118: Should proposed rules require collectors to obtain consent before contacting consumers using a medium that might result in charges to the consumer, such as text messaging or mobile calls? If so, what sort of consent should be required and how should collectors be required to obtain it?

Q119: Should proposed rules impose other limits beyond consent on communications via media that result in charges to the consumer and if so, what limits? For example, would it be feasible

[220] Fed. Reserve Sys., *The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States 2006–2009* at 4–5 (Dec. 10, 2007), *available at http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.*

[221] 15 U.S.C. 1692f.

[222] 12 U.S.C. 5531(c)(1).

[223] 12 U.S.C. 5531(c)(2).

[224] *See* U.S. Bureau of Consumer Fin. Prot., *CFPB Supervision and Examination Manual* at UDAAP 6.

[225] 15 U.S.C. 1692f(5).

[226] *2009 FTC Modernization Report* at 41.

[227] *Id.* at 42.

to require in proposed rules that consumers have the right to opt out of communications via certain media to avoid the possibility of being charged? If so, should initial communications via such media be required under proposed rules to include a disclosure of the consumer's right to opt out? Should proposed rules include limits on the frequency with which collectors use such media?

3. Payment Acts and Practices

Q120: FDCPA section 810 states, ''If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's direction.'' [228] Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how? In addition, what information or data support or do not support the conclusion that conduct that violates FDCPA section 810 is unfair or abusive conduct under the Dodd-Frank Act? Why or why not?

Q121: Should proposed rules require that payments be applied according to specific standards in the absence of an express consumer request or require a collector to identify the manner in which a payment will be applied? Should proposed rules require that the payment be applied on or as of the date received or at some other time?

Q122: Many consumers complain that debt collectors seek to recover on debts that consumers have already paid and therefore no longer owe. Other consumers assert that debt collectors promise that they will treat partial payments on debts as payment in full, but then collectors subsequently seek to recover the remaining balance on these debts. To what extent do debt collectors currently provide consumers with a receipt or other documentation showing the amount they have paid and whether it is or is not payment in full? Should such documentation be required under proposed rules? Are there any State or local laws that are useful models to consider? [229]

D. Substantiation

Firms may want to make claims to consumers for which they lack support, or lack adequate support, at the time they are made. To protect consumers from harm if such claims prove to be false, the FTC has a long history of treating certain types of unsubstantiated claims to consumers in advertising as unfair or deceptive in violation of section 5 of the FTC Act.

Even though the FTC's substantiation doctrine arose in the advertising context, the FTC has used it to protect consumers in other contexts. Most significantly, the FTC has brought cases alleging that debt collectors made unsubstantiated claims to consumers in seeking to recover on debts.[230] The FTC has clearly articulated its view that ''[c]ollectors have a legal obligation to possess information to support the claims they make to consumers about debt, pursuant to both Section 5(a) of the FTC Act, and Section 807 of the FDCPA.'' [231] The Bureau's views regarding unfair and deceptive acts and practices under the Dodd-Frank Act are informed by the FTC's application of those terms under the FTC Act.[232] The Bureau also gives due consideration to the FTC's interpretation of the FDCPA prior to July 21, 2011.[233]

Q123: Should the Bureau's proposed rules impose standards for the substantiation of common claims related to debt collection? If so, what types of claims should be covered and what level of support should be required for each such claim? What would be the costs and benefits to consumers, collectors, and others of requiring different levels of substantiation? Would a case-by-case approach to substantiating claims instead be preferable? Why or why not?

Q124: Should the information or documentation substantiating a claim depend upon the type of debt to which the claim relates (*e.g.,* mortgage, credit card, auto, medical)? Is it more costly or beneficial to substantiate claims regarding certain types of debts than others?

Q125: Should the information or documentation expected to substantiate a claim depend on the stage in the collection process (*e.g.,* initial communication, subsequent communications, litigation) and if so, why?

Q126: What information do debt collectors use and should they use to support claims of indebtedness:

- Prior to sending a validation notice;
- after a consumer has disputed the debt;
- after a consumer has disputed the debt and it has been verified; and
- prior to commencing a lawsuit to enforce a debt?

Q127: In July 2013, the Bureau released a compliance bulletin explaining that representations about the effect of debt payments on credit reports, credit scores, and creditworthiness have the potential to be deceptive under the FDCPA and the Dodd-Frank Act.[234] What information are debt collectors using to support the following claims:

- The consumer's credit score will improve if the consumer pays the debt;
- payment of the debt will result in the collection trade line being removed from a consumer's credit report;
- the consumer's creditworthiness will improve if the consumer pays the debt; and the collector will furnish information about a consumer's debt to a CRA?

E. Service Providers and Third-Party Liability for UDAAP Violations

The previous section of this Part sought comment related to potential proposed rules that would prevent unfair, deceptive, or abusive acts and practices by first-party and third-party

[228] 15 U.S.C. 1692h.

[229] For example, New York City has issued rules providing that if a payment schedule or settlement agreement is reached, the collector must send a confirmation of the arrangement to the debtor within five business days with certain information. New York City Admin. Code § 2–192.

[230] *See, e.g., United States* v. *Luebke Baker & Assoc.,* No. 1:12-cv-01145 (C.D. Ill. May 23, 2012) (debt collector), *available at http://ftc.gov/os/caselist/0823206/120515luebkecmpt.pdf; United States* v. *Asset Acceptance, LLC,* No. 8:12-cv-00182 (M.D. Fla. Jan. 31, 2012) (debt collector), *available at http://www.ftc.gov/os/caselist/0523133/120130assetcmpt.pdf; United States* v. *Allied Interstate, Inc.,* No. 0–10-cv-04295 (D. Minn. Oct. 21, 2010) (debt collector), *available at http://www.ftc.gov/os/caselist/0823207/101021alliedinterstatecmpt.pdf; United States* v. *Credit Bureau Collection Services,* No. 2–10-cv-169 (D. Ohio Feb. 24, 2010) (debt collector), *available at http://www.ftc.gov/os/caselist/0623226/100303creditcollectioncmpt.pdf.* Note that the FTC also has brought actions against mortgage servicers for making unsubstantiated claims to consumers. *FTC* v. *EMC Mortg. Corp.,* No. 4:08-cv-00338 (E.D. Tex. Sept. 9, 2008) (mortgage servicer), *available at http://www.ftc.gov/os/caselist/0623031/080909emcmortgagecmplt.pdf; FTC* v. *Countrywide Home Loans, Inc.,* No. 2–10-cv-04193 (C.D. Cal. June 7, 2010) (mortgage servicer), *available at http://ftc.gov/os/caselist/0823205/100607countrywidecmpt.pdf.*

[231] *2009 FTC Modernization Report* at 24 (footnotes omitted).

[232] U.S. Bureau of Consumer Fin. Prot., *CFPB Examination Manual* at UDAAP 1.

[233] The Bureau has explained:

The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency, in light of all relevant factors, including: whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency.

Identification of Enforceable Rules and Orders, 76 FR 43569, 43570 (July 21, 2011).

[234] U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013–08, Representations Regarding Effect of Debt Payments on Credit Reports and Scores* (July 10, 2013), *available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.*

collectors. Section 1031(a) of the Dodd-Frank Act, however, not only prohibits such collectors from engaging in these acts and practices but also more broadly prohibits UDAAPs from being committed by ''service providers.'' Under the Dodd-Frank Act, ''service provider'' is defined to include ''any person that provides a material service to a covered person in connection with the offering or provision * * * of a consumer financial product.''[235] The Dodd-Frank Act prohibits these service providers ''from committing or engaging in an unfair, deceptive, or abusive act or practice * * * in connection with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' This prohibition includes those activities or practices that may arise out of a consumer credit transaction.

Q128: What services are provided to debt collectors in connection with the collection of debts and who provides them? Are the types of services the same for first-party and third-party collectors? What information or data support or do not support the conclusion that such services provided are material to the collection of debts?

Q129: Are there specific acts or practices by service providers that should be specified in proposed rules as constituting unfair, deceptive, or abusive acts or practices in connection with the collection of debts? How prevalent are such acts or practices?

In addition to the prohibition on unfair, deceptive, and abusive acts and practices by service providers, section 1036(a)(3) of the Dodd-Frank Act prohibits ''any person [from] knowingly or recklessly provid[ing] substantial assistance to a covered person or service provider in violation of the provisions of section 1031 or any rule or order issued thereunder.''

Q130: Who provides substantial assistance to debt collectors? Is the assistance provided to first-party collectors the same as the assistance provided to third-party collectors? What measure should be used to assess whether such services provided are material to the collection of debts?

Q131: In what types of circumstances, if any, are persons knowingly or recklessly providing substantial assistance to collectors who are a ''covered person'' or ''service provider'' as defined in the Dodd-Frank Act with respect to acts or practices by the covered person or service provider that violate section 1031? How prevalent is conduct by such persons?

VI. Time-Barred Debts

Time-barred debts are debts that are older than the applicable statute of limitations. There are no requirements set forth in the FDCPA or the Dodd-Frank Act regarding time-barred debts. The Bureau is generally interested in comments about the need for and the costs and benefits of proposed rule provisions concerning the collection of time-barred debt. The Bureau particularly is interested in comment about the need for and the costs and benefits of requiring debt collectors to provide consumers with information relating to time-barred debts.

A. No Legal Right To File Suit on Time-Barred Debt

The FTC and consumer groups have raised the concern that many consumers do not know or understand their legal rights with respect to the collection of time-barred debts. For example, a consumer may not realize that a debt collector is collecting on a time-barred debt and that it is unlawful[236] under the FDCPA for collectors to sue on such debts if the consumer does not pay. Some empirical research suggests that information about the time-barred status of debts may affect consumers' decisions to pay debts and in what order to pay their debts.[237]

The FTC and the Bureau have taken law enforcement actions arising from the collection of time-barred debts. In 2012, the FTC brought an action against a debt buyer that allegedly collected on time-barred debt without disclosing to consumers that they could no longer be sued successfully on the debt. The U.S. Department of Justice, on behalf of the FTC, filed a complaint against Asset Acceptance, LLC (''Asset'') alleging that when Asset collects time-barred debts, ''[m]any consumers do not know if the accounts that Asset is attempting to collect are beyond the statute of limitations. . . . When Asset contacts consumers to collect on a debt, many consumers believe they could experience serious negative consequences, including being sued, if they fail to pay the debt.''[238] The complaint alleged that it was deceptive for Asset to fail to disclose to consumers that they could not be sued if they did not pay.[239] Asset agreed to a settlement under which it was required to disclose such information when it collects on debts that it knows or should know are time barred.[240] Later in 2012, the Bureau also entered into a settlement agreement with a bank collecting on its own debts that requires the bank to provide disclosures concerning the expiration of the bank's litigation rights when collecting debts that are barred by the applicable statute of limitations.[241]

The Bureau and the FTC also recently explained in a joint amicus brief that consumers may be deceived in connection with the collection of time-barred debts.[242] Consumers, in some circumstances, may infer from a collection attempt the mistaken impression that a debt is enforceable in court even in the absence of an express or implied threat of litigation. Accordingly, where a debt is not legally enforceable, a debt collector may be required to make the affirmative disclosure to that effect to avoid misleading consumers.

Q132: Is there any data or other information that demonstrate or indicate

[235] Section 1002(26)(A) of the Dodd-Frank Act, 12 U.S.C. 5481(26)(A). The term, ''service provider'' does not include ''a person solely by virtue of such person offering or providing to a covered person—(i) a support service of a type provided to businesses generally or a similar ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.'' Section 1002(26)(B) of the Dodd-Frank Act, 12 U.S.C. 5481(26)(B).

[236] *E.g., Kimber* v. *Fed. Fin. Corp.,* 668 F. Supp. 1480 (M.D. Ala. 1987); *Basile* v. *Blatt, Hasenmiller, Liebsker & Moore LLC,* 632 F. Supp. 2d 842, 845 (N.D. Ill.2009).

[237] Timothy E. Goldsmith & Natalie Martin, *Testing Materiality Under the Unfair Practices Acts: What Information Matters When Collecting Time-Barred Debts?,* 64 Consumer Fin. L.Q. Rep. 372 (2010). This study examined whether consumers' responses to collection efforts are affected by the knowledge that a debt is time barred. The study concluded that ''[t]hose participants who were told that the debt could not be enforced through court action chose different repayment options than participants who were not told about time-barred debt.'' Goldsmith & Martin at 377–80. In the study, 34 percent of subjects said they would decline to pay a hypothetical debt when they were told the debt ''cannot be enforced against you through court action because the enforcement period has run out.'' Only 6 percent of subjects said they would decline to pay when they had not received the notice. This difference was statistically significant. *Id.* at 378–79.

[238] Complaint at ¶ 34, *United States* v. *Asset Acceptance, LLC,* No. 8:12–CV–182–T–27EAJ (M.D. Fla. Jan. 30, 2012), *available at http://www.ftc.gov/opa/2012/01/asset.shtm.*

[239] *Id.* at ¶¶ 81–82.

[240] The *Asset*-required disclosure states that: (1) ''The law limits how long [the consumer] can be sued on the debt,'' and (2) ''Because of the age of [the consumer]'s debt, we will not sue [the consumer] for it.'' Consent Decree, *United States* v. *Asset Acceptance, LLC,* No. 8:12–cv–182–T–27EAJ (M.D. Fla. Jan. 31, 2012), *available at http://www.ftc.gov/opa/2012/01/asset.shtm.*

[241] *In re Am. Express Centurion Bank, Salt Lake City, Utah,* FDIC–12–315b, FDIC–12–316k, 2012–CFPB–0002 (Oct. 1, 2012), at 6–7 (Joint Consent Order, Joint Order for Restitution, and Joint Order to Pay Civil Money Penalty), *available at http://files.consumerfinance.gov/f/2012-CFPB-0002-American-Express-Centurion-Consent-Order.pdf.*

[242] Brief for FTC and CFPB as Amici Curiae Supporting Respondent, *Delgado* v. *Capital Mgmt. Services, LP,* No. 4:12–cv–04057 (7th Cir. Aug. 14, 2013), *available at http://files.consumerfinance.gov/f/201309_cfpb_agency-brief_12-cv-04057.pdf.*

what consumers believe may occur when they do not pay debts in response to collection attempts? Does it show that consumers believe that being sued is a possibility?

Q133: Should the Bureau include in proposed rules a requirement that debt collectors disclose when a debt is time barred and that the debt collector cannot lawfully sue to collect such a debt? Should the disclosure be made in the validation notice? Should it be made at other times and in other contexts? Should such a rule be limited to situations in which the collector knows or should have known that the debt is time barred? Is there another standard that the Bureau should consider?

Q134: The FTC in its *Asset Acceptance* consent order and several States by statute or regulation have mandated specific language disclosing that consumers cannot be lawfully sued if they do not pay time-barred debts. Please identify what language would be most effective in conveying to consumers that the collector cannot lawfully sue to collect the debt, and why.

B. Revival of Statute of Limitations With Partial Payment of Debt

The FTC and consumer groups also have raised concerns that consumers do not understand that partial payments in some jurisdictions may revive the entire balance of the debt for a new statute of limitations period. Specifically, consumers may believe that when they make a partial payment on a time-barred debt they have only obligated themselves in the amount of the partial payment but in many circumstances that is not true.[243] Under the laws of most States, a partial payment on a time-barred debt revives the entire balance of the debt for a new statute of limitations period.[244]

The FTC stated in its 2010 FTC Litigation and Arbitration Report that in many circumstances in States where laws provide that a partial payment on a time-barred debt revives it, a collector's attempt to collect time-barred debt may create a misleading impression as to the consequences of making such a payment, in violation of section 5 of the FTC Act and FDCPA section 807. The FTC stated that to avoid creating a misleading impression, collectors in many circumstances would need to disclose clearly and prominently to consumers prior to requesting or accepting such payments that providing a partial payment would revive the collector's ability to sue to collect the balance.[245] Apart from avoiding a misleading impression, consumers also may benefit from receiving affirmative statements regarding the impact of partial payments in making decisions about whether to pay debts and in what order to pay them. Indeed, some State and local governments have started requiring collectors to disclose similar types of information when seeking partial payments on time-barred debts both to prevent deception and assist consumers in making better informed decisions.[246]

Q135: Is there any data or other information indicating how frequently time-barred debt is revived by consumers' partial payments? How frequently do owners of debts and collectors sue to recover on time-barred debts that have been revived?

Q136: Is there any data or other information bearing on what consumers believe are the consequences for them if collectors demand payment on debts and they make partial payments?

Q137: Should the Bureau require debt collectors seeking or accepting partial payments on time-barred debts to include a statement in the validation notice that paying revives the collector's right to file an action for a new statute of limitations period for the entire balance of the debt if that is the case under State law? What would be the benefits to consumers of receiving such disclosure? What would be the costs to debt collectors in making such a disclosure? How should such a disclosure be made to be effective? Are there any State or local models that the Bureau should consider in developing proposed rules concerning disclosures and the revival of time-barred debts?

Q138: Some debts may become time barred after collectors have sent validation notices to consumers. In this case, if a collector is still attempting to collect debts after they become time barred, should the collector be required to disclose information about the debt being time-barred, the right of the collector to sue, and the effect of making partial payment to these consumers, and, if so, when and how should it be provided?

Q139: A substantial period of time may transpire between the time of the first disclosure that debt is time barred and of the consequence of making a partial payment and subsequent collection attempts. Should collectors be required to repeat the partial payment disclosure during subsequent collection attempts? If so, when and how often should the disclosure be required?

Q140: How frequently do actions by consumers other than partial payment (*e.g.,* written confirmation by the consumer) revive the ability of debt collectors to sue on time-barred debts? If so, what other actions trigger the revival of time-barred debts? Should debt collectors be required to provide the same type of disclosures to consumers before they take one of these actions that they would be required to provide in connection with payment on a time-barred debt?

C. Consumer Testing of Time-Barred Debt Disclosures

Some consumer financial services statutes and regulations mandate specific format and wording requirements for disclosures. In other cases, to ease compliance, the Bureau publishes model forms and model clauses that may be used to comply with certain disclosure requirements under its regulations. The Bureau seeks comments concerning developing model or standard language and formats for disclosures relating to time-barred debts.

Q141: Have industry organizations, consumer groups, academics, or governmental entities developed model time-barred debt notices? Have any of these entities or individuals developed a model summary of rights under the FDCPA or State debt collection laws related to time-barred debt? Which of these models, if any, should the Bureau consider for proposed rules?

The Bureau plans to conduct consumer testing and other research in developing content or format requirements for any disclosures for time-barred debts it may propose, and for any model forms or clauses for these disclosures it may propose. The Bureau believes that testing disclosures with consumers would help produce disclosures that consumers will be more likely to pay attention to, understand, and use. The Bureau recognizes that industry, academics, or others may have already conducted relevant consumer testing or other research.

Q142: Is there consumer testing or other research concerning consumer understanding or disclosures relating to time-barred debts that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

[243] For example, if a debt collector offers to accept a $50 payment on a $500 time-barred debt, a consumer may believe that the $50 payment itself is the only consequence to him or her of making the payment.

[244] *2013 FTC Debt Buyer Report* at 47.

[245] *2010 FTC Litigation and Arbitration Report* at 28.

[246] N.Y.C. Admin. Code § 20–493.2 (2012); N.M. Admin. Code 12.2.12; 940 Mass. Code Regs. 7.07(24).

VII. Debt Collection Litigation Practices

This Part of the ANPR seeks comment on several aspects of debt collection litigation practice and procedure. Part VII.A discusses section 811 of the FDCPA, which relates to the venue requirements for filing debt collection actions in State courts. Part VII.B seeks comment on a variety of issues related to litigation process and procedure.

A. Venue (Section 811 of the FDCPA)

Section 811 of the FDCPA specifies where a debt collector may file suit and mandates that legal action be filed in one of three places. In an action to enforce an interest in real property securing the consumer's obligation, the suit must be filed where the property is located.[247] Otherwise, the suit must be filed in the judicial district in which the consumer signed the contract sued upon or in the district in which the consumer resides at the time of the commencement of the suit.[248]

These restrictions on venue are intended to protect consumers by preventing them from incurring undue costs that could arise if they were required to defend themselves in distant collection actions.[249] Even with these restrictions, however, consumer groups have stated that the venue alternatives may create problems for consumers in those States where judicial districts are sufficiently large that it can be unduly burdensome for indigent consumers to travel to distant courthouses.[250]

Q143: Where do most collectors file suit? For example, do collectors usually select the place of suit based on a consumer's place of residence or based on where a contract was signed? Do collectors' choices of venue differ based on the type of debt, the amount of debt, or other considerations?

Q144: Are there any consumer protection concerns related to the geographic size of judicial districts, and if so, where do these problems arise specifically? Are States implementing any measures to decrease burdens on consumers in areas where it may be more burdensome for indigent consumers to travel to courts that are farther away from their places of residency?

Q145: Are there any particular unfair, deceptive, or abusive practices related to choice of venue that the Bureau should address in proposed rules?

B. State Debt Collection Litigation

Most debt collection litigation actions that collectors file to recover on debts are filed in State and local courts. The administration of justice and regulation of these State and local courts ''on all subjects not entrusted to the Federal Government, [is] the peculiar and exclusive province, and duty of the State Legislatures.'' [251] Despite the traditional State role in regulating State and local courts, the FDCPA has been applied to the actions of debt collectors in connection with debt collection litigation.[252] The Bureau is interested in comments concerning how proposed rules could protect consumers in debt collection litigation without adversely affecting the traditional role of the States in overseeing the administration and operation of their court systems and without imposing undue or unnecessary burdens on the debt collection process.

Many of the consumer protection issues with regard to debt collection litigation involve issues of procedure and evidence. As mentioned above, the FTC addressed these issues in its 2010 Litigation and Arbitration Report [253] in which it recommended, among other things, that: (1) States should consider adopting measures to make it more likely that consumers would defend themselves in litigation, decreasing the prevalence of default judgments; and (2) States should consider requiring collectors to include more information about the alleged debt in their complaints.[254] At the recent FTC–CFPB Roundtable discussed above, panelists emphasized that a number of States have begun to address inadequate service of process and improve the information that collectors provide to consumers before and at the time a complaint is filed.[255] Some States also have adopted or have proposed regulations to modify procedures and standards for when collectors can obtain default judgments.[256]

The Bureau is interested in receiving information about the nature and extent of State debt collection litigation reforms relating to rules of procedure and evidence and standards for proof at the time of pleading and application for entry of a default judgment. Such information will be useful to the Bureau in understanding the impact of State rules of procedure and evidence on consumers who owe or are alleged to owe debt and to ensure that the proposed debt collection rules complement and avoid interfering with State rules of procedure and evidence. The Bureau is especially interested in comments from State courts and other State officials on these topics.

Q146: How many debt collection actions do collectors file against consumers each year? If the number of actions filed has changed over time, please explain why. Has the resolution of collection actions changed over time? For example, are default judgments more prevalent than in the past? If cases are being resolved for different reasons than before, why?

Q147: Some States have adopted requirements for the information that must be set forth in debt collection complaints, as well as for documents (*e.g.,* a copy of the credit contract) that must be attached to them. Other States have set forth specific requirements for the information that collectors must file in support of motions for default judgment, including adopting standards for the information that must be included in or attached to supporting affidavits and the reliability of the information in the affidavits. Should the Bureau incorporate into proposed rules any requirements to complement or avoid interfering with States' pleading,

[247] 15 U.S.C. 1692i(a)(1).

[248] 15 U.S.C. 1692i(a)(2).

[249] S. Rept. 382, 95th Cong. at 2.

[250] *See 2010 FTC Litigation and Arbitration Report* at 12 (noting that consumer groups have pointed out the challenges faced by some consumers in traveling to court).

[251] *Calder* v. *Bull,* 3 U.S. 386, 387 (1798).

[252] Courts have interpreted the FDCPA as prohibiting filing actions in court to collect on time-barred debt where the debt collector knows or reasonably should have known that it was time barred. *See, e.g., Kimber* v. *Fed. Fin. Corp.,* 668 F. Supp. 1480, 1488–89 (M.D. Ala. 1987). Courts have also interpreted the FDCPA as prohibiting collectors from making materially false or misleading representations in the pleadings, motions, and other documents filed in litigation. *See, e.g., Washington* v. *Roosen, Varchetti & Oliver, PPLC,* 894 F. Supp. 2d 1015, 1023 (W.D. Mich. 2012) (noting that false or misleading statements are prohibited where the statement is *materially* false or misleading to violation section 1692e); *see also Miller* v. *Javitch, Block & Rathbone,* 561 F.3d 588, 596–97 (6th Cir. 2009).

[253] In its 2010 Litigation and Arbitration Report, the FTC also expressed concern about debt collectors' use of arbitration to resolve disputes with consumers. *2010 FTC Litigation and Arbitration Report* at 37–46. After that Report, there was an industry self-imposed moratorium on collectors' use of arbitration to resolve debt collection claims. Section 1028 of the Dodd-Frank Act directs the Bureau to conduct a study and submit a report to Congress concerning mandatory, pre-dispute arbitration with respect to consumer financial products or services, which would include debt collection.

[254] *2010 FTC Litigation and Arbitration Report* at iii–iv.

[255] Maryland Court of Appeals, *Rules Order* (adopting amendments to Rules 3–306, 3–308 and 3–509) (Sept. 8, 2011); North Carolina Senate Bill 974 (signed into law on Sept. 9, 2009).

[256] At the FTC–CFPB Roundtable, Christopher Koegel (Asst. Dir., Div. of Financial Practices, FTC) noted that Delaware, Maryland, and Texas had incorporated provisions of the FTC's earlier recommendations into their State's laws on debt collection. *Transcript of 2013 FTC–CFPB Roundtable* at 270. In addition, California, Colorado, North Carolina, and Minnesota also have enacted new laws regulating debt collection litigation.

motions, and supporting documentation requirements?

Under the FDCPA, the Bureau has the authority to issue rules prohibiting debt collectors from using ''false, deceptive, or misleading representation or means in connection with the collection of any debt'' or ''unfair or unconscionable means to collect or attempt to collect any debt.'' The Bureau also has the authority under the Dodd-Frank Act to prohibit unfair, deceptive, or abusive acts and practices in collecting on debts arising from consumer credit transactions. Concerns have been raised that some collectors may make unfair or deceptive claims about consumer indebtedness in the pleadings, motions, and related documents (usually affidavits) that they file in State debt collection litigation.[257]

Q148: What types of deceptive claims are made in pleadings, motions, and documentation filed in debt collection litigation? How common are such deceptive claims? For example, how frequently do collectors make the false claim that they have properly served consumers?

Q149: What specific documentation or information do collectors have or provide in State courts to support claims that (1) the creditor has the right to collect on debts; (2) the consumer owes the debt; and (3) the consumer owes the debt in the amount claimed?

Q150: The FTC's Staff Commentary to section 803 excludes from the definition of ''communication'' ''formal legal actions,'' like the filing of a lawsuit or other petition/pleadings with a court, as well as the service of a complaint or other legal papers in connection with a lawsuit, or activities directly related to such service.[258] Should the Bureau address communications in formal legal actions in proposed rules? If so, how?

Q151: Are there any other acts and practices in debt collection litigation that the Bureau should address in a proposed rule? For each type of act or practice, how prevalent is it, what harm does it cause to consumers, and how could the Bureau address it in proposed rules in a manner that complements and that is not inconsistent with State law?

VIII. State and Local Debt Collection Systems (Sections 817 and 818 of the FDCPA)

A. Exemption for State Regulation (Section 817 of the FDCPA)

Section 817 of the FDCPA provides that the Bureau ''shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.'' [259] Prior to July 21, 2011, the FDCPA permitted the FTC to grant such exemptions, and the FTC set forth procedures in 16 CFR Part 901 that States could use to apply for the exemption.

The Dodd-Frank Act transferred rulemaking authority related to the State exemptions under the FDCPA to the Bureau. On December 16, 2011, the Bureau published an interim final rule under Regulation F to establish procedures and criteria whereby States may apply to the Bureau for exemption of a class of debt collection practices within the applying State from the provisions of the FDCPA.[260] Regulation F substantially duplicated the FTC's rule related to State exemptions under the FDCPA, making only certain non-substantive, technical, formatting, and stylistic changes.[261] Accordingly, the FTC has rescinded its rule.[262]

The Bureau solicits comment as to whether it should revise the procedures and criteria that States must use to apply to the Bureau for exemption of a class of debt collection practices from the provisions of the FDCPA.[263]

Q152: Do the procedures and criteria set forth in sections 1006.1 through 1006.8 of Regulation F adequately enable States to apply for exemption? Are there any specific revisions to the procedures or criteria set forth in sections 1006.1 through 1006.8 of Regulation F that the Bureau should consider?

B. Exception for Certain Bad Check Enforcement Programs Operated by Private Entities (Section 818 of the FDCPA)

In 2006, Congress amended the FDCPA and added a new exception under section 818 for certain bad check enforcement programs operated by private parties acting pursuant to contracts with a State or a district attorney.[264] Under the exception, a private entity is excluded from the definition of ''debt collector'' under the FDCPA only if: (1) A State or district attorney has established a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such programs to avoid criminal prosecution; [265] (2) the private entity that operates the pretrial diversion program is ''subject to an administrative services support contract with a State or district attorney'' and ''operates under the direction, supervision, and control of such State or district attorney''; [266] and (3) the private entity conducts its operations consistent with the specific requirements set forth in section 818(a)(2)(C) of the FDCPA.

Consumer groups have expressed concern that some of the entities may not be fulfilling the conditions necessary to be excluded from the definition of ''debt collector,'' and, therefore, that the entities should be subject to the FDCPA. For example, some consumer groups have suggested that entities may not be including a ''clear and conspicuous statement'' that the consumer may dispute the validity of the alleged bad check violation.[267]

Q153: How prevalent are bad check pretrial diversion programs?

Q154: What provisions typically are included in the ''administrative support services contracts'' between private entities operating bad check pretrial diversion programs and State or district attorneys? Are these contracts available to the public? Should the Bureau define ''administrative support services contracts'' in proposed rules or specify in such rules what types of provisions must be included for contracts to meet the definition? Why or why not?

Q155: What do State or district attorneys usually do to ensure that the private entities that operate bad check pretrial diversion programs are subject to their ''direction, supervision, and control''? Should the Bureau specify in proposed rules what State or district attorneys must do to direct, supervise,

[257] At the FTC–CFPB Roundtable, W. Thomas Lawrie (AAG, Office of the Maryland Attorney General) noted that he has seen multiple cases where the ''affiant for the debt buyer [is] robo-signing affidavits'' and ''filing 400, 500, up to say 900 affidavits a day.'' *Transcript of 2013 FTC–CFPB Roundtable* at 336.

[258] FTC Staff Commentary on FDCPA section 803(2), comment 2.

[259] 15 U.S.C. 1692o.

[260] *See* 12 CFR 1006.1 through 1006.8; 76 FR 78121 (Dec. 16, 2011).

[261] Subpart A of Regulation F contains the rule related to State exemptions under the FDCPA. Subpart B is reserved for any future rulemaking by the Bureau under the FDCPA.

[262] *Rescission of Rules,* 77 FR 22200 (Apr. 13, 2012).

[263] Maine is the only State that has ever sought or obtained this exemption. *See Exemption from Sections 803–812 of the Fair Debt Collection Practices Act granted to State of Maine,* 60 FR 66972 (Dec. 27, 1995).

[264] Public Law 90–321, sec. 818, as added Public Law 109–351, sec. 801(a)(2), 120 Stat. 2004 (2006).

[265] 15 U.S.C. 1692p(a)(2)(A).

[266] 15 U.S.C. 1692p(a)(2)(B).

[267] 15 U.S.C. 1692p(a)(2)(C)(v)(I).

and control the private entities that operate bad check pretrial diversion programs in order for these programs to be excluded from the FDCPA? If so, what should be required?

Q156: One of the specific requirements in section 818(2)(C) of the FDCPA is that in their initial written communication with consumers the private entities operating bad check diversion programs must provide a ''clear and conspicuous'' statement of the consumers' rights.[268] How do private entities currently disclose this information? Should the Bureau specify in proposed rules what constitutes a ''clear and conspicuous statement'' of these rights? If so, what standards should be included?

Q157: Private entities operating bad check pretrial diversion programs that meet the conditions set forth in section 818 are exempt from the FDCPA. Where these private entities are subject to title X of the Dodd-Frank Act, should the Bureau exempt these entities from title X of the Dodd-Frank Act and any implementing regulations?

Q158: Are there any other aspects of bad check pretrial diversion programs that the Bureau should address in a proposed rule? To the extent commenters have concerns about acts or practices involving these programs, describe how prevalent the practice is and what harm it causes to consumers?

IX. Recordkeeping, Monitoring, and Compliance Requirements

A. Federal Registration of Debt Collectors

A number of States require the licensing or registration of debt collectors that operate in their State.[269] Although the procedures in each State differ, many States require that the collector file a certificate with the State that includes the name of the collection business, as well as the mailing and physical address of the business. States may also require a listing of individual branch offices, and all employees who operate in the State.[270]

In 2010, there were more than 4,000 third-party debt collection firms that employed more than 140,000 people.[271] Given the sheer number of debt collectors, the fact that not all States have licensing or registration programs, and that registration information may not be shared among States, debt collection firms or individuals engaged in debt collection may commit an unlawful act in one State, leave the jurisdiction, and then commence operations in another State.

Section 1022(c)(7) of the Dodd-Frank Act provides the Bureau with the authority to ''prescribe rules regarding the registration requirements applicable to a covered person,'' subject to limited exceptions.[272] Such a registration system could apply to many collection firms and individual collectors.

Q159: Should the Bureau propose rules to require debt collectors to register? Should any such registration system be used to register individual debt collectors, debt collection firms, or both? What information should be required for registration, and are there any particular State models that the Bureau should consider? Are there data on how consumers have benefitted from similar systems now operating in States? Are there data on the costs imposed on collectors by registration? How could a registration system be structured to minimize the cost of registration for debt collectors, while still providing adequate information for those who use the registration system?

Q160: The Nationwide Mortgage Licensing System and Registry (''NMLSR''), which was originally used by State regulators for the registry of mortgage loan originators, is increasingly being used as a broader licensing platform, including for the registration of debt collectors.[273] Would it be desirable for NMLSR to expand or for some other existing platform to be used to create a nationwide system for registering debt collectors rather than having the Bureau create such a system? What could the Bureau do to facilitate the sharing of information among regulators who are part of the NMLSR or other nationwide system to safeguard confidentiality and protect privileged information?

B. Recordkeeping Requirements

At the FTC–CFPB Roundtable, several panelists stated that recordkeeping requirements should be added to the FDCPA.[274] The FDCPA does not currently contain specific record retention requirements, though debt owners, who also function as creditors or mortgage originators, may be subject to record retention requirements under other statutes and regulations, such as TILA or the Equal Credit Opportunity Act and the Bureau's implementing rules.[275] Some Roundtable participants proposed that an FDCPA recordkeeping requirement should be coextensive with the length of time a debt can appear on a consumer report before it must be deleted as obsolete under the FCRA (generally seven years, with some exceptions).[276] Others have suggested that a recordkeeping requirement should be coextensive with the one-year statute of limitations for private actions under the FDCPA, which begins to run from the time of the FDCPA violation.[277] Another alternative would be to use the longer of these two periods.

Q161: What records do creditors and collectors currently retain relating to debts in collection? Should proposed rules impose record retention requirements in connection with debt collection activities? If so, what requirements should be imposed and who should have to comply with them? What would be the costs and benefits of these requirements?

[268] 15 U.S.C. 1692p(a)(2)(C)(v).

[269] Examples of States with some type of licensing or registration requirement include Alaska, Delaware, Florida, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Utah, Washington, West Virginia, and Wyoming.

[270] *See* Alaska Application, *available at http://commerce.alaska.gov/dnn/portals/5/pub/coa4106.pdf.*

[271] Robert Hunt, Fed. Reserve Bank of Pa., *Understanding the Model: The Life Cycle of a Debt* at 10 (2013), *available at http://www.ftc.gov/bcp/workshops/lifeofadebt/UnderstandingTheModel.pdf* (presented at the FTC–CFPB Roundtable).

[272] The registration provision excludes ''an insured depository institution, insured credit union, or related person.'' Section 1022(c)(7) of the Dodd-Frank Act, 12 U.S.C. 5512(c)(7).

[273] For example, some State banking agencies (including those in Massachusetts, Oklahoma, Rhode Island, Vermont, and Washington) are using the system to manage licensing for a variety of non-depository financial services industries. *See* Press Release, Conf. of State Bank Supervisors, *State Regulators Expand Use of NMLS to Include Additional Non-Depository Industries* (Apr. 16, 2012), *available at http://www.csbs.org/news/press-releases/pr2012/Pages/pr-041612.aspx.*

[274] *Transcript of 2013 FTC–CFPB Roundtable* at 208–09.

[275] *See* 12 CFR 1002.12 and 1026.25; *Transcript of 2013 FTC–CFPB Roundtable* at 208–10.

[276] *See* 15 U.S.C. 1681c; *Transcript of 2013 FTC–CFPB Roundtable* at 208.

[277] *Transcript of 2013 FTC–CFPB Roundtable* at 208; *see* section 813(d) of the FDCPA, 15 U.S.C. 692k(d) (''An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.'')

Q162: How long do creditors and debt collectors currently retain records, and how does it differ based on the type of debt or type of record? Should the length of time that debt collection records are retained relate to how long a debt may generally be reported in a consumer report, how long a collector may collect upon the debt, or how long a consumer has to bring private action under the FDCPA? Or is another time period more appropriate?

Dated: November 5, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–26875 Filed 11–8–13; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 218 November 12, 2013

Part V

Department of Transportation

Office of the Secretary

14 CFR Parts 382 and 399

49 CFR Part 27

Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports and Accessibility of Aircraft and Stowage of Wheelchairs; Final Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 382 and 399

49 CFR Part 27

[Docket No. DOT–OST–2011–0177]

RIN 2105–AD96

Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is amending its rules implementing the Air Carrier Access Act (ACAA) to require U.S. air carriers and foreign air carriers to make their Web sites that market air transportation to the general public in the United States accessible to individuals with disabilities. In addition, the Department is amending its rule that prohibits unfair and deceptive practices and unfair methods of competition to require ticket agents that are not small businesses to disclose and offer Web-based fares to passengers who indicate that they are unable to use the agents' Web sites due to a disability. DOT is also requiring U.S. and foreign air carriers to ensure that kiosks meet detailed accessibility design standards specified in this rule until a total of at least 25 percent of automated kiosks in each location at the airport meet these standards. In addition, the Department is amending its rule implementing the Rehabilitation Act to require U.S. airport operators meet the same accessibility standards.

DATES: This rule is effective December 12, 2013.

FOR FURTHER INFORMATION CONTACT: Kathleen Blank Riether, Senior Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), kathleen.blankriether@dot.gov. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, at the same address, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov.* You may obtain copies of this rule in an accessible format by contacting the above named individuals.

SUPPLEMENTARY INFORMATION: The Department of Transportation is amending its rule implementing the Air Carrier Access Act (ACAA) to require U.S. air carriers and foreign air carriers to make their Web sites that market air transportation to the general public in the United States accessible to individuals with disabilities. Specifically, we are requiring U.S. and foreign air carriers that operate at least one aircraft having a seating capacity of more than 60 passengers to ensure that their primary Web sites are accessible. The requirements will be implemented in two phases. Web pages that provide core air travel services and information (e.g., booking or changing a reservation) must be accessible by December 12, 2015. All remaining pages on a carrier's Web site must be accessible by December 12, 2016. Web sites must conform to the standard for accessibility contained in the widely accepted Web site Content Accessibility Guidelines (WCAG) 2.0 and meet the Level AA Success Criteria. In addition, the Department is amending its rule that prohibits unfair and deceptive practices and unfair methods of competition to require ticket agents that are not small businesses to disclose and offer Web-based fares on or after June 10, 2014, to passengers who indicate that they are unable to use the agents' Web sites due to a disability.

DOT is also requiring U.S. and foreign air carriers that own, lease, or control automated airport kiosks at U.S. airports with 10,000 or more annual enplanements to ensure that kiosks installed after December 12, 2016, meet detailed accessibility design standards specified in this rule until a total of at least 25 percent of automated kiosks in each location at the airport meet these standards. In addition, accessible kiosks provided in each location at the airport must provide all the same functions as the inaccessible kiosks in that location. These goals must be met by December 12, 2022. In addition, the Department is amending its rule implementing the Rehabilitation Act to require U.S. airport operators that jointly own, lease, or control automated airport kiosks with U.S. or foreign air carriers to work with the carriers to ensure that the kiosks installed after December 12, 2016, meet the same accessibility standards. The accessibility standard for automated airport kiosks set forth in this rule is based, in part, on the standard for automated teller and fare machines established by the Department of Justice in the 2010 amendment to its Americans with Disabilities Act (ADA) rules.

Executive Summary

The purpose of this rulemaking is to ensure that passengers with disabilities have equal access to the same air travel-related information and services that are available to passengers without disabilities through airline Web sites and airport kiosks. In the Department's view, equal access means that passengers with disabilities can obtain the same information and services on airline Web sites and airport kiosks as conveniently and independently as passengers without disabilities. We expect this rulemaking to be a major step toward ending unequal access in air transportation for people with disabilities resulting from inaccessible carrier Web sites and airport kiosks.

Today, individuals with disabilities often cannot use an airline's Web site because it is not accessible. There are many disadvantages to not being able to do so even with the existing prohibition on airlines charging fees to passengers with disabilities for telephone or in-person reservations, or not making web fare discounts available to passengers with disabilities who cannot use inaccessible Web sites. For example, the cheapest prices for air fares and ancillary services are almost always on the airline's Web site. As a practical matter, the cheapest fares may not be made available to many consumers with disabilities who book by phone or in person as they may be unaware of their right to ask for the Web fare discounts. A few airlines also do not have telephone reservation operations or ticket offices, making it particularly difficult for passengers with disabilities to purchase tickets from them. Inaccessible Web sites also prevent persons with disabilities from checking out many airlines' fares online for the best price before making a choice, booking an online reservation any time of day or night, or avoiding long wait times associated with making telephone reservations. Many also can't always take advantage of checking-in early online to save time as passengers without disabilities can. The reality is that some people with disabilities currently lack access to most, if not all, of the information and services on certain carriers' Web sites that are available to their non-disabled counterparts.

As for airport kiosks, many passengers today use airport kiosks when arriving at the airport to finalize their travel preparations, whether scanning a passport to check in, printing a boarding pass, cancelling/rebooking a ticket, or printing baggage tags. The convenience of airport kiosks simplifies the airport

experience of countless travelers as they independently conduct the necessary transactions and head to their departure gates. For many passengers with disabilities who are otherwise self-sufficient, using an airport kiosk can only be done with assistance from others. In many instances, passengers who cannot use a kiosk due to a disability are simply directed to a line at the ticket counter where they receive expedited service from an agent. This is not a good solution as it denies travelers with disabilities their rights to function independently and excludes them from the advantages other air travelers enjoy in using kiosks.

The legal authority for the Department's regulatory action affecting 14 CFR part 382 is 49 U.S.C. 41702, 41705, 41712, and 41310. Our legal authority for regulatory action affecting 49 CFR part 27 is Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Below is a summary of the major provisions of this regulatory action.

SUMMARY OF MAJOR PROVISIONS

Web Site Accessibility	
Scope/Coverage	• Requires U.S. and foreign carriers that operate at least one aircraft having a seating capacity of more than 60 passengers, and own or control a primary Web site that markets air transportation to consumers in the United States to ensure that public-facing pages on their primary Web site are accessible to individuals with disabilities. • Requires ticket agents that are not small businesses to disclose and offer Web-based fares to passengers who indicate that they are unable to use an agent's Web site due to a disability.
Web Site Accessibility Standard	• Requires carriers to ensure that Web pages on their primary Web sites associated with core travel information and services conform to all Level AA success criteria of the Web Content Accessibility Guidelines (WCAG) 2.0 within two years of the rule's effective date and that all other Web pages on their primary Web sites are conformant within three years of the rule's effective date.
Usability Testing of Web Sites	• Requires carriers to test the usability of their accessible primary Web sites in consultation with individuals or organizations representing visual, auditory, tactile, and cognitive disabilities.
Equivalent Service	• Requires carriers to provide applicable Web-based fare discounts and other Web-based amenities to customers with a disability who cannot use their Web sites due to a disability. • Requires ticket agents to provide applicable Web-based fare discounts on and after 180 days from the rule's effective date to customers with a disability who cannot use an agent's Web sites due to a disability.
Online Disability Accommodation Requests	• Requires carriers to make an online service request form available within two years of the rule's effective date for passengers with disabilities to request services including, but not limited to, wheelchair assistance, seating accommodation, escort assistance for a visually impaired passenger, and stowage of an assistive device.
Automated Airport Kiosk Accessibility	
Scope, Coverage, and Kiosk Accessibility	• Requires U.S. and foreign air carriers that own, lease, or control automated airport kiosks at U.S. airports with 10,000 or more annual enplanements to ensure that all new automated airport kiosks installed three or more years after the rule's effective date meet required technical accessibility standards until at least 25 percent of automated kiosks in each location at the airport is accessible. Accessible kiosks provided in each location at the airport must provide all the same functions as the inaccessible kiosks in that location. These goals must be met within ten years after the rule's effective date. • Requires airlines and airports to ensure that all shared-use automated airport kiosks installed three or more years after the rule's effective date meet required technical accessibility standards until at least 25 percent of automated kiosks in each location at the airport is accessible. Accessible kiosks provided in each location at the airport must provide all the same functions as the inaccessible kiosks in that location. These goals must be met within ten years after the rule's effective date.
Identification and Maintenance of Accessible Kiosks	• Requires carriers and airports to ensure that accessible automated airport kiosks are visually and tactilely identifiable and maintained in working condition.
Joint and Several Liability	• Makes carriers and airports jointly and severally liable for ensuring that shared-use automated airport kiosks meet accessibility requirements.
Priority Access	• Requires carriers to give passengers with a disability requesting an accessible automated kiosk priority access to any available accessible kiosk the carrier owns, leases, or controls in that location at the airport.

SUMMARY OF MAJOR PROVISIONS—Continued

Equivalent Service	• Requires carriers to provide equivalent service upon request to passengers with a disability who cannot readily use their automated airport kiosks.

Summary of Regulatory Analysis

The regulatory analysis summarized in the table below shows that the estimated monetized costs of the Web site and kiosk requirements exceed their estimated monetized benefits at the 7% discount rate but the monetized benefits exceed the costs at the 3% discount rate. The present value of monetized net benefits for a 10-year analysis period is estimated to be −$4.0 million at a 7% discount rate and $13.7 million at a 3% discount rate. Additional benefits and costs were also identified for which quantitative estimates could not be developed. The Department believes that the qualitative and non-quantifiable benefits of the Web site and kiosk accessibility requirements combined with the quantifiable benefits justify the costs and make the total benefits of the rule exceed the total costs of the rule. A more detailed discussion of the monetized benefits and costs for the final Web site and kiosk accessibility requirements is provided in the Regulatory Analysis and Notices section below.

PRESENT VALUE OF NET BENEFITS FOR RULE REQUIREMENTS*

[millions]

Monetized benefits and costs	Discounting period/rate	Web sites	Kiosks	Present value (millions)
Monetized Benefits	10 Years, 7% discounting	$75.9	$34.8	$110.7
	10 Years, 3% discounting	90.3	42.0	132.3
Monetized Costs	10 Years, 7% discounting	79.8	34.9	114.7
	10 Years, 3% discounting	82.5	36.1	118.6
Monetized Net Benefits	10 Years, 7% discounting	(3.9)	(0.1)	(4.0)
	10 Years, 3% discounting	7.8	5.9	13.7

* Present value in 2016 for Web site requirements and 2017 for kiosk requirements.

Background

On May 13, 2008, the Department of Transportation (''Department'' or ''DOT,'' also ''we'' or ''us'') amended 14 CFR Part 382 (Part 382), its ACAA rule, to apply the rule to foreign carriers and to add new provisions concerning passengers who use medical oxygen and those who are deaf or hard of hearing, among other things.[1] The final rule consolidated and took final action on proposals from three separate notices of proposed rulemaking (NPRM).[2] In the preamble of the 2008 final rule, we announced that we would defer final action on certain proposals and issues set forth in the three NPRMs in order to seek further information on their cost and technical feasibility through a supplemental notice of proposed rulemaking (SNPRM). Among the issues we intended to revisit in the SNPRM was a proposal in the initial NPRM to require carriers and their agents to make their Web sites accessible to people with vision impairments and other disabilities. See 69 FR 64364, 64382–83 (November 4, 2004), hereinafter ''Foreign Carrier NPRM.'' We also pledged to seek further comment on kiosk accessibility, which we had discussed in the preamble of the initial NPRM. See *Id.* at 64370. In the 2008 final rule, as an interim measure, we mandated that carriers ensure passengers with disabilities who cannot use inaccessible kiosks or inaccessible Web sites are provided equivalent service.

On September 26, 2011, the Department published an SNPRM proposing to require U.S. and foreign air carriers to make their Web sites accessible to individuals with disabilities and to ensure that their ticket agents do the same. We also proposed to require U.S. and foreign air carriers to ensure that their proprietary and shared-use automated airport kiosks are accessible to individuals with disabilities. In addition, we proposed to revise our rule implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) to require U.S. airports to work with airlines to ensure that shared-use automated airport kiosks are accessible to individuals with disabilities. The SNPRM also set forth the technical criteria and procedures that we proposed to apply to automated airport kiosks and to Web sites on which air transportation is marketed to the general public in the United States to ensure that individuals with disabilities can readily use these technologies to obtain the same information and services as other members of the public. See 76 FR 59307 (September 26, 2011). Comments on the SNPRM were to be filed by November 25, 2011.

Request for Clarification and Extension of Comment Period

In October 2011, the Department received a joint request from the Air Transport Association (now Airlines for America), the International Air Transport Association, the Air Carrier Association of America, and the Regional Airline Association for clarification of the proposal and a 120-day extension of the comment period. The carrier associations specifically asked DOT to clarify the following with regard to our Web site accessibility proposals: 1) whether the scope of the proposed Web site accessibility requirements included the non-U.S. Web sites of U.S. carriers (e.g., country-specific Web sites maintained by U.S. carriers for the purpose of selling to consumers in countries other than the United States); 2) the meaning of the terms ''primary,'' ''main,'' and ''public-facing'' as used in the proposed Web

[1] 73 FR 27614–27687 (May 13, 2008), as modified by 74 FR 11469–11472 (March 18, 2009) and 75 FR 44885–44887 (July 30, 2010).

[2] Nondiscrimination on the Basis of Disability in Air Travel, Notice of Proposed Rulemaking, 69 FR 64364–64395 (November 4, 2004); Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices, Notice of Proposed Rulemaking, 70 FR 53108–53117 (September 7, 2005); and Accommodations for Individuals Who Are Deaf, Hard of Hearing, or Deaf-Blind, Notice of Proposed Rulemaking, 71 FR 9285–9299 (February 23, 2006).

site requirements; 3) whether the term ''alternate conforming version'' as described in the SNPRM would encompass ''text-only'' features offered by some carriers on their primary Web sites; 4) whether carriers would be responsible under the proposed requirement to ensure that the Web sites of large tour operators and carrier alliances are accessible; 5) the Department's authority to regulate ticket agent Web sites directly under 49 U.S.C. 41712, rather than indirectly through the carriers under the ACAA; and 6) the basis for our estimates of the recurring costs associated with maintaining Web site accessibility. Regarding the Department's kiosk accessibility proposals, the carrier associations asked for clarification concerning: 1) whether the Department intended to require some retrofitting of automated airport kiosks in the final rule in the absence of a specific proposal on the issue in the SNPRM; and 2) whether automated ticket scanners at U.S. airports would be covered by the proposed accessibility requirements. We received additional requests shortly thereafter from the Association of Asia Pacific Airlines (AAPA) and the Interactive Travel Services Association (ITSA) to extend the comment deadline.

By early November 2011, members of the disability community and advocacy organizations were also requesting that we delay the closing of the comment period until accessibility issues concerning the comment form available at *www.regulations.gov* could be resolved. In response, we sought expedited action from the Regulations.gov workgroup to correct the accessibility problems with the form and issued a notice in the **Federal Register** on November 21, 2011, outlining alternative methods for submitting comments until the comment form could be made fully accessible. See 76 FR 71914 (November 21, 2011). This notice also addressed the carrier associations' clarification requests and extended the public comment period until January 9, 2012.

We responded to the carrier associations' inquiries concerning our Web site accessibility requirements by explaining that it was our intention to exclude from the accessibility requirements both U.S. and foreign air carrier Web sites that market air transportation solely to consumers outside of the United States. We also further defined ''public-facing'' Web pages as those on a carrier's or agent's Web site intended for access and use by the general public rather than for limited access (e.g., by carrier employees only). For carriers that own, lease, or control multiple Web sites that market air transportation and offer related services and information, we explained that its ''primary'' or ''main'' Web site is the one accessed upon entering the uniform resource locator ''*www.carriername.com*'' in an Internet browser from a standard desktop or laptop computer. We note that some carriers use their IATA airline designator code or other convention in their primary Web site URL (e.g., *www.aa.com, www.virgin-atlantic.com*). We further explained that a carrier's text-only Web page may only be considered a conforming alternate version if (1) it provides the same content and functionality as the corresponding non-conforming page on the carrier's primary Web site, (2) it can be reached via an accessible link from the primary Web site, (3) the content conforms with WCAG 2.0 Level A and AA success criteria, and (4) it is promptly updated to reflect all changes to content available to its non-disabled customers on the primary Web site. In response to the request for clarification regarding the applicability of the accessibility requirements to ticket agent Web sites, we also explained that the requirements would apply to Web sites of large tour operators, since both travel agents and tour operators fall within the definition of ticket agent found in 49 U.S.C. 40102(a)(45). Carrier alliance Web sites, on the other hand, are operated by carriers but are not primary carrier Web sites and therefore would not be covered.

Regarding the question raised about the Department's assertion of its authority to regulate ticket agents directly while proposing to regulate ticket agents indirectly through the carriers, we stated that it was our intention to gather more information from the public about the course of action that would best serve the public interest. We stated in the notice that the Department's authority under 49 U.S.C. 41712 extends to unfair practices, including discrimination against a protected class of consumers by ticket agents,[3] in this case discrimination against individuals with disabilities who are excluded from using the agents' inaccessible Web sites solely due to their disabilities. We acknowledged that the Department of Justice (DOJ) was also likely to mandate that ticket agents make their Web sites accessible under a future amendment to that agency's rule implementing title III of the ADA. At the same time, we stated our intention to pursue a regulatory approach vis-à-vis the accessibility of ticket agent Web sites that would best serve the goal of achieving Web site accessibility for all in the shortest reasonable time frame. Finally, we corrected the errors in the SNPRM and preliminary regulatory evaluation concerning the estimated annual cost of maintaining Web site accessibility and re-explained the basis of the cost estimate.

Regarding the carrier associations' inquiries about our proposals concerning accessible automated airport kiosks, we explained that: (1) Although we did not propose to require retrofitting of existing kiosks, we were seeking information about the technical feasibility and cost impact of retrofitting some number of kiosks before the end of their life cycle if that should be necessary to ensure at least some accessible kiosks in every location at the airport within a reasonable time after the rule goes into effect; and (2) automated ticket scanners would fall within the scope of automated kiosks the Department intended to cover under the proposed requirements.

The Department received 84 comments on issues raised in the SNPRM from industry and advocacy organizations, academic institutions, and members of the public. The industry comments included: two from airline associations (the Association of Asia Pacific Airlines (AAPA), as well as a joint submission by Airlines for America (A4A), the International Air Transport Association (IATA), Regional Airline Association (RAA) and Air Carrier Association of America that also included comments from the Airports Council International—North America (ACI–NA)), two from airports (San Francisco International and Denver International), three from U.S. carriers (Spirit Airlines, Allegiant Air, LLC, and Virgin America), four from foreign air carriers (Air New Zealand Limited, All Nippon Airways, Condor Flugdienst GmbH, and El Al Israel Airlines Ltd.), four from travel agency or tour operator associations (a joint submission by the American Society of Travel Agents (ASTA) and the National Tour Association (NTA), a joint submission by NTA and Student and Youth Travel Association (SYTA), as well as separate submissions by the Interactive Travel Services Association (ITSA), and the United States Tour Operators Association (USTOA)), and one from a trade association representing leading companies in the information and

[3] 49 U.S.C. 41712 authorizes the Secretary of Transportation to investigate and determine whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation, and if so, to stop such practice or method.

communication technology sector (Information Technology Industry Council (ITI)). Advocacy organization comments included one airline passenger consumer organization (Association for Airline Passenger Rights) and 11 submissions from disability advocacy organizations (a joint submission by the American Council of the Blind (ACB) and American Foundation of the Blind (AFB), Consortium for Citizens with Disabilities (CCD), a joint submission by the National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network (DEAFCAN), Telecommunications for Deaf and Hard of Hearing, Inc. (TDHH), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and individual submissions by Disability Rights New Jersey (DRNJ), Silicon Valley Independent Living Center (SVILC), National Federation of the Blind (NFB), United Spinal Association (United Spinal), Association of Blind Citizens (ABC), National Council on Independent Living (NCIL), American Association of People with Disabilities (AAPD), Paralyzed Veterans of America (PVA), and Open Doors Organization (ODO)). Comments from academic institutes included one each from the Burton Blatt Institute (BBI) at Syracuse University, the Department of Computer and Information Sciences at Towson University, and the Trace Research and Development Center (Trace Center) at the University of Wisconsin, and two from the Cornell e-Rulemaking Initiative (CeRI) at Cornell University. There were also 22 individual and joint submissions from students at the University of Pittsburgh School of Law. Nearly 30 individual members of the public also posted comments, 21 of whom identified themselves as persons with disabilities or relatives of the same.

One submission from the Cornell e-Rulemaking Initiative consisted of summaries of the public discussion on the SNPRM proposals that occurred on its Regulation Room Web site, *http://www.regulationroom.org*. The Regulation Room Web site is a pilot project in which members of the public can learn about and discuss proposed Federal regulations and provide feedback to agency decision makers. The Department partnered with Cornell University on this open government initiative of the Obama administration in order to discover the best ways to use Web 2.0 and social networking technologies to increase effective public involvement in the rulemaking process. During the period the SNPRM was available for comment on the Regulation Room Web site, there were nearly 8,000 unique visitors to the site. Those who registered to participate in the discussion totaled 53 and of those, 29 identified as having a disability. A total of 103 comments were posted by 31 of the 53 registered respondents, with 18 comments submitted by respondents identifying as having a disability. The Regulation Room submitted summaries to the Department of the online discussions addressing the accessibility standards, applicability, scope of the requirements, benefits and costs, and implementation approach of the proposed accessibility requirements for both Web sites and kiosks.

The Department has carefully reviewed and considered all the comments received. A summary of the proposed requirements and related questions asked in the SNPRM, the public comments responsive to those proposals, and the Department's responses are set forth in the sections that follow.

Summary of Comments and Responses

Web Site Accessibility

In the September 2011 SNPRM, we proposed to require that U.S. and foreign air carriers ensure that the public-facing content of a primary Web site they own or control that markets air transportation [4] to the general public in the United States conforms to the WCAG 2.0 Success Criteria and all Conformance Requirements at Level A and Level AA. We explained that the proposed requirements would apply to foreign carriers only with respect to public-facing pages on Web sites they own or control that market air transportation to the general public in the United States and made clear in the November 2011 notice that this same limitation would apply to U.S. carriers as well. For both U.S. and foreign carriers, our intent was to exclude from coverage public-facing content on primary Web sites they own or control that market flights to the general public outside of the United States. We explained that the characteristics of a covered primary Web site that markets air transportation to the general public inside the United States includes, but is not limited to, a site that: (1) Contains an option to view content in English, (2) advertises or sells flights operating to, from, or within the United States, and (3) displays fares in U.S. dollars. We note that non-English (e.g., Spanish) Web sites targeting a U.S. market segment would also be covered; whereas Web sites that block sales to customers with U.S. addresses or telephone numbers, even if in English, would not. We also stated our intention to continue requiring carriers to make applicable discounted Web-based fares and other Web-based amenities available to passengers who self-identify as being unable to use an inaccessible Web site due to their disability and to extend the requirement to do the same for passengers who self-identify as being unable to use the carrier's Web site that meets the WCAG 2.0 standard due to their disability.

In addition to the content on their primary Web sites, the Department proposed to require U.S. and foreign carriers to ensure that when their ticket agents are providing schedule and fare information and marketing covered air transportation services to the general public in the United States on Web sites, that these ticket agent Web sites also meet the WCAG 2.0 standard. We proposed to limit the scope of the carriers' responsibility to ensure agent Web site accessibility to the Web sites of agents that are not small businesses as defined by the Small Business Administration under 13 CFR 121.201 (i.e., travel agents or tour operators with annual receipts exceeding $19 million). Specifically with regard to small ticket agents, we proposed to permit carriers to market air transportation on the inaccessible Web sites of such agents but at the same time require carriers to ensure that those small agents make Web-based discount fares available and waive applicable reservation fees to a passenger who indicates that he or she is unable to use an agent's Web site and purchases tickets using another method, unless the fee would apply to other customers purchasing the same ticket online.

[4] 49 U.S.C. 40102(a)(5) defines ''air transportation'' as foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. 49 U.S.C. 40102(a)(23) defines ''foreign air transportation'' as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside of the United States when any part of the transportation is by aircraft. 49 U.S.C. 40102(a)(25) defines ''interstate transportation'' as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft between a place in a State, territory, or possession of the United States and (i) a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and when any part of the transportation is by aircraft.

Finally, we proposed a tiered implementation approach in which the WCAG 2.0 standard at Level A and AA would apply to (1) a new or completely redesigned primary Web site brought online 180 or more days after the effective date of the final rule; (2) Web pages on an existing Web site associated with core air travel services and information [5] to be conformant either on a primary Web site or by providing accessible links from the associated pages on a primary Web site to corresponding accessible pages on a mobile Web site by one year after the final rule's effective date; and (3) all covered Web pages on a carrier's primary Web site by two years after the final rule's effective date.

1. Technical Standard for Web Site Accessibility

The SNPRM: The Department proposed WCAG 2.0 at Level AA (Level AA includes all the Level A success criteria) as the required accessibility standard for all public-facing Web pages involved in marketing air transportation to the general public in the United States on primary carrier and ticket agent Web sites.

Comments: The comments submitted jointly by A4A, IATA, ACI–NA, RAA, and the Air Carrier Association of America opposed mandating a single technical standard for Web site accessibility. They supported various compliance options that, for the most part, would provide increased access for passengers with disabilities to some, but not all, of the content on primary carrier Web sites through an alternative text-only or Mobile Web site conformant with any of the following standards: WCAG 1.0, WCAG 2.0 at Level A, existing Section 508 standards, or Mobile Web Best Practices (MWBP) 1.0 (if applicable). Two of the options they proposed would allow carriers to establish an alternative Web site (i.e., text-only or mobile Web site) containing only the proposed core air travel information and essential functions to which they would apply the accessibility standard of their choice. Two other options they proposed would allow them to apply the standard of choice to limited portions of a carrier's primary Web site (i.e., either to newly designed Web pages or to Web pages associated with core air travel services and information). These compliance options proposed by the carrier associations, as well as other electronic information and communication technology issues discussed in the SNPRM, are presented in greater detail below in the section on *Scope.* Regarding compliance with the WCAG 2.0 standard at Level AA, the carrier associations asserted that requiring carriers to comply with WCAG 2.0 would ''set a very high bar that exceeds federal government Web site accessibility requirements.'' They commented that no government agency currently is required to meet the WCAG 2.0 Level A and AA standards, maintaining that the section 508 Web site standard agencies are required to meet is the equivalent of the WCAG 1.0 standard.[6] They argued that the airline industry should not be the ''test case'' or the first to implement WCAG 2.0.

Although the Association of Asia Pacific Airlines (AAPA) did not specifically oppose the WCAG 2.0 standard, they noted that requiring airlines to apply the standard to primary Web sites which include covered and non-covered content could result in the airlines having to revamp Web pages and shared electronic data sources outside the scope of the requirement from which the covered Web sites obtain information. This concern was echoed by foreign carriers that commented individually, although none of the comments provided any information about the amount of non-covered content they anticipated having to change. AAPA also expressed concern that foreign carriers may eventually be required by the law of their countries to meet a different Web site accessibility standard. Another carrier commenting individually supported compliance with the WCAG 2.0 Level A standard but only for those portions of its Web site involved in providing core air transportation information and functions. Other carriers objected to the Department requiring the WCAG 2.0 standard altogether, opining that it is ''not widely used on commercial Web sites'' or that the technical criteria are ''highly subjective.'' One U.S. carrier was unopposed to the WCAG 2.0 Level AA standard as long as the Department allowed two years to achieve compliance.

The American Aviation Institute (AAI) supported the Department's proposal to require conformance with the WCAG 2.0 Level AA, but again, only on those pages involved with providing core information and functions. The Information Technology Industry Council (ITI), representing 50 leading companies in the information and communications technology industry, urged the Department not to require any technical standard other than WCAG 2.0, stating: ''WCAG 2.0 is the most current and complete standard for web accessibility and is expected to be the basis for the updated Section 508 also. For harmonization purposes, ITI strongly recommends only accepting WCAG 2.0.''

With rare exception, individual commenters who self-identified as having a disability supported WCAG 2.0 as the applicable standard for Web site accessibility. Virtually all advocacy organizations representing individuals with disabilities across the spectrum also supported WCAG 2.0, with more than half specifically endorsing the Level AA success criteria as the appropriate standard. All of the advocacy organization commenters representing individuals who are blind, deaf, or hard of hearing specifically endorsed the Level AA success criteria. ACB and AFB also urged the Department to adopt the Authoring Tools Accessibility Guidelines (ATAG) 1.0, a World Wide Web Consortium [7] (W3C) guideline that defines how authoring tools should assist Web developers in producing Web content that is accessible and conforms to WCAG. (ATAG will be discussed in a later section on Implementation Approach and Schedule.) There were a few comments suggesting that all Level A success criteria and only selected criteria from Level AA be required.

The leading commenters representing ticket agents (ASTA, NTA, USTOA, and ITSA) felt strongly that the Department should refrain from requiring carriers to ensure that their agent Web sites conform to the WCAG 2.0 standard or any other specific accessibility standard at this time. ITSA, in particular, advocated that the Department allow carriers, as well as agents, to adopt any acceptable standard at any compliance level. Citing the DOJ's concurrent rulemaking concerning Web site accessibility standards applicable to entities covered under ADA title III regulations,[8] ticket agent commenters

[5] In the September 2011 SNPRM, the Department defined core air travel services and information on Web sites as the booking and check-in functions as well as information pertaining to personal flight itinerary, flight status, frequent flyer account, flight schedules, and carrier contact information available to consumers on a carrier's primary Web site.

[6] *See* 36 CFR 1194.22, Note par. 2, stating that ''Web pages that conform to WCAG 1.0, level A (i.e., all priority 1 checkpoints) must also meet paragraphs (l), (m), (n), (o), and (p) of this section to comply with this section.''

[7] The World Wide Web Consortium is an international community that develops open standards to ensure the long-term growth of the Web. One of its primary goals is to make the benefits that the Web enables, including human communication, commerce, and opportunities to share knowledge, available to all people.

[8] 75 FR 43460–43467 (July 26, 2010).

also urged that both agencies coordinate the technical accessibility criteria each intends to apply so that Web site accessibility requirements are consistent. A number of these commenters felt that the Department should postpone imposing a Web site accessibility standard for ticket agent Web sites until the DOJ rulemaking is completed.

DOT Decision: After considering the arguments raised by the carrier and ticket agent associations to postpone requiring any standard until after the DOJ rulemaking on Web site accessibility is complete, we have concluded that there is no compelling reason to defer promulgating a WCAG 2.0 based standard applicable to the Web sites of carriers. Since WCAG 2.0 is by far the front-runner among the existing accessibility standards worldwide, and both the Access Board and the Department of Justice have sought public comment on incorporating WCAG 2.0 technical criteria into the existing section 508 standard or directly adopting the standard,[9] the Department believes there is ample justification for adopting WCAG 2.0 at Level AA as the accessibility standard for carrier Web sites that market air transportation to the public in the United States.

We note that well before DOT published its SNPRM in September 2011, both DOJ and the Access Board had embarked upon rulemakings that address Web site accessibility standards. The DOJ rulemakings sought comment on the standard for Web site accessibility it should adopt for entities covered by ADA titles II and III.[10] Specifically, DOJ asked whether it should adopt the WCAG 2.0 Level AA success criteria, whether it should consider adopting another WCAG 2.0 success criteria level, or whether it should instead adopt the section 508 standards rather than the WCAG 2.0 guidelines as the applicable standards for Web site accessibility. In addition, the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) recommended to the Access Board that the Section 508 standard be harmonized with WCAG 2.0.[11] The Access Board, in turn, sought public comment in two successive advance notices of proposed rulemaking on adopting WCAG 2.0 as the successor to the current section 508 standards for Web content, forms and applications.[12]

This consensus is corroborated by many indicators that WCAG 2.0 is the most robust and well supported accessibility standard currently in use. The developers of WCAG 2.0 have made an array of technical resources available on the W3C Web site at no cost to assist companies in implementing the standard.

In addition, foreign governments increasingly are adopting WCAG 2.0 Level AA either as guidelines for evaluating nondiscrimination in providing Web site access[13] or as the official legal standard for accessibility on government Web sites.[14] Australian government agencies are currently required to be compliant at WCAG 2.0 Level A and upgrade to Level AA by December 31, 2014.[15] In August 2011, the Canadian government adopted a requirement for government agencies to bring most content on their public Web sites into compliance with the WCAG 2.0 Level AA standard by July 31, 2013.[16] The Canadian government also released a resource tool in March 2013, to assist air terminal operators in implementing the government's voluntary Code of Practice on accessibility of non-national airports system air terminals.[17] The guidance recommends that terminal operators conform their Web sites to the WCAG 2.0 standard. All official Web sites of the European Union institutions are currently expected to follow the WCAG 1.0 guidelines for accessible Web content, and the EU Commission has proposed to require 12 categories of EU public sector Web sites to meet WCAG 2.0 at Level AA by December 31, 2014.[18] Hong Kong government sites are currently required to meet the WCAG 2.0 at Level AA.[19] New Zealand government sites must meet the same standards by July 1, 2017, with some limited exceptions.[20] France and Germany have national standards that are based on, but not identical to, WCAG 2.0 (Level AA), while United Kingdom government Web sites are required to comply with either WCAG 1.0 or 2.0 at the AA level.[21] The European Telecommunications Standards Institute (ETSI) is seeking public comment on a draft proposal to adopt harmonized accessibility standards for European public information and communication technology (ICT) procurements that specifically proposes WCAG 2.0 Level AA as the Web content accessibility standard.[22]

The Department considered requiring conformance with WCAG 2.0 Level A success criteria only, which are feasible standards for Web developers and would ensure the removal of major accessibility barriers. Level AA, however, contains additional guidelines and recommendations that provide a more comprehensive level of Web site accessibility for people with various types of disabilities. Examples of Level AA success criteria that provide additional access beyond what Level A provides include minimum contrast ratios for regular and large text, capability to resize text, consistent order of the navigation links that repeat on Web pages when navigating through a site, and the availability of multiple ways for the users to find Web pages on a site. As the foregoing discussion on government Web site accessibility standards indicates, the Level AA success criteria are widely regarded as feasible for Web content developers to implement. Moreover, the Level AA success criteria appear to be most often

[9] *See* 75 FR 43452–43460 (title II) and 75 FR 43460–43467 (title III) (July 26, 2010); *see also* 75 FR 13457 (March 22, 2010) and 76 FR 76640 (December 8, 2011).

[10] *See* 75 FR 43460–43467 (July 26, 2010).

[11] TEITAC was established in 2006 to review the existing Section 508 standards and Telecommunications Act accessibility guidelines and advise the Access Board concerning needed changes, including the need for standardization across markets globally. Its members represented the electronic information technology industry, disability groups, standard-setting bodies in the United States and abroad, and government agencies. TEITAC recommended in its 2008 final report that the Access Board seek to harmonize the Section 508 standards with the WCAG 2.0 standards to improve accessibility and facilitate compliance.

[12] *See* 75 FR 13457 (March 22, 2010) and 76 FR 76640 (December 8, 2011).

[13] *See* 76 FR 76640, 76644, nt. 4 (December 8, 2011).

[14] *See* 76 FR 76640, 76644, nt. 5 and 6 (December 8, 2011).

[15] See *Australian Government Web Guide, http://webguide.gov.au/accessibility-usability/accessibility/* (last visited July 2, 2013).

[16] See *Government of Canada Standard on Web Accessibility, http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=23601* (last visited July 2, 2013).

[17] See *Accessibility of Non-National Airports System Air Terminals: Code of Practice, http://www.otc-cta.gc.ca/eng/publication/accessibility-non-national-airports-system-air-terminals-code-practice* (last visited August 26, 2013).

[18] See *Directive of the European Parliament and of the Council on the Accessibility of Public Sector Bodies' Web sites, http://ec.europa.eu/digital-agenda/en/news/proposal-directive-european-parliament-and-council-accessibility-public-sector-bodies-Web sites* (last visited July 2, 2013).

[19] See *Guidelines on Dissemination of Information Through Government Web sites, http://www.ogcio.gov.hk/en/community/web_accessibility/doc/disseminationguidelines.pdf* (last visited July 2, 2013).

[20] See New Zealand Government (Web Accessibility Standard 1.0), *https://webtoolkit.govt.nz/standards/web-accessibility-standard/* (last visited July 2, 2013).

[21] See Powermapper Software Blog, *Government Accessibility Standards and WCAG 2.0, http://blog.powermapper.com/blog/post/Government-Accessibility-Standards.aspx* (last visited July 9, 2013

[22] *See* Draft EN 301 549 V1.0.0, *Human Factors (HF); Accessibility Requirements for Public Procurement of ICT products and services in Europe,* (2013–02). The public comment period on the draft closes July 28, 2013.

specified when conformance with WCAG is required and are most often adopted when Web sites voluntarily use WCAG.[23] Level AAA success criteria, while providing a high level of accessibility, are not recommended for entire Web sites because they are much more challenging to implement and all criteria cannot be satisfied for some Web content.[24] For these reasons, the Department is persuaded that Level AA is the compliance level that can provide the highest practicable level of Web site accessibility.

Regarding the carrier associations' assertion that requiring airlines to comply with the WCAG 2.0 standard sets ''a very high bar that exceeds federal government Web site accessibility requirements,'' we believe they overstate the actual differences between the section 508 and WCAG 2.0 standards. From a practical standpoint, WCAG 2.0 success criteria largely standardize best practices that were developed in response to the requirements of the current section 508 standards. In addition, WCAG 2.0 success criteria that do not correspond to the current section 508 standards were developed to address perceived gaps and deficiencies in the current section 508 standards. Overall, the WCAG 2.0 success criteria spell out more specific requirements for aspects of the Web site coding function than section 508 provides, such as consistent identification of functional elements that repeat across Web pages, specific standards for color contrast, multimedia player controls, and compatibility with assistive technology.

2. Usability and Performance Standards

The SNPRM: In the September 2011 SNPRM preamble, we asked for comment on whether we should adopt a performance standard in lieu of or in addition to the proposed technical standards in the final rule, as well as on the types and versions of assistive technologies to which performance standards should apply. We also sought comment on the feasibility and value of requiring airlines to seek feedback from the disability community on the accessibility of their Web sites through periodic monitoring and feedback on their usability. In addition, we wanted to know whether the Department should require carriers to develop guidance manuals for their Web site developers on implementing the WCAG 2.0 standard so that their Web sites are functionally usable by individuals with disabilities.

Comments: Disability advocacy organizations strongly urged the Department to adopt a set of performance standards in addition to the WCAG 2.0 Level AA technical standard. ACB and AFB advocated the adoption of a general performance standard consistent with the broader accessibility standard of effective communication articulated in the DOJ ADA title II and III regulations.[25] They argued that mere compliance with the technical standards would not be enough to ensure that Web sites would be fully accessible to people with disabilities. NFB, ABC, NCIL, CCD, and BBI also supported pairing the WCAG technical standard with a performance standard to ensure accessibility and usability by a range of individuals with sensory, physical, and cognitive disabilities. Acknowledging the difficulty of measuring performance standards, NCIL suggested several possible measures, including the rate of success of users with disabilities in accomplishing various tasks on the Web site, the average time it takes for a group of users with disabilities to accomplish a task as compared to a group of non-disabled users, and required compatibility of a Web site with the most widely used accessibility software and technologies to ensure usability by as many people as possible.

While most industry commenters did not specifically address performance standards, the carrier associations opposed the adoption of any kind of prescriptive standard, including specific performance standards. ITSA noted that making Web pages accessible involves performance trade-offs and that imposing rigid performance standards would result in costs and technical challenges that may not be feasible. The Cornell e-Rulemaking Initiative (CeRI), an academic initiative working to facilitate public comment on DOT rulemakings, sought to conform its Web site to WCAG 2.0 at Level AA in preparation for soliciting public comments on DOT's rulemaking on Web site and kiosk accessibility. Their experience led them to conclude that applying performance standards broadly may have limited usefulness. They note, for example, that performance standards are typically developed based on a specific version of a specific assistive technology used to access Web sites and therefore are not useful for testing earlier versions of the technology (e.g., a Web site that meets a performance standard accessed by a user with the latest version of JAWS screen reader software may not meet the performance standard if accessed using an earlier version of the software). They also noted that with regard to specific assistive technologies, compatibility with evolving technical standards and user proficiency has an impact on whether performance standards are helpful in testing the usability of a Web site. ITI expressed concern about the many questions related to specific combinations of browsers, operating systems, assistive technologies, and disability types that would need to be considered and the cost impact of developing and testing specific performance standards. As an alternative, ITI suggested introducing a mechanism for end users of a Web site that already meets the WCAG 2.0 technical standard to be able to report on specific accessibility issues encountered on that Web site.

BBI supported a requirement for carriers to develop internal guidance manuals, pointing out that such documents are useful for training new or temporary employees on implementing the standard and preventing new accessibility barriers on the Web site. CCD stated that DOT should act now to develop guidance for carriers on how to implement technical accessibility standards so that their Web sites will be functionally usable. DRNJ, on the other hand, noted that since a substantial amount of free training and guidance materials are presently available online, a requirement for each carrier to develop its own guidance manual would appear to be unnecessary. They recommended that if there is a need for airline-specific material, the Department should contract with a university or other provider to create a national center for training and technical assistance. The carrier associations felt that requiring carriers to produce a guidance manual would further burden staff members already busy implementing other passenger protection requirements.

DOT Decision: The Department is persuaded that adopting specific performance standards at this time is premature. We strongly believe that specific measures to ensure the usability of Web sites that meet the WCAG 2.0 standard are necessary, however. We therefore are requiring carriers to consult with members of the disability community to test and provide feedback

[23] See *WCAG 2.0 Overview, http://www.evengrounds.com/wcag-tutorial/overview* (last visited July 2, 2013).

[24] See Web Content Accessibility Guidelines (WCAG) 2.0, *http://www.w3.org/TR/WCAG/* (last visited August 22, 2012.)

[25] The Department of Justice requires covered entities to ensure effective communication through auxiliary aids and services that are ''provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.'' See 28 CFR 35.160 (b) and 28 CFR 36.303(c)(1)(ii).

on the usability of their Web sites before the applicable compliance deadline. A carrier is not required to pay a group or individual representing a disability type to test its Web site. Although we believe that it is very unlikely that a carrier would be completely unable to find anyone with whom to consult, if after making a reasonable effort a carrier is unable to find a person or group representing a disability type that will test the carrier's Web site at no expense to the carrier and within a reasonable time period, the carrier has fulfilled its obligation with respect to the requirement.

It is worth noting that the Department has required consultation with disability organizations in implementing certain provisions of its disability regulation (14 CFR part 382) since March 1990. In the March 1990 final rule, the Department mandated that airlines consult with organizations representing persons with disabilities in developing their employee training programs. In the preamble to this 1990 final rule, we explained that ''[t]he Department continues to believe that disability groups are a major resource for carriers, to help them devise practical and comprehensive procedures for accommodating passengers with a wide variety of disabilities. Consultation basically means making reasonable efforts to obtain the views of disability organizations: there is no list of organizations or type of contacts that the rule specifically mandates.'' See 55 FR 8008, 8043 (March 6, 1990).

More recently, we refined this requirement in the May 2008 final rule in response to concerns raised by foreign carriers. In their comments on the 2004 Foreign Carriers NPRM, some foreign carriers objected to consulting with disability groups, saying that the requirement should be waived if they could not find a local disability group to consult. Disability groups responded to these comments by suggesting that such a waiver was unnecessary because the U.S.-based staff of the airline could consult with U.S. groups if necessary. The following excerpt from the preamble to the 2008 final rule discusses the Department's decision regarding changes to the consultation requirement: ''While U.S. disability groups can undoubtedly be a useful resource for both U.S. and foreign carriers, we do not believe it would be realistic to require foreign carriers to seek out U.S. disability groups for consultation (in many cases, U.S.-based personnel of these carriers would be operations staff, not management and training officials). Consequently, we have modified the language of this provision to refer to seeking disability groups in the home country of the airline. If home country disability groups are not available, a carrier could consult individuals with disabilities or international organizations representing individuals with disabilities. We do not believe that a waiver provision is needed, since it is unlikely that a carrier would be completely unable to find anyone—home country or international disability groups, individuals with disabilities—with whom to consult. As a matter of enforcement policy, however, the Department would take into consideration a situation in which a carrier with an otherwise satisfactory training program documented it had made good faith efforts to consult but was unable to find anyone with whom to consult.'' 73 FR 27614, 27643 (May 13, 2008). The Department also already requires U.S. and foreign carriers to consult with local service animal training organization(s) in providing animal relief areas for service animals at U.S. airports.

Similarly, in this final rule, the Department is requiring carriers to consult with individuals with visual, auditory, tactile, and cognitive disabilities or organizations representing these disability types (e.g., American Federation of the Blind, National Federation of the Blind, National Association of the Deaf, Arthritis Foundation, United Cerebral Palsy, The Arc, etc.) in testing the usability of their Level AA-compliant Web sites. Carriers may consult with any individuals and/or local, national, or international disability organizations whose input collectively can help them determine how effectively their accessible Web site addresses the functional limitations of people with visual, auditory, tactile, and cognitive disabilities. To the extent that individuals on a carrier's disability advisory board represent these disability types, the carrier may consult with those individuals to satisfy the requirement. For disabilities of the types listed above that are not represented on their advisory boards, carriers will be obliged to consult with outside individuals or organizations representing those disability types. We believe that it is very unlikely that a carrier would be completely unable to find anyone with whom to consult—either unaffiliated individuals with disabilities or members of a home country or international disability group—that represent these disability types and who use or want to use a carrier's Web site. As a matter of enforcement policy, however, the Department would take into consideration a situation in which a carrier documented that it had made good faith efforts but was unable to find a group or individual willing or able to consult within a reasonable time period. While the consultation requirement does not mandate that carriers modify their Web sites using all the feedback obtained from the consultations, we encourage carriers to make any changes necessary to ensure access by people with these functional limitations to the extent that such changes are not unduly burdensome to implement.

We note that although the WCAG 2.0 standard is geared to making Web sites accessible to a wide range of individuals with disabilities, the developers of WCAG 2.0 emphasize that the guidelines are not able to address the needs of people with all types, degrees, and combinations of disability. Some disability advocates have criticized WCAG 2.0 as falling short in providing equal accessibility for individuals with cognitive disabilities.[26] These advocates observe that certain WCAG 2.0 Level A and Level AA success criteria target certain accessibility issues such individuals face (e.g., Success Criterion 2.2.1—Adjustable Timing, 2.4.7—Focus Visible such that any keyboard operable user interface has a mode of operation where the keyboard focus indicator is visible, 3.3.1—Error Identification, 3.3.3—Error Suggestion, and 3.3.4—Error Prevention). The advocates note, however, that the most significant issues such as difficulty comprehending text are addressed by optional Level AAA success criteria. Those criteria include Success Criterion 3.1.5—Reading Level that requires supplementary content or a version of the content that does not require reading ability greater than lower secondary level, and Success Criterion 1.4.8—Visual Presentation requiring unjustified text, text width no more than 80 characters, line spacing of at least one and a half lines within paragraphs, capabilities for users to select text and background colors and resize text up to 200%, and other features to assist with difficulties in tracking and comprehending text. With nearly 5% of the U.S. population reporting some kind of cognitive disability in 2011,[27] the Department

[26] Richardson, Allie (November 29, 2011). *Those WCAG Forgot: Designing for the Cognitively Disabled.* Retrieved July 16, 2013 from *http://orange.eserver.org/issues/7-2/richardson.html.*

[27] Erickson, W., Lee, C., von Schrader, S. (2013). Disability Statistics from the 2011 American Community Survey (ACS). Ithaca, NY: Cornell University Employment and Disability Institute (EDI). Retrieved July 16, 2013 from *www.disabilitystatistics.org.*

acknowledges that even the best accessibility standards currently available fall short of providing the accessibility needed by many individuals with cognitive impairments. We are nonetheless encouraged that the WCAG developers recognize these needs and support additional measures to advance cognitive, language, and learning access that can be taken within WCAG 2.0 itself and other ways that go beyond what can go into the standard.[28] As efforts to improve accessibility for different kinds of disabilities continue, usability testing with individuals representing a variety of disabilities will help in the interim to improve access until measurable success criteria to address specific unmet needs can be developed. We believe that the usability testing strikes a balance between taking reasonable steps to ensure usability, while limiting the potentially significant costs of meeting performance standards having minimal usefulness to individuals with disabilities. The Department encourages disability advocacy organizations to work with carriers to provide Web site usability feedback, both during the development and testing process and after the accessible Web site has been published.

With regard to adopting a requirement for carriers to develop guidance manuals, the Department concurs that the benefits do not outweigh the costs. There is an abundance of readily available guidance on the W3C Web site with detailed information on implementing and testing each of the technical criteria for each WCAG 2.0 conformance level. In addition, consultation with members of the disability community on the usability of conformant Web sites will enhance the available technical guidance and ensure that carriers have practical feedback to guide their efforts. As Web content is updated and Web development standards evolve, we encourage carriers to continue soliciting feedback from users with disabilities as the best way to ensure the ongoing accessibility and usability of their Web sites.

3. Scope—Web Sites and Other Electronic Information and Communication Technologies

The SNPRM: Our proposal to require carrier Web site accessibility was limited to all public-facing content on a carrier's primary Web site marketing air transportation to the general public in the United States. We did not propose to apply the accessibility standard to any other Web site a carrier may own, lease, or control (e.g., a mobile Web site) or to primary carrier Web sites marketing flights exclusively to the public outside of the United States. The Department asked for comment on whether we should limit the requirement to certain portions of the primary Web site (e.g., booking function, checking flight status), whether the requirements should extend to mobile carrier Web sites and to other electronic information technologies (e.g., email or text messaging) used by carriers, and whether any third-party software downloadable from a carrier's Web site should be required to be accessible.

Covered Content on Primary Web Sites

Comments: Regarding the scope of the Web site accessibility requirements, in general the carrier associations and several individual carriers advocated limiting the scope to pages on the primary Web site or on a mobile Web site involved in booking air transportation. The carrier associations, which strongly advocated for flexibility and alternative approaches to making Web sites accessible, urged the Department to consider four options for providing Web site accessibility from which carriers could choose. The first option was a text alternative Web site that would provide only the core air travel information and services (not all of the public-facing content) offered on the primary Web site. The second option would also provide only core air travel information and services on a mobile Web site that meets the MWBP 1.0 standard and is accessible from a link on the primary Web site or that automatically loads on a Smartphone or other mobile device. The third option would allow a carrier to make the Web pages that provide core air travel information and services on a primary Web site accessible using any Web accessibility standard. The fourth option would only require carriers to make newly created Web pages on a primary Web site accessible using any Web accessibility standard starting two years from the final rule effective date. None of the options suggested by the carrier associations would require that all public-facing content on a primary Web site be accessible, although the fourth option might eventually lead to that result. Commenters who supported flexibility and carrier choice also expressed the view that fewer compliance options would inhibit carrier innovation and use of new technologies, limit Web site utility for all passengers, and result in an undue burden for the industry. Other industry commenters such as AAI supported the WCAG 2.0 accessibility standard, but also favored an approach that would limit the public-facing content on a primary Web site that must meet that standard. Some commenters who supported limiting the scope of covered primary Web site content argued that the cost of making large numbers of infrequently visited pages accessible will outweigh any benefit to the few people with disabilities who might visit them. Others argued that providing the core air travel functions in an accessible format on a mobile or text alternative Web site was a reasonable solution because it would be less costly than making their primary Web sites accessible and still provide passengers with disabilities essential air transportation service information. We note that carriers generally were in agreement with the core air travel information and services listed in the second tier of the phased compliance schedule proposed in the September 2011 SNPRM and to applying some accessibility standard to all associated Web pages. One carrier that did not support applying accessibility standards to carrier Web sites suggested that carriers be required to provide a phone number to an accessible phone line where equivalent information and services could be obtained. In its view, this was the best alternative because it would provide personalized service to passengers with disabilities and avoid the imposition of high Web site conversion costs on carriers.

Disability advocacy organizations and individuals who self-identified as having a disability unanimously supported the Department's proposal to require that all public-facing content on a carrier's primary Web site be accessible. A few commenters who self-identified as having disabilities did not oppose the use of text-only Web sites for achieving accessibility, but none supported access to anything less than all public-facing content on a carrier's Web site. ITI, the association of leading information and communication technology companies, stated unequivocally that the complete Web site (all public-facing content on a carrier's primary Web site versus only portions necessary to providing core air travel services and information) should comply with the WCAG 2.0 standard at the conclusion of the implementation period. The majority of individual commenters identifying as having a disability and all commenters representing disability advocacy organizations were also adamantly

[28] Clark, Joe (November 26, 2006). *Letter of invitation re cognitive language and learning aspects of WCAG 2.0.* Retrieved July 16, 2013 from *http://joeclark.org/access/webaccess/WCAG/cognitive/message061122.html.*

against the use of text-only Web sites as an alternative to making the primary Web site accessible. Their reasons for opposing the text-only sites will be explained in the discussion on conforming alternate versions later in this preamble.

DOT Decision: The Department considered the arguments raised by carriers and carrier associations in support of compliance options that limit the scope of primary Web site content that must be accessible. While the proposed options would undoubtedly result in cost savings to carriers, they are not the only way to reduce the cost of making Web sites accessible. Moreover, and most importantly, such options are not acceptable because the purpose of requiring Web site accessibility is to attempt to ensure that passengers with disabilities have equal access to the same information and services available to passengers without disabilities. Therefore, the Department has decided to retain in the final rule the requirement we proposed that public-facing content on a carrier's primary Web site marketing air transportation to the general public in the United States must be accessible. The statutory definition of air transportation includes interstate transportation or foreign air transportation between a place in the United States and a place outside of the United States. See 49 U.S.C. 40102 (a)(5). For a carrier whose primary Web site markets (i.e., advertises or sells) air transportation to the general public in the United States this generally means that all public-facing Web content is covered. For a carrier whose primary Web site markets air transportation as defined above and other flights to the general public in and outside of the United States, only public-facing content on the Web site marketing air transportation to the general public in the United States must be accessible. We recognize that some technical difficulty may be involved for foreign carriers applying the accessibility standard to Web sites marketing air transportation to the public in the United States that draw on data sources not required to be accessible under our rules. We are not convinced; however, that the effort to ensure the data from such sources can be used on the covered Web site will involve such significant expense as to cause an undue burden. At the same time, there is no requirement for carriers to make Web pages that market air transportation to the general public outside of the United States on a covered Web site accessible. Therefore, for covered Web sites that market both air transportation as defined above and other flights not within the scope of this rule, we expect carriers to do what is necessary to render Web pages marketing air transportation to the general public in the United States accessible. Carriers will have to decide the best approach to making the covered Web content accessible based on their business priorities and available resources. As a practical matter, we recognize that the most technically efficient and cost effective way to ensure that covered pages meet the accessibility standard may be for carriers to make all Web pages accessible on a Web site that markets air transportation to the general public both inside and outside of the United States and/or markets flights not covered by the rule. Therefore, we encourage carriers to bring Web pages covered by the accessibility requirements into compliance with the WCAG 2.0 Level AA standard using the technical approach that is most feasible for them given the content and infrastructure architecture of their Web sites.

Mobile Web Sites, Mobile Apps, and Other Electronic Communication Technology

The SNPRM: The Department sought comment on whether carriers should be required to ensure that their mobile Web sites meet the WCAG 2.0 standard at Level AA or follow the W3C's MWBP 1.0, or both. We asked whether carriers should be required to ensure that any third party software downloadable from a link on the carrier's Web site (e.g., deal finding software) is accessible and to ensure other carrier-initiated electronic communications such as reservation confirmations, flight status notifications, and special offer emails are accessible. We also requested input on the costs and technical feasibility of ensuring that such content is accessible.

Comments: The Department received a number of responsive comments to our questions about the accessibility of mobile Web sites and other electronic information and communication technologies. Several advocacy organizations for individuals with vision impairment were pleased that the Department had acknowledged that primary Web sites represent only a portion of the air travel-related electronic information and communication that pose barriers to people with disabilities. These organizations strongly urged the Department to go further and require carriers to ensure that their mobile Web sites and other technologies used for electronic customer interface (e.g., email, text messages, and mobile applications) are accessible. Some commenters representing advocacy organizations urged the Department to require carriers to make their mobile Web sites conform to the W3C's MWBP, while others urged us to require mobile Web sites to conform to the same WCAG 2.0 Level AA standard as primary Web sites. Regarding mobile applications (apps), while some of these commenters acknowledged that most mobile phones are not yet fully accessible to blind and other visually impaired users, they felt strongly that mobile apps may overtake Web sites and kiosks as the method of choice for looking up flight information, selecting seats, checking in, etc. within the next few years. They urged the Department to require carriers to ensure that their apps are compatible with the built-in or external assistive technologies that individuals with disabilities use. Specifically, they asked us to require carriers to meet the accessibility standards developed by operating system developers (e.g., Apple's *Human Interface Guidelines* for mobile apps designed for Apple's iOS mobile operating system) or another recognized standard known to be compatible with available external assistive technology. As discussed earlier, a few of these commenters also urged the Department to adopt in 14 CFR part 382 DOJ's ''effective communication'' standard under ADA titles II and III and require accessibility of all electronic information and communication technologies used by carriers to interface with their customers. NCIL advocated that the Department take a stronger stance in its rulemakings to reflect the broader rights of people with disabilities to technology access as described in Section 508. By way of comparison, they observed the efforts of government agencies to effectively communicate with people from diverse cultural backgrounds by making their regulations and guidance documents available in multiple languages on agency Web sites, through printed media, and via interpreters on the telephone. NCIL believes that the same concentrated and sustained effort to include people with disabilities is overdue. They further regard failure to move in the direction of greater access for people with disabilities across the spectrum of electronic information and communication technologies as ''unacceptable, unfair, and discriminatory'' stating: ''. . . mandates for accessibility of Web sites . . . [are] long overdue; DOT must not make the same mistake by neglecting to address

mobile apps until several years from now.''

Carrier associations and individual carriers generally supported applying an accessibility standard to mobile Web sites only when the mobile Web site is the platform for making the content of a carrier's primary Web site accessible. They acknowledged that mobile Web sites typically do not contain all the content of primary Web sites. ITSA encouraged us to adopt a flexible standard for mobile Web sites (e.g., the W3C's MWBP). In general, industry commenters either expressed opposition or did not comment on our questions regarding accessibility of other electronic information and communication technologies used by carriers to interface with their customers.

DOT Decision: The Department unequivocally supports full accessibility of all electronic information and communication technologies used by the air transportation industry to interface with its customers. We believe that certain factors, however, preclude introducing new accessibility requirements for electronic information and communication technologies other than Web sites at this time. Four factors weighed most heavily in our decision: (1) No accessibility standard specifically for mobile Web sites exists at this time; (2) accessibility standards such as WCAG 2.0 cannot be readily applied to mobile applications designed for mobile platforms that are not accessible; (3) most mobile devices currently on the market are not accessible to individuals who are blind or visually impaired; and (4) the need to focus carrier attention and resources on bringing existing Web sites into compliance with WCAG 2.0 Level AA. We believe the best approach to expanding accessibility of electronic information and communication technology in the air travel industry is to allow carriers to focus their resources on bringing the covered public-facing content of their primary Web sites into full compliance with the WCAG 2.0 Level AA standard. As they do so, they will acquire expertise and develop technical efficiencies in implementing the standard. We have decided, therefore, not to require that mobile Web sites, email, text messaging, mobile apps, and other electronic communication technologies be accessible at this time. Nonetheless, we encourage carriers to develop their mobile Web sites in conformance with the W3C's current MWBP until such time as a standard for mobile Web sites is developed and adopted. We also encourage carriers to immediately begin incorporating accessibility features into email, text messaging, and other information and communication technologies they use to the extent feasible. Doing so will immediately and incrementally increase access to those technologies for individuals with disabilities. In addition, it may make compliance with any accessibility standard the Department may require for such technologies in the future easier and less costly.

Embedded Inaccessible Third-Party Plug-In Applications and Links to Inaccessible External Web Sites and Applications

Comments: Carrier Web sites may contain content that can only be read using a software application owned and developed by a third party. Such applications may be hosted (embedded) on the carrier's Web site, or the Web site may contain a link to an external Web site where the application resides. In the September 2011 SNPRM, the Department sought comment on whether third-party software downloadable from a carrier's Web site (embedded) should be required to be accessible. The carrier associations opposed any such requirement, reiterating their position that the Department should regulate the entities providing the software directly when it is within the scope of its authority to do so. Disability advocacy organizations commenting on the issue urged the Department to require carriers to ensure that downloadable third-party software is accessible. These commenters pointed out that any contracts carriers have with the entities producing such software should contain a provision requiring that it meet the WCAG 2.0 standard. They specifically noted that section 382.15(b) requires carriers contracting for services that must be provided under Part 382 to ensure that the contracts stipulate that the vendor provide the service in accordance with Part 382. They reasoned that if Part 382 requires a carrier's public-facing Web content to be accessible, and the carrier contracts with a third party to provide downloadable software on its Web site, the contract must stipulate that the software meets the WCAG 2.0 standard. In addition, they urged the Department to require carriers to work proactively with the producers of inaccessible software that resides on an external Web site but can be reached from a link on the carriers' Web sites to repair any accessibility issues.

DOT Decision: The Department has considered the impact on Web site accessibility of various scenarios involving inaccessible third-party software embedded on a carrier's Web site and links to inaccessible Web sites or software that reside on an external Web site. In the case of an inaccessible third-party software, such as a deal finder software, embedded directly on a carrier's Web site, the Department believes that allowing exceptions for such software on an otherwise accessible Web site could significantly undermine the goal of equivalent access to Web site information and services for people with disabilities. Many companies today sell off-the-shelf Web software (e.g., JavaScript menus) used by Web site authors. A general exception allowing carriers to embed inaccessible plug-in software developed by third parties on an otherwise accessible Web site over time could result in significant portions of Web sites being excepted from compliance with the WCAG 2.0 standard.

The Department believes it is incumbent on carriers that intend to host third-party software of any kind on their Web sites to work with the developers to ensure that such software meets the WCAG 2.0 standard. This rule does not, however, prohibit a carrier from having links on its primary Web site to external Web sites and third-party software that are partially or entirely inaccessible. Such links are acceptable so long as there is a mechanism on the carrier's Web site informing the user that the third party software or external Web site may not follow the same accessibility policies as the primary Web site. For example, if a carrier's Web site has links to inaccessible external Web sites containing information and consumer comments about the carrier's services (e.g., social media Web sites such as Facebook, Twitter, and YouTube), the carrier must provide a disclaimer when the link is clicked informing the user that the external Web site is not within the carrier's control and may not follow the same accessibility policies (See links to Facebook, Twitter, and YouTube on the Social Security Administration home page *http://ssa.gov*). While this approach is acceptable, we urge carriers generally to avoid linking to external resources that are known to be inaccessible and to work with the authors of the external sites whenever possible to develop accessible modules. For example, Facebook, Twitter, and YouTube have collaborated successfully with the Web site developers of certain government agencies to provide an accessible interface for agency-related content (e.g., see links to Facebook, Twitter, and YouTube on the homepages of the Department of Education at *http://ed.gov* and the

Department of Homeland Security at *http://dhs.gov*).

4. Applicability

The SNPRM: We proposed to apply the WCAG 2.0 Web site accessibility standard to U.S. and foreign carrier primary Web sites that market (i.e., advertise or sell) air transportation to the general public in the United States. We asked whether the requirements should apply to the Web sites of the largest U.S. and foreign air carriers only (e.g., those that operate at least one aircraft with more than 60 seats), of carriers that offer charter service only, and of carriers that advertise air transportation but do not sell airline tickets. As discussed above, the Department also proposed to require both U.S. and foreign carriers to ensure the accessibility of Web sites owned or controlled by agents that are not small business entities and to permit carriers to market on the inaccessible Web sites of small ticket agents, if they ensure that those small agents make Web-based discount fares and amenities available to passengers who indicate they are unable to use the agent's Web site. We sought comment on whether we should directly require ticket agents to ensure the accessibility of their Web sites under 49 U.S.C. 41712, rather than indirectly through the carriers. We also proposed to require that carriers disclose (and make available to sell) Web-based discounts and waive telephone or ticket counter reservation fees for customers indicating that due to a disability they are unable to use a carrier's inaccessible Web site (before the Web site conversion deadline). Finally, since individuals with certain disabilities (e.g., deaf-blind) may not be able to use a Web site that meets the WCAG 2.0 standard at Level AA without assistance, we proposed to require carriers to disclose and make available Web-based discounts and waive telephone or ticket counter reservation fees for customers indicating that due to a disability they are unable to use the carrier's accessible Web site after the Web site conversion deadline.

Applicability to Carrier Web Sites

Comments: Overall, the majority of commenters favored our proposal to apply the Web site accessibility requirements to primary carrier Web sites that market air transportation to the general public in the United States. Despite their disagreements with the proposed technical standard, the scope of covered Web site content, and the implementation time frame, both U.S. and foreign carriers were nearly unanimous in supporting the concept of carrier Web site accessibility. There were some comments, particularly among industry commenters, in favor of limiting applicability of the Web site accessibility requirements based on carrier size or Web site function.

The carrier associations who commented jointly urged the Department to apply the accessibility standard only to carrier Web sites that offer *and* sell air transportation. In their view, carrier Web sites that advertise air transportation but do not sell airline tickets should be excluded from coverage. Condor Flugdienst noted that foreign carriers operating a small number of weekly flights to and from the United States should be permitted an alternative means of compliance rather than having to make an investment in Web site accessibility similar to that of foreign carriers that operate more frequent covered service. All Nippon (ANA) concurred with the notion that basic information on carrier Web sites should be accessible to consumers with disabilities but stated that revising its Web sites targeting only U.S. consumers is impractical because all its Web sites (e.g., targeting Japan, Asia, Europe) draw on common data sources. The Regional Airline Association asserted that compliance costs for smaller carriers operating aircraft with 60 or fewer passenger seats would far outweigh the benefits but did not explicitly support excluding Web sites based on carrier size. One industry commenter suggested that DOT should exclude small or very small carriers with inaccessible Web sites from the accessibility requirements as long as the large partner carriers handling online ticket sales, check-in, etc., on their behalf also host on their own accessible Web sites the core air travel information and services available on the smaller airlines' inaccessible Web sites. There were very few comments by individual members of the public and none by commenters representing the disability community in favor of excluding any primary carrier Web sites from coverage.

Carriers raised no objections to the provisions to require disclosure of Web-based discounts and amenities and waiver of reservation fees not applicable to other customers for individuals with disabilities who notify the carrier that they are unable to use a Web site due to their disability. Some pointed out that this service is already required by Part 382 so compliance would not pose any additional burden. Others expressed the view that this provision by itself would meet the service needs of customers with disabilities without imposing the cost of compliance with the WCAG standard.

Several disability commenters, however, expressed dissatisfaction with the disclosure and fee waiver measures currently required by the Department when a carrier's Web site is not accessible. These commenters maintained that carriers frequently do not provide the discount information or do not waive reservation fees even when the individual identifies as having a disability. In 2010, Dr. Jonathan Lazar and students at the Department of Computer and Information Sciences of Towson State University conducted a study involving test calls to major carriers to determine how consistently carriers comply with these requirements. Their findings suggested that there are compliance problems. After placing a series of 60 phone calls (15 calls to each of 4 major carriers), students who self-identified as blind and specifically stated that they were unable to access the carrier's Web site noted at least one instance per carrier of price discrimination (e.g., discounted Web-based fares offered online were not disclosed to the caller or the agent refused to waive the telephone reservation fee). The rate of compliance failure was as high as 33 percent and 40 percent respectively for two carriers.[29]

DOT Decision: After carefully considering the concerns and compliance alternatives proposed by commenters, the Department has decided to require U.S. and foreign carriers that operate at least one aircraft with a seating capacity of more than 60 passengers to apply the WCAG 2.0 Level AA standard to their primary Web sites that market air transportation to the general public in the United States regardless of the carrier's type of passenger operations (e.g., charter or scheduled), or in the case of foreign carriers, the frequency of covered flights. We note here that whenever we reference aircraft passenger seating capacity in this or other economic or civil rights aviation rulemakings, we are referring to an aircraft's seating capacity as originally designed by the manufacturer. This requirement includes the primary Web sites of any such carriers that advertise on that site but do not sell air transportation there. For carriers that only advertise air transportation or their role as providers of air transportation (e.g., contract carriers) on their Web sites, compliance will be less technically complex and

[29] Lazar, Jonathan. ''Up in the air: Are airlines following the new DOT rules on equal pricing for people with disabilities when Web sites are inaccessible?'' Government Information Quarterly. 27.4 (October 2010): 329–336. Web. 26 June 2012 *http://www.sciencedirect.com/science/article/pii/S0740624X10000638*

costly than for carriers that also sell airline tickets. For foreign carriers for whom air transportation to and from the United States is a small percentage of their overall operations, some additional complexity may be involved to convert data drawn from databases that are not covered by Part 382. But as we discussed earlier, the data conversion involved does not, in our view, constitute an undue burden.

On the other hand, we have decided to exclude small carriers (defined as those exclusively operating aircraft with 60 or fewer seats) from the requirement to make their primary Web sites accessible because of concerns about cost burden. When we proposed to require all carriers, regardless of size, to make their Web sites accessible, our research indicated that the majority of small carriers operated fairly simple Web sites that do not offer online booking, check-in or flight status updates. In updating our research for the final regulatory evaluation, we found that the Web sites of many smaller carriers have added online booking engines, one of the more difficult Web site functions to make accessible. As such, we believe that the additional cost to comply with the accessibility standard and maintain their Web site's accessibility would be substantial for small carriers. At the same time, the benefit for consumers would be small as only a few carriers exclusively operate aircraft with 60 or fewer seats. We therefore agree with the Regional Airline Association that the additional compliance costs for these small carriers are likely to outweigh the additional benefits to consumers from slightly increasing the number of carriers subject to these requirements.

To address carrier sites that are inaccessible to an individual with a disability before or after the Web site accessibility deadline, we retain the provisions requiring carriers to disclose Web-based discounts applicable to the individual's itinerary and waive fees applicable to telephone or ticket counter reservations for individuals who contact them through another avenue to make a reservation and indicate they are unable to access the Web site due to a disability. If the carrier charges a fee for Web site reservations that applies to all online reservations, the carrier may charge the same fee to a passenger with a disability requesting a reservation for a Web-based fare. We have noted earlier the commenter assertions and the Lazar study findings that some carriers do not consistently make Web-based discounts available or waive telephone or ticket counter reservation fees for those unable to use an inaccessible Web site. Therefore, we encourage carriers to ensure that their customer service staff is properly trained to comply with these requirements, as failures in this regard could result in enforcement action. We also encourage individuals with disabilities to immediately request a complaints resolution official (see 14 CFR 382.151) when they encounter any difficulties obtaining the required accommodation.

Ticket Agent Web sites

Comments: All carrier associations and individual carriers commenting on the provision to require carriers to ensure the accessibility of ticket agent Web sites strenuously opposed it and most urged the Department to regulate ticket agents directly. These commenters cited significant added costs to carriers in order to monitor ticket agent Web sites and a lack of leverage on the carriers' part to make the agents comply. ANA also sought clarification of the provision that carriers must ensure compliance with the accessibility standard on ticket agent ''Web pages on which [their] airline tickets are sold.'' They wanted to know the extent of a carrier's obligation to ensure accessibility on agent Web pages, which in addition to the carrier's fares, display special offers and advertise travel components (e.g., hotel bookings, rental cars) that are not within DOT's jurisdiction.

ANA also raised concerns about Web pages subject to oversight by more than one carrier if disagreements arise among the carriers as to whether the pages adequately meet the standard. ANA also wanted to know about Web pages that are likely to be viewed in the process of booking a carrier's fares but that do not specifically mention the carrier—such as disclosures about service fees or refund fees imposed by the agent. Finally, they raised the possibility that DOJ may subsequently adopt a Web site accessibility standard that conflicts with the DOT standard, and asked whether carriers would be obligated to put agents at risk of DOJ sanctions by insisting that they follow the DOT standard. We respond to these concerns in the section *DOT Decision* below.

The American Society of Travel Agents (ASTA) and National Tour Association (NTA) concurred with the view that airlines should not be quasi-enforcers of ticket agent compliance with Web site accessibility requirements, stating that the carriers' role should only be to provide notice to agents of their Web site accessibility obligations (e.g., through the Airlines Reporting Corporation). The Interactive Travel Services Association (ITSA) was the sole commenter representing ticket agents that supported a requirement for carriers to ensure agent Web site compliance as long as the sole determinant of compliance is the accessibility standard DOT mandates and not any additional requirements that individual airlines may wish to impose.

Echoing ANA's comments about the scope of agent Web sites, other industry commenters pointed out that ticket agent Web sites contain content and functionality that go well beyond the marketing of air transportation. They observed that compliance with the accessibility standard would necessarily entail changes to many Web pages unrelated to air transportation. USTOA in particular argued that few, if any, tour operator Web sites offer customers the opportunity to purchase air transportation as a stand-alone product, which typically is offered as an add-on to supplement a cruise or land tour. They argued that Web site changes to make pages on which air transportation is marketed accessible will necessarily involve changes to the site layout and architecture affecting non-air transportation related Web pages. USTOA believes that this situation amounts to de facto regulation of travel products and services outside the scope of the ACAA and the Department's jurisdiction. Other travel industry commenters noted that only a small portion of the content on agent Web sites is air transportation-related and asserted that unless agents undertake the expense of rendering all the public-facing content on their Web sites accessible, their Web sites as a whole will not be accessible to passengers with disabilities under the proposed requirements.

Commenters representing agents also pointed out that the cost of converting existing Web sites would be especially difficult for ticket agents that have minimal in-house resources providing Web site support. These commenters observed that many travel businesses would have no choice but to purge existing content and avoid adding any advanced features on their Web sites rather than incur the high cost of ensuring that all their covered content is accessible. As an alternative, ASTA/NTA suggested that DOT consider requiring only new content on agent Web sites to be accessible, while permitting a safe harbor for existing content. They reasoned that even with a safe harbor provision, in most cases the continuous and rapid turnover of content would result in Web sites coming into compliance over a relatively short period of time.

For the most part, disability advocacy organizations indicated their overall concurrence with the Department's proposals and few commented directly on whether the Department should require carriers to ensure the accessibility of ticket agent Web sites or ensure the compliance of ticket agent Web sites directly. Disability advocacy organizations that did comment on the ticket agent proposal remarked that carriers should be held responsible for ensuring ticket agent Web site accessibility through their contracts with the agents. They again observed that Part 382 already requires carriers to have provisions in their agreements with contractors that perform services required by Part 382 on their behalf. See section 382.15(b). A few individual members of the public who did not identify as having disabilities, however, did not support a requirement to hold carriers responsible for ensuring the compliance of ticket agent Web sites.

In connection with ensuring the accessibility of ticket agent Web sites, industry commenters and some individual commenters also raised the concurrent Department of Justice (DOJ) rulemaking to revise its ADA title III regulations concerning Web site accessibility standards. These commenters stated that both Federal agencies must coordinate to ensure that the technical Web site accessibility criteria each will require are consistent. Some of these commenters urged the Department to postpone imposing a Web site accessibility standard with regard to ticket agents until the DOJ rulemaking is completed.

Finally, the Department received a number of comments on the proposed provisions for carriers to ensure that agents that are small businesses and whose Web sites are inaccessible provide Web-based discounts, services, and amenities to individuals who indicate that they cannot use the agents' Web sites and who purchase tickets using another method. ASTA specifically supported this proposal as a viable trade-off for small entities in lieu of Web site conformance, saying that such businesses expect to have personal interaction with consumers anyway, so any additional burden of providing these services offline should be manageable. Some disability advocacy organizations took exception to the Department excluding small ticket agents from the carriers' responsibility to ensure that agent Web sites comply with the WCAG 2.0 standard. In their view, a requirement for carriers to ensure that small agents offer Web-based discounts to passengers who self-identify as having a disability is not practical. They argued that customers will not necessarily know whether the agent is a small business and whether or not the agent's Web site should be accessible. They also objected to the notion that in order to access the same service as non-disabled people, they must self-identify as having a disability.

DOT Decision: The Department has considered the viewpoints for and against requiring accessibility of ticket agent Web sites and the question of whether or not carriers should be responsible to ensure that such Web sites are accessible. After looking at all the available information, we have decided against requiring carriers to ensure the accessibility of ticket agent Web sites. We considered limiting the agent Web sites for which carriers must ensure compliance to those agents whose annual revenues related to passenger service to, within and from the United States are $100,000,000 or more. Limiting carriers' responsibility to ensure the accessibility of ticket agent Web sites to only the few largest agent Web sites would limit the cost burden to carriers of monitoring agent Web site compliance with this requirement while increasing the range of accessible air travel Web sites available to consumers with disabilities who would benefit from the rule.

We decided against adopting this approach for two reasons. First, the Department of Justice (DOJ) has jurisdiction to regulate travel services as service establishments that are public accommodations under title III of the ADA, and DOJ expects to issue a proposal in early 2014 on accessibility of public Web sites under ADA title III. The Department of Justice proposal would address the scope of the obligation for public accommodations to provide access to their Web sites for persons with disabilities, as well as the technical standards necessary to comply with the ADA. Ticket agents, which are public accommodations under ADA title III, would be covered entities under DOJ's rulemaking. Although in our view DOT has the rulemaking authority to require ticket agents to directly comply with the same Web site accessibility standard as carriers, we acknowledge DOJ's concurrent authority to do the same and are persuaded that a single consistent standard that applies to ticket agents for Web site accessibility will eliminate uncertainty and confusion in converting their Web sites.

Secondly, we find the carriers' arguments persuasive that a requirement to ensure that their agents implement the Web site accessibility standards will be difficult for them to monitor and enforce. Furthermore, diverting technical resources away from the development and maintenance of their own primary Web sites in order to monitor ticket agent Web sites may detract from their efforts to identify and correct problems that may emerge after the WCAG 2.0, Level AA standard is implemented on their Web sites. For these reasons, we feel it will best serve the public interest not to require carriers to ensure that their ticket agents bring their Web sites into compliance with WCAG 2.0, Level AA at this time. In the same vein, the Department has decided not to require carriers to monitor and refrain from using ticket agents who fail to provide, either over the telephone or at an agent's places of business, Web-based fares and amenities to individuals who cannot access an agent's Web site due to their disabilities. Instead, the Department has decided to amend its rule on unfair and deceptive practices of ticket agents [30] to require all ticket agents that are not considered small businesses under the Small Business Administration's (SBA) size standards [31] to disclose and offer Web-based discount fares to prospective passengers who contact them through other channels (e.g., by telephone or at an agent's place of business) and indicate that they are unable to use an agent's Web site due to a disability.

The Department has also decided not to include an additional requirement in the rule on unfair and deceptive practices to prohibit a ticket agent from charging a fee for reservations made over the phone or at the agent's place of business to individuals who cannot use the agent's Web site due to a disability. In our view, amending the unfair and deceptive practices rule to bar fees is unnecessary since existing law already prohibits charging a fee in such circumstances. Under the ''reasonable modification'' provision of DOJ's current title III ADA regulation, covered entities are required to make reasonable modifications to their policies, practices, and procedures when necessary to afford the same advantages to individuals with disabilities as are available to others, unless such modification would cause a fundamental alteration of the advantage offered.[32] Furthermore, ADA title III prohibits covered entities from imposing charges to cover the cost of such reasonable modifications, even when a charge would normally be assessed to all customers for the same

[30] 14 CFR 399.80.

[31] See 13 CFR 121.201.

[32] See 28 CFR 36.302(a).

service.[33] DOJ's guidance concerning this provision explains that when a service normally provided at a fee to all customers is provided to an individual with a disability as a necessary measure to ensure compliance with the ADA, no fee may be imposed on the individual with a disability for that service.[34] The Department believes that these title III provisions sufficiently establish the obligation of ticket agents to modify their policies to refrain from charging a fee to individuals with a disability for Web fares requested over the telephone or in-person at the agents' places of business when those individuals indicate that they are unable to access the agent's Web sites due to their disabilities.

Implementation Approach and Schedule

The SNPRM: The Department proposed a three-phase implementation schedule for ensuring that the carriers' primary Web sites would be fully compliant by two years after the effective date of the rule. The first phase would apply only to new or completely redesigned primary Web sites that would be required to be accessible if placed online 180 days or later after the effective date. We explained that substantial technical changes such as those affecting a Web site's visual design or site architecture would constitute a ''redesign.'' The second phase would require all pages associated with obtaining core air travel services and information related to these core services, either to be directly conformant on the carrier's primary Web site, or have accessible links from the primary Web site to corresponding conformant pages on a mobile Web site by one year after the effective date. The third phase would require all public-facing content on the carrier's primary Web site, including core air travel services and information previously made accessible on a mobile Web site, to meet the accessibility standard by two years after the effective date. We also sought comment on alternative time frames and approaches for implementation of the WCAG 2.0 standard.

Comments: Most commenters, whether representing industry or the disability community, disagreed with the proposed implementation approach and time frame. Nearly all of the industry comments, for example, favored a flat two-year implementation deadline for all Web site changes, rather than the proposed phased approach. Most of the industry comments favoring a two-year deadline also supported applying the accessibility standard to only the portion of a carrier's primary or mobile Web site involved in providing core air travel services and information. Spirit Airlines offered another option, recommending that only core air travel service and information pages be compliant with WCAG 2.0 at Level A by two years after the effective date and with Level AA by five years after the effective date. Air New Zealand, which did not object to the proposed WCAG 2.0 Level AA standard or to the scope (all public-facing Web pages on the primary Web site) argued that more than two years would be needed to render all covered content compliant. The Interactive Travel Services Association (ITSA) opposed the phased implementation timeline and urged the Department to impose a single compliance deadline of at least 18 months after the effective date for all Web content. Not all commenters rejected a phased approach, however. The American Society of Travel Agents (ASTA) opposed a flat two-year compliance period, stating that the timeline should be variable, allowing more time to convert larger Web sites. ASTA also supported a requirement for priority to be given to bringing content most likely to be used by consumers with disabilities into compliance first.

Although many individual commenters who self-identified as having a disability supported the proposed time frame, disability advocacy organizations generally considered the time frame too generous. In their view, the technology already exists to restructure a large Web site on an accelerated schedule. ACB and AFB found the staggered implementation time frame confusing and potentially subject to litigation. They recommended that all Web site pages be compliant by six months after the effective date, except for certain legacy pages and content that would pose an undue burden to convert. CCD and NCIL advocated that at least Web pages providing the core air transportation services be compliant within six months after the effective date.

ITI offered several comments on the proposed implementation approach. They observed that while the technical challenges of Web site conversion vary greatly among the carriers, it is safe to say that when accessibility is properly integrated into the development process, technical efficiencies can be expected over time. They also observed that while new pages generally can be made accessible more easily than existing content, both share common back end infrastructure that may need to be changed. These infrastructure changes may involve additional staff training and implementation time in order to enable accessibility on new pages. They advised the Department to allow adequate time to execute all the required changes.

DOT Decision: We have considered all these comments at length and have been persuaded that the three-phase implementation schedule proposed for carriers' Web sites to be fully compliant within two years should not be adopted. However, for reasons we discussed earlier, the Department is convinced that it should require all covered public-facing content on a carrier's primary Web site to be accessible. The Department believes that reduction of compliance costs can be achieved without compromising access to all the public-facing pages on an airline's Web site content for people with disabilities by providing additional time for carriers to make their Web sites accessible. The additional time before full compliance is required will increase the extent to which accessibility can be built into newly launched or redesigned Web pages, forms, and applications, while minimizing the amount of retrofitting required. As such, we are requiring carriers that market air transportation to the general public in the United States and operate at least one aircraft with a seating capacity of more than 60 passengers to bring all Web pages associated with obtaining core air travel services and information (i.e., booking or changing a reservation (including all flight amenities), checking-in for a flight, accessing a personal travel itinerary, accessing the status of a flight, accessing a personal frequent flyer account, accessing flight schedules, and accessing carrier contact information) into compliance with the WCAG 2.0 standard at Level AA two years after the effective date of the rule. All remaining covered public-facing content on their Web sites must meet the WCAG 2.0 standard at Level AA three years after the effective date of the rule. We believe the extended deadline will lower the overall compliance costs for carriers by allowing more time to implement the changes during scheduled Web site maintenance and updates. A more

[33] See 28 CFR 36.301(c) which prohibits a public accommodation from imposing a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the ADA or its implementing regulation.

[34] See 28 CFR part 36, App. B, p. 223 (September 15, 2010).

detailed discussion of issues relating to the cost of implementation will be presented in the upcoming section on Costs and Benefits.

5. Conforming Alternate Versions

The SNPRM: In the September 2011 SNPRM preamble, we discussed our concerns about some methods used to provide accessible Web content to individuals with disabilities. Specifically, we discussed the method of making the content of a primary Web site or Web page available in a text-only format at a separate location rather than making it directly conformant on the primary Web site. The Department had learned from a number of sources that such alternate sites are often not well maintained, frequently lack all the functionality available on the non-conforming Web site/page, and have content that is not up-to-date.[35] These deficiencies are so prevalent that many accessibility experts flatly oppose alternate text-only sites as a general accessibility solution.[36] WCAG 2.0, however, permits a conforming alternate version of a Web page as a way for a non-conforming page to comply with the standard. The conforming alternate version must meet the WCAG 2.0 Level AA success criteria, be up-to-date with and contain the same information and functionality in the same language as the non-conforming page, and at least one of the following must be true: (1) The conforming version can be reached from the non-conforming page via an accessibility-supported mechanism, or (2) the non-conforming version can only be reached from the conforming version, or (3) the non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version.[37] The conforming alternate version is intended to provide people with disabilities equivalent access to the same content and functionality as a directly accessible Web page. WCAG 2.0 implementation guidance, however, notes that providing a conforming alternate version of a Web page is a fallback option for WCAG conformance and that the preferred method is to make all Web page content directly accessible.[38] Although the Department proposed no requirement restricting the use of conforming alternate versions, we stated our intent that Web site content be directly accessible whenever possible. See 76 FR 59307, 59313 (September 26, 2011). We sought comment on whether we should explicitly prohibit the use of conforming alternate versions except when necessary to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities. We also asked under what circumstances it may be necessary to use a conforming alternate version to meet that objective.

Comments: In general, as discussed earlier, industry commenters favored the use of alternate Web site versions that did not conform to the WCAG 2.0 definition of ''conforming alternate version.'' Although some carriers did not oppose adopting the WCAG 2.0 Level AA success criteria, nearly all preferred having the option to apply any accepted accessibility standard only to primary Web site content involving core air travel services and information and to provide such content on a separate mobile or text-only Web site. We note that this proposed alternative would result in two parallel Web sites, each with its own development and maintenance costs. ITI commented that it should be up to the carrier to decide whether to build and maintain two Web sites (one that meets the WCAG 2.0 Level AA success criteria and one that does not) or a single compliant Web site. ITI observed that even though over time the cost of maintaining two Web sites would be greater than for a single compliant Web site, carriers should determine which approach would work best for them.

Disability community commenters rejected any option involving an alternative Web site largely because of their experience with such Web sites being poorly maintained and containing outdated content. Moreover, they viewed reliance on text-only alternatives for achieving accessibility as a ''fundamental mistake.'' They noted that arguments for text-only Web sites carry the implicit assumption that accessibility is intended to focus on users with visual disabilities. They emphasized the importance of considering the accessibility needs of all users, including those with hearing, cognitive, and dexterity disabilities, who benefit from accessible content that contains images, color, time-based media, and JavaScript.

DOT Decision: The Department continues to believe that conforming alternate versions, as defined by WCAG 2.0, have a role, albeit a very limited one, in achieving Web site accessibility. The alternate version promoted by the carrier associations and some individual carriers (i.e., text-only Web site containing core air travel services and information only), however, would host on the alternate Web sites only selected portions of the information available on the carriers' primary Web sites. The Department believes that permitting the use of an alternate version of any Web page that does not conform to the elements of a ''conforming alternate version'' as defined by WCAG 2.0 is incompatible with the goal of equal access. As discussed earlier, in order for a non-conforming Web page to be included within the scope of conformance by using a conforming alternate Web page under this rule, the alternate page must meet the WCAG 2.0 Level AA success criteria, be as up-to-date and contain the same information and functionality in the same language as the non-conforming page, and at least one of the following must be true: (1) The conforming version can be reached from the non-conforming page via an accessibility-supported mechanism, or (2) the non-conforming version can only be reached from the conforming version, or (3) the non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version. We note that the use of WCAG 2.0 conforming alternate versions, if unrestricted, is likely to perpetuate the problem of unequal access as carriers allot fewer resources than needed over time to properly maintain the secondary site. Given the incentives for carriers to focus on the development and maintenance of their primary Web site and the cost inefficiencies of maintaining two separate Web sites, the Department concurs with the WAI's view that the preferred method of conformance in most circumstances is to make all content (e.g., each page) on the primary Web site directly accessible.

Moreover, limiting the use of conforming alternate versions aligns with the well-established principle of disability nondiscrimination law that separate or different aids, benefits, or services can only be provided to individuals with disabilities (or a class of such individuals) when necessary to provide aids, benefits, or services that

[35] See Disabilities, Opportunities, Internetworking, and Technology, University of Washington. *Are text-only Web pages an accessible alternative?* (January 23, 2013), *http://www.washington.edu/doit/CUDE/articles?1149* (last visited July 16, 2016). See also Accessibility Hawks, *Why Text Only Alternate Web Pages Are Not Ideal For Accessibility* (March 12, 2012), *http://accessibilityhawks.com/web-accessibility-articles/why-text-only-alternate-Web-pages-are-not-ideal-for-accessibility.php* (last visited July 16, 2013). See also *Should Sites Be Accessible or Provide a Text-Only Alternative, http://www.evengrounds.com/articles/should-sites-be-accessible-or-provide-a-text-only-alternative* (last visited July 16, 2013).

[36] *Id.*

[37] See ''Understanding Conformance'' at *http://www.w3.org/TR/UNDERSTANDING-WCAG20/conformance.html#uc-conforming-alt-versions-head*, June 20, 2012.

[38] See *Id.*

are as effective as those provided to others. See, e.g., the ADA implementing regulation for title II at 28 CFR 35.130(b)(1)(iii) and (iv) and 35.130(b)(8)(d), and the ADA implementing regulation for title III at 28 CFR 36.202(b) and (c), and 36.203(a). Therefore, the Department has decided to permit the use of Level AA conforming alternate versions only when making a particular public-facing Web page compliant with all WCAG 2.0 Level AA success criteria would constitute an undue burden or fundamentally alter the content on that page. Since a fundamental principle underlying the WCAG success criteria is that they be reasonable to do all of the time, most of the more difficult success criteria have explicit exceptions built-in for situations where direct compliance is not reasonable. For example, Success Criterion 1.1.1 (Level A) provides that all non-text content that is presented to the user has a text alternative that serves the equivalent purpose and lists six exceptions/alternative means of compliance for situations in which presenting non-text content as a text alternative would not be technically feasible. These include non-text content that is (1) a control or accepts user input, (2) time-based media, (3) a test or exercise, (4) designed to create a specific sensory experience, (5) a Completely Automated Public Turing test to tell Computers and Humans Apart (CAPTCHA), or (6) a decoration, formatting, or invisible. Most of these exceptions permit the text alternative to at least provide descriptive identification of the non-text content. With such broad exceptions intended to address technically challenging situations specifically built into the success criteria, an undue burden or fundamental alteration defense for using a conforming alternate version rather than rendering a Web page directly compliant with the Level AA success criteria will be a very high bar to meet.

If, despite the exceptions built into the WCAG 2.0 standard, a carrier believes an undue burden defense is justified with respect to a particular Web page, we would emphasize that the determination must be based on an individualized assessment of a number of factors showing that directly converting the Web page would cause significant difficulty or expense to the carrier. Those factors include: The size of the carrier's primary Web site; the type of change needed to bring the particular Web page into compliance; the cost of making the change as compared to the cost of bringing the Web site as a whole into compliance; the overall financial resources of the carrier; the number of carrier employees; the effect that making the change would have on the expenses and resources of the carrier; whether the carrier is part of a larger entity and its relationship to the larger entity; and the impact of making the change on the carrier's operation.

6. Compliance Monitoring

The SNPRM: In the September 2011 SNPRM, the Department discussed several issues relating to ensuring and monitoring carriers' compliance with the WCAG 2.0 accessibility standard. We discussed, but did not propose to require, that carriers post WCAG 2.0 ''conformance claims'' on their Web sites. (A ''conformance claim'' is W3C's term of art for a statement by an entity giving a brief description of one Web page, a series of pages, or multiple related pages on its Web site for which the claim is made, the date of conformance, the WCAG guidelines and conformance level satisfied, and the Web content technologies relied upon.) See *Web Content Accessibility Guidelines (WCAG) 2.0: W3C Recommendation 11 December 2008,* available at *http://www.w3.org/TR/WCAG/#conformance-claims* (as of November 16, 2012). Although concerned that conformance claims may be too resource intensive for complex and dynamic carrier Web sites, we nonetheless invited public comment on effective alternative means for readily identifying compliant Web pages during the Web site conversion period and for verifying overall Web site accessibility after the compliance deadline. We asked whether the Department should initiate random ''spot'' investigations of carrier and online ticket agency Web sites to monitor compliance after the rule becomes effective. We also asked whether there were any specific technical barriers to maintaining Web site accessibility after full Web site compliance is initially achieved.

Comments: The Department received a fairly wide range of comments addressing our inquiries on compliance monitoring. The NFB disagreed with the Department's view that conformance claims may be too costly to be feasible, stating that conformance claims are the ''cheapest and easiest method of identifying accessible Web pages for both the carrier and the user.'' If the Department does not decide to adopt conformance claims, NFB suggested that in the alternative carriers provide: (1) A mechanism for users to request accessibility information that carriers must promptly disclose in an accessible format; (2) a ''how to'' tutorial on using the accessible Web site; or (3) customer service assistance specifically to address accessibility questions and needs. NFB considered these suggested alternatives less effective and less feasible than conformance claims. Some commenters suggested that the Department require carriers to adopt some form of self-monitoring such as a link to a customer survey prominently displayed on the Web site, a pop-up to ask users their opinion or permission to send them a survey regarding Web site accessibility, or a feedback mechanism on the Web site specifically for reporting accessibility problems. Other suggestions were that the Department itself randomly check carrier Web sites to ensure compliance or work collaboratively with academic institutions to carry out random monitoring. Yet another suggestion was that the Department require carriers to establish disability teams to conduct an annual or biannual assessment of their Web sites for accessibility barriers and send a report to the Department.

The carrier associations suggested that the Department employ accessibility experts and use available online tools to determine if carriers' Web sites meet the accessibility standard. They also suggested that initial ''spot'' investigations be used to provide constructive feedback to carriers on Web site areas that appear not to meet the required standard. Regarding specific technical barriers, they noted that Java or Flash programs used to enhance the customer Web site experience are not easily made accessible and should be exempt from the standard or a text alternative version permitted.

DOT Decision: The Department considered the value of conformance claims as a means to readily identify compliant Web pages and Web sites and weighed the expense that meeting all the required elements of conformance claims is likely to incur. We also considered the fact that W3C itself does not require entities to post conformance claims. We have decided that other methods would allow the Department to monitor Web site compliance and provide feedback to carriers without imposing any additional cost burden on them. The Department encourages carriers to adopt one or more of the suggestions above for obtaining user feedback on the accessibility of their Web sites and urges them to use the feedback to continuously improve the accessibility of their Web sites. We especially recommend, but do not require, that carriers include a feedback form on their Web sites, perhaps located on a page that can be reached from a link on the Web pages associated with

disability assistance services. At the same time, we do not consider self-monitoring alone adequate for ensuring compliance. The Department intends, therefore, to engage Web site accessibility experts after the date specified in this rule for Web site compliance to check the compliance status of carrier Web sites so that we can notify carriers of non-compliant areas for corrective action. A carrier's failure to take corrective action within a designated time frame may result in the Department taking enforcement action.

7. Online Disability Accommodation Request

The SNPRM: Following up on a similar inquiry we had made to the public in the 2004 Foreign Carrier NPRM, we asked in the September 2011 SNPRM whether the Department should require carriers and ticket agents to provide a mechanism for passengers to provide online notification of their requests for disability accommodation services (e.g., enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, etc.).

Comments: The comments the Department received on this question were starkly split. The disability advocacy community and some individual members of the public strongly favored adopting a requirement for carriers to allow passengers to submit a request online for a disability accommodation. Representatives from industry opposed any mandate for them to provide this service. Disability advocacy commenters observed that online service request notification would be advantageous for passengers with disabilities, who would have a written record of their requests and for carriers, who would have the request in writing in case there was a need for additional information. The Open Doors Organization (ODO) stated that ''everyone in the industry,'' including travel agents, should be using special service requests uniformly. ODO observed that passengers with disabilities who book their tickets with online travel agents oftentimes must still call the carrier to set up the service request. ODO also pointed out that when the option is available to make a disability service request online when booking with an online travel agent, the service request often does not transfer to the carrier. The carrier associations noted that several carriers already provide an online accommodation request function. They stated that carriers generally still prefer for passengers to speak with a customer service representative about their accommodation needs. The carrier associations believe that any requirement to provide an online service request function will serve to mislead passengers into believing that no other communication with the carrier about their accommodation needs is necessary, thus preventing carriers from getting all the information necessary to properly accommodate passengers.

DOT Decision: The Department believes that having online capability for requesting a disability accommodation has a number of potential benefits both to passengers with disabilities and to carriers. Aside from the advantage to a passenger of having an electronic record of providing notice to the carrier of a service request, an online service request will serve as a flag to the carrier of the passenger's accommodation needs. The Department is therefore requiring carriers to make an online service request form available for passengers with disabilities to request services including, but not limited to, wheelchair assistance, seating accommodation, escort assistance for a visually impaired passenger, and stowage of an assistive device. We also note the carrier associations' argument that simply making an online service request may not be sufficient to ensure the correct accommodation is provided. We agree with their assertion that additional information may be needed at times from the passenger. Therefore, carriers will be permitted to require that passengers with disabilities making an online service request provide information (e.g., telephone number, email address) that the carrier can use to contact passengers about their accommodation needs. Carriers that market air transportation online will be required to provide the service request on their Web sites within two years after the effective date of this rule.

We view an online service request form as a useful tool to assist carriers in providing timely, appropriate assistance and reducing service failures that lead to complaints. Furthermore, aggregate data on online service requests would potentially be useful in helping carriers to understand the volume and types of service requests across time periods and routes.

Airport Kiosk Accessibility

Automated airport kiosks are provided by airlines and airports to enable passengers to independently obtain flight-related services. The Department proposed provisions in the September 2011 SNPRM to require accessibility of automated airport kiosks affecting airlines under 14 CFR part 382 and U.S. airports with 10,000 or more enplanements per year under 49 CFR part 27 (Part 27). Part 27 is the regulation implementing section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Department of Transportation. The proposed provisions of Part 382 would require carriers that own, lease, or control automated kiosks at U.S. airports with 10,000 or more annual enplanements to ensure that new kiosks ordered more than 60 days after the effective date of the rule meet the accessibility design specifications set forth in the proposal. We intended this provision to apply to kiosks for installation in new locations at the airport and as replacements for those taken out of service in the normal course of operations (e.g. end of life cycle, general equipment upgrade, and terminal renovation). The design specifications we proposed were based largely on Section 707 of the 2010 ADA Standards for Accessible Design. We also included selected specifications from the Access Board's section 508 standard for self-contained, closed products (36 CFR 1194.25). During the interim period from the effective date of the rule until all automated kiosks owned by a carrier are accessible, the Department proposed to require that each accessible kiosk be visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the device) and be maintained in proper working condition. We specifically proposed not to require retrofitting of existing kiosks.

We intended the requirements proposed above also to apply to shared-use kiosks that are jointly owned by one or more carriers and the airport operator or a third-party vendor. Therefore, provisions to amend 49 CFR part 27 were proposed to apply nearly identical requirements to U.S. airports. We also proposed to require that carriers and airport operators enter into written, signed agreements allocating responsibility for ensuring that shared-use equipment meets the design specifications and other requirements by 60 days after the final rule's effective date. We included a provision proposing to make all parties jointly and severally responsible for the timely and complete implementation of the agreement provisions. Again, nearly identical requirements for entering a written agreement and making the parties jointly and severally liable for implementing the agreement were proposed for both Part 382 and Part 27.

In addition, we proposed to amend Part 382 to require each carrier to provide equivalent service upon request

to any passenger with a disability who cannot readily use its automated airport kiosks. Such assistance might include assisting a passenger who is blind in using an inaccessible automated kiosk or assisting a passenger who has total loss of the use of his/her limbs in using an accessible automated kiosk. We proposed to require carriers to provide equivalent service upon request to passengers with a disability who cannot readily use their accessible automated kiosks, because even accessible automated kiosks cannot accommodate every type of disability.

Finally, we proposed the same effective date for all requirements applying to the carriers under 14 CFR part 382 and to the airport operators under 49 CFR part 27 to avoid any delays in implementing accessibility for shared-use automated kiosks.

1. Covered Equipment and Locations

Automated Airport Kiosk Definition and Applicability Based on Function/Location

The SNPRM: The ownership of automated kiosks varies from airport to airport. In some airports, automated kiosks are airline proprietary equipment (i.e., owned, leased, or controlled by each individual airline). In other airports, kiosk ownership is shared jointly by the airport operator and airlines serving the airport and are often referred to as common use self-service (CUSS) machines. In the September 2011 SNPRM, the Department proposed to define an airline-owned automated airport kiosk covered by this rule as ''a self-service transaction machine that a carrier owns, leases, or controls and makes available at a U.S. airport to enable customers to independently obtain flight-related services.'' For CUSS machines, we proposed the term ''shared-use automated airport kiosk'' defined as ''a self-service transaction machine provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers.'' We proposed to apply the accessibility design specifications to all proprietary and shared-use automated kiosks that provide flight-related services (including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags) to customers at U.S. airports with 10,000 or more enplanements per year. We asked in the preamble whether we had adequately described automated airport kiosks in the rule text.

Comments: In their joint request of October 7, 2011, to clarify the scope of the proposed requirement, A4A, IATA, the Air Carrier Association of America, and RAA asked the Department whether automated ticket scanners for rebooking flights during irregular operations were included in the definition of automated kiosks we intended to cover in the rulemaking. After our clarification notice of November 21, 2011, addressing ticket scanners, ITI sought further clarification of how accessibility requirements apply to kiosks based on their functionality and location at the airport (e.g., check-in or baggage tagging kiosks located near the ticket counter, boarding or rebooking kiosks near the gate areas). The Trace Center commented that check-in and other kiosks at airports such as ticket scanners for rebooking, self-tagging baggage kiosks, etc. should all be covered. They emphasized that no exceptions should be made for particular types of airport kiosks, but if needed due to technology shortcomings, should only apply to a particular kiosk functions, not to an entire kiosk or category of kiosks. The Trace Center also suggested that any exceptions based on function should be reviewed every five years in light of advances in technology.

DOT Decision: In our notice of November 21, 2011, the Department clarified our position that a kiosk that allows passengers to rebook their flights independently provides a flight-related service and therefore is within the intended scope of the proposed rule. Although following the notice we received additional comments suggesting that certain types of automated airport kiosks be excluded from coverage based on function or location at the airport, the Department finds no reasonable basis for such exclusions. Despite the trend toward fewer consumers using an airport kiosk than a home computer or Smartphone to check in and download their boarding passes, we expect airlines to continue expanding the menu of new flight-related services available on kiosks at various locations throughout the airport (e.g., rebooking, ticketing, and flight information). It continues to be the Department's intention that all flight-related services offered to passengers through airport kiosks in any location at the airport be accessible to passengers with disabilities. Therefore, the accessibility requirements will apply to all new automated airport kiosks and shared-use automated airport kiosks installed more than three years after the effective date of this rule until at least 25 percent of automated kiosks in each location at the airport are accessible. By ''location at the airport'' we mean every place at a U.S. airport where there is a cluster of kiosks or a stand-alone kiosk (e.g., in a location where five kiosks are situated in close proximity to one another, such as near a ticket counter, at least two of those kiosks must be accessible; in all locations where a single kiosk is provided which is not in close proximity to another kiosk, the single kiosk must be accessible). When the kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), the accessible kiosks must also provide all the same functions as the inaccessible kiosks. (See section below on Implementation Approach and Schedule.)

Kiosk at Non-Airport Locations

The SNPRM: Although we proposed to apply the accessibility standard only to automated airport kiosks, we noted in the preamble that airlines may also own, lease, or control kiosks that provide flight-related services in non-airport venues (e.g., hotel lobbies) covered by ADA title III rules. We asked for public comment on whether kiosks that carriers provide in non-airport venues should also be covered by this rulemaking.

Comments: Six disability advocacy organizations (ACB, AFB, NFB, NCIL, PVA, and BBI) strongly urged the Department to apply the accessibility requirements to kiosks in non-airport locations. PVA argued that airlines should be required to ensure that kiosks providing flight-related services are accessible wherever they are located. ACB, AFB, NFB, NCIL and BBI all noted that both DOT and DOJ potentially have jurisdiction over kiosks in non-airport locations. ACB and AFB acknowledged that there may be differences between the DOT and DOJ requirements for kiosk accessibility given that DOJ is currently working on a rulemaking to apply accessibility standards to kiosks other than ATMs and fare machines provided by entities covered under ADA title III. NFB, NCIL and BBI all supported DOT's initiative to cover non-airport kiosks under the ACAA but expressed concern that the ACAA regulations not impede or interfere with rights and remedies available under the ADA or other laws. The ACAA, for example, lacks a private right of action like that provided by the ADA against entities that violate the law. NFB, ACB, and AFB specifically urged the Department to cover non-airport kiosks in the final rule and to state in the preamble that ADA

provisions prevail when there is an overlap with the ACAA provisions. Among individual commenters, there was a mix of responses for and against applying the accessibility standard in DOT's final rule to airline kiosks in non-airport venues. Individual members of the public who did not identify themselves as having a disability tended to oppose applying the standard to kiosks located outside airports due to concerns about possible conflicts between the applicable DOT and DOJ standards.

On the industry side, only the carrier associations commented, stating that they were opposed to applying the DOT standard to airline kiosks located in places of public accommodation where ADA title III already applies.

DOT Decision: Although a case can be made to support covering airline-owned kiosks located in non-airport venues under the ACAA regulations, the Department believes there are compelling reasons for not doing so at this time. A primary goal of this ACAA rulemaking is to apply an accessibility standard to new automated airport kiosks installed after a certain date. To achieve this, airlines must work with the airports and their own technical teams, as well as with the hardware designers and software developers of their suppliers, to design, develop, test, and install accessible kiosks at airports with 10,000 or more annual enplanements where they own, lease, or control kiosks. Each carrier may have several different kiosk suppliers with whom they must work, depending on the airports they serve. We believe requiring airlines to meet the accessibility standard for kiosks located in non-airport venues would add significantly to their compliance burden and divert resources needed to meet their primary goal of compliance at U.S. airports. In our view, airline compliance with respect to airport kiosks is a technically complex and resource intensive undertaking that must take priority over making kiosks located in other places accessible. Within the next few years, kiosks in non-airport locations will be subject to DOJ's accessibility design standard under its revised ADA title II and III regulations. This means that at most there will be a lag of a few years from the time airline kiosks at airport locations and those at non-airport locations are required to be accessible. We believe this time lag is an acceptable trade off to support proper implementation of the fundamental goal of airport kiosk accessibility.

Allocation of Responsibilities for Shared-Use Kiosks

The SNPRM: The Department proposed that carriers and airports be required to enter into written, signed agreements concerning shared-use kiosks that they jointly own, lease, or control. The purpose of the agreements is to allocate responsibilities among the parties for ensuring that new shared-use kiosks ordered after the effective date meet the design specifications, are identified as accessible, and are maintained in working condition. We asked a number of questions about the allocation of responsibilities and cost-sharing between airport operators and airlines for the procurement, operation, and maintenance of shared-use kiosks. We asked about potential difficulties carriers and airport operators would have in meeting the written agreement requirement or in implementing the agreements. We also asked whether there were any shared-use kiosk ownership arrangements involving airlines only or between airlines and outside vendors that would require additional time to implement.

Comments: The Department received very few comments directly responsive to the questions we asked about allocation of responsibilities and costs between carriers and airport operators on shared-used automated kiosks. Regarding the proposed written agreements, the carrier associations asserted that it would take 24 months to enter into them, presumably due to the time necessary to revise the IATA kiosk standards. Denver International Airport did not comment specifically on the deadline for compliance with the agreement provision. San Francisco International Airport indicated that six months would be needed to comply with the agreement provision. They also objected to the provision holding airports and carriers jointly and severally responsible for compliance with the accessibility standard for new kiosk orders and other provisions applicable to shared-use automated kiosks. Their concern was that airlines and airports have separate responsibilities for ensuring that shared-use kiosks are accessible and would have no control over the other party meeting its responsibilities under the agreement. They argued that airports should not be held responsible for airlines failing to do their part as provided in the joint agreement. In their view, the provision for both parties to be jointly and severally liable is not practical and they asked the Department to delete it.

DOT Decision: The Department has considered the merits of the arguments against the proposed provision to hold carriers and airport operators jointly and severally liable for compliance of shared-use kiosks with the accessibility requirements. We continue to believe, however, that joint accountability is essential to ensuring that shared-use kiosks comply with the design specifications set forth in the final rule. Moreover, there is precedent for holding carriers and airport operators jointly and severally liable under Part 382 (see 14 CFR 382.99(f)) and under Part 27 (see 49 CFR 27.72(c)(2) and (d)(2)) for the provision and maintenance of lifts and accessibility equipment for boarding and deplaning at airports. Therefore, we have retained in the final rule provisions stating that carriers and airports are jointly and severally liable for ensuring that shared-use automated airport kiosks are compliant with the requirements, including the maintenance provisions. We have accepted, however, the recommendation to drop the requirement for a written, signed agreement. Both parties nevertheless will be responsible for jointly planning and coordinating to ensure that shared-use kiosks are accessible and will be held jointly and severally liable if compliance is not achieved. We believe the liability provision will be an incentive for airports and airlines to work together to carry out requirements that cannot be successfully implemented without their mutual cooperation.

2. Accessibility Technical Standard

The SNPRM: The Department proposed and sought public comment on design specifications based on section 707 of the ADA and ABA Accessibility Guidelines (now codified in the Department of Justice's 2010 ADA Standards) [39] that apply to automated teller machines (ATM) and fare machines and on selected specifications from the section 508 standard for self-contained closed products (see 36 CFR 1194.25). Below we have summarized the questions we posed along with the responses we received.

[39] *See* 28 CFR 35.104 (defining the ''2010 Standards'' for title II as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in § 35.151); *see also* 28 CFR 36.104 (defining the ''2010 Standards'' for title III as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in subpart D of 28 CFR part 36). Appendices B and D to 36 CFR part 1191 contain the Access Board's 2004 ADA Accessibility Guidelines (2004 ADAAG), consolidating both the ADA Accessibility Guidelines and Architectural Barriers Accessibility Act Guidelines (*see,* 69 FR 44084 (July 23, 2004)).

Comments: The consensus among most commenters was that the Department's proposed design specifications adequately covered all the functions automated airport kiosks presently offer, as well as some functions that may be added in the future. The Trace Center, however, urged the Department to look beyond the 2010 ADA Standards for Accessible Design and provisions of the section 508 regulation dating from 1998 as the basis for the design specifications. Many of their comments for additions and revised wording were based on the Access Board's advance notices of proposed rulemaking for the Section 508 update [40] and on success criteria from WCAG 2.0.[41] Two individual commenters suggested that the Department consider incorporating parts of the U.S. Election Assistance Commission's Voluntary Voting System Guidelines (VVSG).[42]

DOT Decision: In collaboration with the Access Board and the Department of Justice, the Department reviewed and considered the VVSG guidelines and certain WCAG 2.0 success criteria in developing the proposed standard. We also considered each of the specific suggestions for modifying our proposed design specifications offered by the commenters and have adopted a number of them after weighing the cost and benefit as well as the present need based on functions automated airport kiosks currently perform.

In deciding whether or not to accept a suggested change, we also considered the fact that the Access Board is now engaged in rulemakings to revise the guidelines and standards on which our proposed kiosk standard is based and is expected to issue updated guidelines within the next few years. We did not accept some recommended changes for functions typically not performed by airport kiosks or that the Access Board is studying for possible inclusion in their revised standard (e.g., control of animation and seizure flash threshold for visual outputs).

Regarding the flight-related services automated airport kiosks currently make available, the Department believes that the standard we are now adopting is entirely adequate to ensure independent access and use by the vast majority of individuals with disabilities. The standard will apply to new kiosks installed three years or more after the effective date and will not apply to any kiosks installed prior to that date. We will continue to monitor automated airport kiosks and the accessibility of any new functions not currently available as the technology of self-service transaction machines evolves. We will also review the new guidelines and standards issued by the Access Board and the Department of Justice to determine whether improvements to the section 707 and section 508 specifications warrant further change to the DOT airport kiosk standard in the future. Insofar as the Department modifies its standard in the future to address new developments in kiosk technology, the revised standard will apply to new or replacement kiosk orders only and will not apply retroactively to any equipment that complies with this standard.

Operable Parts

The Department sought comment on certain characteristics of operable parts, including the following:

Identification—The Department proposed to require that the operable parts on new automated airport kiosks be tactilely discernible by users to avoid unintentional activation and requested comment regarding the cost of meeting the requirement.

Timing—We proposed that when a timed response is required, the user be alerted by sound or touch to indicate that more time is needed. We also wanted to know whether timeouts present barriers to using automated airport kiosks as well as the costs and potential difficulties associated with meeting the requirement.

Status Indicators—We asked whether locking or toggle controls should be discernible visually as well as by touch or sound.

Comments: The Trace Center offered a number of comments for substantially reorganizing and expanding the scope of this section so that the provisions apply to the overall operation of the kiosk rather than to its operable parts alone. They also suggested incorporating the provisions of section 309 of the 2010 ADA standards word for word rather than by reference, as well as new requirements to allow at least one mode of operation that is usable without body contact, without speech, or without gestures. Regarding the timing provision, they requested that a visual alert be added and that the time limit be extendable at least ten times. In addition, they proposed to include a new ''key repeat'' provision, modify the color provision to further accommodate individuals with color blindness, and expand the scope of the operable parts provisions to include the provision of touch screen controls as well as tactilely discernible controls. The carrier associations suggested that making operable parts tactilely discernible and integrating a user prompt for timeouts would require substantial time to design and test and thus would require a compliance date of 36 months after the rule's effective date. ITI indicated that timeouts, whether in voice or visual mode, are a standard feature of applications today. They also stated that there should be no requirement for the status of locking or toggle controls to be discernible visually, or by sound or touch. In their view, such a requirement would be unnecessary since most host system applications are not case sensitive or middle layer applications convert and send inputs to the host in the appropriate format.

DOT Decision: The Department has accepted the suggestion to add a visual alert requirement to the timing provision and a requirement for visually discernible status indicators on all locking or toggle controls or keys. We have included as examples of toggle controls the Caps Lock and Num Lock keys. In light of current automated airport kiosk functions and operation, the Department has decided that the provisions of the operable parts section as we proposed them are adequate without further change. After the Access Board finalizes its rulemakings revising the section 508 rules and the ADA and ABA Accessibility Guidelines to address kiosks other than ATMs and fare machines, the Department will consider whether further changes addressing the issues raised by the Trace Center should be incorporated in the operable parts provisions for future orders.

Privacy

The Department proposed that automated airport kiosks must provide the same degree of privacy to all individuals for inputs and outputs.

Comments: The Trace Center suggested that we add an advisory to provide users of speech output the option to blank the screen for enhanced privacy. They explained that the screen should not blank automatically when the speech output mode is activated since many users may want to use both speech and visual interfaces simultaneously. NFB suggested that the screen blank out automatically upon activation of speech output.

DOT Decision: The Department has modified the proposal in line with the Trace Center suggestion to require that

[40] See *http://www.accessboard.gov/sec508/refresh/draft-rule2010.htm* (preamble at 75 FR 13457, 13468 (March 22, 2010) and *http://www.access-board.gov/sec508/refresh/draft-rule.htm* (preamble at 76 FR 76640, 76646 (December 8, 2011).

[41] See *http://www.w3.org/TR/WCAG20/*.

[42] See Voluntary Voting System Guidelines, *http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx.*

when an option is provided to blank the screen in the speech output mode, the screen must blank when activated by the user, not automatically.

Outputs

The Department sought comment on certain characteristics of outputs, including the following:

Speech Output—The Department proposed to require that speech output be delivered through an industry-standard connector or a handset and asked whether delivering speech output through either of these means should be required. We wanted to know whether it would be sufficient to require volume control for the automated airport kiosk's speaker only without requiring any other mode of voice output and about any privacy concerns with a speaker-only arrangement. We also asked about the costs associated with providing a handset or industry standard connector and about the costs/benefits of requiring a speaker only, without a handset or headset output capability. We inquired about wireless technology to allow people with disabilities to use their own Bluetooth enabled devices in lieu of requiring the kiosk itself to have a handset or headset connector, and if so, whether it should be required.

Volume Control—We asked whether the dB amplification gain specified for speakers was sufficient and about the need for volume control capability for outputs going to headphones or other assistive hearing devices.

Tickets and Boarding Passes—Regarding transactional outputs (e.g., receipts, tickets), we proposed to require that the speech output must include all information necessary to complete or verify the transaction. We listed certain types of information accompanying transactions that must be provided in audible format, as well as certain supplemental information that need not be, and whether any other information should be required to be audible.

Comments: Speech Output—In descending order of preference, commenters supported supplying standard headset connectors, handsets, or speakers as the method for delivering speech output. In response to our question whether requiring volume control for the automated airport kiosk's speaker alone without requiring any other mode of voice output, ITI stated that it would not recommend working with a speaker-only solution. They observed that along with privacy concerns, the ambient noise levels in airports would present difficulties. The Trace Center, ITI, and a number of individual commenters supported a private listening option and recommended that a standard connector be provided for greater privacy during transactions and to allow individuals with hearing impairments the use of assistive listening technologies (e.g., audio loops). The carrier associations said all three methods should be allowed, in addition to any other equivalent alternative a carrier or vendor identifies. The Trace Center commented that handsets should be in addition to, not instead of, a headphone connector and should be hearing aid compatible if included. Regarding the cost of providing headset connectors and handsets, ITI said the costs will depend on whether volume control can be implemented via software or hardware, whether a physical volume control is required, and whether volume will need to be at distinct levels or at a continuous level. Carrier associations cited various reasons for believing that there would be high costs associated with providing either handsets or headset connectors, (e.g., need to keep a large supply of handsets on hand for sanitary reasons or to provide headsets for passengers who forgot their own).

Regarding wireless technologies for receiving speech outputs, the Trace Center supported the wireless concept as an alternative output method, but noted that a Bluetooth device must be ''paired'' with the kiosk to ensure user privacy, a process that is too complicated for many users and usually requires sight. ITI observed that Bluetooth technology is not widely used in public spaces and that it would not advocate a requirement for the use of Bluetooth at airport kiosks.

Regarding speech outputs associated with characters such as personal identification numbers, both the Trace Center and NFB suggested that rather than providing a beep tone, which typically indicates an input error, it would be better to provide the masking characters as speech (e.g., read the word ''asterisk'' when the character ''*'' is displayed onscreen).

Volume Control—In response to our question about the adequacy of the proposed dB amplification levels, the Trace Center indicated that the specified volumes for external speakers was sufficient and noted that absolute volume for headphones cannot be specified due to differences in headphone equipment.

Receipts, Tickets, and Boarding Passes—The Trace Center advocated for requiring speech output upon request for certain types of legally binding supplemental information (e.g., contracts of carriage, applicable fare rules) accompanying a transaction, unless the information was available to the user in an accessible format at an earlier time (e.g., when the ticket was purchased online).

Other Suggested Changes—The Trace Center also proposed changes to require automatic cutoff of an external speaker when a plug is inserted into the headset connector. There were two new requirements proposed by the Trace Center related to outputs: one dealing with control over animation (i.e., a mode of operation to pause, stop, or hide moving, blinking, or scrolling if information starts automatically, lasts for more than five seconds, and is presented in parallel with other content) and one to prohibit lights and displays from flashing more than three times in any one second period, unless the flashing does not violate the general flash or red flash thresholds. The latter proposed requirement is derived from a WCAG 2.0 success criterion on seizure flash thresholds.[43]

DOT Decision: Speech Output—The Department concurs that a headset jack potentially offers more flexibility to users in accessing a kiosk, as well as greater privacy. At the same time, the volume control requirements for both private listening and external speaker will allow adequate access to speech outputs without limiting the design options and cost flexibility. Therefore, this rule allows carriers to choose whether their accessible automated kiosks will deliver speech outputs via a headset jack, a handset, or a speaker. We have also decided not to add a provision to require Bluetooth technology at this time due to security concerns regarding its use in public spaces and usability issues associated with pairing Bluetooth devices with airport kiosks.

Regarding the speech output for masking characters, the Department is requiring that the masking characters be spoken (''*'' spoken as ''asterisk'') rather than presented as beep tones or speech representing the concealed information.

Receipts, Tickets, and Boarding Passes—The Department has not accepted the suggestion to require that legally binding information be provided in audio format upon request because in our view the cost outweighs the benefit. We do not believe the burden to carriers of providing complex and lengthy documentation in speech format at an automated kiosk would be balanced by a corresponding benefit to people with disabilities, particularly when the information is supplemental (not essential to the transaction itself) and

[43] For further explanation of general flash and red flash thresholds, see *http://www.w3.org/TR/UNDERSTANDING-WCAG20/seizure-does-not-violate.html.*

can be obtained by requesting it from an agent at the airport or online.

Other Suggested Changes—The Department has not accepted the suggested provision to require automatic cut-off of the external speaker when a headset is plugged into the connector. It is our understanding that this automatic cut-off is already a standard feature of devices equipped with connectors. While we believe that equipping handsets with magnetic coupling to hearing aids may be desirable, the volume control requirements for both handsets and headset connector will still provide access and allow greater design flexibility. Regarding the recommended provisions for animation control and seizure flash thresholds, we believe they have merit but are premature at this time. These provisions are appropriate and necessary for video clips and other animated material that typically are not available on today's automated airport kiosks. Therefore, the Department has decided that it will reconsider the need for such provisions, if airport kiosk functionality evolves to include animated content in the future.

Inputs

The Department sought public comment on whether there was a need to revise the proposed requirement for tactilely discernible input controls to allow for accessible touch screen technology such as that used by Apple's iPhone and Google's Android products. We asked how familiar the community of individuals with visual impairments is with accessible touch screen technology. We also asked about alphabetic and numeric keypad arrangements and whether the specified function keys and identification symbols were sufficient for the types of operations typically performed on airport kiosks functions.

Comments: Tactilely Discernible Input Controls—The carrier associations and ITI support allowing either tactilely discernible controls or accessible touch screen navigation as methods of input. The Trace Center believes that both methods should be allowed, but that if gestures on a surface or in three-dimensional space are allowed there also must be some other method involving tactilely locatable controls. The Trace Center observed that gestures can work well for people who are technically savvy but are not easy to use for many people with disabilities—especially those with manual dexterity disabilities.

Keypad Controls—The Trace Center made a number of suggestions to improve tactile controls, the layout of alpha and numeric keys on key pads (use of QWERTY arrangement), and the use of tactile symbols for distinguishing function keys on non-ATM style keypads. They also suggested adding a provision to specify the arrangement of a virtual onscreen keyboard alphabetically in one mode to facilitate navigation using arrow keys and voice output. ITI pointed out that airport kiosks are not usually equipped with keypads and the new standard should not assume their presence on an accessible kiosk. They further indicated that keypad arrangements, whether onscreen or external, should not be specified due to text-to-speech software that reads out each screen element.

DOT Decision: The Department has accepted the Trace Center's suggestion to modify the provision on tactile controls to state that ''at least one input control that is *tactilely discernible without activation* shall be provided for each function. We also accepted their suggestions to require that alphabetic keys on a keypad to be arranged in a QWERTY keyboard layout with the ''F'' and ''J'' keys tactilely distinct from the other keys, as well as an option for numeric keys to be arranged in a row above the alphabetic keys on a QWERTY keyboard. We did not add any new provisions for enhancing the onscreen navigation of virtual keyboards for those with visual impairments but will consider doing so in the future if virtual keyboards are integrated into automated airport kiosks and there is a need to address their usability by people with disabilities.

Display Screens

The Department did not ask specific questions but received a few comments about the proposed specifications for display screens.

Comments: The Trace Center suggested that we change the requirement for display screens such that they must not only be visible, but also readable, from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk. Several commenters requested that the language concerning the required contrast of characters with their background on visual displays be changed from ''either light characters on a dark background or dark characters on a light background'' to ''with a minimum luminosity-contrast-ratio of 3:1.'' Trace Center requested that we require a higher contrast ratio of 4.5:1 for characters that are less than 14-point.

DOT Decision: We have accepted the suggestion to require display screen characters and background to have a minimum luminosity-contrast-ratio of 3:1. This ratio is consistent with that specified in the WCAG 2.0 Success Criteria 1.4.3 on minimum contrast. Combined with the requirement for characters on the display screen to be in sans serif font and at least 3/16 inch (4.8 mm) high (based on the uppercase letter ''I''), the 3:1 contrast ratio will satisfy the success criterion at Level AA. (For further clarification of this requirement see the WCAG 2.0 definitions for ''contrast ratio'' and ''relative luminance'' found at: *http://www.w3.org/TR/WCAG20/#contrast-ratiodef* and *http://www.w3.org/TR/WCAG20/#relativeluminancedef*.)

Regarding display screen visibility, we have not accepted the suggestion to require display screens to be *readable* from a point located 40 inches above the center of the clear floor space in front of the kiosk. The proposed requirement that the display screen be *visible* from a point located 40 inches above the center of the clear floor space essentially means that the display screen must not be obscured from view at that height. A requirement that the display screen be readable from that height would not be practicable since ''readability'' is a function of many factors, including screen characteristics (e.g., font size), ambient conditions (e.g., lighting), and each potential reader's visual acuity when viewing the screen at a given distance from the eye.

Biometrics

In the SNPRM, we included a provision stating that biometrics may be used as the only means for user identification or control where at least two options using different biological characteristics are provided. We requested comment on this provision as well as the costs associated with implementing it.

Comments: ITI opposed any requirement for more than one biometric option, saying the cost of more than one biometric device per kiosk would be prohibitive. They recommended an alternative identification method be used such as a personal identification number (PIN) for those who cannot use the biometric option provided.

DOT Decision: The final provision does not require that more than one biometric identification option be used unless the only method of identification the kiosk provides is biometric. The kiosk provider may also use a non-biometric alternative such as a PIN in lieu of a second biometric identifier using a different biological characteristic. Our proposed provision provided alternatives that are accessible for virtually all individuals with a

disability without imposing unreasonable cost on kiosk providers; therefore, we are finalizing the proposed requirement.

Other Comments on the Technical Standard

Several disability organizations' comments urged the Department to require carriers and airports to consult with individuals with disabilities on the design and usability of their kiosks that meet the technical standard. Although the standard we are adopting consists of well-established and tested design specifications, the Department nonetheless encourages carriers and airports to consult with disability advocacy organizations on the usability of their accessible kiosk during the test phase and to consider adopting any feasible suggestions for improving its usability and accessibility.

3. Implementation Schedule and Alternatives

Compliance Dates for New Kiosk Orders and Airline/Airport Agreements

The SNPRM: The Department proposed to require carriers that own, lease, or control automated airport kiosks or jointly own, lease, or control shared-use automated kiosks with an airport operator at U.S. airports with 10,000 or more annual enplanements to ensure that new kiosks ordered more than 60 days after the effective date of the rule meet the proposed accessibility standard. We proposed to require the same of operators of U.S. airports having 10,000 or more annual enplanements that jointly own, lease, or control shared-use automated kiosks with airlines. The Department asked whether setting the effective date to begin ordering accessible kiosks starting 60 days after the effective date of the rule was too long or too short and what would be a reasonable amount of implementation time for the ordering provision. Important to our decision about the compliance time frame is the ability of the manufacturing sector to meet the demand for accessible automated airport kiosks. Consequently, we asked a number of questions about the capabilities of airport kiosk manufacturers to market accessible models in time to meet the proposed time frame. We asked about the number of large and small manufacturers that currently make automated airport kiosks and whether any currently market accessible models. Assuming that some lead-time would be needed to develop and start manufacturing an accessible model that meets the required standard, we asked whether carriers could meet the 60-day ordering deadline, and if not, how much time would be needed to have a product ready to market. We also asked about the competitive impact of the ordering deadline on small manufacturers given the resources of larger manufacturers to meet demand more quickly.

We explicitly proposed not to require retrofitting kiosks. For both carriers and airports that jointly own, lease, or control shared-use automated kiosks, we proposed to require that they enter into written, signed agreements allocating their respective responsibilities for ensuring compliance with the kiosk accessibility requirements. We asked whether carriers and airport operators should have more than 60 days after the effective date of the rule to enter into agreements with airport operators concerning compliance with the kiosk accessibility requirements, and if so, what would be a reasonable amount of time.

Comments: The carrier associations recommended a delay of up to 36 months after the rule's effective date to implement the ordering provision for new accessible kiosks. The carrier associations that commented jointly estimated it would take as long as one year for manufacturers to develop compliant prototype kiosks, an additional four to six months to procure the kiosk hardware, up to one year for carriers to develop compliant software applications, and six months to install and test the software. Individual carriers recommended lesser delays of one to two years for implementing the ordering provision. The American Aviation Institute (AAI) recommended at least two years from the rule's effective date to begin implementing the ordering provision.

In addition to a longer delay in the effective date of the ordering provision, most industry commenters recommended that only a percentage of new kiosks ordered be required to comply with the accessibility standard. The IATA Common Use Working Group stated that the majority of shared-use airport kiosks follow the international IATA (RP1706c) and ATA (30.100) Common Use Self-Service (CUSS) Standards. They suggested that at least one year would be needed to modify and test the standards for new accessible hardware, updated platform software, and new software interfaces required to support airline software applications. Development of airline application software and pilot testing with integration software could require up to another year. ITI recommended a delay of 18–36 months from the rule's effective date, which from their perspective would allow a reasonable amount of time for product development and manufacturing. They emphasized the importance of adequate time to design, engineer, and test the accessibility features to ensure they function effectively, noting that once product development is completed, inventory and delivery should take 90–120 days. ITI also cautioned that certification, field trials, and controlled pilots could extend the timeline further, if issues arise with third parties that are out of the kiosk manufacturer's control. They did not support recommendations that the Department require only a portion of new kiosks ordered to be accessible.

Disability community commenters called for reducing the delay after the rule's effective date for the new order requirement. United Spinal and CCD both recommended 30 days after the rule's effective date; BBI recommended no delay in the effective date of new order provision and that it coincide with the rule's effective date. The Trace Center, recognizing that a longer lead time would likely be needed, suggested that the Department finalize the technical standard and provide it to interested parties while the final rule is still under review by the Office of Management and Budget (OMB). In effect, the Trace Center recommended that the Department give vendors and other organizations advance notice of the technical standard before the final rule is published so that they could develop and test an accessible kiosk prototype before the actual effective date of the rule. They further recommended that the final rule require that accessible kiosks begin to be installed in airports shortly after the final rule is published. As for airports, Denver International Airport concurred with the Department's proposed effective date of 60 days for new kiosk orders while San Francisco International Airport suggested extending the compliance date to six months after the rule's effective date to allow enough time to complete the airport/airline agreements for shared-use automated kiosks and prepare the technical specifications.

We received very few public comments addressing our questions about the capabilities of the manufacturing sector, none of which came from manufacturers of airport kiosks. However, our contractor preparing the regulatory evaluation contacted a number of manufacturers who confirmed in part what the industry commenters had told us about the longer lead-time required to develop and produce compliant hardware and

software applications. They explained that airlines with proprietary kiosks and the in-house capability to program their own software applications would need less time to comply than airlines that contract out software development. Manufacturers that produce shared-use kiosks confirmed the complex development scenario described by the carrier associations, including an initial phase to revise and test the international technical standard that applies to such kiosks. They confirmed that for shared-use kiosks, airports typically procure the hardware and platform software while the airlines must each develop and certify their own compliant software application, which then must be integrated and tested on the hardware—steps that could extend the compliance time frame. The manufacturers also corroborated ITI's observations that requiring only a portion of new kiosks to be accessible would not substantially reduce the development costs for accessible kiosks.

DOT Decision: The Department has weighed all the available information and is persuaded that a compliance deadline of 60 days from the effective date of the final rule for new kiosk orders is not feasible. Under this rule, airlines and airports have 36 months after the rule's effective date to begin installing accessible kiosks at U.S. airports. There are no automated airport kiosks presently on the market that meet entire set of the accessibility requirements mandated by this rule, and discussions with kiosk manufacturers confirm airline assertions that it could take a substantial amount of time to have kiosks with fully compliant hardware and platform software developed, tested, and ready to market for sale. Research conducted by our contractor indicates that the amount of lead time required to develop and produce compliant hardware and software applications will vary significantly depending on whether the kiosks are proprietary or shared-use and whether their capabilities for software application development are in-house or contracted. Airlines with proprietary kiosks and immediate access to applications programming capabilities may be able to develop and deploy compliant kiosks within 18 to 24 months. For carriers that use shared-use kiosks, however, it may take more than two years for accessible kiosks to be ready for installation.

The IATA Common Use Working Group indicated that it would take up to one year to revise the applicable standards for shared use airport kiosks, with additional time needed to develop and test the kiosk hardware and software components for shared-use automated kiosks. ITI and several other sources have indicated that the current marketplace for developers of shared-use kiosk software is limited to a few firms. This suggests that carriers and airports could also face delays in securing the requisite technical resources. In addition, software applications for shared-use kiosks must be certified, which the IATA Working Group indicates can add another 3 months to the time required to prepare the product for deployment. Apart from the above technical considerations, a compliance time frame of less than three years could also result in above-market pricing, since fewer vendors will be able to develop and test compliant kiosks in less time.

The Trace Center's recommendation that the Department "finalize[], publish[] and provide[] to all interested parties [the accessibility standard] in advance while the provisions make their way through the Office of Management and Budget . . ." might accelerate the availability of accessible kiosks, but would not be consistent with the requirements of Executive Order 12866 and the Administrative Procedure Act. Executive Order 12866 requires Federal agencies to submit the final rule of any significant agency rulemaking to OMB prior to its publication in the **Federal Register**, unless OMB waives its review.[44] It also prohibits agencies from otherwise issuing to the public any regulatory action subject to OMB review prior to OMB completing or waiving its review.[45] The Administrative Procedure Act specifically provides that individuals "may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the **Federal Register** and not so published."[46] This means the Department can neither finalize the accessibility standard prior to OMB's completion of its review nor compel carriers or airports to begin implementing the standard prior to publication of the final rule in the **Federal Register**.

In light of these factors, the Department has decided to extend the compliance time frame for installing new kiosks at U.S. airports to three years after the rule's effective date. Meeting this deadline will require some concurrent effort in the development of compliant hardware and software applications. Carriers and airports will need to be active participants in the IATA standards development and approval process to finalize a standard within a time frame that supports the development, prototyping, and marketing of accessible kiosks and software applications by the compliance deadline. At the same time, the three-year lead time before the provision on new kiosk installations becomes effective will give manufacturers and programmers not presently engaged in developing accessible kiosks enough time to gear up to participate in the market. We believe this broadening of the supplier base can be expected to mitigate the incremental costs of acquiring and installing accessible kiosks. Based on the input our contractors received from manufacturers, shortening the compliance deadline may limit the number of firms that would develop and market compliant hardware and software applications. In addition, due to the amount of technical coordination between airlines and airports necessary to develop accessible shared-use kiosks and their reliance on third-party contractors to develop and test compliant platform and application software, many airports and carriers would not be able to meet a shorter compliance deadline. Ultimately, the Department believes that passengers with disabilities will benefit significantly from providing kiosk manufacturers and application developers with a longer period to develop, prototype, test, and deploy kiosks that effectively meet the required accessibility standard.

Implementation Alternatives

The SNPRM: The Department proposed that all new kiosks ordered after the order deadline must be accessible. We asked for comment on whether a phasing in period over 10 years, gradually increasing the percentage of automated airport kiosk orders required to be accessible, would meaningfully reduce the cost of implementing the accessibility standard. We also asked whether we should require less than 100 percent of new airport kiosks to be accessible, and if so, what percentage of accessible kiosks we should require in each location at the airport. We noted that if only a percentage of kiosks were required to be accessible, the wait time for passengers who need an accessible automated kiosk could be significantly longer than for non-disabled passengers unless they were given some kind of priority access to those machines. We observed that any mandate for priority access to accessible kiosks could also carry the

[44] See Exec. Order 12,866, 58 51735, 51741 (October 4, 1993).

[45] See Exec. Order 12,866, 58 FR No. 140 51735, 51743 (October 4, 1993).

[46] See 5 U.S.C. 552(a)(1).

potential of stigmatizing and segregating those passengers.

Comments: ITI commented that from a development and manufacturing perspective, the timelines and resources needed to develop and incorporate ''new accessibility solutions will be the same, regardless of whether all, or a percentage of, kiosks are required to comply with the new rules.'' They added that from their perspective there also would be no meaningful cost reduction from a gradual phasing in of accessible kiosks. The carrier associations nonetheless opposed a requirement for all airport kiosks to be accessible, arguing that this approach is inconsistent with other Part 382 requirements (e.g., movable armrests are only required on fifty percent of aircraft aisle seats, one accessible lavatory on a twin aisle aircraft) and costly. They urged the Department to consider two compliance alternatives, each having a compliance date of 36 months after the effective date of the final rule: (1) Require ten percent of future kiosks ordered to include accessible features or, in the alternative, (2) require one accessible kiosk per passenger check in area at an airport. From their point of view, a reduced number of accessible kiosks will have no significant impact on passenger wait times since passengers with a disability who self-identify would be given priority to use an accessible kiosk, reducing their wait to the time it would take for someone already using the accessible kiosk to finish their transaction. In the event more than one passenger needs to use the accessible kiosk at the same time, agents will be available to assist. The carrier associations believe this approach will provide accessible kiosks to those who need and will use them, while better balancing the costs with the benefits. Air New Zealand made a similar argument, suggesting that requiring only 25 percent of airport kiosks to be accessible, in combination with priority access for passengers with disabilities, will provide passengers with disabilities the independent access they want and limit the additional financial burden to carriers. Spirit Airlines proposed that the Department require only 50 percent of new kiosks ordered to be accessible, until a total of 25 percent of airport kiosks are accessible. The San Francisco International Airport, on the other hand, took the position that the Department should require 100 percent of kiosks to be accessible by a date to be determined after taking manufacturing capabilities and other factors into consideration. They saw this approach as the best way to avoid potential problems for airports having to maintain both accessible and inaccessible kiosk models.

DOT Decision: We are requiring that all new kiosks installed at U.S. airports three years or more after the effective date of the rule be accessible until at least 25 percent of kiosks in each location at the airport are accessible. We agree with the comments of Air New Zealand that having 25 percent of airport kiosks accessible (as opposed to more than 25 percent), in combination with priority access for passengers with disabilities to those kiosks, will enable passengers with disabilities to independently use airport kiosks and limit the additional costs to carriers and airports associated with acquiring and installing accessible kiosks. Nonetheless, the Department intends to monitor implementation of this rule to determine whether delay in obtaining access to an accessible kiosk is a significant problem for passengers with disabilities, despite the priority access provision, especially during peak demand times. If so, we may issue further regulations to address the matter. Of course, airlines and airports may always choose to make more than 25 percent of airport kiosks accessible. As noted by San Francisco International Airport, one advantage of making 100 percent of airport kiosks accessible is avoidance of the potential costs associated with maintaining and supporting both accessible and inaccessible kiosk models.

As we stated earlier, the requirement for at least 25 percent of accessible automated airport kiosks at each location in U.S. airports with 10,000 or more enplanements means that at least 25 percent of kiosks provided in each cluster of kiosks and all stand-alone kiosks at the airport must be accessible. For example, in a location where five kiosks are situated in close proximity to one another, such as near a ticket counter, at least two of those kiosks must be accessible; in locations where a single kiosk is provided which is not in close proximity to another kiosk, the single kiosk must be accessible. In addition, when the kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), the accessible kiosks must provide all the same functions as the inaccessible kiosks in that location. These days many kiosks provide a broad range of functionality beyond simple check-in. Kiosks that perform different functions are considered to be of different types. Accessible automated airport kiosks must provide all the functions provided to customers at that location at all times. For example, it is unacceptable for the accessible automated airport kiosks at a particular location to only enable passengers to check-in and print out boarding passes while the inaccessible automated airport kiosks at that location also enable passengers to select or change seating, upgrade class of travel, change to an earlier or later flight, generate baggage tags and purchase inflight Wi-Fi sessions or other ancillary services. Whatever functions are available on inaccessible automated airport kiosks must also be available to customers using accessible airport kiosks at the same location. As noted above, the 25 percent requirement also applies to each location at the airport where kiosks are installed. It is not sufficient for a carrier or an airport to merely comply with the percentage for the airport as a whole, or even for a given terminal building if there are kiosks in more than one location in the terminal.

Based on data from commenters who estimated airport kiosk life spans, we estimate that the typical kiosk life span is no more than five to seven years. We believe it is reasonable to conclude that well before the end of the 10-year period after the effective date of this rule virtually all airport kiosks will have reached the end of their life span. As such, a total of at least 25 percent of airport kiosks in each location at a U.S. airport should have been replaced with an accessible kiosk by then. To ensure this outcome, we have added requirements that both carriers and airport operators must ensure that at least 25 percent of automated kiosk provided in each location at the airport must be accessible by ten years after the effective date of the rule. Accessible kiosks provided in each location at the airport must provide all the same functions as the inaccessible kiosks in that location.

Retrofitting Kiosks

The SNPRM: In proposing to require that only new kiosks ordered after a certain date be accessible, we had also considered proposing to require carriers to either retrofit or replace a certain percentage or number of airport kiosks (e.g., retrofit 25 percent of existing kiosks or replace at least one kiosk) in each location at the airport by a certain date. We ultimately decided against proposing either option, as the available information suggests that these approaches would significantly increase the cost to carriers. Nonetheless, we also had concerns that the transition time for an accessible kiosk to become available

at each location in an airport could be more than a decade. The best life cycle estimates for airport kiosks available to us when the September 2011 SNPRM was published ranged from seven to ten years. We therefore asked for comment on the accuracy of our life cycle estimate and whether the Department should require carriers to retrofit or replace a certain portion of their kiosks to meet the accessibility standards until all automated airport kiosks are accessible.

Comments: Most disability advocacy organizations, individual commenters who self-identified as having a disability, and some commenters from the general public supported an interim requirement to retrofit some percentage of existing kiosks to accelerate the availability of accessible kiosks at all locations in an airport. The Trace Center, NFB, and BBI supported a phased retrofit schedule such that 25 percent of all deployed kiosks must be accessible by 1 year, 50 percent by 3 years, 75 percent by 5 years, and 100 percent by 7 years after the effective date. NCIL advocated a more accelerated approach for retrofitting that would have 100 percent of deployed kiosks accessible by five years after the effective date. PVA urged the Department to require that any existing kiosk that is altered (voluntarily modified or refurbished, including any software modification or upgrade) must be retrofitted to meet the accessibility standard. The Trace Center conceded that retrofitting ''can be significantly more expensive than deploying new accessible kiosks'' due to loss of the lower cost production environment and economies of scale, as well as the additional costs of taking kiosks out of service and the actual cost to modify the kiosk. They acknowledged that even activating dormant accessibility features (e.g., headset connector) can be a significant undertaking that would take some lead-time to complete.

The San Francisco International Airport also recommended retrofitting some existing kiosks as a reasonable alternative to requiring only that new kiosks ordered after the effective date be accessible. They reasoned that if only new kiosks must meet the accessibility requirements, it would create an adverse incentive for airlines to maintain older kiosks beyond their useful life and delay full accessibility for many years. They thought it likely that the airport industry would be ready to support immediate retrofits.

Carriers and the carrier associations opposed any kind of retrofitting. They added that many kiosk models could not be retrofitted because they are near the end of their life cycle and are no longer supported by the manufacturer. The IATA CUSS working group estimated incremental costs of at least $3,000 per kiosk to retrofit to the DOT standard. ITI said that the costs of retrofitting an existing kiosk would be difficult to quantify—particularly older kiosks with operating systems that are not compatible with text-to-speech technology and may not support software needed for speech output. They noted that in addition to hardware costs, there would also be software certification costs. Several manufacturer representatives echoed these concerns, indicating that there are significant technical feasibility issues associated with retrofitting.

DOT Decision: The Department acknowledges that a requirement to retrofit some percentage of kiosks to meet the accessibility standard would accelerate the near-term availability of accessible machines at airports. While more rapid near-term availability of accessible machines is an important objective, retrofitting is clearly an expensive, and in some cases, technically infeasible means to accomplish it. A shortened compliance timeline also runs the risk of insufficient testing to ensure the successful integration and error-free operation of all the hardware and software components of accessible kiosks. In lieu of requiring retrofitting of existing kiosks, carriers and airports will be required to ensure that at least 25 percent of automated kiosks in each location at an airport are accessible and that accessible kiosks provided in each location at the airport provide all the same functions as the inaccessible kiosks at that location by ten years after the rule's effective date. As mentioned earlier, with data from carriers and industry experts confirming that the typical kiosk life cycle is between five and seven years, we anticipate that 25 percent of kiosks in all locations at an airport will have been replaced with accessible models well before this ten-year deadline. Compliant kiosks will begin to be installed in locations at airports no later than 3 years after the effective date of this rule.

4. Identification and Maintenance

The SNPRM: The Department proposed to require carriers and airports to ensure that each accessible automated kiosk they own, lease, or control in a location at an airport is visually and tactilely identifiable as such to users (e.g., an international symbol of accessibility affixed to the front of the device) and is maintained in proper working condition, until all automated kiosks in a location at the airport are accessible. We proposed to apply these requirements to airlines under Part 382 and to airports under Part 27.

Comments: The Department received a very small number of comments on these provisions. Two disability organizations supported the requirement for affixing an international accessibility symbol. Some commenters who did not identify as having disabilities noted that a requirement to affix a symbol or a sign indicating that a particular kiosk is accessible may be helpful to some individuals with disabilities, such as those with mobility or cognitive impairments. As a practical matter, these same commenters noted that for users with visual impairments, receiving guidance from airline personnel to an accessible kiosk made more sense than affixing an accessibility symbol they cannot see and which they could not touch until physically in front of the machine. Despite such observations, there were no comments opposing these specific provisions.

DOT Decision: The Department views the need for accessible automated kiosks to be identifiable and maintained in working condition to be of great importance particularly since this rule does not require 100 percent of kiosks to be accessible. Passengers with disabilities will experience a greater impact than other passengers when accessible kiosk equipment is out of order since only a portion of them will be required to be accessible. In assessing carrier/airport responsibility for accessible kiosks that are down for repair periodically during their service life, the Department will examine several factors on a case-by-case basis, including whether maintenance schedules are in place and followed for all kiosks owned by the carrier/airport and whether the maintenance schedules and policies followed for both accessible and inaccessible kiosks are similar. Also, kiosk locations at the airport will have a mix of accessible and inaccessible machines so there is value in requiring that accessible kiosk models carry the international accessibility symbol to allow passengers with a variety of disabilities maximum independence in locating and using an accessible kiosk. This requirement will help ensure that adequate resources are allocated to maintaining accessible kiosks, particularly during the first few years when there are fewer accessible models at an airport, for parts and technical training that may otherwise be given low priority. Since we received no comments opposing the provisions as proposed and for the other reasons mentioned above, the Department is

retaining these provisions in the final rule.

5. Other Issues—Federal Preemption

The SNPRM: In the preamble of the September 2011 SNPRM, we stated that States are already preempted from regulating in the area of disability civil rights in air transportation under the Airline Deregulation Act, 49 U.S.C. 41713 and the ACAA, 49 U.S.C. 41705.

Comments: In their comments on this rulemaking, NFB and NCIL both urged the Department to rectify what they viewed as erroneous holdings in two recent court cases alleging that inaccessible airline kiosks and Web sites constitute disability discrimination under State law.[47] In both cases, the court granted the defendant airlines' motions to dismiss, concluding that Plaintiffs' State-based claims alleging disability discrimination in air transportation were preempted by the ACAA and the Airline Deregulation Act.[48] Specifically NFB and NCIL asked the Department to use agency discretion to grant passengers with disabilities, who are protected against disability discrimination under the ACAA regulations, additional protection under other laws, such as the State laws at issue in the litigation, by including a saving clause in Part 382.[49]

As background, we note that in the case filed by NFB in the United States District Court for the Northern District of California, the Department of Justice filed a *Statement of Interest By the United States* reflecting the views of the Department of Transportation in support of United's motion to dismiss. The statement made three central arguments supporting Federal preemption of NFB's state claims: (1) Airline kiosks constitute a service that falls within the preemption provision of the Airline Deregulation Act; (2) the ACAA rules apply pervasively not only to disability discrimination in aviation generally, but also to the accessibility of airline kiosks specifically; and (3) applying a State remedy to NFB's discrimination claims would have the broad effect of undermining the purpose behind the ACAA regulations. The court agreed with the views of the United States, finding that NFB's claims were preempted under both the Airline Deregulation Act and the ACAA.[50]

JetBlue's dismissal motion subsequently adopted the preemption arguments made in the *Statement of Interest By the United States* submitted in the United case, asserting that these views represented the agency judgment of the Department of Transportation.[51] The court did not agree with JetBlue's argument that Web sites and kiosks are ''services'' affecting economic deregulation or competition intended to fall within the scope of the Airline Deregulation Act and found that the plaintiffs' State law claims were not preempted by the Act. The court agreed, however, with JetBlue's arguments that DOT's ACAA regulations occupy the field of disability non-discrimination in aviation and preempt State law. Citing provisions in DOT's 2008 final ACAA rule requiring airlines to provide interim accommodations and its intent stated in the rule's preamble for further rulemaking on inaccessible kiosks and Web sites, the court held that the ACAA regulations specifically preempt the field of airline kiosk and Web site accessibility ''so as to justify the inference that Congress intended to exclude state law discrimination claims relating to these amenities.'' [52]

The Plaintiffs in both cases appealed the decisions to the Court of Appeals for the Ninth Circuit. In the NFB case, the United States filed an *amicus curiae* brief and reiterated its arguments that NFB's claims were both field and conflict preempted by the ACAA and expressly preempted by the Airline Deregulation Act.[53] The case was argued on November 8, 2012. However, the Court vacated submission of the case and will delay its decision pending a decision by the Supreme Court in *Northwest, Inc. et .al.* v. *Ginsberg,* 695 F.3d 873 (9th Cir. 2012), *cert. granted,* —S. Ct. —, 2013 WL 2149802 (May 20, 2013) (No. 12–462).[54] The parties in the JetBlue case filed an unopposed motion to stay proceedings pending the court's decision in the NFB case, and the Court granted that motion on September 22, 2011.[55]

Notwithstanding the United States' position and the district courts' holdings of Federal field preemption under the ACAA in both cases, in its comments on this rulemaking, NCIL pointed to statements in the Congressional record that the ACAA was enacted to ensure that airlines eliminate all discriminatory restrictions on air travel by persons with disabilities not related to safety.[56] They asserted that these statements concerning the ACAA are evidence that ''. . . a saving[s] clause permitting the operation of more protective state laws [was] squarely contemplated by Congress and should be preserved with a saving[s] clause.''

DOT Decision: The Department fully concurs with NCIL and NFB that the ACAA was enacted to eliminate discriminatory restrictions by airlines on air transportation for people with disabilities. We continue to strongly disagree, however, with the notions that Congress intended State and local disability non-discrimination laws applied to aviation to be exempt from preemption under the Airline Deregulation Act or to operate concurrently with the ACAA. As we outlined in the Statement of Interest discussed above, the Department believes that the concurrent operation of State and local laws would undermine certain central goals of both the ACAA and the Airline Deregulation Act.

We believe that the detrimental impacts resulting from the concurrent operation of State/local disability non-discrimination laws on passengers with disabilities and on air transportation overall are serious and foreseeable. The saving clause advocated by NCIL and NFB would subject airlines to non-discrimination requirements in scores of State and local jurisdictions. Aside from the burden of complying with a patchwork of State and local disability regulations on airline economic activity and competition, passengers with disabilities would again be subject to inconsistency and uncertainty regarding the accommodations they can expect in air travel. Congress intended that the ACAA regulations apply accessibility requirements and compliance deadlines

[47] See *Nat'l Fed'n of the Blind v. United Airlines, Inc.,* No. C 10–04816, p. 3 WHA, 2011 WL 1544524 (N.D. Cal. April 25, 2011) and *Foley et al* v. *JetBlue Airways Corp.,* No. C 10–3882, p. 3 (N.D. Cal. August 3, 2011).

[48] See *Id.*

[49] NFB and NCIL recommended identical language for this provision: ''Nothing in these regulations shall be construed to invalidate or limit the remedies, rights, and procedures of any federal law or law of any state or political subdivision of any state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by these regulations.''

[50] *Nat'l Fed'n of the Blind* v. *United Airlines, Inc.,* No. C 10–04816, p. 2–3 WHA, 2011 WL 1544524 (N.D. Cal. April 25, 2011).

[51] *Thomas Foley et al.* v. *JetBlue Airways Corp.,* No. C 10–3882, p. 4 (N.D. Cal. August 3, 2011).

[52] *Id.* at 18–20.

[53] Brief for the United States as *Amicus Curiae* Supporting Affirmance of the District Court's Judgment, *Nat'l Fed'n of the Blind* v. *United Airlines, Inc.,* No. 11–16240 (9th Cir. Oct. 18, 2011).

[54] Order, *Nat'l Fed'n of the Blind* v. *United Airlines,* No. 11–16240 (9th Cir. May 22, 2013).

[55] Order, *Foley, et al.,* v. *JetBlue Airways Corp.* No. 11–17128 (9th Cir. Sept. 22, 2011).

[56] See 132 Cong. Rec. S11, 784–08 (daily ed. Aug. 15, 1986) (statement of Sen. Dole). See also S. Rep. No. 99–400, at 2, 4 (1986), reprinted in 1986 U.S.C.C.A.N. 2328, 2329, 2331; 132 Cong. Rec. S11784–08 (daily ed. Aug. 15, 1986); 132 Cong. Rec. H7057–01 (daily ed. Sept. 17, 1986) (statement of Rep. Sundquist); S. Rep. No. 99–400, at 2 (1986), reprinted in 1986 U.S.C.C.A.N. 2328, 2329–30.

to covered airlines uniformly. The goal was to ensure that passengers with disabilities would consistently receive the same accommodations wherever their air transportation is subject to U.S. law. This outcome has largely come about today due to airlines throughout the U.S. market being freed to focus their resources on meeting a single regulatory and enforcement scheme for ensuring accessibility. Carriers have not had to scatter their resources training employees to meet varying regulatory requirements for each State in which the carrier operates. It is our view that Congress sought to avoid these foreseeable adverse effects and intended the ACAA regulation to occupy the legal field in this area in order to maximize accessibility across the entire air transportation market to which the ACAA applies. Therefore, we believe the public interest will be best served by not adding a saving provision to Part 382.

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, tailor the regulation to impose the least burden on society consistent with obtaining the regulatory objectives, and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. This rule promotes such values by requiring the removal of barriers to equal access to air transportation information and services for passengers with disabilities.

In the Department's view, the non-quantifiable benefits of kiosk accessibility, which the tables below do not reflect, are wholly consistent with the ACAA's mandate to eliminate discrimination against individuals with disabilities in air transportation. They include the increased ability of individuals with disabilities to independently access and use with equal convenience and privacy, and without stigmatization, the same air transportation information and services available to individuals without disabilities. Specific non-quantifiable benefits associated with the kiosk accessibility requirements also include an enhanced sense of inclusion for travelers with vision or mobility disabilities, as well as a decrease in the stigma of special treatment at the ticket counter and in their overall waiting time to check-in. Having a choice of check-in options (e.g., either the automated kiosk or the check-in counter), depending on their anticipated transaction time or personal preference also has value to many travelers with disabilities, even if its monetary value cannot be quantified. The availability of accessible kiosks will also reduce waiting times at ticket counters for travelers without disabilities who are required to or choose to use the airline ticket counters for ticket purchase or check-in and free customer service agents from routine check-in and seat assignments tasks to focus on individual ticketing and baggage issues. Travelers with and without disabilities will also benefit from the design features of accessible kiosks (e.g., travelers who have difficulty reading English may benefit from having the ability to hear the kiosk instructions). We note that some of the non-quantifiable costs include the sunk costs of inaccessible kiosk models currently under development and occasional increases in kiosk waiting times that may result for other travelers initially as new users become familiar with kiosk features and applications.

Regarding the Web site accessibility requirements, we anticipate both non-quantifiable and intrinsically qualitative benefits. Web sites that meet the WCAG 2.0 Level AA standards will have a cleaner layout and less content per page, resulting in improved accessibility not only for people with severe vision impairments, but also for those with less severe disabilities such as low vision, developmental delays, or epilepsy. Web site accessibility will also remove a barrier to travel for independent people with severe vision impairments, making it more likely they will travel and increasing the number of trips they purchase. For carriers, we expect the process of making their Web sites accessible (e.g., developing a detailed Web site inventory) to result in an improved ability to identify and clean up existing errors and performance issues (e.g., broken links and circular references).

There are also potentially important categories of costs associated with the Web site accessibility requirements that are intrinsically qualitative or for which monetary values cannot be estimated from the available data. Bringing an entire air travel Web site into compliance with WCAG 2.0 Level AA, for example, may reduce options for innovation and creative presentation of Web content. Carriers will also need to allocate programming resources for creating and updating Web pages to ensure regulatory compliance that could be used to otherwise improve or increase functionality on their primary Web sites. Also unknown are the costs the Department will have to incur to enforce these rules by acquiring and maintaining the ability to monitor covered air travel Web sites, conduct periodic testing and verification, and work with carriers to understand and remedy identified Web site noncompliance.

The Department believes that the qualitative and non-quantifiable benefits of the Web site and kiosk accessibility requirements nonetheless justify the costs and make the rule cost beneficial, even without the economic benefits displayed in the tables below. The non-quantifiable benefits to individuals with disabilities, in particular, are integral to achieving full inclusion and access to the entire spectrum of air transportation services, which is the overarching goal of the ACAA.

The final Regulatory Evaluation established that the monetized benefits of the final rule exceed its monetized costs by $13.5 million using a 3-percent discount rate. The benefits and costs were estimated for the 10-year period beginning two years after the effective date (which was assumed to be January 1, 2014) for the Web site accessibility requirements and three years after the effective date for kiosk accessibility requirements. The upfront compliance costs incurred for Web sites in 2014 and 2015 and for kiosks in 2015 and 2016 were rolled forward and included in the 10-year analysis period results cited in the final regulatory evaluation. The expected present value of monetized benefits from the final rule over a 10 year period using a 7-percent discount rate is estimated at $110.7 million, and the expected present value of monetized costs to comply with the final rule over a 10-year period using a 7-percent

discount rate is estimated at $114.7 million. The present value of monetized net benefits over a 10 year period at a 7-percent discount rate is −$4.0 million. The table below, taken from the final Regulatory Evaluation, summarizes the monetized costs and benefits of the rule.

PRESENT VALUE OF NET BENEFITS FOR RULE REQUIREMENT

[Millions]

Monetized benefits and costs	Discounting period/rate	Web sites	Kiosks	Present value (millions)
Monetized Benefits	10 Years, 7% discounting	$75.9	$34.8	$110.7
	10 Years, 3% discounting	90.3	42.0	132.3
Monetized Costs	10 Years, 7% discounting	79.8	34.9	114.7
	10 Years, 3% discounting	82.5	36.1	118.6
Monetized Net Benefits	10 Years, 7% discounting	(3.9)	(0.1)	(4.0)
	10 Years, 3% discounting	7.8	5.9	13.7

* Present value in 2016 for Web site requirements and 2017 for kiosk requirements.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on State and local governments. With regard to preemption, this final rule preempts State law in the area of disability civil rights in air transportation. However, State regulation in this area is already expressly preempted by the Airline Deregulation Act, which prohibits States from enacting or enforcing a law ''related to a price, route, or service of an air carrier.'' [57] Furthermore, the ACAA occupies the field in the area of nondiscrimination in air travel on the basis of disability. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We note that while the Regulatory Flexibility Act does not apply to foreign entities, we have examined the effects of this rule not only on U.S. airports and air carriers that are small entities under applicable regulatory provisions, but on small foreign carriers as well. The Web site accessibility requirements do not impact small U.S. and foreign carriers. Only carriers that operate at least one aircraft having a seating capacity of more than 60 passengers are required to make their Web sites accessible to passengers with disabilities and ensure that they provide Web-based discounts and waive any telephone or walk-in reservation fees for individuals unable to use their Web site due to a disability.

This final rule also requires small U.S. and foreign carriers that own, lease, or operate proprietary or shared-use automated kiosks at U.S. airports with 10,000 or more annual enplanements to install accessible models at each U.S. airport kiosk location starting three years after the rule's effective date until at least 25 percent of automated kiosks provided at each location are accessible and provide all the same functions as the inaccessible kiosks at each location. The same requirement applies to operators of U.S. airports with 10,000 or more annual enplanements that own, lease, or operate shared-use automated kiosks. Research for our initial regulatory flexibility analysis identified no small carriers or small airport authorities covered by the proposed accessibility requirements that owned or operated kiosks. Moreover, we received no comments on the proposed requirements during the SNPRM public comment period from small carriers (those exclusively operating aircraft with 60 or fewer seats), small airport authorities (those publicly owned by jurisdictions with fewer than 50,000 inhabitants or privately owned by small entities with annual revenues of $30 million or less under the Small Business Administration (SBA) size standard), or other stakeholders that are small entities. For this final rule, therefore, we conducted no further analysis on the impact of the kiosk accessibility requirements on small entities.

On the basis of the examination discussed above, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the Final Regulatory Flexibility Analysis has been placed in docket.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB) (Pub. L. 104–13, 49 U.S.C. 3501 et seq.). The Department may not impose a penalty on persons for violating information collection requirements when an information collection required to have a current OMB control number does not have one.

The final rule contains two new information collection requirements that require approval by OMB under the PRA. Specifically, section 382.43 requires carriers to provide a mechanism on their Web sites for passengers to provide online notification of their requests for disability accommodation services (e.g., enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, etc.) within two years after the effective date of this final rule. Section 382.43 also requires carriers to ensure that a disclaimer is activated when a user clicks a link on a primary Web site

[57] 49 U.S.C. 41713(b)(1).

to embedded third-party software or an external Web site. The disclaimer must inform the user that the software/Web site is not within the carrier's control and may not follow the same accessibility policies.

As required by the PRA, the Department invites interested persons to submit comments on any aspect of these information collections for 60 days, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

As noted above, the first of these two new information collections is mandated by the requirement that carriers that market air transportation online to customers in the U.S. make a disability accommodation service request function available on their primary Web site within two years after the effective date of this rule. The types of accommodations a passenger with a disability may request through the function would most often include, but are not limited to, wheelchair assistance, seating accommodation, escort assistance for a visually impaired passenger, and stowage of an assistive device. Carriers are permitted to require that a passenger with a disability provides his/her contact information (e.g., telephone number, email address) when making an online service request.

The Department anticipates that carriers will create a form that contains 1) check boxes corresponding to a listing of the current IATA disability-related Special Service Request (SSR) codes currently used to flag electronic ticket records of passengers requesting assistance, 2) fields for passenger contact information to verify requested services, and 3) an open text box to describe the specific needs and the services being requested. We anticipate that each covered U.S. and foreign carrier that markets scheduled air transportation to the general public in the United States would incur initial costs associated with developing and reviewing the design and implementation plan for the request form, developing, coding, and integrating the form into the Web site, as well as testing, debugging, and connecting the form with a backend database to store the information. None of these initial costs involve recordkeeping or reporting activities under the meaning of the PRA. The revised final regulatory analysis (FRA) estimates that it will take an average of 32 labor hours per carrier to develop, implement, integrate, connect, and test the online request form. Up to 28 additional hours eventually may be needed to revise request-handling procedures and to train staff in the changes resulting from the new form. Should carrier associations or some other entity develop a common request form that all carriers could adapt and incorporate to their Web sites, the initial costs per carrier would be reduced.

The second information collection is a requirement for carriers to provide a disclaimer notice for each link on its primary Web site that enables a user to access software or an external Web site that may not follow the same accessibility policies as the primary Web site. The disclaimer notice must be activated the first time a user clicks such a link before beginning the software download or transferring the user to the external Web site. We anticipate that each covered U.S. and foreign carrier that markets scheduled air transportation to the general public in the United States will incur initial costs associated with identifying all links on the Web site that may require a disclaimer, developing and reviewing the design and language for the disclaimer notice, as well as developing, testing, and deploying the code that provides this notice to Web site visitors. However, none of these initial costs involves recordkeeping or reporting activities under the meaning of the PRA. The incremental labor hours associated with providing the required disclaimer may vary depending on the number of links on the Web site to which this requirement applies. The revised FRA estimates that it will take an average of 6 labor hours per carrier to develop, test, and deploy the disclaimer notice.

The title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below for each of these information collections:

1. Requirement to make a disability accommodation service request function available on the primary Web site.

Respondents: U.S. and foreign air carriers that own or control a primary Web site that markets air transportation within, to, or from the United States, or a tour (i.e., a combination of air transportation and ground or cruise accommodations), or a tour component (e.g., a hotel stay of a tour) that includes air transportation within, to, or from the United States, and that operate at least one aircraft with a seating capacity of more than 60 passengers.

Estimated Annual Burden on Respondents: 32 hours.

Estimated Total Annual Burden: 3,552 hours.

Frequency: One time.

2. Requirement to provide a disclaimer notice to users when clicking a link on a primary Web site to embedded third-party software or an external Web site.

Respondents: U.S. and foreign air carriers that own or control a primary Web site that markets air transportation within, to, or from the United States, or a tour (i.e., a combination of air transportation and ground or cruise accommodations), or a tour component (e.g., a hotel stay of a tour) that includes air transportation within, to, or from the United States, and that operate at least one aircraft with a seating capacity of more than 60 passengers.

Estimated Annual Burden on Respondents: 6 hours.

Estimated Total Annual Burden: 666 hours.

Frequency: One time.

F. Unfunded Mandates Reform Act

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to civil rights requirements mandating nondiscrimination; therefore, the Department has determined that the Act does not apply to this final rule.

Issued this November 1, 2013, at Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

List of Subjects

14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses

49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, the Department amends 14 CFR parts 382 and 399 and 49 CFR part 27 as follows:

Title 14—Aeronautics and Space

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 41705, 41712, and 41310.

■ 2. Section 382.3 is amended by revising the definition of ''air transportation'' and adding definitions for ''automated airport kiosk,'' ''conforming alternate version,'' ''flight-related services,'' ''primary (or main) Web site,'' and ''shared-use automated airport kiosk'' in alphabetical order to read as follows:

§ 382.3 What do the terms in this rule mean?

* * * * *

Air Transportation means interstate or foreign air transportation or the transportation of mail by aircraft, as defined in 49 U.S.C. 40102. Generally this refers to transportation by aircraft within, to or from the United States.

* * * * *

Automated airport kiosk means a self-service transaction machine that a carrier owns, leases, or controls and makes available at a U.S. airport to enable customers to independently obtain flight-related services.

* * * * *

Conforming alternate version means a Web page that allows a corresponding non-conforming Web page on the primary Web site to be included within the scope of conformance as long as it meets the WCAG 2.0 Level AA success criteria, is up-to-date and contains the same information and functionality in the same language as the non-conforming page. At least one of the following applies to a conforming alternative version:

(1) The conforming version can be reached from the non-conforming page via an accessibility-supported mechanism; or

(2) The non-conforming version can only be reached from the conforming version; or

(3) The non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version.

* * * * *

Flight-related services mean functions related to air travel including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags.

* * * * *

Primary (or Main) Web site means the Web site that is accessed upon entering the uniform resource locator (e.g., *www.carriername.com,* www.airline designator code.com) in an Internet browser from a standard desktop or laptop computer where the carrier advertises or sells air transportation to the public.

* * * * *

Shared-use automated airport kiosk means a self-service transaction machine that is jointly owned, controlled or leased by an airport operator and carriers and/or an independent service provider and that provides carrier software applications which enable customers to independently access flight-related services.

* * * * *

§ 382.31 [Amended]

■ 3. In § 382.31, paragraph (c) is removed.

■ 4. Section 382.43 is amended by revising the section heading and adding paragraphs (c) through (e) to read as follows:

§ 382.43 Must information and reservation services of carriers be accessible to individuals with visual, hearing, and other disabilities?

* * * * *

(c) If you are a U.S. or foreign air carrier that operates at least one aircraft having a designed seating capacity of more than 60 passengers and owns or controls a primary Web site that markets passenger air transportation, or a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that must be purchased with air transportation, you must ensure the public-facing Web pages on your primary Web site are accessible to individuals with disabilities as provided in paragraphs (c)(1) through (4) of this section. Only Web sites that market air transportation to the general public in the United States must be accessible to individuals with disabilities. The following are among the characteristics of a primary Web site that markets to the general public in the U.S.: the content can be viewed in English, the site advertises or sells flights operating to, from, or within the United States, and the site displays fares in U.S. dollars.

(1) Your primary Web site must conform to all Success Criteria and all Conformance Requirements from the World Wide Web Consortium (W3C) Recommendation 11 December 2008, Web site Content Accessibility Guidelines (WCAG) 2.0 for Level AA as follows:

(i) Web pages associated with obtaining the following core air travel services and information that are offered on your primary Web site are conformant by December 12, 2015:

(A) Booking or changing a reservation, including all flight amenities;

(B) Checking in for a flight;

(C) Accessing a personal travel itinerary;

(D) Accessing the status of a flight;

(E) Accessing a personal frequent flyer account;

(F) Accessing flight schedules; and

(G) Accessing carrier contact information.

(ii) All remaining Web pages on your primary Web site are conformant by December 12, 2016.

(2) Your primary Web site must be tested in consultation with individuals with disabilities or members of disability organization(s) who use or want to use carrier Web sites to research or book air transportation in order to obtain their feedback on the Web site's accessibility and usability before the dates specified in paragraph (c)(1) of this section. Collectively, such individuals must be able to provide feedback on the usability of the Web site by individuals with visual, auditory, tactile, and cognitive disabilities. Consultation is required to ensure that your Web site is usable by individuals with disabilities by the date specified in paragraph (c)(1).

(3) You are permitted to use a Level AA conforming alternate version only when conforming a public-facing Web page to all WCAG 2.0 Level AA success criteria would constitute an undue burden or fundamentally alter the information or functionality provided by that page.

(4) You must assist prospective passengers who indicate that they are unable to use your Web site due to a disability and contact you through other channels (e.g., by telephone or at the ticket counter) as follows:

(i) Disclose Web-based discount fares to the passenger if his or her itinerary qualifies for the discounted fare.

(ii) Provide Web-based amenities to the passenger, such as waiving any fee applicable to making a reservation or purchasing a ticket using a method other than your Web site (e.g., by telephone), unless the fee applies to other customers purchasing the same fare online.

(d) As a carrier covered under paragraph (c) of this section, you must provide a mechanism on your primary

Web site for persons with disabilities to request disability accommodation services for future flights, including but not limited to wheelchair assistance, seating accommodation, escort assistance for a visually impaired passenger, and stowage of an assistive device no later than December 12, 2015. You may require individuals who request accommodations using this mechanism to provide contact information (e.g., name, daytime phone, evening phone, and email address) for follow-up by your customer service department or medical desk.

(e) As a carrier covered under paragraph (c) of this section, you must provide a disclaimer activated when a user clicks a link on your primary Web site to an external Web site or to third-party software informing the user that the Web site or software may not follow the same accessibility policies no later than December 12, 2016.

■ 5. Section 382.57 is revised to read as follows:

§ 382.57 What accessibility requirements apply to automated airport kiosks?

(a) As a carrier, you must comply with the following requirements with respect to any automated airport kiosk you own, lease, or control at a U.S. airport with 10,000 or more enplanements per year.

(1) You must ensure that all automated airport kiosks installed on or after December 12, 2016, are models that meet the design specifications set forth in paragraph (c) of this section until at least 25 percent of automated kiosks provided in each location at the airport (i.e., each cluster of kiosks and all stand-alone kiosks at the airport) meets this specification.

(2) You must ensure that at least 25 percent of automated kiosks you own, lease, or control in each location at a U.S. airport meet the design specifications in paragraph (c) of this section by December 12, 2022.

(3) When the kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), you must ensure that the accessible kiosks provide all the same functions as the inaccessible kiosks in that location.

(4) You must ensure that a passenger with a disability who requests an accessible automated kiosk is given priority access to any available accessible kiosk you own, lease, or control in that location at the airport.

(5) You must ensure that each automated airport kiosk that meets the design specifications in paragraph (c) of this section is:

(i) Visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the front of the device).

(ii) Maintained in proper working condition.

(b) As a carrier, you must comply with the following requirements for any shared-use automated airport kiosks you jointly own, lease, or control at a U.S. airport with 10,000 or more enplanements per year.

(1) You must ensure that all shared-use automated airport kiosks you jointly own, lease, or control installed on or after December 12, 2016, meet the design specifications in paragraph (c) of this section until at least 25 percent of automated kiosks provided in each location at the airport (i.e., each cluster of kiosks and all stand-alone kiosks at an airport) meet this specification.

(2) You must ensure that at least 25 percent of shared-use automated kiosks you own, lease, or control in each location at the airport meet the design specifications in paragraph (c) of this section by December 12, 2022.

(3) When shared-use automated kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), you must ensure that the accessible kiosks provide all the same functions as the inaccessible kiosks in that location.

(4) You must ensure that each automated airport kiosk that meets the design specifications set forth in paragraph (c) of this section is:

(i) Visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the front of the device; and

(ii) Maintained in proper working condition.

(5) As a carrier, you are jointly and severally liable with airport operators and/or other participating carriers for ensuring that shared-use automated airport kiosks are compliant with the requirements of paragraphs (b) and (c) of this section.

(c) You must ensure that the automated airport kiosks provided in accordance with this section conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) *Self contained.* Except for personal headsets and audio loops, automated kiosks must be operable without requiring the user to attach assistive technology.

(2) *Clear floor or ground space.* A clear floor or ground space complying with section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design, 28 CFR 35.104 (defining the ''2010 Standards'' for title II as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in 28 CFR 35.151) (hereinafter 2010 ADA Standards) must be provided.

(3) *Operable parts.* Operable parts must comply with section 309 of the 2010 ADA Standards, and the following requirements:

(i) *Identification.* Operable parts must be tactilely discernible without activation;

(ii) *Timing.* Where a timed response is required, the user must be alerted visually and by touch or sound and must be given the opportunity to indicate that more time is required;

(iii) *Status indicators.* Status indicators, including all locking or toggle controls or keys (e.g., Caps Lock and Num Lock keys), must be discernible visually and by touch or sound; and

(iv) *Color.* Color coding must not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) *Privacy.* Automated airport kiosks must provide the opportunity for the same degree of privacy of input and output available to all individuals. However, if an option is provided to blank the screen in the speech output mode, the screen must blank when activated by the user, not automatically.

(5) *Output.* Automated airport kiosks must comply with paragraphs (c)(5)(i) through (iv) of this section.

(i) *Speech output enabled.* Automated airport kiosks must provide an option for speech output. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all other visual information for full use must be accessible to and independently usable by individuals with vision impairments. Speech output must be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech output must be recorded or digitized human, or synthesized. Speech output must be coordinated with information displayed on the screen. Speech output must comply with paragraphs (c)(5)(i)(A) through (F) of this section.

(A) When asterisks or other masking characters are used to represent personal identification numbers or other

visual output that is not displayed for security purposes, the masking characters must be spoken (''*'' spoken as ''asterisk'') rather than presented as beep tones or speech representing the concealed information.

(B) Advertisements and other similar information are not required to be audible unless they convey information that can be used in the transaction being conducted.

(C) Speech for any single function must be automatically interrupted when a transaction is selected or navigation controls are used. Speech must be capable of being repeated and paused by the user.

(D) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output must include all information necessary to complete or verify the transaction, except that—

(*1*) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier are not required to be audible;

(*2*) Information that duplicates information available on-screen and already presented audibly is not required to be repeated; and

(*3*) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass are not required to be audible.

(ii) *Volume control.* Automated kiosks must provide volume control complying with paragraphs (c)(5)(ii)(A) and (B) of this section.

(A) *Private listening.* Where speech required by paragraph (c)(5)(i) of this section is delivered through a mechanism for private listening, the automated kiosk must provide a means for the user to control the volume. A function must be provided to automatically reset the volume to the default level after every use.

(B) *Speaker volume.* Where sound is delivered through speakers on the automated kiosk, incremental volume control must be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level must be user selectable. A function must be provided to automatically reset the volume to the default level after every use.

(iii) *Captioning.* Multimedia content that contains speech or other audio information necessary for the comprehension of the content must be open or closed captioned. Advertisements and other similar information are not required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) *Tickets and boarding passes.* Where tickets or boarding passes are provided, tickets and boarding passes must have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) *Input.* Input devices must comply with paragraphs (c)(6)(i) through (iv) of this section.

(i) *Input controls.* At least one input control that is tactilely discernible without activation must be provided for each function. Where provided, key surfaces not on active areas of display screens, must be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each must be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) *Alphabetic keys.* Alphabetic keys must be arranged in a QWERTY keyboard layout. The ''F'' and ''J'' keys must be tactilely distinct from the other keys.

(iii) *Numeric keys.* Numeric keys must be arranged in a 12-key ascending or descending keypad layout or must be arranged in a row above the alphabetic keys on a QWERTY keyboard. The ''5'' key must be tactilely distinct from the other keys.

(iv) *Function keys.* Function keys must comply with paragraphs (c)(6)(iv)(A) and (B) of this section.

(A) *Contrast.* Function keys must contrast visually from background surfaces. Characters and symbols on key surfaces must contrast visually from key surfaces. Visual contrast must be either light-on-dark or dark-on-light. However, tactile symbols required by (c)(6)(iv)(B) are not required to comply with (c)(6)(iv)(A) of this section.

(B) *Tactile symbols.* Function key surfaces must have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) *Display screen.* The display screen must comply with paragraphs (c)(7)(i) and (ii) of this section.

(i) *Visibility.* The display screen must be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) *Characters.* Characters displayed on the screen must be in a sans serif font. Characters must be 3/16 inch (4.8 mm) high minimum based on the uppercase letter ''I.'' Characters must contrast with their background with a minimum luminosity contrast ratio of 3:1.

(8) *Braille instructions.* Braille instructions for initiating the speech mode must be provided. Braille must comply with section 703.3 of the 2010 ADA Standards.

(9) *Biometrics.* Biometrics must not be the only means for user identification or control, unless at least two biometric options that use different biological characteristics are provided.

(d) You must provide equivalent service upon request to passengers with a disability who cannot readily use your automated airport kiosks (e.g., by directing a passenger who is blind to an accessible automated kiosk, assisting a passenger in using an inaccessible automated kiosk, assisting a passenger who due to his or her disability cannot use an accessible automated kiosk by allowing the passenger to come to the front of the line at the check-in counter).

PART 399—STATEMENTS OF GENERAL POLICY [AMENDED]

■ 4. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 41712

■ 5. Section 399.80 is amended by revising the introductory text, adding reserved paragraphs (o) through (r), and adding paragraph (s) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (m) of this section by a ticket agent of any size and the practice enumerated in paragraph (s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

* * * * *

(o)–(r) [Reserved]

(s) Failing to disclose and offer Web-based discount fares on or after June 10, 2014, to prospective passengers who contact the agent through other channels (e.g., by telephone or in the agent's place of business) and indicate they are unable to use the agent's Web site due to a disability.

Title 49—Transportation

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 6. The authority citation for part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

■ 7. Section 27.71 is amended by adding reserved paragraphs (h) and (i) and paragraphs (j) and (k) to read as follows:

§ 27.71 Airport facilities.

* * * * *

(h) [Reserved]

(i) [Reserved]

(j) Shared-use automated airport kiosks. This paragraph applies to U.S. airports with 10,000 or more annual enplanements.

(1) Airport operators that jointly own, lease, or control automated airport kiosks with carriers at U.S. airports must ensure that all shared-use automated kiosks installed on or after December 12, 2016 meet the design specifications set forth in paragraph (k) of this section until at least 25 percent of kiosks provided in each location at the airport (i.e., each cluster of kiosks and all stand-alone kiosks at the airport) meet this specification.

(2) Airport operators must ensure that at least 25 percent of shared-use automated airport kiosks they jointly own, lease, or control with carriers in each location at the airport meet the design specifications in paragraph (k) of this section by December 12, 2022.

(3) When shared-use kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), the accessible kiosks must provide all the same functions as the inaccessible kiosks in that location.

(4) Each shared-use automated kiosk that meets the design specifications in paragraph (k) of this section must be visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the front of the device) and maintained in proper working condition.

(5) Airport operators are jointly and severally liable with carriers for ensuring that shared-use automated airport kiosks are compliant with the requirements of paragraphs (j) and (k) of this section.

(k) Shared-use automated airport kiosks provided in accordance with paragraph (j) of this section must conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) *Self contained.* Except for personal headsets and audio loops, automated kiosks must be operable without requiring the user to attach assistive technology.

(2) *Clear floor or ground space.* A clear floor or ground space complying with section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design, 28 CFR 35.104 (defining the ''2010 Standards'' for title II as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in 28 CFR 35.151) (hereinafter 2010 ADA Standards) must be provided.

(3) *Operable parts.* Operable parts must comply with section 309 of the 2010 ADA Standards, and the following requirements:

(i) *Identification.* Operable parts must be tactilely discernible without activation;

(ii) *Timing.* Where a timed response is required, the user must be alerted visually and by touch or sound and must be given the opportunity to indicate that more time is required;

(iii) *Status indicators.* Status indicators, including all locking or toggle controls or keys (e.g., Caps Lock and Num Lock keys), must be discernible visually and by touch or sound; and

(iv) *Color.* Color coding must not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) *Privacy.* Automated airport kiosks must provide the opportunity for the same degree of privacy of input and output available to all individuals. However, if an option is provided to blank the screen in the speech output mode, the screen must blank when activated by the user, not automatically.

(5) *Output.* Automated airport kiosks must comply with paragraphs (k)(5)(i) through (iv) of this section.

(i) *Speech output enabled.* Automated airport kiosks must provide an option for speech output. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all other visual information for full use must be accessible to and independently usable by individuals with vision impairments. Speech output must be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech output must be recorded or digitized human, or synthesized. Speech output must be coordinated with information displayed on the screen. Speech output must comply with paragraphs (k)(5)(i)(A) through (D) of this section.

(A) When asterisks or other masking characters are used to represent personal identification numbers or other visual output that is not displayed for security purposes, the masking characters must be spoken (''*'' spoken as ''asterisk'') rather than presented as beep tones or speech representing the concealed information.

(B) Advertisements and other similar information are not required to be audible unless they convey information that can be used in the transaction being conducted.

(C) Speech for any single function must be automatically interrupted when a transaction is selected or navigation controls are used. Speech must be capable of being repeated and paused by the user.

(D) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output must include all information necessary to complete or verify the transaction, except that -

(*1*) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier are not required to be audible;

(*2*) Information that duplicates information available on-screen and already presented audibly is not required to be repeated; and

(*3*) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass are not required to be audible.

(ii) *Volume control.* Automated kiosks must provide volume control complying with paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) *Private listening.* Where speech required by paragraph (k)(5)(i) is delivered through a mechanism for private listening, the automated kiosk must provide a means for the user to control the volume. A function must be provided to automatically reset the volume to the default level after every use.

(B) *Speaker volume.* Where sound is delivered through speakers on the automated kiosk, incremental volume control must be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above

the ambient level must be user selectable. A function must be provided to automatically reset the volume to the default level after every use.

(iii) *Captioning.* Multimedia content that contains speech or other audio information necessary for the comprehension of the content must be open or closed captioned.

Advertisements and other similar information are not required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) *Tickets and boarding passes.* Where tickets or boarding passes are provided, tickets and boarding passes must have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) *Input.* Input devices must comply with paragraphs (k)(6)(i) through (iv) of this section.

(i) *Input controls.* At least one input control that is tactilely discernible without activation must be provided for each function. Where provided, key surfaces not on active areas of display screens, must be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each must be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) *Alphabetic keys.* Alphabetic keys must be arranged in a QWERTY keyboard layout. The ''F'' and ''J'' keys must be tactilely distinct from the other keys.

(iii) *Numeric keys.* Numeric keys must be arranged in a 12-key ascending or descending keypad layout or must be arranged in a row above the alphabetic keys on a QWERTY keyboard. The ''5'' key must be tactilely distinct from the other keys.

(iv) *Function keys.* Function keys must comply with paragraphs (k)(6)(iv)(A) and (B) of this section.

(A) *Contrast.* Function keys must contrast visually from background surfaces. Characters and symbols on key surfaces must contrast visually from key surfaces. Visual contrast must be either light-on-dark or dark-on-light. However, tactile symbols required by (k)(6)(iv)(B) are not required to comply with paragraph (k)(6)(iv)(A) of this section.

(B) *Tactile symbols.* Function key surfaces must have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) *Display screen.* The display screen must comply with paragraphs (k)(7)(i) and (ii) of this section.

(i) *Visibility.* The display screen must be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) *Characters.* Characters displayed on the screen must be in a sans serif font. Characters must be 3/16 inch (4.8 mm) high minimum based on the uppercase letter ''I.'' Characters must contrast with their background with a minimum luminosity contrast ratio of 3:1.

(8) *Braille instructions.* Braille instructions for initiating the speech mode must be provided. Braille must comply with section 703.3 of the 2010 ADA Standards.

(9) *Biometrics.* Biometrics must not be the only means for user identification or control, unless at least two biometric options that use different biological characteristics are provided.

[FR Doc. 2013–26749 Filed 11–7–13; 4:15 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2011–0098]

RIN 2105–AD87

Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is issuing a final rule to allow airlines to use the seat-strapping method (placing a wheelchair across a row of seats using a strap kit that complies with applicable Federal Aviation Administration or foreign government regulations on the stowage of cargo in the cabin compartment) to transport a passenger's manual folding wheelchair in the cabin of aircraft.

DATES: This rule is effective January 13, 2014.

FOR FURTHER INFORMATION CONTACT: Amna Arshad or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9342 (phone), 202–366–7152 (fax), *amna.arshad@dot.gov* or *blane.workie@dot.gov* (email). Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign carriers against passengers with disabilities. (See 49 U.S.C. 41705) Its implementing regulation, 14 CFR Part 382 (Part 382), contains detailed standards and requirements to ensure carriers provide nondiscriminatory service to passengers with disabilities. A requirement that U.S. carriers provide in-cabin space for a folding passenger wheelchair was originally adopted in 1990. (55 FR 8007.) At that time the Department's intention was that new aircraft would have a designated space (e.g., a closet or similar compartment) in which one passenger's wheelchair could be stowed. The practice of seat-strapping, placing a wheelchair across a row of seats using a strap kit that complies with applicable Federal Aviation Administration (FAA) or foreign government regulations on the stowage of cargo in the cabin compartment, was not authorized in the regulatory text or even mentioned in the original rulemaking. However, it was subsequently permitted under Department enforcement policy as an alternative to compliance with the regulation's requirement with respect to accommodating a passenger's manual folding wheelchair in the cabin on covered aircraft (aircraft with a design passenger seat capacity of 100 or more seats that were ordered after April 5, 1990, or delivered after April 5, 1992). Whenever we reference passenger seating capacity in this or other economic or civil rights aviation rulemakings, we are referring to the manufacturer's designed seating capacity.

Part 382 was updated on May 13, 2008, to cover foreign air carriers, among other things. (73 FR 27614.) The Department determined in the final rule issued in 2008 that it was best not to retain the seat-strapping policy in the new rule with respect to new aircraft (i.e., aircraft ordered after May 13, 2009, or delivered after May 13, 2010), and required, consistent with the intent of the original 1990 rule, that new aircraft be capable of accommodating a passenger's wheelchair in a priority stowage space in the cabin. See 14 CFR 382.123(c). The Department made this decision because of concerns that seat-strapping: (1) Is an awkward way of transporting a wheelchair in the cabin; (2) can result in less timely stowage and return of the passenger's wheelchair; (3)

can be more conspicuous and bring unwanted attention to passengers with disabilities; (4) can more likely result in damage to the passenger's wheelchair; and (5) can result in last-minute surprise denials of service to other passengers holding confirmed tickets on full flights. Existing covered aircraft were not required to be retrofitted, however, and airlines could continue to use seat-strapping on those aircraft.

Within six months of issuance of the May 13, 2008, final rule, the Department received two requests to continue the use of seat-strapping. The Department also received a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the passenger's wheelchair in the cabin of aircraft. These requests were submitted pursuant to the ''equivalent alternative'' provision of the May 13, 2008, final rule, which allows carriers to request a determination that a carrier's policy, practice, or other accommodation provides substantially equivalent accessibility to passengers with disabilities, as compared with that provided under a specified provision of Part 382. (See 14 CFR 382.9.)

The Department denied the two requests to continue the use of seat-strapping because it was contrary to the explicit language of the rule and because a change in the substance of the rule must be addressed through rulemaking. (See Response to Application of JetBlue Airways Corp. for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT–OST–2008–0273–0063 (filed July 22, 2009); Response to Application of US Airways, Inc. for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT–OST–2008–0273–0064 (filed July 22, 2009).) The Department, however, granted a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the wheelchair in the cabin, on a one-year trial basis, subject to numerous conditions to ensure the same or greater accessibility to persons with a disability. (See Response to Application of Aerovias Del Continente Americano S.A., for an Equivalent Alternative Determination from 14 CFR 382.67 and 14 CFR 382.123, Docket DOT–OST–2008–0273–0101.) On June 3, 2011, the Department published a Notice of Proposed Rulemaking (NPRM) entitled ''Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs'' in the **Federal Register**. The Department announced in the NPRM that it was considering amending the rule addressing the stowage of wheelchairs in aircraft cabins. The Department sought comment on whether it should modify the provisions in the May 13, 2008, rule pertaining to the stowage of one passenger's manual folding wheelchair in the cabin of aircraft with 100 or more passenger seats (§ 382.67) in order to allow the continued use of the seat-strapping method.

In the NPRM, the Department asked a series of questions in the following broad categories to assist it in determining the impact of seat-strapping on passengers with a disability, other members of the traveling public, and carriers: (1) Potential stigmatization associated with the seat-strapping method and impact on other passengers that may result from the seat-strapping method; (2) compliance cost if the prohibition on the use of the seat-strapping method remains; (3) complaints relating to damage to wheelchairs or delay in the stowage and return and of a passenger's wheelchair; (4) training of carrier employees; (5) identification of priority space for assistive devices; (6) additional accommodations that may be required if the seat-strapping method is permitted; and (7) other miscellaneous questions.

The Department received fifteen comments in response to the NPRM. Of these, seven comments were from airlines, representing the views of Virgin Atlantic Airways, Spirit Airlines, JetBlue Airways, Virgin America, United Airlines, US Airways, and Societe Air France. One airline association, the Air Transport Association of America (now Airlines for America), submitted a comment. Disability organizations including Paralyzed Veterans of America and the Disability Rights Education and Defense Fund each submitted a comment. Finally, five individual consumers submitted comments. The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM are set forth below, as is the Department's response.

Summary of Final Regulatory Analysis

The final regulatory evaluation concludes that the monetized benefits of the final rule exceed its monetized costs, even without considering non-quantifiable benefits. This evaluation, outlined in the table below, finds that the expected net present value of the benefits of the rule over 20 years, at a 7% discount rate, will amount to $242 million to $272 million.

		Present value (millions)
Total Quantified Benefits	20 years, 7% discounting	$243 to $273.
Total Quantified Costs *	20 years, 7% discounting	$0.6.
Net Quantified Benefits	20 years, 7% discounting	$242 to $272.

* This rule will only impose monetary costs on carriers.

Information on additional benefits and costs for which quantitative estimates could not be developed is provided in the Regulatory Analysis and Notices section.

Comments and Responses

1. Potential Stigmatization and Impact on Other Passengers

Questions Posed in NPRM

We asked whether there are concerns over potential stigmatization or embarrassment associated with the seat-strapping method, including how a passenger with a wheelchair might feel if he or she is made aware that other passengers might be denied boarding in order to accommodate the wheelchair in the cabin. We requested carriers to share what procedures are currently used to minimize potential stigmatization or embarrassment associated with the seat-strapping method. We also asked whether passengers had any other concerns associated with the use of the seat-strapping method such as increased likelihood of denied boardings and requested carriers provide information regarding the number of passengers denied boarding per year due to the use of the seat-strapping method.

Comments

In general, the airlines and the Air Transport Association of America (ATA) favor the use of seat-strapping to stow a passenger wheelchair in the cabin of aircraft and state that it is a safe and

well-tested method of wheelchair stowage. Several airlines state that they receive very few onboard wheelchair requests and that it is extremely rare for seat-strapping to result in a denied boarding of another passenger. These commenters believe that the concern over potential stigmatization or embarrassment associated with the seat-strapping method is unfounded and state that they have no complaints in their records from passengers to support this concern. Several airlines note that it has been their experience that some passengers are reassured by the visibility of their wheelchairs while seat-strapped in the cabin.

Airlines additionally state that current procedures prevent stigmatization from happening as seat-strapping is done during the pre-boarding process and the wheelchair is not identified with the passenger. Several airlines also state that they speak to passengers with disabilities in private and do not involve them in discussions with passengers that may be denied boarding. Spirit Airlines states that it blocks the row used for seat-strapping from advance seat assignment and it is only assigned at the airport after all other seats have been filled in order to minimize the possibility of moving or denying boarding to other customers and any potential stigmatization. According to the ATA, pre-boarding procedures, voluntary bumping, and blocked seating for in-cabin wheelchair requests are all procedures that can be implemented to minimize stigmatization and impact on other passengers. Virgin Atlantic Airways is the only airline that did not favor seat-strapping, as its current practice is to stow wheelchairs in designated closets in the cabin of the aircraft. It states that seat-strapping would cause a rise in denied boarding situations resulting in inconvenience for other passengers.

Individual commenters and disability associations oppose the seat-strapping method and believe it is an awkward and unsafe method of transporting a wheelchair in the cabin. According to these commenters, the stigmatization of passengers who choose to have their wheelchair stowed in the cabin and the possibility of denied boardings are likely consequences of seat-strapping. They state that seat-strapping is done in front of all passengers, which would cause other passengers to complain about a wheelchair taking up two seats. One individual commenter shared an incident where he requested seat-strapping, which the airline did in the first row of the aircraft in front of all the passengers, and he overheard two passengers commenting on how rude he was for causing two individuals to be denied boarding. Another passenger shared a similar story where the airline reportedly made a scene of the seat-strapping while people were entering the aircraft, and another incident where she had requested to stow her wheelchair in the cabin and the airline told her the flight was full and that they had no closet. These commenters believe that a designated onboard stowage space would satisfy their ability to store their wheelchair safely without adversely impacting other passengers.

DOT Response

Having fully considered the comments, the Department has decided to allow carriers to use the seat-strapping method to stow a passenger's manual folding wheelchair in the cabin of aircraft. Based on the comments received, the Department has concluded that the seat-strapping method is an acceptable alternative to a closet or similar stowage space for wheelchair stowage in the cabin because carriers can minimize any stigmatization and impact on other passengers by implementing alternative procedures such as voluntary bumping in exchange for compensation, allowing passengers with wheelchairs to pre-board, blocking seats to accommodate wheelchair stowage requests, and strapping the wheelchair to the seats during the pre-boarding process. The Department emphasizes that carriers must take specific well-defined measures such as these to ensure that the use of the seat-strapping method does not result in stigmatization or embarrassment of the passenger choosing to stow their wheelchair in the cabin.

2. Compliance Cost

Questions Posed in NPRM

We asked about costs to carriers if prohibition on the use of the seat-strapping method continued and about any effects, other than cost, that the continued prohibition would have on carriers. We sought comment on the benefits to using the seat-strapping method, aside from cost savings to carriers, over the requirement to have a priority stowage space. We also requested information regarding any increased costs to carriers that would result from allowing the seat-strapping method.

Comments

The airlines and the ATA are concerned about compliance cost if the prohibition on the use of the seat-strapping remains. These commenters state that in addition to the cost of adding an in-cabin closet or similar stowage space in each new aircraft, which ranges from $25,000 to $75,000 per aircraft, the airlines would face millions of dollars of lost revenue over the life of each aircraft due to the permanent loss of a row of seats. These commenters state that a ban on seat-strapping would lead to fewer permanent seats for passengers, and they contend that seat-strapping would allow airlines to offer lower fares for consumers. According to these commenters, seat-strapping provides an equivalent alternative to a dedicated stowage space for a wheelchair in the cabin at a fraction of the cost.

Virgin Atlantic states that it stows wheelchairs in designated closets in the cabin of the aircraft and that it would incur great expense if it were required to use the seat-strapping method, including the price to purchase and deploy seat-strapping kits, the cost of training crew on how to safely strap wheelchairs, training ground crew on how to ensure proper handling of denied boarding situations, and creating, printing and distributing materials such as procedures, notices and training manuals.

DOT Response

Given that almost all the commenting carriers have stated that they have not received any passenger complaints against the seat-strapping method, and given the dearth of public comments against this method, the Department feels it would not be justified in burdening the carriers with the cost of a designated wheelchair stowage space in the cabin of their aircraft, particularly with respect to the permanent revenue loss from removing a row of seats. With proper safeguards, the Department believes seat-strapping can be an effective means of transporting wheelchairs.

Virgin Atlantic's concern is misplaced. The Department is not requiring carriers to use the seat-strapping method; it is simply authorizing this procedure as an option. Virgin and all other carriers remain free to use a closet or similar space in the cabin to accommodate passenger wheelchairs if they choose. We note, however, that this final rule requires carriers to be able to stow two folding manual passenger wheelchairs on any covered aircraft, as opposed to the prior requirement to be able to stow one such chair, if the carrier chooses to use the seat-strapping method for wheelchair stowage and if stowing a second passenger wheelchair in the cabin would not displace additional passengers.

3. Complaints Regarding Damage to Wheelchairs and Timely Stowage and Return of a Passenger's Wheelchair

Questions Posed in NPRM

We asked for commenters to share any concerns they have regarding damage to a wheelchair or less timely stowage and return of a wheelchair if the seat-strapping method is allowed. We also asked whether there were any complaints received regarding wheelchair damage from using the seat-strapping method or from stowing a wheelchair in a priority space in the cabin.

Comments

According to the ATA and the airlines, complaints regarding damage to wheelchairs are extremely rare. Almost all of the airlines reported that they have no complaints related to in-cabin wheelchair stowage in their records. Additionally, according to the ATA, its members have no complaints in their records related to wheelchair damage as a result of seat-strapping. These commenters also state that seat-strapping does not result in less timely stowage or retrieval than if the wheelchair was stowed in a closet.

Individual commenters and disability associations state that seat-strapping can result in less timely stowage and return of the passenger's wheelchair. The Paralyzed Veterans of America (PVA) believes that it is likely that a carrier would place the wheelchair in the last row of seats, rather than the first, which could cause it to be the last item off the plane, and that a seat-strapped wheelchair is more susceptible to damage as it is exposed to other people, carry-on baggage, and food or beverage carts. Also, PVA states that the securement process itself could cause damage to the wheelchair if an employee is not properly trained in the procedure. These commenters believe that a designated closet space would resolve all of these concerns.

DOT Response

The Department feels there is insufficient data to support the comments that assert that seat-strapping will result in damage to wheelchairs or increased incidents of denied boarding. We do not need to speculate about the potential impact of seat-strapping, as the process has been in use for more than ten years. According to the airlines, there are no passenger complaints in their records about wheelchair damage as a result of seat-strapping. The Department also has not received any complaints about wheelchair damage as a result of the use of the seat-strapping method. With respect to timely stowage and return, the Department has concluded that since a passenger's wheelchair is generally the last item an airline removes from the cabin (whether it is stowed in the closet or in the first or last row of the aircraft), a delay in stowage or return is unlikely. In addition, the Department has not received any complaints regarding untimely stowage or return of a passenger wheelchair as a result of the use of the seat-strapping method.

4. Training

Questions Posed in NPRM

We asked carriers how they currently ensure that their employees know that passengers can use the seat-strapping method to stow wheelchairs. We also asked whether the existing requirement for carriers to train their public contact employees to proficiency on the proper and safe operation of any equipment used to accommodate passengers with a disability is sufficient to ensure carrier employees know the proper manner in which to stow a wheelchair across a row of seats using a strap kit.

Comments

According to the comments from the airlines and the ATA, carriers currently provide training to crewmembers, airport agents, and Complaint Resolution Officials (CROs—disability specialists) on the seat-strapping method, and include this method in various operation manuals. Instructions are also included with the seat-strapping kits. These commenters believe that the seat-strapping method is just as efficient as storing a wheelchair in a closet and state that this is supported by the fact that there are no complaints from passengers to support damage or delayed returns of wheelchairs as a result of seat-strapping. One individual noted that she requested to have her wheelchair stowed in the cabin and it appeared to her that the airline representative she was interacting with was not trained to do it.

DOT Response

The Department has considered all of the comments and emphasizes the importance in training airline personnel to ensure that passenger wheelchairs are handled in a safe and proper manner to avoid any damage. Given that airlines are responsible for any damage resulting from mishandling of the wheelchairs or improper stowage using the seat-strapping method, the Department believes it is in the airlines' best interest to ensure proper training of their personnel in utilizing the seat-strapping method.

5. Identification of Priority Space for Stowage of Assistive Devices

Questions Posed in NPRM

We asked whether the Department should require carriers to visually identify via a placard or other mechanism that wheelchairs, other mobility aids, and other assistive devices have priority for stowage in the cabin compartment over other items. We also inquired as to whether there was any benefit in requiring airlines to inform passengers of the location of the seats where a folding manual wheelchair may be stowed.

Comments

The airlines and ATA believe that there are no benefits to identifying priority space for the stowage of assistive devices or informing passengers of the location of seats where a folding manual wheelchair may be stowed. They state that a placard or other visual identification would lead to further stigmatization or embarrassment of passengers who wish to stow their wheelchairs onboard the aircraft. Virgin Atlantic Airways notes that a placard is used to identify the location for the crew and it is not necessary for the passenger to know of the location as the passenger would be unable to retrieve their own wheelchair without assistance. The ATA notes that there is no benefit to informing the passengers of the location of the space as it may be different on various aircraft and may change due to inoperable seats, or an aircraft change may change the stowage location. However, the ATA states that if the Department adopts this requirement, it should limit it to information provided at the airport, since gate agents typically have this information on hand. JetBlue Airways states that it has found it beneficial to provide passengers with notice on its Web site that seats designated for passengers with disabilities are not available for assignment until the day of travel and that passengers who request to sit in the row designated for seat-strapping may be relocated if a passenger requests onboard stowage.

In general, disability associations and individual commenters believe that carriers should visually identify the priority stowage space in the cabin in order to ensure that assistive devices have priority for stowage in the cabin compartment over other items. The PVA and an individual commenter state that visual identification of the priority stowage space will educate air carrier

and contract personnel as well as other passengers that the space is prioritized for passenger wheelchairs. Neither the disability associations nor the individual commenters addressed whether there was any benefit in requiring airlines to inform passengers of the location of seats where a folding manual wheelchair may be stowed via the seat-strapping method.

DOT Response

The Department has reviewed and carefully considered the comments regarding the identification of priority space for stowage of assistive devices. With regard to whether carriers should be required to inform passengers of the location of the seats where a folding manual wheelchair may be strapped, the Department agrees with commenters that placing a placard or other visual identification on such seats would be of limited benefit and could potentially have a stigmatizing effect on passengers. Accordingly, the Department will not require visual identification of the seats where the seat-strapping method of carrying wheelchairs is utilized.

However, with regard to in-cabin closets, the Department is requiring carriers to visually identify via a placard or other mechanism that wheelchairs, other mobility aids, and other assistive devices must be stowed in this area with priority over other items, such as crew luggage. Travelers with disabilities have recounted stories of when airline personnel did not appear to know that their wheelchairs had priority for stowage in a closet over other items brought onto the aircraft by other passengers or crew enplaning at the same airport. Visual identification of the stowage space is expected to increase the likelihood that a passenger's wheelchair or other assistive device will be transported in the in-cabin closet where it is much less likely to be damaged during transport. Accordingly, the Department believes that there are important benefits derived from requiring airlines to visually identify that assistive devices have priority in the closet.

6. Additional Accommodations if Seat Strapping Method Is Allowed

Questions Posed in NPRM

We inquired whether the current dimensions of a wheelchair that must fit without disassembly in the priority space should be increased if the Department allows the use of the seat-strapping method, and if so, what those dimensions should be. We also asked if carriers should be required to accommodate more than one wheelchair in the passenger cabin when the stowage of additional wheelchairs would not displace other passengers.

Comments

The airlines and the ATA believe that the current dimensions (13 inches by 36 inches by 42 inches or less) of a wheelchair that must fit without disassembly in the priority space should not be increased as these dimensions meet the needs of passengers and can readily be accommodated by seat-strapping. Virgin Atlantic Airways states that any larger size should only be required for wheelchairs that are seat-strapped, as the stowage closets are designed for the current dimensions.

The airlines and the ATA believe that accommodating more than one wheelchair is not necessary and should not be required. Airlines state that onboard stowage of wheelchairs is not common enough that it is necessary to require carriers to accommodate two passenger chairs. They note that requiring them to accommodate more than one wheelchair would necessitate additional seat-strapping kits and disrupt more passengers. The airlines further state that they should have the option to accommodate more wheelchairs if there is room in the cabin, but that it should not be a requirement.

DOT Response

Based on the comments received, the Department does not see a need to change the dimensions of a wheelchair that must fit without disassembly in the priority space. However, the Department has decided to require carriers to accommodate one more folding wheelchair in the passenger cabin if the carrier uses the seat-strapping method for wheelchair stowage and if accommodating a second passenger wheelchair in the cabin would not displace other passengers. The Department believes that carriers choosing to use the seat-strapping method do not have the space constraints that carriers with an in-cabin closet have and would be able to accommodate a second wheelchair as long as it would not displace other passengers, thereby benefitting consumers at minimal to no cost. Carriers may choose to stow both wheelchairs in a single row of seats in a method accepted by the Federal Aviation Administration or applicable foreign government. The requirement to ensure that there is a priority space for at least two wheelchairs only applies to new aircraft (aircraft ordered after May 13, 2009, or delivered after May 13, 2010).

7. Other

Questions Posed in NPRM

We asked for comments on whether the Department should prohibit or allow U.S. and foreign carriers to remove existing closets or other priority spaces used for stowing a passenger's wheelchair in the cabins of aircraft covered by Part 382. We also asked whether the Department should allow the use of the seat-strapping method only on single-aisle aircraft on the basis that there is sufficient space for a closet or other priority stowage space on twin-aisle aircraft. We requested commenters to provide any information or data that are relevant to the Department's decision.

Comments

One individual commenter contended that it is reasonable to require airlines to carry two wheelchairs in the cabin of twin-aisle aircraft. According to two individual commenters, the Department should prohibit carriers from removing existing closets or other priority stowage spaces. According to the ATA, the Department should allow the removal of the closet space as long as the carrier has other areas to stow other devices and also allow seat-strapping for both single and twin-aisle aircraft. JetBlue Airways states that the Department should not distinguish between single and twin-aisle aircraft and that the decision to seat-strap or stow in closets should remain with the carriers.

DOT Response

After considering the comments, the Department sees no compelling reason to limit carriers' options with respect to stowing passengers' wheelchairs in the cabin and has decided to allow carriers to decide whether to remove existing closets or other priority spaces currently used for stowing a passenger's wheelchair in the cabin as long as the carrier has a workable, approved method for in-cabin wheelchair stowage. Additionally, the Department has decided not to distinguish between single-aisle and twin-aisle aircraft and has concluded that the seat-strapping method is suitable for use in both types of aircraft.

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review), DOT Regulatory Policies and Procedures, and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It

has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to non-quantifiable values, including equity and fairness.

The Final Regulatory Evaluation estimates that the final rule will impose a maximum one-time potential cost of compliance of $0.6 million present value over the next 20 years. This cost estimate represents the use of a worst-case approach that assumes a second seat-strapping kit will be used on all impacted aircraft as the result of carriers' adoption of the seat-strapping method as an alternative to permanent wheelchair stowage. The worst-case approach was used because the approach most likely resulting in lower potential cost estimates of extra or second seat-strapping kits is difficult to quantify monetarily due a multitude of uncertain factors (e.g., the frequency of requests for wheelchairs by passengers with disabilities on airlines, the frequency of full airline flights when wheelchair requests are made, the number of extra seat-strapping kits needed as standbys per airline flight). Additionally, this final rule requires carriers to label priority stowage space in their cabins. The total estimated cost of compliance with this part of the rule is expected to be minimal with the total discounted cost ranging from $15,700 to $21,400 between 2014 and 2033.

On balance, any costs incurred by carriers over the next 20 years for extra seat-strapping kits or for labeling priority stowage areas are expected to have an insignificant impact on the total potential benefits of the rule. Specifically, the benefits of allowing carriers to use seat-strapping will likely result in a total net revenue gain over a 20-year period of $242–$272 million present value. This represents revenue derived from seats that will not have to be removed in order to make space for a permanent wheelchair stowage area. There are also benefits with regard to the requirement that carriers identify the in-cabin priority stowage space such as ensuring that other passengers and/or airline employees know that manual wheelchairs and other assistive devices have priority in the in-cabin closets of aircraft over other carry-on items or crew luggage and increasing the likelihood that manual wheelchairs and other assistive devices will be transported in the cabin rather than in the cargo compartment.

The rule is also expected to generate additional benefits to passengers with disabilities as a result of the second wheelchair requirement. A second wheelchair requirement would provide an additional passenger who may prefer in-cabin stowage for various reasons (for example, to avoid the possibility of damage occurring to the wheelchair in the cargo compartment or for a sense of reassurance by the visibility of his or her wheelchair) the opportunity to be able to request it as long as it would not displace other passengers. The potential benefits of a second wheelchair requirement are difficult to quantify monetarily because of a multitude of uncertain factors similar to those described previously for estimating potentially lower costs of extra seat-strapping kits. Although not used in this evaluation because of the lack of information, it is reasonable to assume carriers will only purchase the number of extra seat-strapping kits in accordance with their projected demand for more than one wheelchair on flights. A copy of the Final Regulatory Evaluation has been placed in the docket.

B. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). *See* 14 CFR 399.73. The subject matter of this rule only affects aircraft with 100 or more passenger seats. Therefore, this requirement does not apply to small businesses.

E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

Issued this November 1, 2013, in Washington, DC

Anthony R. Foxx,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, and Individuals with disabilities.

For the reasons set forth in the preamble, the Department is amending 14 CFR Part 382, as follows:

PART 382–NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

■ 2. Section 382.67 is revised to read as follows:

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must ensure that there is priority space (i.e., a closet, or a row of seats where a wheelchair may be strapped using a strap kit that complies with applicable Federal Aviation Administration or applicable foreign government regulations on the stowage of cargo in the cabin compartment) in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-

down manual passenger wheelchair, the dimensions of which are 13 inches by 36 inches by 42 inches or less without having to remove the wheels or otherwise disassemble it. This section applies to any aircraft with 100 or more passenger seats and this space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(b) If you are a carrier that uses the seat-strapping method to stow a manual passenger wheelchair, you must ensure that there is priority space for at least two such wheelchairs, if stowing the second passenger wheelchair would not displace passengers.

(c) If you are a carrier that uses a closet as the priority space to stow a manual passenger wheelchair, you must install a sign or placard prominently on the closet indicating that such wheelchairs and other assistive devices are to be stowed in this area with priority over other items brought onto the aircraft by other passengers or crew, including crew luggage, as set forth in § 382.123.

(d) If passengers holding confirmed reservations are not able to travel on a flight because their seats are being used to stow a passenger's wheelchair as required by paragraph (a) of this section, carriers must compensate those passengers in an amount to be calculated as provided for in instances of involuntary denied boarding under 14 CFR part 250, where part 250 applies.

(e) As a carrier, you must never request or suggest that a passenger not stow his or her wheelchair in the cabin to accommodate other passengers (e.g., informing a passenger that stowing his or her wheelchair in the cabin will require other passengers to be removed from the flight), or for any other non-safety related reason (e.g., that it is easier for the carrier if the wheelchair is stowed in the cargo compartment).

(f) As a carrier, you must offer pre-boarding to a passenger stowing his or her wheelchair in the cabin.

(g) As a foreign carrier, you must meet the requirement of this section for new aircraft ordered after May 13, 2009, or delivered after May 13, 2010. As a U.S. carrier, this section applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

§ 382.123 [Amended]

■ 3. In § 382.123, paragraph (c) is removed.

[FR Doc. 2013–26743 Filed 11–7–13; 4:15 pm]

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